

Theory and history of state and law

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**Hotsuliak Svitlana**

*PhD, Assistant Professor of the*

*Department of History of State and Law of Ukraine and Foreign Countries*

*Yaroslav Mudryi National Law University*

**Гоцуляк Світлана Леонідівна**

*кандидат юридичних наук,*

*асистентка кафедри історії держави і права України та зарубіжних країн*

*Національний юридичний університет імені Ярослава Мудрого*

**Sviridov Nikita**

*Student of the*

*Yaroslav Mudryi National Law University*

**Свірідов Нікіта Юрійович**

*студент*

*Національного юридичного університету імені Ярослава Мудрого*

**A COMPARATIVE ANALYSIS OF THE CONSTITUTION OF PYLYP  
ORLYK AND THE US DECLARATION OF INDEPENDENCE  
ПОРІВНЯЛЬНИЙ АНАЛІЗ КОНСТИТУЦІЇ ПИЛИПА ОРЛИКА ТА  
ДЕКЛАРАЦІЇ НЕЗАЛЕЖНОСТІ США**

**Summary.** *This comparative study highlights the peculiarities of the formation of legal acts in times of state crises and changes in the international diplomatic system. This analysis is a thorough one within the framework of understanding the process of formation of political systems in the world and focuses on the issue of identifying the factors that formed the relevant context for the signing of the documents under study. Thus, the established research hypothesis formed the basis of the work and determined the appropriate*

*methodology, namely, the use of comparative, historical, systematic, and other general scientific methods of knowledge. The historical periods outlined in this work, which characterize the Constitution of Pylyp Orlyk and the Declaration of Independence of the United States, have several common factors of identification in accordance with the geopolitical context, namely, manifestations of nationalism, the desire to establish a single regulatory order (formation of integral legal systems), formation of the nation and, accordingly, its struggle for independence. Considering such manifestations of the social order within the framework of modern international relations and domestic policymaking, the Constitution of Pylyp Orlyk and the US Declaration of Independence have common ideological foundations and, therefore, shape modern political rhetoric that seeks peace and freedom in the world. Accordingly, the historical legal acts under consideration have several common fundamental practices that have become new and fundamental for the state system of that time and have formed the basis of the current political life of a sovereign state. In particular, the author examined such aspects as the historical background of the signing, described the forms of government, rights and freedoms of citizens, the role of religion, etc., which allowed to reveal the essence of the selected legal acts and outline the importance of their study for the modern academic community. Thus, the historical context of the adoption of the described legal acts is based on an understanding of the process of formation of the concept of national identity and the historical preconditions that dictated the need for the legal consolidation of independence and territorial integrity. One of the main features of the US Declaration of Independence and the Constitution of Pylyp Orlyk is the introduction of an independent legal system, namely the establishment of three branches of government and the compliance of other branches with the judiciary (i.e., power could not be distributed randomly, only according to the rights and obligations to the state established by law). Accordingly, the described legal acts were in many ways*

*the first in the formation of statehood that resembles the regulatory framework of modern social legal systems.*

**Key words:** *Constitution of Pylyp Orlyk, Declaration of Independence of The United States, religion, rights and freedoms.*

**Анотація.** *Це порівняльне дослідження висвітлює особливості формування правових актів у періоди державних криз та змін у міжнародній дипломатичній системі. Цей аналіз є ґрунтовним у рамках розуміння процесу становлення політичних систем у світі та зосереджується на питанні виявлення чинників, які формували відповідний контекст для підписання досліджуваних документів. Таким чином, сформульована дослідницька гіпотеза лягла в основу роботи і визначила відповідну методологію, а саме - використання порівняльного, історичного, системного та інших загальнонаукових методів пізнання. Окреслені в роботі історичні періоди, які характеризують Конституцію Пилипа Орлика та Декларацію незалежності США, мають декілька спільних факторів ідентифікації відповідно до геополітичного контексту, а саме: прояви націоналізму, прагнення до встановлення єдиного нормативного порядку (формування цілісних правових систем), формування нації та, відповідно, її боротьба за незалежність. Розглядаючи такі прояви суспільного устрою в рамках сучасних міжнародних відносин та внутрішньої політики, Конституція Пилипа Орлика та Декларація незалежності США мають спільні ідеологічні засади і, відповідно, формують сучасну політичну риторичу, яка прагне миру та свободи у світі. Відповідно, розглянуті історичні правові акти мають кілька спільних засадничих практик, які стали новими та фундаментальними для тогочасного державного устрою і лягли в основу сучасного політичного життя суверенної держави. Зокрема, автор розглянув такі аспекти, як історичні передумови підписання,*

