

CONSTITUTIO MEDIEVALIS: THE POLITICS OF LANGUAGE AND THE LANGUAGE OF POLITICS IN THE 1710 CONSTITUTION

One of the most distinguishing features of the political and clerical elites of the Zaporizhian Hetmanate during the era of what might be termed the Kyivan High Baroque was their remarkable facility with languages, ancient and modern. Geographically embedded among all varieties of the faiths of the Book, and amidst multiple sources of military might and political authority, these elites were obliged to interact with all of them. Mazepa, of course, was renowned for his ability to speak numerous languages (including, apparently, Turkish and Tatar). But it is the cohorts educated in seminaries, including some laymen, on whom the burden of multi-glossia primarily fell. For it was they who produced the primary *written* or *public* texts of confessional and political interface. More so even than the educated Polish elites whom they in many ways resembled, the Hetmanate's leaders needed to find the right tongue, or even dialect, appropriate for the specific discursive space(s) of the moment. Language, in other words, including the choice of language or dialect, was intensely and unavoidably political.

No figure of the era personified this existential fact of life more than Pylyp Orlyk, as complex, engaging, and polychromatic a politician as one is likely to find anywhere in early-modern Europe. Trained at academies in both Vilnius and Kyiv and comfortable in several languages, he composed texts in Polish, Latin, French, and various modes of East Slavic, Church Slavonic, and Russian/Ruthenian writing. More to the point, he fashioned himself in starkly different ways in different languages. For example, his letter to Metropolitan Stefan Iavorskii of 1721, written largely in Russo-Ukrainian but with a good deal of Latin and French phraseology, was cast as an exercise of pious and unswerving Orthodoxy¹. His campaign *Diariusz*, some of which was penned at approxi-

¹ On the letter to Iavorskii see my article: *Casting Mazepa's Legacy: Pylyp Orlyk and Feofan Prokopovych// Slavonic and East European Review*. 2010. Vol. 88:1/2. P. 125–33. The version that was published in the Russian-language journal *Osnova* in 1862, from which all subsequent translations have derived, strips the language of its polyglot color, and renders the text in a more-or-less homogenized Russian.

mately the same time as the letter, was written mostly in Polish, also with scattered interpolations of official correspondence in Latin and French. But in contrast to the letter to Iavorskii, the *Diariusz* made few references to Orthodoxy. Intermingled with his negotiations with diplomats and military figures, Orlyk recounted his ongoing attendance at services in Catholic churches and cathedrals in Wrocław, Cracow and other Polish towns, and without ever saying so explicitly, he framed himself almost matter-of-factly as a conventionally observant Catholic¹. Some of his writings during his *Wanderjahre* characterized him as Mazepa's closest aide and loyal follower, while others conveyed rage and betrayal at Mazepa's headstrong and authoritarian decision making during the fateful years leading up to the break with Peter I.

Enigmatic examples such as these abound in Orlyk's work, leading at least one scholar to characterize his political world as a "theater of shadows," a performative political world in which nothing was ever quite real and no one could ever determine his true sentiments². Perhaps this is so, but at the very least one must begin with the assumptions that Orlyk crafted his chameleon-like self representations carefully, and that he chose his languages with similar deliberation. The point here is not about uncovering what Orlyk "really" thought in his heart of hearts, an enterprise that lies beyond the meager tools of documentary historians who are fated to rely upon textual and physical remnants of a past time to try to reconstruct matters as they appear to us in distant hindsight. Instead, we need to inquire into how Orlyk chose to present himself, his arguments, and his images textually.

What, then, of the Constitution of 1710? Although it has been made available in many languages, Orlyk composed it and circulated it primarily in Latin. In light of the language-as-politics axiom that defines this paper let us begin by assuming that he chose Latin deliberately. As a work of history this examination focuses on past meanings and shared understandings rather than on the subsequent afterlife of the Orlyk Constitution as a source of inspiration among later Ukrainian thinkers and political movements. This paper is not explicitly interrogating the putative beginnings of modern constitutionalism—although it does so indirectly—even though that is an entirely legitimate inquiry. Thus the question so often posed about Orlyk's text regarding whether it articulated an early

¹ These comments are based on the portion of the *Diariusz* that was published in Warsaw in 1936 rather than on the complete facsimile photoprints published by Harvard more recently. *Diyarii Het'mana Pylypa Orlyka // Pratsi ukrains'koho naukovoho instituta*. 1936. T. XVII. P.1–170. References to attending mass in Catholic churches appear frequently in this section, replete with critiques of the sermons and officiating priests.

² Beavois D. *Le Journal de Philippe Orlyk: du mirage de l'exile au mythe identitaire ukrainien // Mazepa e il suo tempo: Storia, cultura, societa*. Alessandria, 2004. P. 153–159.

version of the modern idea of separation of powers is not of primary concern here. Rather, the paper dwells on the probable resonance of the text among his contemporaries, what these phrases might have signified *at that time and in that context*, and why, consequently, Orlyk chose Latin.

1. The Power of Latin

What were the specificities of language that would have connected the Constitution in Latin to older texts, codes, and linguistic formulae that would have enabled contemporary audiences both within and outside the Hetmanate to situate the manifesto and recognize its signifiers? What were the primary key words that the constitution of 1710 employed to characterize the political body for which it now lay its claims as a fundamental pact or law, and what did those words mean?

