

HOW IMPERIAL HISTORIANS BECAME NATIONAL: THE EXAMPLE OF ONYKII MALYNOVSKYI

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INTRODUCTION

A turn of the 19th and 20th centuries was pivotal to the nation-building of the East-Central European space. The national projects, formed in the intellectuals' texts and the programs of the national movements, were factually executed in the process of the collapse of the Romanov and Habsburg empires. The stands of the "national" historians of the new states were studied and comprehensible enough due to their active part in the state establishment. The logic of the historical writing and the civilian activities, for example of the Ukrainian Mykhailo Hrushevskyi or Lithuanian Ignas Jonynas, was very similar despite the individuality of their research and political paths. It is more difficult to answer the question on how the yesterday's decent imperial cultural figures, for instance, the professors of the imperial universities, became the key players of the already national cultures as well as the national historians – either in Ukraine and Belarus, controlled by the Bolsheviks, or in the independent Baltic states. Obviously, they were greatly influenced by the new national and political realities and acted not as engines (subjects) of the national and political reformation on the territory of East-Central Europe but as its [reformation] passive (without any negative connotations) objects. However, such an assumption is very general. Thus, it needs factual verification. In order to understand the causes of the ideological evolution of the cultural figures in the conditions of the appearance of national cultural space on the imperial ruins, it is necessary to study their life journey in the widest possible context. The reasoning of a general nature is indispensable here. Without it, the historians are doomed to the spread in literature superficial speculations about the "national treason" of the ones (for example, Ivan Lynnychenko – the student of one of the creators of modern Ukraine Volodymyr Antonovych, who, as we all know, condemned Ukrainians for their race for independence) and "national self-sanctification" of the others (for instance, Oleksandra Yefymenko – the author of one of the first synthesis of the Ukrainian history).

The transnational perspective can serve as a methodological matrix, which will contribute to the deeper insight into the intellectuals' individual world. Obviously, the study of the fate of the imperial intellectuals in times

of the crisis of empires (as well as their stands, self-identification, the vision of the world and themselves in the conditions of such crises) in terms of history, which comes solely from the national historical models, is unproductive. This situation was argued well, for instance, by Andreas Kappeler. In 2012, he published an interesting, thorough and replete with unconventional observations “crossed” mutual biography of a married couple of the Ukrainian ethnographer, statistician and a member of the Ukrainian movement Petro Yefymenko and the above-mentioned historian, “self-learner, women and katsap” (according to the accurate statements of the same Western historian) Oleksandra Yefymenko¹. As A. Kappeler has convincingly demonstrated, the biography of O. Yefymenko cannot be satisfactorily explained through the lens of exceptional loyalty, only Russian or Ukrainian “segments” of her legacy or life journey. In addition to them, coincidences, mishaps, everyday causes, which escaped the researchers’ attention previously, such as the struggle for survival under conditions of a serious economic situation of the family, very often affected her.

1. Life Journey and Intellectual Legacy of O. Malynovskyi

It is high time to move to the story of “the hero” of our article. The destiny and posthumous memory about Onykii O. Malynovskyi (1865–1932) were not favourable to the scientist. They do not require a detailed description because his biography in its traditional sense (as an accumulation of data about the biological, family, artistic and civic and political life) is mainly known nowadays. Today, after a long period of obliviousness in Soviet times, the researchers’ interest in him has significantly increased. To date, the Ukrainian and Russian historians and lawyers have published several dozens of encyclopedic slogans, more or less substantial articles about the scientist and the excerpts of some of his memorial texts, written at different times. One of the scientific training departments of the university in the city of his birth, Ostroh Academy, is named after O. Malynovskyi. At the same time, annual international conferences to commemorate him are held here; their materials are published; several scientific and scientific popular works of O. Malynovskyi are republished. The most important of the latter is the revised edition of the generalized and, to some extent, summarized work of both O. Malynovskyi and the school of “law of Western Rus”, to which he belonged, – “Lektsii po istorii russkoho prava” (*The Lectures on the*

¹ ДИВ: Kappeler A. *Russland und die Ukraine: verflochtene Biographien und Geschichten*. Wien; Köln; Weimar, 2012. 395 s.

History of Russian Law)² on the basis of Rostov edition of 1918, published in 2015³.

O. Malynovskyi was born in a family of craftspeople. He managed to reach the top of the academic recognition, became a Ph.D. in History of “Rus’ law”, the lead professor of several universities in the Russian empire, and starting from 1925 – an academician of the All-Ukrainian Academy of Science. On the other hand, he was always on the top of the liberal and democratic opposition to the self-contained regime. Also, he was an editor and author of the oppositional editions because of which he repeatedly suffered in the career plan. In 1920, with the establishment of Bolshevism, he, as a “counter-revolutionary”, was sentenced to capital punishment, which was substituted with the imprisonment in the last moment. In 1925, the scientist was released on parole. After moving to Kyiv in 1926–1930, he worked productively in the All-Ukrainian Academy of Science. He was the head or a member of a myriad of academic institutions. With the start of Stalin’s purges, the scientist was stripped of the title of academician and all academic posts. On many occasions, fate put him to test in a personal sphere of life. At a very young age, he was destined to cope with terrible grief. In the spring of 1884, because of a landslide, his father and brother Volodymyr tragically died. In 1911, his apartment in Tomsk, where he lived and taught at a university from 1898 to 1913 (the scientist was fired from the university in 1911 due to his “unreliability”), burned during the fire. In the last years of his life, he suffered from progressive diseases, deafness in particular, which were the result of Malynovskyi’s huge scientific and socio-political workload throughout his life.

