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(Istorinė Lietuvas Konstitucija)
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History of Lithuanian Constitutionalism
(Historic Lithuanian Constitution)
1387, 1566, 1791, 1918, 1990

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Scientific editor: Vaidotas A. VAICAITIS. Co-authors: Jevgenij MACHOVENKO,
Jurgita PAUŽAITĖ-KULVINSKIENE, Lina GRISHKEVIČ

SUMMARY

Introduction
The concept of constitutionalism

The authors were inspired to write a study on Lithuanian constitutionalism from a
retrospective reference in the preamble to the 1992 Constitution of the Republic of Lithuania
to the historical statehood of Lithuania, the Statutes of Lithuania and inter-war constitutions
as the "legal foundations" for contemporary Lithuanian constitutionalism. As its point of
departure, the present study takes constitutionalism, although understanding that the ideas
of the rule of law, democracy, and human rights are just as broad in scope as constitutionalism
itself. Firstly, it must be noted that the emergence of the idea of constitutionalism is equally
related to the ancient aspiration pursued by humankind to establish the most appropriate
form of state government and guarantee the common good encompassing public security,
stability, social justice and other public values. This study interprets the idea of constitutional-
ism and values as a common good or a value per se, because the tradition of constitutionalism
manifesting itself through ideas and values of law analysed therein may be understood as a
steady and unchangeable political and cultural heritage of Western civilisation. Moreover,
it is important to underline that the Western origin of the concepts of constitution and con-
stitutionalism do not mean that constitutionalism and the ideas of constitutional values are
not universal and may not be applied to other cultures or civilisations.

It should also be emphasised that the co-authors of this book consider their central
task to identify what is common to various sources of constitutional law rather than focusing
on the differences that might be found in different countries throughout the centuries.
Hence, a constitution in its narrow sense, i.e., as a specific document of a given time, may be,
and sometimes even should be, amended, except for those fundamental provisions which
are a direct embodiment of the universal values referred to above.

In modern times there have been at least six paradigms of the constitution: 1) the
constitution as a social dialogue originating from the past, a continuous and "living constitu-
tion"; 2) the constitution as the supreme law and fundamental norm, 3) the constitution
as a social contract, 4) the constitution as an act of constituent power, 5) the constitution as an anti-majority act and, last but not least, 6) the constitution as the embodiment of the highest political, social and moral values. Within this context, it should be noted that the paradigm of the constitution as a dialogue originating from the past and continuing to this date as a "living constitution" is closest to the Anglo-Saxon tradition of common law and also – to the historical school of law, alongside the hermeneutical concept of legal dialogue. The paradigm of the supreme law and fundamental norm may be most broadly related to the idea of the supremacy of law and legal positivism. The constitution as a social contract is related to the idea of democracy and natural law school. As an act of establishment, the constitution may best be explained within the context of phenomenological philosophy (as transcendental performativity directed towards its implementation or retrospectivity, assessing it from the future perspective). The concept of the constitution as an anti-majority act can be related to the idea of protection of human rights, including the school of natural law, whereas the concept of the constitution as an embodiment of key societal values is linked with the law as a symbol of certain "holy scripture". Each of the above paradigms of the constitution (and law in general) reveals one of the constitutional aspects and supplements each other. Thus, the modern theory of constitution should try to find a balance among them all without disregarding any.

In order to realise the underlying elements of a constitution from the point of view of contents, which could be evaluated as the fundamental ideas of constitutionalism, one should pay attention to three elements. First, the provisions on 1) a state, its establishment, symbols, institutional and territorial framework, second, on 2) public authority, including the idea of sovereignty depicting the supreme governing power of a state, and, thirdly, 3) provisions which might be associated with the fundamental legal and moral values, which are named in this study as the rule of law, democracy, and human rights. Therefore, a modern constitution, in one way or another, regulates groups of relations linked to the aforementioned ideas and values, which are, inter alia, closely interrelated. Or to put it another way, just as no state can exist without authority, no public authority or sovereign can exist without a state. A similar correlation is observed among the legal (constitutional) values: rule of law, democracy, and protection of human rights. The co-authors also believe that the existence of these values allows attributing a specific state to the contemporary Western legal tradition. Moreover, in the contemporary science of comparable constitutional law, the mentioned three values (the rule of law, democracy, and protection of human rights) are sometimes even said to be irreversible. Hence, these three constitutional values might be regarded as the unwritten conventions of the Western legal tradition. The hermeneutical interdependence of these values is often revealed by the fact that each of them is naturally derived from the other and cannot manifest itself to the fullest in isolation. For instance, a state which does not guarantee freedom of assembly, freedom of speech or any other human right, may not call itself a democracy within the modern meaning of the term, even where its authority has been elected by the majority of the people. On the other hand, a state with a non-functioning principle of the division of powers, and in particular – the independence of the judiciary, may not ensure effective protection of human rights. Last but not least, the rule of law, which is often understood as certain restrictions on public authority, may only manifest itself in full if the protection of human rights is guaranteed and only provided that the democratic rules of public decision-making are ensured.