My argument in brief is that Orlyk chose his political language very carefully, gazing backward toward an imagined antiquity of liberty so as to embed his claims for future political arrangements in past understandings, specific antiquities, and historical precedent rather than on appeals to universality. He mobilized this linguistic retrospection in pursuit of a *restoration* of an idealized just order, a shared understanding of sovereignty for and among his Cossacks that had been increasingly abused by multiple parties (first the Poles, then the Muscovites) over several decades. This strategy was neither new to Orlyk nor unique to Ukraine. On the contrary, the notions of precedent, legitimation through ancient lineage or primordial understandings, and inflections of familiarity upon which the constitution rested dated back several generations, and even centuries, to modes of political argumentation commonplace in Europe since the Renaissance, if not before. All of these mark the text as pre-modern, and, in the eyes of its contemporaries a *constitutio medievalis*.

The use of Latin in this context served several practical, political, and symbolic functions, not the least of which was to draw a sharp linguistic line between the Hetmanate, whose lettered elites knew the language well, and Muscovy, in which Latin was little known and sparingly used, even in formal treaties. In a geopolitical region in which the core populations of Muscovy and Zaporizhie shared a common religion, mutually comprehensible language, and even “Rossiia/Rossia,” this act of cultural differentiation boldly highlighted something they did not share, and cast Muscovy as the outsider. Latin was the universal language of diplomacy. All of Europe used it, as the language of learning and science, and even in the early eighteenth century most treaties and international agreements employed it. Soon to begin his lonely journey in pursuit of

supporters from one town to the next, Orlyk knew that it was the Latin version that would be scrutinized in the courts of Europe, courts with which he dearly wished to make common cause. It was as if he was conveying the thought that they, the lawful civilized peoples of Europe, all spoke the same language, all belonged to the same fraternity of nations. It was the uncivil who did not belong. All this semiology before a single clause had been read! Beyond the political and cultural symbolism, Latin was the only language which provided an inventory of key terms that would resonate with clarity in European courts. It would have been essential that crowned heads and their diplomatic advisors see words and phrases with which they were familiar and to which they could ascribe clear meaning from their own political heritage. Latin, in short, was Orlyk's best hope, slim as that might have been.

2. Framing the Charter: Constitutio, Pacta, Conventa, and Conventa Pactorum

All of the key terms with which Orlyk inscribed his document were legal topoi, commonplaces long familiar throughout Europe in his day. These words alone would have evoked understanding, suggesting to trained eyes a familiar range of possible compacts between a ruler and his political elites¹. There exists a rich literature on the late medieval and Renaissance understandings of the term 'constitutio,' for example, both in the practical exercise of statecraft and in the philosophical speculations of Jean Bodin, Thomas Aquinas and many other political thinkers. Similarly, 'pacta' and 'conventum' had a long history as important key terms in European political discourse, in particular in states such as the Polish Commonwealth where the relationship between the King and *sejm* had to be negotiated, voted upon, and periodically reconfirmed². One must assume that these inventories of meaning framed the backdrop for Orlyk's text so as to link his political proclamations with similar compacts in the *longue durée*

¹ A point familiar to most of those reading this essay, but that nevertheless bears mention, is the variation between the manuscript title, the first page of which is now available to all on the internet, and the formal title in subsequent printed versions. The former identifies the text as *Conventa Pactorum inter Ducem et Exercitum Zaporoviensem conventorum* (i.e., without the word 'constitutio'), whereas the latter, at least in the redactions I have examined, includes 'constitutio': *Pacta et constitutiones legume libertatumque exercitus... publico utriusque partis laudo conventa, ac in libera electione...* As I read the text, the presence of absence of 'constitutio' is not a crucial issue, since the term would not have had the modern resonance that it has to readers born after the American and French Revolutions.

² See, inter alia, Golubev S. *Kievskii Mitropolit Petr Mogila i ego spodvizhniki (opyt istoricheskogo issledovaniia)*. 1883. V. 1 (P. 451).

of European politics. The fact that he saw no need to define these Latin terms (i.e., to tell the *starsbyna* what they meant) anywhere in the Constitution, or to interpolate specific or distinct attributions, implies that he either assumed that the Cossacks knew what the terms meant or that he chose to behave as if they knew.

In Polish parlance *Pacta Conventa*, dates back to the sejm of 1573 (although it has a much longer pedigree in the Mediterranean world), and its acceptance of Henry of Valois as the Polish king ¹. Then, as in 1710, it was meant to convey a sense of formal agreement between ruler and representative bodies, setting forth their mutual consent over both the fact and relations of sovereign authority. Subsequent negotiations over elected Polish kings also employed the term, as did Cossack representations to the Polish diet in pressing their claims to participate in negotiations as the voice of Rus' ². One suspects, therefore, that Orlyk's use of such a familiar concept constituted a deliberate effort to adapt a Polish formulation of the rights and responsibilities of a sovereign towards his subjects to Hetman-Cossack relations in the Sich, thereby establishing more legalistically than previously and in a single gesture both the idea of sovereign independence and Cossack rights.

Similar observations apply to 'constitutio.' The standard Latin dictionary of Orlyk's day, Du Cange's *Glossarium ad scriptores mediae et infimae Latinitatis* (which coincidentally was published in the same year as the Bendery Constitution) offered the following synonyms for 'constitutio': "census, consuetudo, praestatio quae ex instituto exsolvitur" ³. These definitions carry none of the implications of a fundamental and everlasting law that undergirds the modern notion of constitution, no sense of a universal and inclusive citizenship. In their place it suggests specific and temporally bound arrangements among consenting parties. The language of perpetuity ("in perpetuo") might be included, but this was common phraseology in treaties, pacts, and formal agreements, and with little concrete meaning, witness the "eternal peace" of 1686 between Muscovy and Poland. What, then, did Orlyk want his audience to understand by 'constitutio, i.e., how did he wish to render it familiar?