In 1888–1892, O. Malynovskyi studied at the History and Philology Department and, then, at the Law Department at the University of Saint Volodymyr. There he entered the students’ circle of the famous legal historian Mykhailo Vladymyrskyi-Budanov and became one of the representatives of a research team of mainly the students of this very scientist. Onykii Malynovskyi himself called it “the school of research scientists of Western-Russian times”⁴, and today’s historians call it “the school of Western-Russian law” (Serhii Mykhalchenko⁵) or “Kyiv history and law school” (Tetiana Bondaruk⁶). The focus of this non-formal scientific association was the history of the law of the Grand Duchy of

² Малиновский И. Лекции по истории русского права. Ростов-на-Дону, 1918. 497 с.

³ Малиновский И. А. Лекции по истории русского права. Москва, 2015. 696 с.

⁴ Ibid. С. 31.

⁵ Михальченко С. И. Киевская школа в российской историографии (Школа западно-русского права). Москва; Брянск, 1996. 186 с.

⁶ Бондарук Т. Західноруське право: дослідники і дослідження (Київська історико-юридична школа). Київ, 2000. 160 с.

Lithuania. Their works, at least those published till the end of the 1910s, were based on several common ideas shared by O. Malynovskyi as well. For instance, all school representatives proceeded from the premise that “national unity” of the Slavic people, who were considered to be solid and were usually called “Russian”, was typical of Kyivan Rus (“the ancient Russia” in the terminology of the school representatives). Then, this national unity was conserved in the Grand Duchy of Lithuania through a relatively peaceful inclusion of “Western Rus” in the state, which these and other imperial historians-lithuanists (Matvii Liubavskiyi, Ivan Lappo) called “Litovsko-russkim gosudarstvom” (“the Grand Duchy of Lithuania”). Thus, a mainly “Russian” ethnic composition and the legal nature of this formation were emphasized. On the basis of the usage of the key methodological school instrument – the comparative method, particularly the comparison of the “ancient Russia” law and the law of Grand Duchy of Lithuania, the conclusion was drawn that the judicial order of Kyivan Rus was the first genealogical level of the state and law formation in the Grand Duchy of Lithuania.

Let us briefly outline the most important achievements of O. Malynovskyi as a historian of the Grand Duchy of Lithuania. His first major research in general and in the sphere of the history of the law of the Grand Duchy of Lithuania was a monograph “Uczenie o prestuplenii po Litovskomu statutu” (*A Study on the Crime According to the Lithuanian Statute*)⁷. This book is a part of his student’s work on the topic “Ugolovnoie pravo Litovskoho statuta v sviazi s razvitiem ugolovnoho prava voobshche” (*The Criminal Law of the Lithuanian Statute in Relation with the Development of Criminal Law in General*), for which he obtained the gold medal of the Board of the University of Saint Volodymyr. The study was dedicated to the poorly researched at the time of its publication question. As all three revised editions of the Lithuanian statute were interconnected, the scientist examined their contents altogether, indicating every time “whether a certain resolution is present in one, two or all three revised editions, and what modifications this resolution has undergone in the last two cases”⁸. Thanks to such a method, O. Malynovskyi managed to avoid repetitions, which would be impossible to do when reviewing resolutions of every revised edition separately, as well as depict the historical genesis of different criminal law institutes.

The author thoroughly analyzed the outer structure and contents of the criminal laws of the Lithuanian statute, shed the light on its contributors’

⁷ Малиновский И. Учение о преступлении по Литовскому статуту. Киев, 1894. 232 с.

⁸ Ibid. С. 1.

understanding of such notions as crime, corpus delicti, types of crimes and penalties.

Analyzing the legal skills of the lawyers of the Grand Duchy of Lithuania, O. Malynovskyi was reaching the conclusion that the description of crimes in the Lithuanian statute was casuistic. “Wordiness, frequent repetitions of one and the same resolutions, casuistry and (as a result) law incompleteness”, these, according to the historian, are the typical features of the Lithuanian statute, which signifies a poor development of the legislative technique of codifiers in the 16 century⁹.

The most famous monographic study of O. Malynovskyi, which made him one of the best researchers in the field of law history in Russia, was “Rada Velikoho kniazhestva Litovskoho v sviazi s boiarskoi dumoi drevnei Rossii” (*The Council of the Grand Duchy of Lithuania in Connection with the Boyar Duma of ancient Russia*). The work is a comparative study of two bodies of power – the Boyar Duma of Kyivan Rus and the Council of Lords of the Grand Duchy of Lithuania. If the Boyar Duma was an institution studied well by the imperial historiography, the Council of Lords of the Grand Duchy of Lithuania as an object of the research did not attract the attention of the legal historians for a long time.

