

## REVIEWS

**SOURCES OF LAW OF UKRAINIAN HETMAN STATE: TEACHING GUIDE / S. I. BUDNYK, V.Z. PRUS, O.V. SHKURATENKO. KYIV: MARCH-A, 2017. 242 P.**

**ДЖЕРЕЛА ПРАВА УКРАЇНСЬКОЇ ГЕТЬМАНСЬКОЇ ДЕРЖАВИ (ВІЙСЬКА ЗАПОРОЗЬКОГО): НАВЧ. ПОСІБНИК / БУДНИК С. І., ПРУС В. З., ШКУРАТЕНКО О. В. КИЇВ, 2017. 242 С.**

**T**he emergence of a new teaching guide on History of State and Law of Ukraine, which is focused on the sources of law of the Hetman state, is an extremely necessary and useful thing. The course of History of State and Law of Ukraine and, in particular, its section on the Ukrainian law of the 2nd half of the 17th century – the first half of the 18th century is highly important in shaping the



national consciousness and statesman-like attitude of the youth. Without a profound and comprehensive analysis of the most important legal monuments (sources of law), it is impossible to learn about the historical and legal heritage and to create scientific and legal thinking which is essential for studying and applying laws. This teaching guide will make it possible to study legal acts of the aforementioned period in more detail and to become acquainted with the process of formation of the areas of Ukrainian law.

In the preface to the publication, the authors clearly defined the goal and intentions as well as the methodological principles they followed when writing the guide. The first section dealing with the present state of the scientific study of the topic is insightful. Apart from the relevance mentioned, due attention is paid to clarification of the methodological and theoretical foundations of understanding the sources of law. The effective combination of the legal and historical research methods is worth mentioning. The present state of scientific research of the sources of law has been addressed comprehensively and the notion of a source of law in historical and legal thought is explained in detail. A positive aspect of this part of the work is a rather detailed construction of the definitions of sources of law and their classification (p. 37–44). Quite reasonable consolidated information presented at the beginning should be highlighted – the use of various names of the Cossack state such as the Hetmanate, Zaporizhian Host, Ukrainian Hetman state as well as Cossack Ukraine, which are all commonly known; also, its chronological framework and territorial boundaries are focused on. It is stated that the publication will mostly deal with the sources of law of the 18th century Left-Bank Hetmanate.

Particularly noteworthy is the attempt to study the sources of legal awareness that had an impact on the formation of the Cossack legislation, namely: customary law, Lithuanian statutes, Magdeburg Law and church law. In this same part, such source of law as the *Pacts and Constitutions...* by Pylyp Orlyk is described. However, it appears that it would have been more reasonable and logical to study this document in the next section, where Hetmans' legal acts are studied. For, as the authors say, the *Pacts and Constitutions...* were an attempt to generalize the social and political system that had been created in the period of existence of the Sich and the Zaporizhian Host, which lasted a century and a half. They were a logical extension of Hetmans' previous acts, even though they differed from them (p. 60). In our opinion, the review of the *Pacts and Constitutions...* after a detailed characteristic of the 1654 March Articles and treaty

articles would have shown the development of Ukrainian law in respect of Hetmans' legislative acts more vividly.

In the second part, which deals with the legal acts of the Cossack state, the authors analyze documents of the Hetmanate government and legal acts of the General Military Staff (*starshyna*). Analysis of legal acts issued by the Hetmanate authorities starts with the Universals. Due attention is given to the explanation of the term itself – its literal translation, origin, and establishment of its meaning. Having described the definitions already used in the domestic encyclopedic editions and monographs, the authors give their own interpretation of the Universals as regulatory legal acts of the Hetmanate government of the second half of the 17th century – the first half of the 18th century, which acts regulated the public relations by establishing (revoking or amending) legal provisions, prescribed the rights and duties of specific participants of legal relations, determined the responsibility level of individuals and social ranks for offenses committed by them (p. 67). The information about the structure of a Universal, manner of its dissemination, punishment for failure to comply with the same, etc. looks interesting (p. 69).