There is no question that Kyiv's educated and political elites were familiar with the word as Du Cange defined it as a series of pacts between the ruler and specific categories of subjects, since their forebears had employed constitutionalism in just this way to champion the rights of Orthodox populations in the

¹ Skwarczynski P. *The Origin of the Name Pacta Conventa in 1573 // Slavonic and East European Review*. 1959. Vol. 37, No 89. P. 669-72.

² Golubev S. *Kievskii Mitropolit Petr Mogila*. P. 438, 451, 457.

³ Charles du Fresne Du Cange, *Glossarium ad scriptores mediae et infimae Latinitatis*. 1710. Vol. 1. P. 1301-02.

Polish Commonwealth. The Polish diet had produced constitutions relevant to Orthodox populations in 1550, 1569, 1627, and 1631, and these had been cited repeatedly by leaders of the Orthodox communities in the Polish Commonwealth in defense of their religion. Petro Mohyla had been particularly effective in making the Orthodox case against the claims of Uniates, pointing out again and again the terms of specific “constitutions of the sejm” guaranteeing freedom of religion, control over Orthodox religious spaces, and protection against violence. For Mohyla, these constitutions, agreements between rulers and ruled, set precedents that ought to have guided the sejm and crown, a position that was accepted more than once in Warsaw. The “Puncta Responsum Dissidentibus de Religione” stated clearly in response to protests over recent decrees, “We promise that the tribunal decrees of the Crown and Lithuanian Grand Duchy which bear the sense and force of law, will not be carried out in any way as this [relationship] was clearly spelled out in the constitution of 1627. And if in spite of the constitution such decrees are ruled valid by a court somewhere these rulings should not have the slightest significance”¹.

The title of Orlyk’s published text employed “pacta et constitutiones,” i.e., the plural, suggesting a series of agreements or conventions, as in ‘consuetudo’, rather than a single over-arching characterization of the entire document². In the body of the text, ‘constitutio’, or variants of it, appear relatively infrequently. Somewhat further on, in the middle of the preamble, Orlyk employed the term again, when he wrote about the now-severed agreement with Moscow. He explained that Mazepa had hoped in vain that the “Muscovite absolutist Empire” would respect the liberties contained in the formal agreements of union: “confisus ipsi tanquam unionis ritu nobis uniformi, quod obligationes suas *pactis conventis constitutionibusque annexas...*” [italics added]³. This was a frequently expressed grievance, transparently alluding to the “rights and liberties” contained in the relevant treaties and in all of the pacts binding Moscow, Baturyn, *starshyna*, and hetman whenever a new hetman was elected. These rights were inscribed both in written law and in oral tradition, dating back to compacts with Poland, and according to some lore, originating at the time of the Khazars. In

¹ Quoted in Golubev S. *Petr Mogila i ego spodvizhniki*. P. 479.

² All citations and quotes from the Latin text come from the 1916 edition published in Switzerland. *Pacta et Constitutiones Legum Libertatumque Exercitus Zaporoviensis Inter Illustrissimum Dominum Dominum Philippum Orlik, Neoelectum Ducem Exercitus Zaporoviensis, et Inter Generales, Colonellos, Nec Non Eundem Exercitum Zaporoviensem, Publico Utriusque Partis Laudo Conventa, Ac In Libera Electione Formali Juramento Anb Eodem Illustrissimo Duce Corroborata, Anno Domini 1710, Aprilis 5. Ad Benderam*. Texte original avec traduction française. (Lausanne: Redaction de ‘Ukraine’, 1916). Hereafter, *Pacta et Constitutiones*.

³ *Pacta et Constitutiones*. P. 2.

other words, Orlyk was not suggesting that these ‘constitutionibus’ [again, in the plural] were in any sense innovative. Quite the contrary: their unassailability rested on their heritage, the *constituted agreements* between multiple parties, much like the medieval and Renaissance concept of the ancient constitution, famously analyzed by J. G. Pocock over half a century ago, that gained widespread currency throughout Europe during the seventeenth century ¹.

Even a cursory examination of the constitutions of the late eighteenth and nineteenth centuries reveals just how different this is from the language of modernity. Enlightenment and post-Enlightenment constitutions have almost invariably invoked a universal principle, God or nature, as the *transcendent* basis of rights rather than lineage or past compacts. The American Declaration of Independence, for example, embedded rights in “the Laws of nature and of Nature’s God,” and deemed them universal and inalienable. Similarly, both the Declaration of the Rights of Man (1789) and the French Constitution of September 1791 spoke of “the natural, inalienable, and sacred rights of man...in the presence and under the auspices of the Supreme Being.” These rights applied to all men as citizens of the *patrie*. Finally, the Haitian Constitution of 1805 echoes this language by proclaiming that “in the presence of the Supreme Being all mankind are equal” and that therefore, “equality in the eyes of the law is incontestably acknowledged” ².

By contrast, Orlyk employed ‘constitutio’ consistently as a limited and time-bound set of agreements. Thus, the preamble described the new relationship with Sweden in the following language: “sub protectionem S-ae R-ae Maiestatis Sueciae confugerit et nunc fortiter in ea perseverat...ac libertates suas, inivimus pactum constitutumque cum Domino Domino Philippo Orlik neoelecto Duce” ³. This language implied a compact about specific liberties granted to specific elements of the population, with no reference to natural law, a priori rights, or universality. Article IX employed the term in precisely the same way with the expression, “ordo communi pacto statuitur et immutabili, lege constituitur, ut libertata utinam Patria nostra de Moscovitico iugo” ⁴. Finally, the

¹ Pocock J. G. A. *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century*. 1987 See especially Part Two: “The Ancient Constitution Revisited”. P. 255–387.