Therefore, if identification of a state and public authority framework within a given constitution can be said to be a purely formal constitutional element, inclusion of the mentioned legal values into a constitution should already be associated with qualitative elements of the constitutional contents allowing it to be attributed to the family of Western legal tradition. Although we could, in principle, agree on the sufficiency of formal contents to regard a specific legal act as constitutional, i.e., regulation of public authority relations of a state and forms of government, this study regards a constitution not only from the formal point of view, but focuses instead on the qualitative or value phenomenon of the Western legal tradition. Within the context of the history of Lithuanian constitutionalism, this position means that those sources of the constitutional law of Lithuania that do not comply with the (qualitative) value elements of the contents are not the subject of the present study. Moreover, the authors believe that all three legal values (the rule of law, democracy, and protection of human rights) do not need to be identified within one legal source to allow it to be regarded as a legal act with constitutional status, because these values are intertwined with each other, but it is important that this act should not have provisions contradicting those constitutional values.

I. State and authority as elements of constitutional idea and constitutional contents

In contemporary science on the Western tradition of the state, three key elements of a state are singled out: a nation, territory and public authority. Even though these elements are usually applied in international law, i.e., for the purpose of defining elements of a state as a sovereign subject of international law, the mentioned elements are all the more relevant within the context of constitutional law. This is because all these elements describing a state are reflected in one way or another in contemporary institutions both as independent institutes, and as content elements of the constitutional values, primarily, the rule of law and democracy referred to above. Moreover, a contemporary state may not be interpreted in isolation from the concept of citizenship, meaning the special legal status among a state and its permanent residents.

As far as interpretation of the concept of a state and statehood within the context of constitutional theory is concerned, a constitution can be said to be one of the underlying foundations for the legitimate existence of a state. It is noteworthy that due to the special relationship between the state and the law (including constitution), a certain tradition of including the science on state into the concept of constitutional law is still relevant in Lithuania.
Another feature of statehood as a constitutional idea is that a constitution usually defines the institutional framework of a state, including its form of government, i.e., it establishes the way a public authority functions and its relationship with citizens.

It should be noted that the idea of statehood in contemporary constitutions is often disclosed through the idea of independence (enshrined in acts on independence) and was used for the first time in constitutional history in the 1776 United States Declaration of Independence (which might be regarded as the Preamble to the 1787 US Constitution) and which became widespread immediately after the WWI with the (re)establishment of (new) national states. The idea of independence in constitutions and other constitutional acts is used in order to reinforce the status of a new subject of international law emerging on the international stage.

At this point, it is worth mentioning the Treaty establishing a Constitution for Europe signed by EU Heads of State and Government in 2004 in Rome (which never came into force). The purpose of this document was to change the name of the legal act establishing the European Union (EU) from ‘establishing treaty’ into ‘constitutional treaty’ or even constitution, therefore, the concept of constitution was no longer used to refer to a nation state, but to the European Union in that document. Nevertheless, refusal by some member states of the EU to ratify this document demonstrated that the societies of some EU member states were not yet ready to waive the traditional concept of a constitution and a state.

Another important element and subject matter of contemporary constitutional research is related to public authority and sovereignty as ideas denoting the supreme public authority. It was mentioned that public authority is one element of a state, but this position may be reversed by saying that a public authority needs to have a state or another para-state structure to make it possible for the public authority to realise itself. Therefore, the supremacy of the authority and sovereignty over the state has to be acknowledged here.