In the first part of the book¹⁰ the author mainly repeats the conclusions drawn by Vasyl Kliuchevskyi about a significant social status of the Old Russian aristocracy (the boyards), which gave grounds for its participation in the supreme power¹¹. According to O. Malynovskyi, the meetings of kniazes and boyars (in other words, the Boyar Duma) were legally necessary for kniazes, which was fixed by the customary law. In the historian’s opinion, the Boyar Duma was running the country along with the kniaz and veche (here, as in his other works, O. Malynovskyi was sticking to the well-known concept of M. Vladymyrskyi-Budanov about the triad of power (the three “beginnings”) in Kyivan Rus. Its bearers were the kniaz (the monarchical element), the Boyar Duma (aristocratic) and the veche (democratic). However, its role in the exercise of supreme power as well as the relationships between the kniaz and the veche were not stable. They were defined by the specific conditions of a particular case¹².

The most important from the point of view of scientific novelty, the presence of conclusions and generalizations was the first edition of the second part of the monograph¹³, devoted to the problem of the origin of the

⁹ Ibid. С. 12.

¹⁰ Малиновский И. Рада Великого княжества Литовского в связи с боярской думой древней России. Томск, 1903. Ч. I: Боярская дума древней России. IV, 201 с.

¹¹ Ibid. С. 70, 80.

¹² Ibid. С. 103.

¹³ Малиновский И. Рада Великого княжества Литовского в связи с боярской думой древней России. Томск, 1904. Ч. II: Рада Великого княжества Литовского. Вып. 1. IV, 132 с.

Council of the Lords of the Grand Duchy of Lithuania. Here the questions about the conditions of creating the Grand Duchy of Lithuania, forming the aristocracy in this country and its role in the process of genesis of the Grand Duchy of Lithuania as well as the problem of establishment of the Council of Lords as the institution of power were considered.

If in the Old Russian times the structure of the supreme power was characterized by a relative equilibrium of the three “beginnings”, then very soon “those special circumstances, which accompanied the establishment of Moscow and Lithuanian-Russian sovereignty, influenced the peculiarities of the system of Moscow and Lithuanian-Russian government: the monarchical beginning dominated in Moscow, and the aristocratic – in Lithuania”¹⁴. According to O. Malynovskyi, the role of aristocracy in the governance of the country in the Grand Duchy of Lithuania increased even more compared to its place in Kyivan Rus due to two reasons: because of direct participation of “the higher levels of aristocracy – the kniazes and boyards, or landowners [...] as the closest assistants and co-workers of the great kniaz” and because of “the influence of the system of government of the neighboring Russian lands, where the Boyar Duma existed as a permanent institution, on Lithuania”¹⁵ in the process of establishment of the Grand Duchy of Lithuania. The highest body of power that expressed the interests of aristocracy in the Grand Duchy of Lithuania was the Council of Lords. O. Malynovskyi considered that the Council of Lords (as well as local seims and general seim) was an institution with a genetic relation to the Boyar Duma of Old Rus: “The oldest right of the aristocracy to sit in the Boyar Duma changed to the right to participate in the local seims, on the one hand, and the right to sit in the council and take part in the general seims, on the other hand, at a later (Lithuanian) period”¹⁶.

The scientist deliberately paused on the circumstances of all Council meetings from 1324 to 1488. However, he did not state the exact date of the creation of the Council of Lords as a state institution. His conclusions are very careful: “We cannot tell when the council under the Grand Duke of Lithuania appeared exactly. However, we can assume that it happened early enough”, and it occurred “with invisible, subtle gradualism”¹⁷. Considerable attention in the book is also paid to the analysis of the composition, regime of work and functions of the Council of Lords.

¹⁴ Ibid. C. 1.

¹⁵ Ibid. C. 118.

¹⁶ Ibid. C. 21.

¹⁷ Ibid. C. 118.

The second edition of the second part¹⁸, dedicated to the history of the Council of Lords during 1492–1569, had the biggest volume out of all three books of the monograph by O. Malynovskyi. An important theoretical foundation of this volume of the historian's work is the timeline of the history of the highest state institution of the Grand Duchy of Lithuania. O. Malynovskyi suggested distinguishing two stages in the history of the Council of Lords – till 1492 (“the period of the council creation”) and after 1492 to 1569 (“the period of the council domination”)¹⁹.

O. Malynovskyi believed that the beginning of the second stage was marked by the privilege of the Grand Duke Oleksandr in 1492, who transformed the Council of Lords into the highest body of power in the Grand Duchy of Lithuania. The book thoroughly examines the composition, working procedures and competencies of the Council of Lords at the height of its power. To the scientist's view, as “the customary law does not possess accuracy and certainty”, then “the definite answers to the questions about the organization and activities of the Council as well as its relationship with the Grand Duke and seim cannot be provided. Such nature corresponds to the historical reality: a custom provides only general, imprecise directions regarding the organization and terms of reference of the state institutions and separates one institution from another only with general, imprecise features”²⁰.