² These texts are widely and freely available on the Internet and often in multiple languages. For English-language versions of the Declaration of Rights of Man see among many possible sites http://avalon.law.yale.edu/18th_century/rightsof.asp. For the Haitian Constitution: <http://www.webster.edu/~corbetre/haiti/earlyhaiti/1805-const.htm>; for the Declaration of Independence <http://www.ushistory.org/declaration/document>; and for the 1791 Constitution see <http://sourcebook.fsc.edu/history/constitutionof1791.html>.

³ *Pacta et constitutiones*. P. 4.

⁴ *Ibid.* P. 11–12.

declaration ended by proclaiming, “Pacta autem illa et Constitutiones efficaci executioni committuntur quas Sua Excellentia subscriptione manus propriae et sigillo publico, sed et formali iuramento dignitata est confirmare”¹. The valuation of “signing in public view” conformed to standard formulae of the time, an essential and universally understood element of surety intended to reassure anxious Cossacks that this set of agreements would be honored. Such a ritual would have been equally familiar in earlier times and in other places, whether it be thirteenth-century Catalonia, fourteenth-century Flanders, or fifteenth-century Piedmont².

3. The Primacy of Ethnicity: Gens, Patria, Populus

Ten years ago, the eminent Scottish historian Robert Bartlett posed the following question about the meaning and most faithful translations of pre-modern political language in Europe: “When...is it reasonable to employ the word *race*, the word *nation*, the word *tribe*”³. More recently and closer to the topic at hand, Serhii Plokhii has dwelled at some length on this terminological terrain in articulating what he terms “the origins of the Slavic nations”⁴. In his nuanced and close reading of numerous important texts Plokhii has concluded that the idea of nation emerges among the east Slavic peoples over a relatively long span of time, and that for Ukraine the idea of nationhood crystallized in the late seventeenth and early eighteenth centuries, more-or-less the time period in question. Although the questions regarding Ukrainian political discourse that Plokhii has raised relate to a very broad body of texts and utterances, his thesis has obvious relevance to Orlyk, especially in assigning particular meanings to ‘gens’ and ‘patria,’ words that Orlyk employed repeatedly in the Constitution.

Bartlett devotes much of his article to exploring the medieval and early modern understandings of those terms, as well as ‘natio’, a word that Orlyk did not employ, and ‘populus’, one that he used only infrequently. Bartlett acknowledges that these terms were every bit as ambiguous and overlapping in pre-

¹ Ibid. P. 18.

² On the parliamentary and constitutional situation of these other realms see: Marongiu A. *Medieval Parliaments A Comparative Study*. London, 1968. See in particular Part V: “The characteristics of parliamentary assemblies”. P. 223–50. Marongiu also appended a very useful glossary of political terminology, in which most of Orlyk’s key terms appear, more-or-less as Orlyk used them.

³ Robert B. *Medieval and Modern Concepts of Race and Ethnicity // Journal of Medieval and Early Modern Studies*. 2001. Vol. 31, No 1. P. 36.

⁴ See: Plokhii S. *The Origins of the Slavic Nations: Premodern Identities in Russia, Ukraine, and Belarus*. Cambridge, 2006. 400 p.

modern times as their modern linguistic counterparts. Nevertheless, he draws some conclusions that are pertinent here. 'Gens', he argues, often denoted something like ethnicity, even race, a sense of shared culture, language, descent, law and heritage, only occasionally situated in nature or biology. Bartlett terms this the "genealogical idiom"¹. Although 'gens' as ethnicity typically did not entail political claims of sovereignty or autonomy, "it is highly likely that it would be invoked [politically] when expedient; and it was"². 'Patria', by contrast often, but not invariably, came to mean something like the spatial or physical realm that we think of as a country—although the realm could at times be quite small, as in the patria of Friuli in late medieval Italy, bounded and ruled in common but not necessarily comprising a single or homogeneous people. Generally speaking, scholars associate the modern usage of 'patria' with emerging Enlightenment notions of the nation and 'gens' with older ones. Andrzej Walicki put it this way,

The Enlightenment concept of the nation—in Poland and in Europe as a whole—was generally political rather than ethno-linguistic and denoted the whole body of 'active citizens,' or the whole population of the state without reference to ethnic or cultural differences³.

Walicki's brief in this argument was to demonstrate (not totally convincingly) that pre-partition Poland conducted and conceived of itself as a nation in precisely these ethnically-blind terms. Moreover, as Bartlett has shown, all these terms, including, 'patria,' had a longer history than have modern nations. Still, he is essentially correct in his view of Enlightenment state ideology, and he alerts us to the necessity of paying close attention to the frequency of use and inscribed meanings of these powerful words in Eastern as well as Western Europe.

Orlyk's constitution employed these terms repeatedly, and we are obliged to pose the same questions to it as Walicki asked of his Polish philosophers: where do ethnicity, nation, cultural specificity, and citizenship stand in relation to one another?

The word 'patria' does not appear in the preamble to the Constitution but it can be found several times in the subsequent articles. Orlyk presumably meant it to be synonymous with 'otchizna' or 'otechestvo' ('fatherland'), words that had gained some currency in Ukrainian political language during that time, as

¹ Plokhy S. *The Origins of the Slavic Nations: Premodern Identities in Russia, Ukraine, and Belarus*. P. 44.

² Ibid. P. 51.