The guide points out that such legal acts as orders and instructions were similar to the Universals; Hetmans' letters and charters are mentioned as well as the scope of their application. These documents are characterized by the same principle as the Universals but not as extensively. However, it is emphasized in the publication that the Universals were of particular importance and “they were the most common legal acts” (p. 74). While emphasizing the traditional classification of the Universals into general and special ones, the authors of the guide take it a step further and offer a more in-depth classification by the subject of legal regulation; in particular, they singled out the following: Universals dealing with military issues and day-to-day governance, land Universals (which protected and secured the private ownership of land), protective (taking under Hetman's personal protection), Universals that were related to the legal status of the Cossacks, clergy, peasants and town dwellers. In particular, as to the latter, the authors suggest the interesting idea that “sometimes the status of town dwellers (living in towns using Magdeburg Rights – N.R.) was even more privileged than that of the Cossacks, especially during the rule of Hetman I. Mazepa” (p. 89).

Noteworthy is the emphasis made in the guide on the socio-economic development of the young state and, consequently, the legal acts relating to it. In particular, there is a description of Hetman Universals that allowed engagement in a certain branch of economic activity (flour milling, alcohol distillation, saltpeter production, glass-making, etc.) as well as exclusive right to pursue a certain trade.

Also, there is a characteristic of Hetman acts that regulated the Hetmanate's judicial system. Special attention is given to Hetmans' efforts in contributing to the proper functioning of the judicial system. However, according to the authors, despite the Hetmans' efforts, the Hetmanate's judicial system was far from ideal. In the conclusion, the authors reasonably prove that the Cossack state, being autonomous, had its own legal system, which is an important characteristic of a state (p. 104).

The subsection entitled “Legal Acts of the General Military Staff (*starshyna*)” shows the latter's place in the governing bodies and describes its composition and functions. The guide pays great attention to the status and competence of the General Staff (*starshyna*) Council, provides a detailed analysis of legal historians' opinions of this issue and clearly identifies several viewpoints: some believe (M. Hrushevsky, O. Lazarevsky, K. Okynashevych) that it was an advisory collegial body under the Hetman, others consider that it was a clearly structured independent body which acted within its competence, operating concomitantly with the Hetman and was a full-fledged legal subject (M. Slabchenko). The authors themselves tend to think that the General Staff (*starshyna*) was not an independent subject of legislative initiative and did not issue legal acts in its own name but only executed Hetman's instructions,

except for the Universals that were published in the times of P. Polubotok. The guide points out that the existence of a body the Hetman had to reckon with when issuing legal acts proves that there were elements of democracy in shaping the legal framework of the Cossack state (p. 113).

The third section entitled “Extension of the Russian Legislation to the Legal System of the Ukrainian Hetman State (Zaporizhian Host)” starts with the subsection dealing with provisions of Hetmans’ treaties made with the Russian tsars. This subsection pays great attention to the Treaty of Pereyaslav signed by Bohdan Khmelnytsky in 1654. This treaty is still believed to be one of the most contentious issues and is often the subject of debate. Therefore, despite the analysis of the most widely used opinions: the traditional Russian opinion (there was no equal treaty; Ukraine became a part of Moscovia and the tsar granted certain privileges to the Hetman and Cossacks) and the Ukrainian opinion (it was a bilateral treaty whereby the Moscow tsar’s protectorate was established), more attention should have been given to this question; also, the construction and evaluation of the treaty in the modern Ukrainian historical and legal science should have been explained in more detail. The history of signing and creating the March Articles is described in detail, and the Articles are thoroughly analyzed from a legal perspective. There is a comparative analysis of draft Hetman articles submitted to the tsar and those approved.

The guide tells about the following treaties concluded by Hetmans with the Moscow tsars, which treaties are referred to by the common name “treaty articles”. The authors emphasize that the treaty articles are constitutional acts since they determined the legal status and general provisions of the administrative and political system of the Ukrainian Cossack state, confirming its autonomous status (p. 118).