In the third book of his monograph, O. Malynovskyi put forward and supported an important conclusion that the source and beginning of the representational system in the Grand Duchy of Lithuania are the Council of Lords. According to the legal historian, the general seims of the state of Lithuania were only extended meetings of the Council of Lords with the participation of the nobility-knighthood but with the leading role of the Council of Lords in them. The introduction of a real representational system with the election of deputies out of nobility started not long before the end of the Grand Duchy of Lithuania as an independent state according to the Lithuanian statute of 1566²¹.

The publication of the first and third books of the monograph was preceded by the publication of a collection of documents²² and appendixes

¹⁸ Малиновский И. Рада Великого княжества Литовского в связи с боярской думой древней России. Томск, 1912. Ч. II: Рада Великого княжества Литовского. Вып. 2. (1492–1569). 492 с.

¹⁹Ibid. С. II.

²⁰ Ibid. С. III.

²¹ Ibid. С. 115–116.

²² Сборник материалов, относящихся к истории панов-рады Великого княжества Литовского. Томск, 1901. 693 с.

to it²³ regarding the history of the Council of Lords. It contains rich material taken by the contributor from the so-called Lithuanian metrics as well as the civil register of Kyiv Central Archive of that time. The documents from the collection are grouped into four parts. The first part includes the privileges of the members of the Council of Lords and privileges granted with the participation of this state institution to the other people. They provide an opportunity to determine the composition of the Council of Lords. The second part contains the acts regarding the political role of the highest body of power of the state of Lithuania. The third part includes the judicial acts, in other words, the decisions of the highest court consisting of the Grand Duke and the Council of Lords, and sometimes separate sentences of the Council of Lords. The fourth part presents the documents about the “everyday” history regarding the life and activities of the members of the Council of Lords. The collection contains detailed indexes: personal, geographic and subject.

At the behest of Saint-Petersburg Academy of Sciences, M. Vladymyrskyi-Budanov wrote a review of O. Malynovskyi’s works about the Council of Lords of the Grand Duchy of Lithuania²⁴ in 1914. Despite pointing out a number of drawbacks (for example, Mykhailo Flehontovych highlighted the absence of an accurate notion of “aristocracy”, insufficient consideration of the question of the origin of the Council of Lords, incompatibility of the claims about the complete succession between the Old Russian Boyar Duma and the Council of Lords in the Grand Duchy of Lithuania), he commended Malynovskyi’s works on history of the highest body of power of the Grand Duchy of Lithuania. At the same time, the review emphasizes the importance of both the scientific conclusions and the methodological advantages of his texts (primarily, the logical completeness of the experiment, the consistency between the conclusions and facts, the objectivity and balance in his assessment). On the basis of Vladymyrskyi-Budanov’s feedback, a cycle of studies of O. Malynovskyi on the history of the Council of Lords was awarded the Batiuskov prize of the Saint-Petersburg Academy of Sciences²⁵.

O. Malynovskyi attempted to prepare a generalized course of the history of “Russian” law. Warsaw edition of “Lektsii po istorii russkoho prava” (*The Lectures on the History of Russian Law*) (1914, 1915) was released in two volumes. Later, the author united them into one (Rostov-on-Don, 1916; reprint in 1918; new reprint in 2015). The book

²³ Сборник материалов, относящихся к истории панов-рады Великого княжества Литовского. Добавление. Томск, 1912. 139 с.

²⁴ Владимирський-Буданов М. Рада Великого Князівства Литовського. Записки соціально-економічного відділу [УАН]. Київ, 1926. Т. IV. С. 204–237.

²⁵ Ibid. С. 204.

was an example of an innovative synthesis and a unique intellectual result of the scientific heritage of the imperial historians of the “Russian” law, particularly the representatives of the school of the “Western-Russian law”. The first who noted the novelty of this work was the famous Ukrainian legal historian, an academician of the All-Ukrainian Academy of Science Mykola Vasylenko. He highlighted that O. Malynovskyi was the first to introduce the history of the “Western-Russian law” in the university series of lectures on the “Russian law” and clearly outline the history of all the branches of law, not only of the state law²⁶. Indeed, the book contains rich and interestingly presented material on the history of the state, criminal, civil and judicial law as well as an informative essay about the sources of the history of the “Russian” law. It distinctly declared the school main principles, for example, a thesis about the “national unity” of “Russian people” (other terms used in the book – “Slavs”, “Russian Slavs”) since the times of “the Russian state” of “ancient Russia”. For instance, in the preface, explaining the notion of the subject of the history of the “Russian law”, he calls it “the law of the Russian people” and expands it beyond the Slavs of the Great Russian states: “Currently, one of the most important ancient Russian lands Galicia is a part of Austria-Hungary. The population of Galicia is Russian and the law, established among these people, is Russian. Then, in the Middle Ages, two states, Moscow and Lithuanian-Russian, were formed from separate Old Russian lands. The majority of the population of both states were the Russian people, and the law, developed by the Russians of both states, is the Russian law. It means that both Moscow and Lithuanian-Russian law should be called the Russian law, and the general course of the history of Russian law should include both the history of Moscow law and the history of the Lithuanian-Russian law”²⁷.