³ Walicki A. *The Enlightenment and the Birth of Modern Nationhood: Polish Political Thought from Noble Republicanism to Tadeusz Kosciuszko*. Notre Dame, 1989. P. 1–2.

Frank Sysyn has admirably demonstrated ¹. Even so, the meaning that Orlyk inscribed onto ‘patria’ remained ambiguous. Its initial use corresponded closely to the idea of one’s country in a geographic sense or political sense, “Sicut omne dominum integritate limitum inviolate consistit et stabilitur, ita et Parva Rossia, *patria nostra* [italics added], in suis limitibus...” ².

This statement constitutes a bold and fundamental claim of autonomy, identifying ‘Malorossiiia’ (“Parva Rossia”) as the fatherland, a sovereign space entitled to establish fixed borders. In other places he identifies the patria as ‘Ucraina’ and, alternatively, as ‘Roxolania’ (article XIV), an indication that he understood these three appellations to be interchangeable. The text goes on to delineate where those borders lay, and only then proclaims that this sovereign territory (‘Ucraina’) has voluntarily entered into an agreement to be under the perpetual protection (“perpetuorum...Protectorum”) of Sweden. In article VI, when discussing public well-being and declarations of war and peace, Orlyk referred to “the common good of the fatherland, both public and private” (“de communi patriae commodo private ac publica”), apparently suggesting something less spatial and all-inclusive ³.

Over the next several sentences in the same paragraph Orlyk returned to ‘patria’ at least three times, but in a far less expansive light. Here the patria was bounded not by space or identified with Parva Rossia but was instead conflated with the Cossack army, the constituency whose interests Orlyk and the Constitution most explicitly sought to protect. It was they, not the entire population residing in the Hetmanate or in ‘Ucraina’ who were the bearers of rights and liberties, and who held the authority to elect the hetman, to impose limits on his executive power, and to prevent him from engaging in disorder or public violence against the interests of the army, one of the most contentious legacies of Mazepa’s rule within the *starshyna* ⁴. The generals, colonels and supreme counselors, drawn from among the Cossack elites, simultaneously constituted and defended the ‘patria,’ even against the Hetman himself if necessary. Toward this end they were commanded to reside as ministers at the Hetman’s residence. They were deemed the guardian of the public good, and were explicitly warned against pursuing private interests, “which would be a detriment to the fatherland

¹ Sysyn F. E. *Fatherland in Early Eighteenth-Century Ukrainian Political Culture // Mazepa e il suo tempo*. P. 39–53.

² *Pacta et Constitutiones*. Article XII. P. 6.

³ *Ibid.* P. 8–9.

⁴ *Ibid.* P. 9. “Quo despotico iure Ministerio Ducali incompletente introducti sunt in patriam et Exercitum Zaporoviensem multi disordines, legum et libertatum eversiones, publica gravamina, violentae, et appetiatae officiorum militarium dispositionis, levis Generalium, Colonellorum et insignium commilitonum aestimatio”. This same use of ‘patria’ recurs a few sentences later when Orlyk details the rights of the army officers.

and could lead even to its ruin”¹. In this usage, then, the political body, the collective patria, was very closely aligned (although not completely synonymous) with the army (*‘Exercitus’*), the military representation of the Cossacks themselves, a usage that is reminiscent of the conciliarism of early modern times, what Walicki referred to in the Polish context as ‘noble republicanism.’ In short, Orlyk was not entirely consistent about who or what the fatherland was, land or Cossacks, a reflection perhaps of a more basic tension that ran through the entire discourse of the realm of Ukrainian sovereignty at the time: was it the land and its people or the Cossack hosts?

By contrast, *‘populus’* appeared sparingly, and with far less emotion or ambiguity than *‘patria,’* usually to mean “people” in the most prosaic sense. Article XIV described the measures to be taken to alleviate popular suffering as a result of the “Muscovite yoke” (*‘iugo moscorum’*), a particularly acerbic term that Orlyk employed several times that would negatively associate Moscow simultaneously with the days of the ruina (“the Polish yoke”) and with “*tatarskoe igo,*” the earlier subjugation of the Muscovites themselves, and thus reinforce Moscow’s intertextual alterity from European civilization². He used the expression “*cum alleviatione populi publica,*” meaning flesh-and-blood people, translated into modern French as “*avec l’aide du peuple.*” Article XVI endowed “*populus*” with a similarly concrete meaning when it discussed legal protection, but identified them as rural inhabitants rather than the entire mass of people, “*Nulla iudicia non tantum in causis criminalibus, sed in accidentibus peragant, neque insolitas extorsiones et gravamina populo et civitatibus inferant...*”³.

The third of these key words, *‘gens’*, meaning variously something like ethnicity, race, nation, or people of common descent is the one term on which Bartlett dwelled the longest because of its widespread use in late medieval and early modern European discourse. Orlyk, in fact, endowed *gens* with far greater, almost magisterial, importance than either *‘populus’* or *‘patria,’* no small matter especially since recent scholarship has suggested that, in the Ukrainian parlance of the day, *‘gens’* had come to be equated with the modern notion of nation. Bartlett, too, acknowledged the possible association of *‘gens’* with *‘nation,’* but not necessarily in a modern sense as antecedent to nation state. Thus, *‘gens Cantuariorum’* is rendered as ‘the Kentish nation’, *‘gens Anglorum’* as the ‘Eng-

¹ *Pacta et Constitutiones*. P. 10. “*cum ulla honoris Ducalis detractio, cum publico patriae gravamine, ruina absit vero et pernicie.*” See also the use of *‘patria* in Article IX 9 (Ibid. P. 12) that continues this conflation of Cossackdom and patria.

² Ibid. P. 16.