Traditionally, sovereignty may be construed from an external point of view as being related to the status of a state as an independent legal subject under international law, as well as from an internal point of view appealing to the supreme and integral public authority within a state, which does not require any other legal basis and which enjoys, according to Thomas Aquinas, potestas in se ipsum i.e., the power (authority) within itself. Jean Bodin subconsciously rephrased this theological idea saying that sovereignty is an eternal, unconditional, supreme (absolute, limitless, total), indivisible, non-transferable and self-justifying (not requiring any other legitimation) authority. While analysing the constitutional concept of sovereignty it should be noted that, historically, various paradigms on the ownership of supreme and final powers within a state have undergone many transformations. Moreover, it must be noted that during certain periods in history it has never been a case of having a one and only concept of sovereignty and the sovereign. At various points in time, the prevailing concept would always be challenged by alternatives postulated by the monarch and the aristocracy, the emperor and the pope, the party and the national leader, the nation itself and even the law as a certain sovereign. A perfect illustration of this can be found in modern democracies, such as the competing (co-existent) pluralistic concept of sovereignty in the United Kingdom, where, from a constitutional point of view, sovereignty belongs to the Parliament, from the political point of view – to the nation, and from the historical point of view – to the monarch.

As regards the idea of national sovereignty, it should be noted that the concept of a nation described in J. J. Rousseau’s theory of social contract, the notion of a nation correlates more with a civil society (populus), whereas national revival movements of the 19th century brought about the idea of a historical ethnic nation (natio). Moreover, even the contemporary idea of inherent human rights can be regarded within the context of sovereignty. Therefore, different interpretations of sovereignty existed at various historical times and sometimes several sovereigns might have (and still may) coexisted even at the same time within a certain state. In addition, it is important to stress that the concept of sovereignty is much broader in scope than the meaning of a public authority as it may cover such notions as the state, the law or even human rights.

II. Fundamental constitutional values: the rule of law, democracy, and human rights

Constitutional values may be regarded as the third element of a constitution and constitutionalism (in addition to the state and authority). Legal values are those moral and political values, which should be used as the basis of the public life of a given society. From one side, they are prescribed in the text of the constitution itself, and, from the other, they go beyond the limits of the law and constitution. As mentioned already, according to the Western legal tradition, the rule of law, democracy and protection of human rights can be regarded as the key constitutional values. Moreover, as previously mentioned, these three values are interrelated and intertwined with each other and are derived from each other, and more importantly, each of the three legitimises the other two.

Indeed, dissemination of the idea of constitution and constitutionalism may be viewed as one of the most striking manifestations of the principle of the rule of law. The rule of law is sometimes linked to the idea of law as certain sovereign and means privity over the state and public authority, which does not need to be legitimised by the state or its public authority. However, the idea of the rule of law is always construed as a mechanism for limiting public authority (primarily, through the written sources of law, the principle of division of public powers, and independent judiciary). Historically, such concept of the rule of law even legitimised rebellion against a titular sovereign were the latter to infringe the principle of the rule of law. The spreading of the English term of the rule of law in Europe is traditionally linked with the Anglo-Saxon legal tradition, according to which, even the monarch of Medieval England had to abide by the law. The most famous example of a limitation of sovereign powers is the 1215 Magna Charta. In modern times, this principle gained popularity...
as the basis of British constitutionalism, primarily due to Albert Venn Dicey, who called it the fundamental principle of the constitution. The popularity of this term was furthered also by the American tradition of constitutionalism, which gained root following the adoption of the 1787 US Constitution and judicial review of the Supreme Court. Meanwhile, the most famous metaphor of the rule of law of the 20th century were Kelsen’s “basic norm”, Hart’s “rule of recognition”, and Ronald Dworkin’s “legal empire”, whereby the latter is perceived as the foundation of “integral legal system” and which is evolving continuously in a certain direction (of the Western legal tradition) capable of identifying the right answers and (aided by the judiciary) reinterpreting itself. Therefore, on the basis of the contemporary tradition of constitutionalism, at least three elements of the principle of the rule of law might be distinguished, but these shall not be regarded as being final. These elements are: 1) supremacy of the constitution, 2) limitation of powers of a public authority (including division of powers), and 3) the principle of justice.