охарактеризував форми правління, права і свободи громадян, роль релігії тощо, що дозволило розкрити сутність обраних нормативно-правових актів та окреслити важливість їх вивчення для сучасної наукової спільноти. Так, історичний контекст прийняття описаних правових актів базується на розумінні процесу формування концепції національної ідентичності та історичних передумов, які диктували необхідність правового закріплення незалежності та територіальної цілісності. Однією з головних особливостей Декларації незалежності США та Конституції Пилипа Орлика є запровадження самостійної правової системи, а саме створення трьох гілок влади та підпорядкування інших гілок судовій владі (тобто влада не могла розподілятися довільно, а лише відповідно до прав та обов'язків перед державою, встановлених законом). Відповідно, описані правові акти були багато в чому першими у формуванні державності, що нагадує нормативну базу сучасних соціальних правових систем.

**Ключові слова:** Конституція Пилипа Орлика, Декларація незалежності США, релігія, права і свободи.

**Statement of the problem.** The issues of researching the Constitution of Pylyp Orlyk and the Declaration of Independence of the United States are important topics for shaping the history of law and political systems. These legal acts have a fundamental importance for the development of democracy and human rights in the world, which corresponds to the international political and social challenges of our time. Thus, the analysis of legal acts that were created in a difficult political situation and instability is important as part of the path to self-identification and national unity of the Ukrainian people. At the same time, the scientific substantiation of the study is based on the consideration of the evolutionary development of the formation of normative documents for the

establishment of sovereignty and the formation of statehood based on the rights and obligations of citizens.

**Formulation purposes of article.** The study of the Constitution of Pylyp Orlyk and the Declaration of Independence of the United States, and the identification of common and distinctive aspects of the documents in the process of analysis.

The tasks of the work, in accordance with the outlined issues, are to study and compare the texts of the presented legal acts and to consider them according to the following factors:

- historical context of adoption;
- the form of the state system
- reflection (consolidation) of human rights and freedoms
- comparison of the possibilities of amending the documents;
- the role of religion
- distribution of powers and structure of governance;
- description of the land that was secured as state land.

The methodological basis of the scientific work is a number of general scientific research methods that maximized the effectiveness of the research work. The comparative method was taken as the basis for the analysis of regulatory and legal historical documents, and, together with the historical method of research, allowed comparing objects without deforming their meaning and excluding destructive influence on the interpretation of documents. Other approaches used were induction, deduction, the systematic method of cognition, analysis, and synthesis.

**Analysis of recent researches and publications.** The topic of the research paper has been widely studied, in particular because of the historical context of the signing of the Constitution of Pylyp Orlyk and the Declaration of Independence, as well as the interest of the academic community in strengthening the national unity of peoples. Although this comparative study is

based on an independent analysis of the above-mentioned legal acts, the works of a number of contemporary Ukrainian and foreign researchers were used to test the hypotheses. For example, Maier P. [13] describes the solid basis of the political and social circumstances that led to the writing of the Declaration of Independence of the United States, including the dissatisfaction of American colonists with British rule and the growing independence movement. It is also important to consider the contribution of Thomas Jefferson, who is considered the main author of the Declaration, to the formation of the state concept of independence of the United States. Mukha H. Y. [5], in the process of analyzing the current trends in the legal system of Ukraine and the United States, emphasizes the common features that can be identified with the existing regulatory framework, namely, the relevant current Constitutions and other historical legal acts, in particular the Declaration of Independence of the United States and the Constitution of Pylyp Orlyk, which have common trends towards the rule of law. Volivetska M. V. [4] in her work highlights the importance of the formation of the US Declaration of Independence as the basis for the desire for national unity and freedom, liberation from domination, which provides a normative basis for comparing the document with the Constitution of Pylyp Orlyk. Vovk O. B. [3], highlighting the path of the Constitution of Pylyp Orlyk and its current state, speaks of the dichotomy of its interpretation due to a number of historical factors, one of which is the distortion of the retrospective of the formation of the Ukrainian nation by Russia. In turn, Rosavytskyi O. O. [8], considering the interpretation of the Constitution of Pylyp Orlyk, focuses on the formation of the document as the basis of Ukrainian statehood and its political significance in modern international diplomatic practice. This can be considered a key to the formation of the relevance of the consideration of this document and the dissemination of its deep-rooted meanings in Ukraine and abroad. It is also worth highlighting the works of Khotin R. [10] and Kuropas M. B. [12], which describe important events for establishing historical facts, namely, the path of



Pylyp Orlyk as Hetman, his historical portrait and understanding of the Constitution as part of the formation of the Ukrainian nation.