³ Ibid. P. 17.

lish nation', etc. ¹ Lest there be any doubt of Orlyk's determination to foreground 'gens' over other terms, the text of the constitution began with this thundering inscription:

In nomine Patris et Filii et Spiritus Sancti,
Dei in Sacrosancta Trinitate Glorificate

Fiat ad perpetuam Exercitus Zaporoviensis
Gentisque Rossiacae gloriam et memoriam ².

The second stanza suggests that the army, although supreme, was a subset of the larger 'gens', and that the two together occupied the highest rungs of Orlyk's nominalist hierarchy. Who—or what, then, were the 'gens,' and what properties defined them? Orlyk addressed these questions of identity immediately: the 'gens' were the Cossacks ("Cossaticam"). This association is consistent with Plokhii's argument that in the Ruthenian usage of the seventeenth and early eighteenth centuries the idea of nation came to be inscribed specifically onto the Cossacks. Orlyk then embraces and embellishes the myth of Khazar origins of the Cossacks in order to proclaim their existence as a distinct group dating back many centuries, long before the Hetmanate. It was from the Khazars that the Cossacks inherited their glory, right to the land, and sense of justice, "Ita et gentem strenuam antiquamque Cosaticam, antea nominatam Cossaricam, prius exaltaverat immoritura Gloria, amplo dominio et factis heroicis" ³. The Khazar's kahan was, he declared, a cossack prince, married to the daughter of the Byzantine Emperor. This postulate recurred again in Article III when, in averring peaceful intentions toward the Crimean khan, he declares, "the ancient Khazar people, subsequently named Cossacks, derive their genealogy from the valorous and invincible Goths...".

Although the scholarship has not determined precisely who originated this mythology (Hryhorii Hrabianka and Samuel Velychko, both of whom wrote somewhat later than Orlyk, are sometimes mentioned as likely pioneers, as is Ioanniki Galiatovs'kyi), there seems to be a general consensus that it gained particular currency during the Mazepa-Poltava-Bendery events possibly as an alternative to the Polish insistence on deriving Cossacks from the Sarmatians. In Plokhii's words, "the idea of a distinct Cossack nation of Khazar origin was popular among the Ukrainian elites that supported the revolt of Hetman Ivan Mazepa ...and...found expression in the historical preamble to the Constitution of Hetman Pylyp Orlyk" ⁴.

¹ Bartlett. P. 43–45.

² Ibid. P. 1.

³ Ibid. P. 1.

⁴ Plokhyy S. *Ukraine and Russia: Representations of the Past*. Toronto, 2008. P. 5.

Regardless of its specific origins or of whether Orlyk himself was the first to propose the Khazar myth as official doctrine, he certainly endowed it with considerable and rather specific importance. Having derived the Cossack 'gens' ethnically from the Khazars, Orlyk proceeded to articulate the defining characteristics of this group. Based on frequency of terminology, the primary feature was its liberty, a word that he employed constantly throughout the constitution. Expressions such as "pristinum libertatis," "legum et libertatum veterum," "libertatum Exercitus Zaporoviensis," etc., recur in virtually every paragraph. It was God's punishment that the Cossacks had been compelled to submit to Polish rule and sacrifice their previous liberty. It was as a 'gens' that the Sich suffered multiple waves of oppression "to the ultimate ruin of a free people" ("ac finale ruinam inferre gentisque liberae")¹. And it was as a 'gens' that they pursued the reestablishment of those freedoms now, against the impious Muscovite state. This antinomy of pious/impious emerges as a critical element as Orlyk endeavors—without ever quite saying so—to draw a distinction between the Muscovites and Ukrainians as separate ethnicities, fundamental to debunking the myth of a single 'Rus'.

Implicit in this fusion of liberty and the glorious heritage of Khazaria was the centrality of faith, and divine sanction that, in its miraculous and mysterious essence, exalted some royals and peoples ("regna gentesque exaltat") and rained misery upon others, "Among the three Theological virtues faith occupies the highest place"². On this point Orlyk was un-categorical: the faith of the Cossack gens was Orthodoxy, and it was as an Orthodox people that Bohdan Khmelnytskyi had unchained them from the Polish yoke³. This articulation of the primacy of a specific faith among the 'gens' may have been unavoidable, especially in light of the anathema against Mazepa's that had been pronounced by local clergy (under orders from Peter I, Menshikov, and Iavorskii) throughout the Hetmanate, and the widely circulated accusation that Mazepa and Orlyk had sold out the faithful to the enemies of Orthodoxy, "Liutyi Liakhy". Orlyk's counter attack declared the Muscovites themselves to be impious, and purveyors of violence not only against the Cossacks but against God himself. For it was from God, he insisted, that Cossack freedom (albeit not universal or even Ukrainian freedom writ large) ultimately derived. This postulate led him to demand the political exclusion of Catholics and especially of Jews. The faith of the Cossack army was "solely Orthodox" ("solum pro Fide sua Orthodoxa"). "The Hetman therefore was compelled to take energetic measures to nullify the introduction

¹ Plokhy S. *Ukraine and Russia: Representations of the Past*. Toronto, 2008. P. 2.

² Ibid. P. 4. "Quoniam inter tres virtutes Theologicas fides primatum teneat locum".

³ Ibid. P. 2.

of alien (“exotica”) religions in our Ruthenian fatherland”¹. Preaching and proselytizing was forbidden to other confessions, and all measures were to be undertaken to make certain that Orthodoxy will be the only religion of Parva Rossia. Here Judaism—ironically the faith of the actual Khazar elites—was singled out for particular condemnation, in language that implied the potential for expulsion, “praesertim vero praestigioso Iudaismo cohabitationem in Ucraina non concedet et omni virium conatu sollicitam impendet curam...”.