2. National Identity and Political Loyalty of the Scientist

Without doubts, the credit for highlighting the importance of the political and legal culture of Kyivan Rus in the establishment of the legal order of the Grand Duchy of Lithuania as well as studies into the specific institutions of law of this state, based on the thorough analysis of the sources, goes to O. Malynovskyi and other school representatives. In fact, O. Malynovskyi, as other imperial historians-lithuanists, was working on the multinational/transnational range of problems regarding the Lithuanian, Belarusian and Ukrainian past. However, they studied it from a purely

²⁶ Василенко М. Передмова. *Праці комісії для вивчення історії західньо-руського та українського права*. Київ, 1925. Вип. 1. С. III.

²⁷ Малиновский И.А. Лекции по истории русского права. Москва, 2015. С. 19.

“supranational” perspective typical of the historical science of the Russian empire. Such a critical weakness of the approaches of school representatives was noticed by the disrupter of the scheme typical of the imperial historiography Mykhailo Hrushevskyyi at the beginning of the 20 century.

Thus, let us give the floor to the most famous Ukrainian historian. In his well-known “manifest” “Zvychaina skhema “ruskoi” istorii i sprava natsionalnoho ukladu istorii skhidnoho slovianstva” (“A typical Scheme of the “Russian” History and the Matter of an Effective System of the History of Eastern Slavdom”) (1904), he stated: “The Grand Duchy of Lithuania was a very inhomogeneous and not unanimous body. The new science neglects and sometimes even ignores the meaning of the Lithuanian element. The study into the connection of the Old Russian law with the law of the Grand Duchy of Lithuania, the meaning of the Slavic element in the process of creation and development of the Grand Duchy of Lithuania led the contemporary researchers of the internal structure of this state to such extreme that they completely ignore the Lithuanian element [...]. Then, leaving out the Lithuanian, the Slavic element of the Grand Duchy of Lithuania by itself is not unanimous: we have two nations here – Ukrainian and Belarusian. The Ukrainian lands, excluding Pobuzhzhia and Pynshchyna, were quite mechanically connected with the Grand Duchy of Lithuania. They stood by, lived their local life, and due to the Union of Lublin, became a part of Poland. On the contrary, the Belarusian lands were closely connected with the Grand Duchy of Lithuania and had a significant influence on it – in the sphere of the public and political order, law and culture (on the other hand, they were greatly influenced by the public and political as well as cultural processes of the Grand Duchy of Lithuania) and remained a part of it till the end. Therefore, the history of the Grand Duchy of Lithuania is far more closely connected with the history of the Belarusians than the Ukrainian-Russians [...]”²⁸. As we can see, M. Hrushevskyyi called for the exploration of the ignored in the imperial historiography Lithuanian element and the national division of one undivided “Russian” history into two independent – Belarusian and Ukrainian. In other words, instead of the imperial, “supranational” narrative, a call for the writing of the national narratives about the Grand Duchy of Lithuania is clearly seen here. Such an approach was typical of the times of the patriarch of the Ukrainian historiography. It was adopted by the Ukrainian and Belarusian historiographies in the 1920s, the times of implementing the Soviet localization policy, but again rejected by the party

²⁸ Грушевський М.С. Звичайна схема «русскої» історії й справа раціонального укладу історії східного слов'янства. Український історичний журнал. 2014. № 5. С. 205–206.

historical science of the USSR starting from the 1930s, which practically revived the imperial historical scheme.

How can the persistence of Malynovskyi's "imperial" position, which he held at least till 1918, the time of the last publication of his "Lektsii po istorii russkoho prava" (*The Lectures on the History of the Russian Law*), be explained? It is obvious that such conformism was not a wonder. Both M. Vladymyrskyi-Budanov, who (together with Fedir Leontovych) formulated the main school principles and whom O. Malynovskyi always respected and considered to be his teacher²⁹, and the imperial historiographic culture, criticized by M. Hrushevskyi in the above-mentioned article, and ethnopolitical loyalties of "pre-revolutionary" O. Malynovskyi pushed their way around. At least till the beginning of the 1920s, he was a typical "little Russian", in other words, a person with the "all-Russian" political and cultural awareness, which, however, sympathized with its small Motherland. On the one hand, he considered himself to be of "Ukrainian origin" and gladly sang Ukrainian songs. Having married, his young wife embroidered him a Ukrainian shirt, which he treasured a lot³⁰. O. Malynovskyi was married to the daughter of the leading figure of the Ukrainian movement of that time Oleksandr Konysky named Mariia. Being a part of Denikin's civilian government for a certain period of time in 1919, he contributed to the preservation of the Ukrainian Academy of Sciences, which chauvinists-denikinists wanted to close³¹. In the letter to the first president of the All-Ukrainian Academy of Science Volodymyr Vernadskyi in 1919, one of the well-known representatives of the school of "Western-Russian" law Fedir Tarnovskyi wrote about O. Malynovskyi as of "a genuine Ukrainian", "innate little Russian and Russian", opposing him to one of the scientists of Polish origin³². On the other hand, starting from 1898, he was beyond the public and political life of Ukraine under Russian control. He was an active member of the all-imperial Kadet Party, which took a moderate stance on the Ukrainian question. At the Kadet Party congress in Yekaterinodar in 1918, he voted in favour of the resolution on one and indivisible Russia³³. This step was not accidental. Malynovskyi's diary entries confirm that his position was