Another constitutional value, which would make the contemporary constitutionalism unimaginable and which is presented in this chapter is democracy. Democracy (Gr. demos – nation (people), kratos – power) is closely linked to the principle of the rule of law and the protection of human rights, constituting a hermeneutical triad of contemporary constitutionalism together with these values. Just like any other constitutional value, democracy too can be broken down into direct and indirect democracy and into constitutional principles or elements of a narrower scope, primarily into 1) sovereignty of a nation (people), 2) elections and parliamentarism and 3) republic, because ‘republic’ (L. res – matter, affair, business, publica – public/common) may also be construed as a Roman interpretation for the Greek democracy. In this study, national sovereignty will be disclosed through direct and indirect democracy and parliamentarism – through such parliamentary elements as the exclusive status of a parliament within the general framework of public authority, special status of a parliamentarian, parliamentary scrutiny (of the executive), legislative functions of parliament, etc.

It has been universally recognised that the contemporary Western legal tradition is impossible without real guarantees of the protection of human rights and vice versa. In other words, states that fail to guarantee human rights (for instance, the freedom of assembly, freedom of speech, etc.) may not be perceived as constitutional democracies. Looking at it another way, the prerequisite for protection of human rights as a constitutional value is closely linked with democracy and the rule of law, to the extent that violation of any of the principles will inevitably violate the other two (and vice versa). Hence, human rights may be analysed both within the context of the value of the rule of law as one of the instruments limiting the powers of public authority, as well as within the context of a democratic value. In other words, a state that fails to guarantee protection of human rights could be regarded as non-democratic and illegitimate. Meanwhile, within the context of the present study and considering the significance of human rights for the Western legal tradition and civilisation, human rights are analysed as an independent value of constitutionalism. It is the anti-majority nature of human rights phenomenon that (just like the protection of the rights of minorities in the context of contemporary democracy) allows calling the constitution itself an anti-majority act.

The modern concept of human rights within the context of Western legal tradition originates from at least three sources: the philosophy of Ancient Greece (primarily, Stoicism), Judeo-Christian ethics and humanistic and liberal individualism. The present study did not intend to provide a detailed list of legal theories to justify the contemporary concept of human rights, irrespective of whether this might be an historical school of law, legal ethics, analytical jurisprudence, critical legal studies, utilitarianism, legal hermeneutics, uniformity of rights and duties or any other concepts and paradigms of the philosophy of law. The authors believe that all contemporary legal theories may be appreciated within the context of four major legal schools: natural legal school, legal positivism, legal realism and historical school of law. We think that contemporary legal studies should harmonise all paradigms of the concept of law. However, this study focuses primarily on the natural school of law, mainly due to the fact that the contemporary concept of human rights born in the aftermath of the atrocities of WW2 is linked to the rebirth of the idea of inherent human rights, on the basis of which human rights do not originate from a positive law, but rather from human nature and dignity.

Against the backdrop of this study, it is worth mentioning that in terms of the level of legal protection, human rights may be broken down into international, European (conventional and charter-based), constitutional and ordinary. According to this concept, constitutional rights enjoy a higher degree of protection (from the point of view of their limitations) vis-à-vis other human rights not prescribed by a constitution (or in the European Convention on Human Rights). Human rights presented in this study are primarily to be regarded as constitutional rights, even though states following the Western legal tradition do not have a precise finite “list of constitutional rights”.

There are many references in legal science on the classification of human rights: individual and collective; absolute versus non-absolute; changeable versus unchangeable rights; general and special rights; first, second and third generation rights, etc. Among them all, the most popular classification of human rights is a classification based on their content. The 1948 Universal Declaration of Human Rights, the 1950 European Convention for the Protection of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and a few more international instruments enabled to formulate a clearer typology of human rights in terms of the content, identifying primarily 1) personal, 2) civil-political and 3) social, economic and cultural rights.

Therefore, the concept of constitutional ideas and values given above has contributed to the reconstruction of the Lithuanian historical constitutional sources.
III. Historical perspective of the Preamble to the 1922 Constitution of the Republic of Lithuania: national privileges of the 14th–16th centuries of the Grand Duchy of Lithuania, the Lithuanian Statutes of the 16th Century, the 1791 Constitution and the interwar Lithuanian Constitutions