One is obliged at this point to ponder what this strident insistence on a singular politically entitled faith might have meant at the time. It is essential here to underscore the fundamentally pre-modern (and now, perhaps, post-modern) character of these particular expressions of faith-specific identity in articulating political community and ethnicity. Anti-Jewish and anti-Catholic sentiments in this type of text would not have discomfited Orlyk’s confederates or his audiences in other European lands. Numerous charters over many generations and throughout Europe had constituted resident Jews as a separate population, with obligations, tasks, and privileges specific to them. More than once Jews had been formally excluded from parts of Cossack-held territory, including Kyiv. The Khmel’nyts’kyi rebellion, predicated on a similar fusion of Cossack identity and Orthodoxy (“At first I fought for the wrongs done to me personally; now I shall fight for our Orthodox faith²), profoundly and violently deepened that sense of mutual separateness both from Polish Catholics and from Jews, who were often linked as almost interchangeable objects of enmity³. In light of Orlyk’s ease with participating freely in Catholic rites while in Poland, one must conclude that he reprised these statements—indeed he placed them in the very first article!—not out of passion but precisely because of their popular resonance.

Language such as this, repugnant to modern principles of universality and tolerance, was not unusual in pre-modern constitutions, and it formed one basis for momentary expulsions and exclusions of coinhabitant peoples throughout Europe. Edward I’s Edict of 1290 expelling the Jews from England, for example, was done as a constitutional act. Similarly, the multiple restrictions and expulsions of Jews from various regions of late medieval France were carried out as parts of constitutional law, nominally as exercises of regalia rights in pursuit of

¹ “ut nulla exotica Religio in patriam nostrum Rossiacam introducatur” (Ibid. P. 5).

² This quote is taken from: Magosci P. R. *A History of Ukraine*. Seattle, 1996. P. 204.

³ The history of the Khmel’nyts’kyi revolt has been told numerous times and from every possible point of view. For a particularly dispassionate and informative discussion of religious strife and the nature of anti-Jewish violence see: Sysyn F. *The Jewish Factor in the Kbmelnytsky Uprising// Ukrainian-Jewish Relations in Historical Perspective* / Peter J. Potichnyj and Howard Aster eds. Alberta, 1988. P. 43–56.

the “common good”¹. However deplorable from a contemporary perspective on the meaning of nations, all these actions conformed to the notion of constitutions prevalent in pre-modern Europe, as pacts of exclusivity, endowing one people (‘gens’) a set of prerogatives between ruler and ruled while explicitly denying those prerogatives to others on religious or more-or-less ethnic bases. Orlyk’s text was merely transferring a notion of sovereign authority over Jewish settlement and “dissident” Christian confession from the Polish or Russian crowns, where it had heretofore resided, to the realm of the Hetman.

Reading (or, perhaps, mis-reading) these clauses through a post-Enlightenment lens leads only to mistakes and unnecessary pain in that it unavoidably associates them with disenfranchisement and eviction, cleansing the land of “strangers” and other disagreeable features of our common modernity. Simply put, whereas modern constitutions have emphasized inclusion, universality, absolute rights, and citizenship, pre-modern constitutions invariably defined lines of exclusion among populations that resided within the physical boundaries of the realm. Neither natural nor primordial, the liberties that these pacts afforded could be revised or annulled. It was with this set of understandings that Orlyk, like so many European political actors before him, made ‘gens’ the paramount basis for constitutional inclusion.

Clearly, Orlyk was walking a very fine line here ideologically. Let us put aside the awkward circumstance that the Khazar elites had themselves embraced Judaism, something of which Orlyk would almost certainly have been aware even if he preferred to trace them racially to the Goths. This historic complication could be passed over in silence. But the insistence upon confession as an irreducible attribute of ethnicity raised other ambiguities that could not be ignored. On the one hand, Orthodoxy was an irreducible element of the ethnicity of ‘Parva Rossia,’ the absence of which ipso facto excluded others (Catholics and Jews) who happened to be residing on the same land from membership in the body politic. On the other hand, Orthodoxy could not become the *primary* signifier of ethnic identity, because otherwise it would be virtually impossible to delineate on ethnic terms the differences between ‘Parva’ and ‘Magna Rossia.’

Orlyk fully acknowledged the common faith with Muscovy. Moreover, for all of its insistence on visible signifiers of explicit identity, the constitution never made any allusions to a discrete Ukrainian language or dialect as an attribute of identity—in fact it did not mention languages at all—a reflection presumably of the fact that many Uniate Catholics spoke the same language as he did, and that there was no fixed and recognized boundary separating Muscovite

¹ Jordan W. C. *Jews, Regalian Rights, and the Constitution in Medieval France* // *Association for Jewish Studies Review*. 1998. Vol. 23, No 1. P. 2–4.

from Ukrainian speech. Even 'Rossia' was a shared appellation. The only way of differentiating the two on religious grounds was structural, and here Orlyk proclaimed that the Metropolia under his domain would return to the Patriarchate of Constantinople, with local authority remaining in the hands of the Metropolitan of Kyiv¹. Such a resolution lay beyond the power of lay authorities, as Orlyk well knew, as only a synod of eastern patriarchs could ordain such a reorganization. But practically speaking this was the only course open to him, even if it risked alienating Orthodox patriarchates abroad. Autocephaly also represented an effort to win over the Hetmanate's monastic clergy, which had expressed deep reservations about the shift to Muscovite authority in 1686, but which had failed to provide visible support to Mazepa and Orlyk in the months after October 1708.