²⁹ Див: Малиновский И.А. Памяти учителя (Опыт характеристики ученой и преподавательской деятельности профессора М.Ф. Владимирского-Буданова). Острог, 2013. 58 с.

³⁰ Морозова О.М. Нарратив профессора И.А. Малиновского. *Матеріали II Міжнародної науково-практичної конференції «Малиновські читання», м. Острог, 15-16 листопада 2013 року.* Острог, 2013. С. 26–27.

³¹ Яремчук В. Призабуті постаті української історіографії: біоісторіографічні нариси. Острог, 2002. С. 51.

³² Фоминых С.Ф., Некрылов С.А., Афанасенков В.О. Несколько дней из жизни академика И.А. Малиновского (по материалам Ейского дневника 1928 г.). *Матеріали III Міжнародної науково-практичної конференції «Малиновські читання», м. Острог, 14-15 листопада 2014 року.* Острог, 2014. С. 28.

³³ Морозова О.М. Нарратив профессора И.А. Малиновского. С. 27.

genuine. For example, in his Yekaterinodar diary on January 1, 1920, he wrote that he made a New-Year's toast to the revival of Russia: "I [...] proposed a toast to the mutual family – to Russia; I wished that the New Year was new in all senses, that all the nightmares and horrors of our lives left along with the old year, that our miserable, exhausted, torn to pieces and tarnished Motherland revived, that we became free citizens of united great Russia in the New Year"³⁴.

However, during the "Kyivan" period, we observe the metamorphoses of the scientist's works, which were not only "scientific". Firstly, we can see certain "Marxist" accents, particularly the elements of the materialistic understanding of the historical process typical of Marxism in his works. Yes, in the review of Taranovskyi's book "Vvedeniye v istoriyu slavianskoho prava" (*The Introduction into the History of Slavic Law*) (1922) in 1927, he highlighted that "the law is a result of social and economic conditions"³⁵. In his work "Revoliutsiine radianske zvychaieve pravo" (*The Revolutionary Soviet Customary Law*) (1928), O. Malynovskyi was writing the following: "It is known that the law is created on the social and economic basis, that this basis changes along with the increase in the creative power, and thus, the law changes, and that the legal rules, in which the law manifests itself in every historical epoch, protect the interests of the dominant under the social and economic conditions of that period class"³⁶. The process of formation of the upper class through the lens of Marxism is depicted in the work "Starodavni derzhavnyi lad skhidnykh slovian ta yoho piznishi zminy. Narysy z istorii prava" (*The Ancient System of Government of the Eastern Slavs and its Later Changes. Sketches on the History of Law*) (1929) (which we will discuss later): "The political order is a reflection of the social and economic order due to the state of the national economy. The seeds of distinguishing an influential minority are already seen in primitive times. However, even in the epoch of accumulative economy and primitive communism, factual differences existed and had weight [...]. With time, when the private property and the class structure of society appears, the distinction of the wealthy minority and its dominant role are imminent. At the same time, the wealthiest who is a natural representative and a leader of this minority as well as of all people who are unwillingly under his control and exploited by him"³⁷ stands out. In his book "Radianski popravcho-

³⁴ Ibid. С. 26.

³⁵ Михальченко С.И. Киевская школа в российской историографии. С. 112.

³⁶ Малиновський О.О. Революційне радянське звичаєве право. *Праці комісії для вивчення звичаєвого права України*. Київ, 1928. Вип. 3. С. 122.

³⁷ Малиновський О. Стародавній державний лад східних слов'ян і його пізніші зміни: Нариси з історії права. Київ, 1929. С. 32.

trudovi ustanovy porivniuiuchy z burzhuznymy tiurmamy” (*The Soviet Corrective-Labour Establishments in Comparison with the Middle-Class Prisons*) (1928), the following statement looks completely Marxist: “Crimes are committed because of social and, in the long run, economic conditions”³⁸.