A preamble to a constitution is often construed as the basis for interpretation of the body of the constitution and as a major source of inspiration for the underlying ideas and values contained therein. A preamble is usually assumed to be part of the text of the constitution, which is not directly applicable, unless provided otherwise in its specific provisions on human rights and duties or other provisions of normative nature. Even though the preamble to the 1922 Constitution of the Republic of Lithuania does not contain provisions of normative nature, the provisions contained therein can perfectly facilitate a better understanding of the underlying text of the Constitution and better interpretation of its normative provisions. First of all, it is worth mentioning that the preamble to the 1922 Constitution of the Republic of Lithuania contains all three major constitutional ideas analysed above, i.e., the state, the power (sovereignty), and fundamental constitutional values. Moreover, it must be stressed that the text of the preamble reflects the concept of the constitution, which is continuously undergoing historic developments and follows the spirit of the nation. Pursuant to this concept, the Lithuanian Constitution emerged in parallel to the statehood of Lithuania and has been continuously developing from the first legal acts of the state of Lithuania from the 14th century, through the Lithuanian Statutes of the 16th century up until the traditions of the First Lithuanian Republic, and finally, crowned by the adoption of the Constitution in 1922. Even the 1922 Constitution itself may be regarded not as the end of the Lithuanian constitutional development, but rather as another historic step of continuous journey.

Therefore, the present study analysed each historic stage of the development of Lithuanian constitutionalism linking it to the ideas and values of constitutionalism covered earlier. Even though, the study rests on the belief that for a specific legal act (or any other legal source) to be recognised as having constitutional status, it is not required to reflect all three constitutional values analysed above. It may be presumed, nevertheless, that these values or origins thereof already existed much earlier in Lithuanian legal tradition than in the constitutional acts of the 20th century or the 1791 Constitution. They already existed back in the 16th century Lithuanian Statutes and texts of national privileges of the Grand Duchy of Lithuania (GDL), which have been analysed in greater detail here.

When reviewing the history of Lithuanian statehood and law and aided by the constitutional preamble, the authors were able to reconstruct five historic dates which symbolise (according to the terminology of Harold J. Berman) certain dates of “legal revolutions” in the history of Lithuanian constitutionalism and marking some major breakthroughs in society covering “revolutionary” changes in legal thinking, namely the years of 1387, 1566, 1791, 1918 and 1990. The first date (1387) marks the first common state privilege of the Grand Duchy of Lithuania (which also became the first known legal normative act of the state of Lithuania) and symbolises the beginning of transition from the ancient type of law to the Medieval type of legal system, which incorporated Lithuania into the European ius commune. The second date (1566) is the date of the adoption of the Second Statute of Lithuania and symbolizes the transition from the Medieval to the New Age Renaissance (Humanism) legal thinking, including codification and systematisation of the legal system. The third date (1791) marks the transition to the so-called Enlightenment constitutionalism. The fourth date (1918) marks the re-establishment of the Lithuanian state and transition to the contemporary modern legal system, and last but not least, the fifth date (1990) is the date of the second re-establishment of the state of Lithuania in the 20th century and symbolises the transition from the imposed totalitarian legal system and positive legal thinking to a democratic and pluralistic system of law built on the concept of inherent human rights.