**The main material.** In 1710, after the death of Ivan Mazepa, his associate and general clerk, Pylyp Orlyk, was elected hetman. This event marked a new milestone in the history of Ukraine and the legal consolidation of the de facto sovereignty of the state in the international arena. The historical events that deformed the territorial integrity of the state, as well as the Hetman's personal beliefs and attitude, in particular, towards the then Russian Empire, were the retrospective context for the formation and development of the document that would later be called the "Constitution of Pylyp Orlyk" or the "Bendery Constitution".

Pylyp Orlyk was an educated man with strong beliefs in the independence of Ukrainian statehood. As historian Oleksandr Alfiorov notes [10], the newly elected hetman was a highly educated representative of the Cossack officers, a nobleman, and Mazepa's intellectual associate. This even gives rise to the idea that Ivan Mazepa was partially involved in the writing of the Constitution, although it was signed by P. Orlyk after the former's death. This is also influenced by the historical context of the issue, because the then Hetman could not fight the Russian tsar alone, so he needed guarantees and legal consolidation of relations with King Charles XII of Sweden.

Thus, the main factors of the historical context of the signing of the Constitution of Pylyp Orlyk were the then peculiarities of Ukraine's geopolitical position, the need to obtain official support in the struggle against the Russian Empire, and the desire to generalize the process of government activity within the existing territories of the state. The Constitution of Pylyp Orlyk was an important document in the history of Ukraine, as it was one of the first constitutions in Europe and the first in the East Slavic world. However, due to the political instability of the time, the Constitution was not fully implemented, and Pylyp Orlyk continued to fight for Ukraine's independence until his death in

1742. Thus, the Constitution became one of the world's fundamental early democratic legal acts that confirmed the sovereignty of the state, just like the U.S. Declaration of Independence, which, however, was adopted years later.

The US Declaration of Independence was adopted on July 4, 1776, and marked the actual formation of a new national unity that over the decades has become a powerful state - the United States of America. The document was approved by the Continental Congress and announced the separation of 13 North American British colonies from Great Britain. As P. Mayer notes, the historical context of this decision was the systematic violation of the rights and freedoms of the colonists described in the document, which led to the outbreak of the American Revolution in 1775 [13].

Speaking about the evolution of the colonies' aspirations for independence, G. Wood [15] emphasized in his work that they developed in accordance with the process of increasing British military aggression to suppress the rebellious colonies. Eventually, this developed into a single desire for separation, which was enshrined in the Declaration of Independence. The author of the first copy of the document was the first US Secretary of State Thomas Jefferson, who advocated individualism as the basis of the American Revolution, the separation of church and state, and the founder and architect of the University of Virginia.

It would be appropriate to say that the historical background of the adoption of the Constitution of Pylyp Orlyk and the U.S. Declaration of Independence were somewhat similar in the context of the desire for independence and the defense of national rights and freedoms. While the colonies described separation from the metropolis and the formation of an independent state, Pylyp Orlyk emphasized the unification of Cossack military units and granting them legal status, as well as the consolidation of the rights and freedoms of the Ukrainian people. Thus, the main concept in the context of the documents is the notion of self-determination and the realization of the right



to national self-identification within the framework of creating a separate statehood.

The difference between the examples described above lies in the emphasis, on the one hand, on the affirmation of the existence of a new actor in international relations as a separate entity, and, on the other hand, in the emphasis on the rights and freedoms of the people, as well as the legitimization of the management of the existing army for the further struggle for the sovereignty of the state.