It will be interesting for future lawyers, historians and all those who take an interest in this subject to learn that the treaty articles were always made up of two parts: the basic agreement (which was based on the March Articles) and new supplements. It is reasonably recalled that at the time of signing the agreement with Yu. Khmelnytsky in 1659, the first part was already falsified by Moscow in order to limit the autonomy. Particular attention is given to the characteristic of the treaty articles of the 18th century Hetmans, starting with Hetman I. Mazepa (1687) and ending with the “Authoritative Ordinances” (Reshitelnye Punkty) by D. Apostol (1728); however, similar acts issued by the Hetmans in the second half of the 17th century, namely I. Briukhovetsky, I. Mnohohrishny, I. Samoylovych were overlooked. It seems that they should have been addressed as well in the context of analyzing the process of continuous growth of the Russian laws’ impact on the Hetmanate and destruction of its autonomy.

The subsection “Legal Acts of the Tsars, Little Russia’s Order and Collegium of Little Russia of the Russian Empire” quite reasonably starts with the information that from the beginning of the 18th century, absolutism was established in Russia as a form of government of the state, which had a significant effect on the Hetmanate’s legal status towards restriction of the Hetman power. With the establishment of absolute monarchy, law was recognized as the only legal source of the Russian Empire (p. 141). The authors present a classification of the forms of law and look at its main forms: manifesto, regulations, decree, statute and charter.

The guide clearly identifies the main trends in the extension of the Russian legislation to the legal system of the Ukrainian Hetman state, when gradual limitation of the Hetman’s power and authority occurred due to a series of reforms conducted by the Russian authorities in the spheres of state power organization, military, socio-economic, cultural and religious spheres. Detailed description of the reforms makes it possible to conclude about the intentions of the Russian Empire to wipe out the autonomy of the Hetmanate, destroy the effective legal sources and take control of its legal system. Legislative sources of the Russian law in administrative, judicial practice

and of the current legislation of the tsars are addressed separately, and their classification is presented.

The following subsection deals with systemization of the laws of the Ukrainian Hetman state in the first half of the 18th century. Having specified their reasons, the authors of the guide analyze the attempts to harmonize the current Ukrainian laws. Primary focus is on the collection entitled "Laws under Which People of Little Russia Litigate". Legal sources can be traced, the structure is presented, certain sections of the collection are described in detail, and its huge impact on the subsequent development of Ukrainian jurisprudence is pointed out. Also, information is presented about other attempts of codification, where their structure and role are analyzed in detail. The authors of the guide specifically highlight the fact that none of these documents ever gained the status of codification act or was introduced, because the Russian government was not interested in the development of independent Ukrainian law. The strengths of the publication are the conclusions, which can be found in each section and subsection; thanks to this, the information can be structured and learned more easily.

In view of the above, the guide under review makes a good impression, the material is presented consistently, logically, and its continuity and intra-subject links are ensured. The text of the narration complies with the standards of the Ukrainian literary language and is clear. However, it should be mentioned that the text is densely packed with quotations from Russian-language documents. In our opinion, their quantity should be reduced; instead, texts of the documents should be placed at the end of each subsection together with assignments related to them. The applied practice of listing questions at the end of each subsection for self-control purposes is effective from the viewpoint of methodology. This encourages a more in-depth comprehension of the material and prevents its mechanical memorization. At the same time, the teaching guide would be even better if its methodological component was broader and included materials for self-learning presented in a more meaningful way: terminological dictionary, tests.

We would like to mention the immense amount of work done by the authors of the guide and, in particular, point to the use of new interesting facts related to the content. The authors of the guide managed to touch upon numerous pressing issues which are often left out in the scientific methodological literature dealing with the issues of history and theory of state and law. The guide will be useful for students, teachers, researchers and all those who are interested in the problems of the history of Ukrainian state and law.

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