1. According to the Anglo-American legal tradition, one of the contemporary constitutional sources is the 1215 Magna Charta, which contained some origins on the protection of human rights and limitation of powers enjoyed by public authorities. Such approach to the medieval legal sources allows an identical interpretation to be applied to the historical Lithuanian documents, first of all, to the so-called national privileges of the Grand Duchy of Lithuania, which may be interpreted as an obligation assumed by the Grand Duke towards the nobility to guarantee certain rights and freedoms upon his ascension to the throne. In this study, 16 such privileges were identified from 1387 to 1568. While the strongest elements reflected in these privileges were mainly elements of the state and powers, they also guaranteed certain constitutional values, such as certain origins of the rule of law, democracy, and human rights. At that time, the rule of law was mainly reflected in the supreme hierarchical status of privileges within the Lithuanian legal system. Since the privileges of the 16th century, the values of democracy have been reflected in all of its elements: in the emerging concept of sovereignty of the civil society (nobility), in elections to the parliament (the Seimas), in the emergence of Lithuanian parliamentarism and an idea of a republicanism as a state, which is a common affair of all citizens (electing their ruler). When reconstructing the human rights contained in the privileges, all three types of human rights were identified: personal, political, and economic. Obviously, democracy and human rights of that time were perceived within the context of a class-based society and were guaranteed only to the nobility as the only fully-fledged citizens of the Grand Duchy of Lithuania (GDL). The national privileges of the GDL can be associated with the reference to the emergence of the state of Lithuania made in the preamble to the 1922 Constitution of the Republic of Lithuania, because 1387 Jagiello’s national privilege is the first known legal normative act of the state of Lithuania. Moreover, the territorial (rather than personal or tribal) principle of application of such privileges bestows them with a universal (albeit class-based) normative nature. Finally, the constitutive nature of the GDL’s national privileges, their place within the hierarchy of legal sources and content, which reflected the then civil contract within a state (establishment of the major institutions of the state and the rights and duties of its citizens), allow them to be attributed to the historical sources of Lithuanian constitutionalism.
2. At this point, it is worth mentioning certain privileges of the GDL in the 16th century, because in a certain sense they legitimised the adoption of the Statutes of Lithuania in the 16th century and these are also referred to in the preamble to the 1992 Constitution as legal sources of constitutional status. The reconstruction of the Statutes of Lithuania (official title – the Statutes of the Grand Duchy of Lithuania), within the context of contemporary constitutional ideas and values, was the other objective of the study. First of all, the Statutes of Lithuania is a certain compilation of a codified source of law covering the entire legal framework of the Grand Duchy of Lithuania in the 16th century and including legal norms from private to public law and from criminal to administrative rules. There were three editions of the Statutes of Lithuania: – in 1539, 1566 and 1588, although they have been known in the historiography under titles of the 1529 First Statute of Lithuania, the 1566 Second Statute of Lithuania and the 1588 Third Statute of Lithuania. The Statutes of Lithuania systematised and further expanded the constitutional values covered by the national privileges: the rule of law, democracy, and human rights. Within the context of these values, along with the tradition of the constitutionalism of Lithuania, it may be concluded that the breakthrough ("revolutionary") event, which took place during the legal reform of the Lithuanian in the midst of the 16th century, should be associated with the adoption of the 1666 Statute of Lithuania, which laid the foundation for Lithuanian parliamentary tradition. This Statute stipulated the principle of regular parliamentary (Seimai) elections, equal and territorial representation of the entire civil society, the special status of representatives in the Seimas, it limited the sovereign's legislative powers and established the key legislative competences of the Seimas, including imposition of taxes, proclamation of war, and nomination of officials.

3. In the first part of the study it was argued that despite the absence of reference to the 1791 Constitution in the preamble to the 1992 Constitution of the Republic of Lithuania, the 1791 Constitution must also be included in the list of legal sources of the Lithuanian constitutional traditions. The study identified five constitutional acts adopted by the Seimas of Reforms (1788–1792) in 1791, which may be regarded as forming part of the 1791 composite Constitution: the Law on Cardinal Rights of January 8, the Law on Local assemblies (Sąjūdžiai) of March 24, the Law on Towns of April 21, the Government act of May 3, and the Mutual Pledge of the Two Nations (Zaręzenie Wzajemne Obojga Narodów) of October 20. In the study it is argued that the "central axis" of the 1791 composite constitution is the May 3 Government act. However, as it does not refer to the statehood of Lithuania, this 1791 complex constituent Constitution may be construed as "the Constitution of the Republic of the Two Nations" (and, hence, as part of the Lithuanian tradition of constitutionalism) only thanks to the Mutual Pledge of the Two Nations adopted on October 20, 1791 by the Seimas, which once again turned back to the idea of "the Republic of the Two Nations".

During this study of three constitutional values, a conclusion was drawn that despite the class nature of the 1791 Constitution that was evident in the procedure of the Seimas elections and composition of the judiciary (with specially designated class courts for the gentry, the urban and rural population), the rule of law was most vividly expressed in the May 3 Government act through an explicit principle of division of powers (focusing, in particular, on the independence of the judiciary) and the supremacy of this constitutional act (and of all five constitutional acts referred to above) over other acts adopted by the Republic of Two Nations. The constitutional value of democracy was most profoundly expressed in the 1791 Constitution (similar to the Lithuanian Statutes) in the expanding notion of a citizenship and a well-developed principle of parliamentarism, including regular elections, uniform territorial representation of civil society in a bicameral parliament (the Seimai), rather detailed procedure of elections of civil society representatives to the Seimas (the principle of independence and impartiality of election organisers, secret ballot and universal nature of gentry elections), immunity of parliamentarians, functions of legislation, parliamentary scrutiny and deliberation. The concept of the republicanism enshrined in the 1791 Constitution was analogous to the perception of national privileges and the Lithuanian Statutes, i.e., it expressed the idea of a common good and state as the common value for all of its civil society. As far as protection of human rights in the 1791 Constitution are concerned, it has to be emphasised that human rights did not receive much attention, because the Constitution was primarily dedicated to increasing the efficiency of state governance through modernisation of the then existing gentry democracy on one hand, while not being daring enough to abolish the class system of the state, on the other hand. All this resulted in a much greater focus on the political rights of citizens from different social classes, in particular, on electoral rights to the Seimas and other rights derived from these.