In the Constitution of Pylyp Orlyk, the form of government was envisioned as a democratic republic with executive power exercised by the Hetman and the Rada [1]. In other words, the Hetman actually had executive power, but his actions were to be controlled by the Rada, which consisted of representatives of Cossack regiments. The Rada was a legislative body and had the right to veto any decision of the Hetman. Thus, the system with a single subject of power was rejected and the algorithm of policy implementation was established, which would later spread to European countries and become the basis of the struggle for the rights of the people to express their will and govern the state within the framework of representative democracy.

Article VII of the Constitution also provided for a system of courts that were supposed to be independent of the executive branch and have the right to appeal to the Rada in case of violation of laws. This was also an unprecedented phenomenon in the history of Ukraine, as for the first time the right to judge was not extended to representatives of the feudal caste of society, but was rooted in a separate representative body. This practice of dividing power into legislative, executive, and judicial branches also became a normative practice for the progressive democratic world, which is why Pylyp Orlyk is described as a man ahead of his time. In general, the Constitution of Pylyp Orlyk established a democratic form of governance of the Hetmanate, which provided for a balance

of power between the Hetman and the Rada, as well as the protection of people's rights and freedoms through an independent system of courts.

The US Declaration of Independence was created for a republic where power belonged to the people and the principles of political governance were clearly declared [4]. It is worth noting that the document does not directly indicate the form of government, but emphasizes the creation of a new independent state based on the principles of democracy, republicanism and human rights. According to the principles of republicanism, power should be transferred to the people [14]. To ensure this, a system of government was established, which included legislative, executive and judicial powers, divided among different authorities to prevent the concentration of power in the hands of one person or organization.

Legislative power was exercised by the Congress, which consisted of two chambers, the Senate and the House of Representatives. Executive power was vested in the President, who was elected by direct vote. The judiciary consisted of federal courts and the US Supreme Court [14]. Thus, the form of government in the US Declaration of Independence can be characterized as a republican democracy with separated forms of government.

It is worth noting the historical gap between the time of adoption of the described Constitution of Pylyp Orlyk and the US Declaration of Independence, which affects their comparison and context. The Constitution was based on the realities of monarchical states, but rejected royalty and named the head of state as a person in the hetman's office, who was elected and could be revised. The essence of the declaration lies in its positioning as a document certifying the creation of a new state with a democratic form of government and the post of elected president. The similarities between the documents can be described in terms of their democratic nature and the positioning of a single position of the head of state, but with limited power, which is exercised by other actors who, however, also do not fully possess it. The main similarity is also the division

into three branches of government, which is a sign of a democratic policy of state governance, and thus the formation of a unique legal system [5].

The Constitution of Pylyp Orlyk also contains provisions on human rights and freedoms, such as freedom of faith, freedom of speech, inviolability of personal property, inalienability of personal freedom, etc. These provisions are clearly defined in the document and regulated by the respective described norms. For example, Article XII of the Constitution condemns the misuse of material goods by certain segments of the population and the refusal to perform public duties. It also prohibited the use of forced labor, cheaper labor from rural residents, and the use of coercion to force lower-ranking Cossacks or other persons to perform any type of work on the private territories of higher-ranking people.

In addition, the Constitution of Pylyp Orlyk contained provisions on freedom of speech and press, the right to judicial protection and other important human rights and freedoms. Thus, the Constitution of Pylyp Orlyk was an important document that enshrined human rights and freedoms and had a significant impact on the further development of human rights and democracy in Ukraine and the world.

The U.S. Declaration of Independence enshrines fundamental human rights, such as the right to life, liberty and the pursuit of happiness, as well as freedom of religion, freedom of speech, the right to a fair trial, and others. According to the Declaration, all human beings are created equal and endowed by God with certain inalienable rights, including the right to life, liberty and the pursuit of happiness. It also states that the main goal of the government is to protect these rights. A. Onishchenko says that this interpretation, along with other historical legal acts of Europe, which were formed on the basis of revolutionary aspirations, became the basis of modern civil society [6].

The Declaration also points to some specific rights that every individual has: freedom of speech, freedom of the press, freedom of religion, the right to

bear arms, the right to free trade, and the right to assemble and petition. It is important to note that the US Declaration of Independence is not an official legal document, but it has become a symbol of freedom and democracy for many nations. It was the basis for the US Constitution, which enshrines these rights and freedoms in the form of laws and regulations that are recognized and protected in the courts.