4. Cities and territoriality: 'Urbs' and Magdeburg Law

While under Polish rule, Kyiv, and some other Ukrainian towns were subject to Magdeburg Law. As with all rights and privileges articulated within the Hetmanate, urban self administration was rooted in tradition and established relationships, in this case dating at least to the fourteenth century for western Ukraine and the late fifteenth century for Kyiv and confirmed again in 1514². At least in a formal sense this designation continued even after incorporation into a Russian state³. The Treaty of Pereiaslav explicitly confirmed it, as do subsequent legal documents. Of course, practically speaking urban autonomy clashed with central authority, especially through the agency of the town magistrates. But it is clear that urban self-administration mattered to Kyiv's merchant elite (and does so again today, judging by the Magdeburg Law Monument in central Kyiv), even if only as a principle, and it is of interest, therefore, to see how Orlyk's Constitution responded to these sensibilities.

Like 'constitutio' and 'conventa', the articulation of Magdeburg rights was explicitly predicated on the principle of special privileges rather than universality, and it was commonly applied in such a way as to ascribe those rights of

¹ Ibid. P. 4–5.

² *The Charter Confirming Magdeburg Law in Kiev // A Source Book for Russian History from Early Times to 1917*. Vol. 1. New Haven, 1972. P. 109–110.

³ The annulment of Kyiv's Magdeburg rights took place only in 1835. *Polnoe sobranie zakonov rossiiskoi imperii*. Sbornik 2, Vol. X, No 7694. For more details see I. Kamanin, *Poslednie gody samoupravleniia Kieva po Magdeburgskomu Pravu*. Kyiv, 1888. For a fuller discussion of urban communalism and Magdeburg Law in Kyiv see also Christophe v. Werdtte. *Stadt und Gemeindebildung in Ruthenien: Okzidentalisierung der Ukraine und Weissruslands im Spätmittelalter und in der frühen Neuzeit*. Wiesbaden, 2006. P. 111–24 and P. 207–10.

urban citizenship to some members of the town corporate body while explicitly denying them to others, deeming them guests. Thus, in various times and places confession became a dividing line for inclusion in Magdeburg rights. The Kyivan confirmation of 1514, for example, applied these rights to “townspeople of Roman, Greek, and Armenian faith alike, present and future”¹. Explicitly excluded were Tatars, but the larger implication was that these rights were reserved to Christians. All of this was consistent with Orlyk’s own usage of political language, but his sense of corporate inclusion rested firmly on his derivation of Cossack / military identity. Where, then, did the towns and their residents fit into his quasi-ethnic notions of belonging?

Significantly, Magdeburg Law is entirely absent from Orlyk’s text, which in general sought to subordinate cities to the army. Article V, for example, discussed the town of Terekhtemirov, near Pereiaslav, but only in the context of the rights of the Cossacks to have free passage, storage, and billeting there, a right specifically inscribed in a charter from the Polish king in 1578. Similar references are made elsewhere in the text to Poltava and Samara. Only toward the end of the proclamation, in Article XII did Orlyk address towns as corporate bodies. But he made no reference in any of these to Magdeburg Law or to town governance. Instead he speaks of freeing them from the Muscovite yoke but without any mention of the restoration of previous rights. On the contrary, he commanded that the General Council of the Hetman will prevail, and then he goes on to criticize the negligence of rich merchants and Cossacks who, he charges, abandoned their responsibilities to the urban poor under the pretext of respecting the rights of towns, “Mercatores vero opulentiores gloriandi tum libertationibus Ducalibus, cum et protectrici Colonellorum tutela evitant baiulanda publica onera sibi competentia renitentque praestando subsidio miserae plebe.” This is an interesting expression in that it seems to take the side of the urban and rural poor against the wealthiest elements of the population. This most certainly is inconsistent with Magdeburg principles, and it can even be seen as contravening them in that it granted the Hetman’s Council overall authority and raises suspicions about what the articulation of urban rights was all about. Only in the subsequent article, XIII, did he make concessions to urban autonomy, and then only briefly, “Kyiv, the capital city of Ukraine, along with all the other towns will maintain intact and inviolable all their rights and privileges accorded by law”. What these rights and privileges were, and whence they derived, the Constitution failed to elaborate. One suspects, therefore, that Orlyk had

¹ *Stadt und Gemeindebildung in Ruthenien: Okzidentalisation der Ukraine und Weis-
srußlands im Spätmittelalter und in der frühen Neuzeit.* Wiesbaden, 2006. P. 109.

little interest in those rights, and cared far more about bringing urban populations under the umbrella authority of Cossack-centered institutions.

5. Conclusion

The Latin key words that Orlyk employed, ‘pacta’, ‘constitutio’, ‘gens’, ‘patria’, et al. as well as the meanings he inscribed onto them, were part of a familiar inventory of political language in his day and well before. Many of the basic issues with which his constitution wrestled, in particular the struggle of military or landed elites (*noblesse d’épée* or *noblesse du robe*) to protect what they perceived to be ancient rights and liberties against aggressive incursions on all sides from state power, would have struck a responsive chord continent wide. Frondeurs, parliamentarians, and Junkers, as well as Cossacks, articulated related concerns vis-a-vis rapacious and seemingly irrepressible absolutism, what historians used to term ‘the crisis of the seventeenth century.’ Against those incursions, elites everywhere asserted special or primordial constitutional privileges, based on particular compacts that—or so they believed—spared them and only them, usually with little ultimate success. If none of that sounds particularly modern, it nevertheless was quintessentially European.