It is impossible to be completely sure about how genuine and organic the elements of the Marxist methodology, used by O. Malynovskyi in his works of the “Kyivan” period of life, were for him. It is obvious that just like the majority of the representatives of the old academia, his “Marxist” statements were more or less forced because this doctrine was declared official by the new government. On the other hand, his diary notes of this period show that the historian quite seriously perceived and positively assessed the social transformations, which were taking place in the Soviet Union and Ukraine in the 1920s. However, he was critical of the specific situations, for example, the insufficient attention of the government to the problems of science, the interference of bureaucracy in the scientific life, cronyism in the All-Ukrainian Academy of Science, etc. Rejecting many modern to him processes and phenomena, he, as it seems, placed much hope in the Soviet order at least till 1928. For instance, explaining two social and political systems, where he used to live, bourgeois and Soviet, in August of 1928, he wrote that “the idea of the mutual assistance is provided to the highest degree, and the possible mistakes of one person are rectified thanks to the experience of others”³⁹ in the Soviet system. In his notes of the “Kyivan” period, we find another important speculation: “Nowadays the protests are not necessary. What goes beyond the wildest expectations has come to pass”⁴⁰. Thus, it is possible that his “Marxist” statements were coming not from the banal opportunism (which is difficult to believe knowing the bravery and civic position of the eternal opponent) but from the respect for the doctrine, which was presented in the USSR, and Malynovskyi’s ideas and which in the process of its implementation was leading and should have led to a more democratic, fair public order. There was less than a year till the beginning of the “great” Stalinist “turnaround”, which showed the illusory of the idealistic expectations of the professor, raised on the principles of respect for the value of human life...

We also note another metamorphosis of the intellectual face of “late” O. Malynovskyi. It seems that he felt a deeper connection with Ukraine.

³⁸ Малиновський О.О. Радянські поправчо-трудові установи порівнюючи з буржуазними тюрмами. Київ, 1928. С. 10.

³⁹ Фоминых С.Ф., Некрылов С.А., Афанасенков В.О. Несколько дней из жизни академика И.А. Малиновского. С. 27.

⁴⁰ Яремчук В. Призабуті постаті української історіографії. С. 52.

The reason for it was his commitment to the scientific work of the leading scientific institution in Soviet Ukraine, which strengthened the self-awareness of O. Malynovskyi as a Ukrainian scientist. His diaries show that he favourably evaluated the Bolsheviks' national politics, having seen a certain form of Ukrainian sovereignty among its consequences: "Ukraine is not the same as before: it is not "an inseparable part of United Russia", but an independent, free state – "the Ukrainian Soviet Republic"⁴¹. Such ideas were not unusual in the period of Ukrainization. A number of Ukrainian figures also took a rose-coloured view of the Bolsheviks' national reform, perceiving the USSR as Piemonte of the national rebirth. Let us remind at least the textbook fact about the emigration of 70,000 Galician Ukrainians to Soviet Ukraine in the 1920s .

From this perspective, a partial transformation of Malynovskyi's conceptual representations about the Eastern Slavic history is understandable. The last significant scientific text of the scientist was destined to become a synthesis "Starodavni derzhavnyi lad skhidnikh slovian i yoho piznishi zminy: "Narysy z istorii prava" (*The Ancient Government System of the Eastern Slavs and its Later Changes. Sketches on the History of Law*). The book can be seen as an original "swan song", the result of Malynovskyi's historical and law studies. To some extent, this generalization interprets his previous texts in a new way. O. Malynovskyi suggested a new vision of the development of the state institutions of the Eastern Slavs from the pre-Kyivan period till the end of the 16 century. On the one hand, the historian repeated the old idea of the school of "Western-Russian" law about the triarch structure of the state system of Kyivan Rus and kept track of the development of this structure in the lands-principalities, which appeared after its disintegration. As in his earlier texts, in this one O. Malynovskyi argues that this genesis happened as follows: in Volhynia and Galicia, later Galicia-Volhynia principalities; in the Grand Duchy of Lithuania, the priority of the aristocratic element of power was established; in Novgorod the Great – at first the combination of aristocratic and democratic elements, where the latter gradually transformed into "fiction" as a result of social differences and the increase of the role of the boyardom, the aristocratic element gained the upper hand; in Muscovy, the monarchic order, which evolved from the monarchy, the limited Boyar Duma and zemsky sobors to absolutism, which firmly established itself at the beginning of the 18 century, won.

⁴¹ Ibid.

As we know, only one highly critical review of the academician's generalized work appeared⁴². Its author, the legal historian Viktor Novytskyi made a number of both appropriate and doubtful comments (for example, about the author's complete disregard for the Ukrainian historiography (when O. Malynovskyi cited "Istoria Ukrainy-Rusy" (*The History of Ukraine-Rus*) by M. Hrushevskyi several times, argued with the views of V. Antonovych on the Council of Lords in the Grand Duchy of Lithuania⁴³), the exaggeration of the democracy in Novgorod (when O. Malynovskyi stated that the Novgorod democracy started falling from the 13 century, and the factual power was given to *duma*⁴⁴), disregard for the role of the boyardom in Suzdal (instead, the scientist noted that Moscow rulers "had to put up with the organized participation of the boyardom in the governance in the form of the Boyar Duma" till the beginning of the 13 century⁴⁵). At the same time, the reviewer did not notice a very important statement of Malynovskyi's last book. The point at issue here is that in it O. Malynovskyi, in fact, supported the views of M. Hrushevskyi on the question of the origins of the Russian people and the Russian state. According to O. Malynovskyi, the Great Russian nation "emerged from the combination of the Slavic and Finnish elements" after the emigration of "the Rus people" to the east and north in the times of crisis of Kyiv and southern Rus in the second half of the 12 century. The academician of the All-Ukrainian Academy of Science started the genesis of Muscovy from the Suzdal (Rostov-Suzdal) land, which he called the colony of Novgorod the Great and which, according to him, became an independent principality at the beginning of the 12 century. "The Suzdal land was the seed that produced Muscovy", stated O. Malynovskyi⁴⁶. Thus, we see that O. Malynovskyi accepted the main thesis of Hrushevskyi's scheme regarding the necessity to differentiate the history of the Ukrainian people and forms of their governmental organization from the history of other Eastern-Slavic people and states. It is obvious that apart from the above-mentioned factors, the important role in it was also played by the general readiness of the Ukrainian historians of the 1920s for the criticism of the traditional great-power view on the history of the Eastern Slavs, which, with some modifications, the Russian historians of the post-revolutionary epoch, including the new generation of the historians-Marxists, continued to support. It is known that despite a difficult,