Thus, the issue of enshrining human and civil rights and freedoms within the framework of the described documents is clearly defined and normative. Thus, the Constitution of Pylyp Orlyk describes the processes in which the observance of the norms of personal freedoms, justification of their property and protection as a citizen of the Hetmanate, an independent international construct is clearly traced [8]. At the same time, much attention is paid to the issue of duties, corruption and coercion that directly violate individual rights, as described in Articles X, XI, XII, XIV, etc. As part of the solution to the described problems, the hetman is granted the power to partially dispose of material property and inspect compliance with the established rules. As for the U.S. Declaration of Independence, it more clearly specifies certain rights and freedoms, in particular, describes numerous violations of them and emphasizes the inadmissibility of such activities. In particular, the text describes in detail the process of suppression of the rights of colonists by Great Britain and emphasizes the importance of such natural rights as freedom of speech or religion.

When considering the possibility of making amendments or changes of a global nature to the text of the Constitution of Pylyp Orlyk, it is worth noting the historical context of its adoption, the fate of the Hetman himself, as well as the state of the process of legal approval and amendment of such documents. Given all of the above, such an adopted wording could not be changed in the modern sense of reforming or amending a normative text. Thus, due to the fact that the Constitution was adopted for a limited period in Ukraine's history, it had no mechanism for amendment.

Accordingly, the US Declaration of Independence has the status of a historical document, so it is not subject to changes or amendments. However, the United States has a Constitution that was adopted in 1787 and enshrines human rights and freedoms [11]. It can be changed by adopting amendments through the legislative process.

According to the procedure, any bill to amend the Constitution must be supported by two-thirds of the votes in the Senate and the House of Representatives and then passed by at least 34 of the 50 states [11]. After that, the amendment becomes part of the Constitution and has the same status as the Constitution itself. Thus, although the Declaration of Independence cannot be amended, the US has a legislative process for amending the Constitution to reflect the current needs and challenges of society.

Thus, when it comes to amending these documents, it is necessary to understand the context of their adoption and current status. Thus, both the Constitution of Pylyp Orlyk and the U.S. Declaration of Independence are historical documents, their actual text cannot be changed, and such a procedure has not been historically provided for. However, due to the fact that the Declaration is the basis of the current Constitution, we can talk about changing the latter as making nominal amendments to the Declaration [9].

The religious issue in the Constitution of Pylyp Orlyk is clearly highlighted, as emphasized in the first line of the document, which states: "In the name of the Father and the Son and the Holy Spirit, God in the Holy Trinity glorified" [2]. Further, the concepts of God and religious affiliation are also repeatedly encountered (in Articles I, II, III), the glorification of the concept of a divine gift that decides the fate of states is described, and the construct of church affiliation is described. Thus, three godly virtues are mentioned, among which the dominant one is the belief in a higher, divine power, and thus the document defined the only faith within the sovereign state - the Eastern Orthodox faith.

The text of the Constitution also repeatedly mentions the then former Hetman Bohdan Khmelnytsky and his war against the Polish-Lithuanian Commonwealth (in the preamble and Articles I and II), which is characterized as a liberation war for rights and freedoms, but with religious overtones, that is, for the struggle for the right to religion. It was also emphasized that no other religion should be spread on the territory of the Ukrainian state, and the Hetman himself should monitor this.

The U.S. Constitution, which was adopted in 1787, does not mention religion or its role in society. However, early in American history, the colonies had great religious diversity, and some of them had an official religious faith or church that had influence on legislation. Pylyp Orlyk himself, who was in the United States in the 1770s, drew up a model charter for the Ukrainian colony in southern Pennsylvania [12]. This charter, which he called the "Duma," was written in Ukrainian and contained a declaration of equality of all people before the law, as well as a demand to ensure freedom of conscience and religion. It was intended for the Ukrainian community in America as a model of documents that would have constitutional force.

Although the Duma did not become part of U.S. law, it reflects that religious freedom and freedom of conscience were important issues for many people during the country's founding. It is important to note that in 1791, the First Amendment was added to the U.S. Constitution (ratified on December 15, 1791), which guarantees freedom of religion and freedom of speech. This amendment stipulates that Congress shall make no law abridging the freedom of religion or of speech, and guarantees the right of a person to express his or her religious beliefs without persecution.