4. The last historic reference contained in the 1992 Constitution of the Republic of Lithuania is to the constitutions of the inter-war or the First Lithuanian Republic. The constitutional tradition of the First (inter-war) Republic of Lithuania is closest to the current 1992 Lithuanian Constitutional and marks the establishment of a contemporary legal framework of Lithuania and embodies ideas of contemporary constitutionalism. The inter-war period had three interim (1918, 1919, 1920) and three permanent (1922, 1928, 1938) constitutions. This study mainly focused on the analysis of the interim 1920 Constitution and (permanent) 1922 Constitution because the last two (1928 and 1938) were adopted after the December 1926 coup d'état, moving to authoritarian regime, which symbolised withdrawal of the state of Lithuania in bigger part from the constitutional values analysed therein, i.e., from the rule of law, democracy, and protection of human rights. The history of Lithuanian constitutionalism analysed in this chapter, therefore, covers only six years (1920–1926), which makes it all the more relevant.

The 1922 Constitution of Lithuania was a typical constitution of a parliamentary (republican) democracy of Europe in the first half of the 20th century. It reflected all the three constitutional values: the rule of law, democracy, and protection of human rights. From the perspective of the rule of law, this Constitution may be said to have explicitly stipulated the principles of the supremacy of the constitution and the division of powers. However, the Seimas (parliament) enjoyed a dominant position vis-à-vis other branches of power. The President of the State was to be elected by the Seimas and was part of the Government. Reference to the value of democracy was given in the preamble and Article 1, but was most profoundly expressed through the principles of sovereignty of the nation,
elections, parliamentarism and republicanism, which meant not only a form of government but also a common public matter of all citizens. For the first time in the history of Lithuanian constitutionalism, human rights had a separate individual chapter within a constitution, which laid down the fundamental personal, political, economic and cultural rights, together with minority rights.

IV. Declarations of Independence as part of the Lithuanian constitutionalism (Act of February 16, 1918, Declaration of February 16, 1949 and Act of March 11, 1990)

Finally, the last chapter of the study first at all analyses two Declarations of Independence: the Act of February 16, 1918 and the Act of March 11, 1990: On the Re-establishment of the State of Lithuania. These constitutional acts are analysed in the context of the earlier mentioned constitutional values, in particular, in the context of the rule of law and democracy. The study draws the conclusion that both acts (Declarations of Independence) are inseparable from each other, derive from each other and legitimise each other. Due to their primary constituent character and to the fact that the two constitutional values (the rule of law and democracy) were enshrined in these constitutional acts, they might be treated even as irreversible constitutional acts in Lithuanian constitutional tradition. The chapter concludes with an analysis of the Declaration of February 16, 1949 by the Council of the Movement of the Lithuanian Freedom Fighters (this act was adopted during the Soviet occupation by fighters of the resistance movement) underscoring its huge importance within the system of constitutional sources of Lithuania. Even though this Declaration was transposed into the contemporary legal system of Lithuania by an ordinary statute of January 12, 1990, the legal status of the Declaration due to its constituent nature should undoubtedly be grouped with the other Declarations of Independence as a primary constitutional legal act. Moreover, the Declaration derives its constitutional status from the constitutional values analysed in the study, namely, the rule of law, democracy, and human rights. In addition, the Declaration of February 16, 1949 was the first national constitutional act to refer to the 1948 Universal Declaration of Human Rights.
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The features of the Western legal tradition in this study allowed to identify the fundamental constitutional ideas (the state, power and values), and to group the key constitutional values into three broad categories: the rule of law, democracy and human rights. One of the central tasks of this study was not only to appreciate the crucial dates of Lithuanian constitutionalism (1876, 1866, 1918, 1918, 1990), but also to identify the common principles of Lithuanian historic constitutional sources of law, which covers the Grand Duchy of Lithuania's national privileges of 19th century, the Lithuanian Statutes of 16 century, the 1914 constitution, interwar constitutions and also so called independence acts: the Independence act of 16 February 1918, the Lithuanian Partisans Declaration of 16 February 1949 and the Independence act of 11 March 1990.