⁴² Новицький В. [рец. на:] Малиновський О. Стародавній державний лад східніх слов'ян і його пізніші зміни: Нариси з історії права. Київ, 1929. Україна. 1930. № 40. С. 143–151.

⁴³ Малиновський О. Стародавній державний лад східніх слов'ян і його пізніші зміни. С. 71.

⁴⁴ Ibid. С. 114–116.

⁴⁵ Ibid. С. 151.

⁴⁶ Ibid. С. 126–127.

sometimes hostile, attitude towards M. Hrushevskiy, his fierce critics from the camp of the Ukrainian historians-Marxists headed by Matvii Yavorskiy recognized the accuracy of Hrushevskiy's scheme regarding the Eastern-Slavic past.

It is noteworthy that during his days at the All-Ukrainian Academy of Science, O. Malynovskiy emphasized the necessity of the early development of the complete course of the history of the Ukrainian law as an independent academic discipline to the scientific community on several occasions. In the 1920s, thanks to the researches of Mykola Vasylenko, Mykhailo Slabchenko, Mykola Chubatyi, Rostyslav Lashchenko, etc., the establishment of this branch of the historical and legal science was taking place. O. Malynovskiy not only supported the very idea of separation of the history of the Ukrainian law as an independent academic discipline but also joined the discussion about its subject. Unlike M. Chubatyi, O. Malynovskiy (as well as his work colleague in the All-Ukrainian Academy of Science Lev Okynshevych) demanded that the course of the history of the Ukrainian law included also the "foreign", nationally non-Ukrainian law, adopted or imposed upon the Ukrainian people, and that the name of the discussed discipline was "the history of the law of the Ukrainian people" and not "the history of the Ukrainian law"⁴⁷. Therefore, in this discussion, he revealed himself as a Ukrainian scientist and a legal historian, who, considering the frequent presence of Ukrainians on the territory of non-Ukrainian ethnic groups and states, looked at the Ukrainian history and the history of the Ukrainian law from both territorial and narrow national perspectives.

CONCLUSIONS

Thus, at the end of his life, in the conditions of socio-political and intellectual changes of the period of revolutions at the territory of the Romanov state and "red Renaissance" in the 1920s, which resulted in the birth of Ukraine as a national and political reality, a typical "little Russian" historian, which took an imperial historical stance (it did not see any differences in the historical destiny of different "branches" of "Russian" people and was "supranational" in this context) gradually "grew into" the Ukrainian cultural context. The example of O. Malynovskiy is unique in some way. The majority of the pre-revolutionary historians, who started to serve Ukraine in the relatively liberal 1920s, produced "the golden age" in the Ukrainian historical science in the Bolsheviks' USSR, marked their

⁴⁷ Малиновський О. Курс історії права українського народу (з приводу «Лекцій по історії українського права» Р. Лашенка, професора Українського Університету в Празі). *Праці комісії для вивчення історії західньо-руського та вкраїнського права*. Київ, 1927. Вип. 3. С. 12–13.

belonging to the Ukrainian intellectual process and the national movement back in the pre-revolutionary period. Among the most famous ones is Dmytro Bahlii, the transformation of whom from the official imperial cultural figure into the leading Ukrainian historian was rapid and painless. He was like that even before 1917. However, due to his conformism, he was thoroughly hiding his Ukrainian self-awareness.

SUMMARY

The article attempts to explain the reasons and demonstrations of the historical thought of the researcher of the legal history of the Grand Duchy of Lithuania Onykii Malynovskyi (1868–1932). The author reaches the conclusion regarding the gradual migration of the scientist from the supranational Russian imperial historiographic culture to the national Ukrainian one. The reasons for such changes lie in the integration of the scientist into the context of the scientific and public life of the Soviet Ukraine of the period of Bolsheviks' Ukrainization, possible growth of his Ukrainian ethnonational fealty. The national reform in Ukraine led to the national and cultural uprising (“the red Renaissance”) and the spread of the national self-awareness among the intellectuals. These common processes touched O. Malynovskyi as well.

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