Thus, summarizing the topic of religion within the framework of the described documents, we can outline a clear parallel between the topic of religion and its consolidation in society at the state level. For example, the Declaration of Independence of the United States does not contain any mention



of faith and religion, which is due to the diverse approach to beliefs among the population of the colonies of that time. Over time, this trend has developed into a free attitude to religious diversity and the enshrining of this fact in the Constitution of the United States of America [9].

Accordingly, the constitution of Pylyp Orlyk more fully reflected the attitude of the Hetman and the implemented branches of government to the issue of religious affiliation. Thus, the text clearly shows a concentration on one religious basis that reflects the beliefs of the Eastern Orthodox confession [2]. This means that within the framework of this document, it was not allowed to spread any other faith, and the established one reflected the state of affairs in the state, in particular, regulated the calendar plan of work, or the state of division of society.

It should also be noted that the Constitution of Pylyp Orlyk gained a high position at that time not only because of its novelty and expediency of uniting the state, but also because of the tutelage of Charles XII. This is due to the fact that at that time society did not yet understand the importance of secularizing the church from the government, and therefore listened to the norms that were implemented under the auspices of beliefs and religious rules. At the same time, Charles XII was the so-called "anointed of God" [10], that is, he acted on behalf of the Lord on Earth, so his support for such a document was fundamentally important at the time. Such legitimization raised the status of Pylyp Orlyk and his Constitution in the world, and thus provided additional opportunities to achieve the goals of the newly elected hetman.

As noted earlier, Pylyp Orlyk's Constitution provided for the establishment of three main branches of government: legislative, executive, and judicial. Executive power was entrusted to the Hetman, who headed the military and civilian authorities in the country. The judiciary was in the hands of the Cossacks and was completely separated from the tutelage of the feudal lords, as stated in Articles VI, VII, VIII, etc. The Declaration of Independence of the

United States provided for the establishment of a federal republic with the division of power between the federal and state levels. The federal government consisted of three branches of power: legislative (Congress), executive (president) and judicial (federal courts). Power at the state level was also divided among the three branches, similar to the federal level.

Thus, despite the historical gap that separates the dates of adoption of the above documents, they are very similar in terms of the separation of powers. Thus, although the Constitution emphasized a unified statehood without introducing the principle of the federal existence of separate entities within the country, the government was entrusted to the Hetman, who was clearly controlled by other branches. Such a division was quite democratic for the time of signing the document, and thus we can say that it was ahead of its time.

Accordingly, the US Declaration of Independence is characterized by similar postulates, such as a democratic society, division of power into three subjects, but at different levels, not similar to the state structure of Ukraine in the times of Pylyp Orlyk. Thus, federal entities within the state were described as independent structures united by a single statehood, having a single center of power (personified by the US President), but using their own resources in the process of forming local government representatives.

An important issue within the framework of the described documents is the definition of territorial boundaries, or any geographical affiliation of the sovereign states they described. Article 2 of the Constitution of Pylyp Orlyk states that the territorial boundaries of the then Ukraine "...were established by pacts from the Polish-Lithuanian Commonwealth, the Most Serene Porte and the State of Moscow...", i.e., pre-determined by a number of normative acts of that time [2].

The Declaration of Independence of the United States did not contain any specific instructions on how to secure land as public property. However, the

U.S. Constitution, adopted later, provided for the possibility of the federal government to acquire, own and manage land [14].

**Insights from this study.** Thus, in comparing the Constitution of Pylyp Orlyk and the U.S. Declaration of Independence, a number of similarities and fundamental differences can be identified. First of all, the documents differ in the years of their signing and in the different historical perspectives that served as the basis for their negotiation. It is also important to note that the U.S. Declaration of Independence is a fact of separation and unification of established social groups based on the national desire for unity. The Constitution of Pylyp Orlyk only declared a new way of life on the territory of Ukraine, and facilitated certain aspects of Cossack governance, without focusing on separation or description of certain territorial boundaries. It should also be noted that the Declaration is rather a document that describes the oppression and human rights violations committed by Great Britain against the peoples living in the territory of the United States. The only authors of the legal acts were on the separation of powers in the country, the consolidation of the rights and freedoms of citizens, etc. Another notable fact is that there was no provision for amendments to the texts of the drafted legal acts, as they were, to a certain extent, nominal in nature and enshrined the desire to regulate the position of those who signed them. Despite their differences and certain contradictions, the documents are the historical heritage of the Ukrainian and American peoples, reflecting the desire for independence and national freedom.

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