

# The Formation of the Elements of Parliamentarism and Constitutionalism at the Territory of Latvia in the Middle Ages and Early Modern Times (13<sup>th</sup>-18<sup>th</sup> centuries)

VALDIS BLŪZMA

## 1. Historical Constitutional Traditions of Latvia

Learning history of Latvia we may make a conclusion that Latvia certainly should be ranked within the circle of European states with the ancient traditions of constitutionalism notwithstanding a fact that Latvia is relatively new state with rather short statehood history. For example, we may mention that for the first time the principle of rule of law was formulated at territory of Latvia in a legal source *Privilegium Sigismundi Augusti* (Privilege of Sigismund II August) in the middle of XVI century<sup>1</sup>.

Surprisingly, but we may also ascertain relatively small interest of Latvian scholars about its constitutional traditions of the previous centuries. It is not possible to find any references on constitutional traditions in territory of Latvia before the formation of the national state in books devoted to constitutional law which were published in Latvia in the first decade of XXI century

“Konstitucionālās tiesības” (Constitutional Law) or “Ievads konstitūcijas teorijā” (An Introduction to Theory of Constitution)<sup>2</sup>, whose authors a lot of times quoted and analysed the constitutional traditions of so called old Western democracies.

The reason for the lack of interest in the local ancient constitutional traditions may be explained mainly by unique historical circumstances which characterized the evolution of constitutional history in territory of Latvia. We need to take in account that Latvians obtained their statehood only in 1918, fighting a lot of decades of XIX century against Baltic German privileged noble minority (descendants of crusaders who conquered this country in XIII century) which had a local political and economic power, as well as, legal autonomy in the three Baltic governorates (German: *Ostseegouvernement*, Russian: *Остзейские губернии*) of the Russian Empire – Estonia (northern part of modern Estonian state territory), Livonia (southern part of modern Estonian state and northern part of

modern Latvian state territories) and Courland (western and southern part of modern Latvian state territory). In viewpoint of Latvian national movement ideology 700 years from starting point of Baltic Crusade in the end of XII century till the establishing of the independent Latvian state were interpreted as the years of the slavery of Latvian people under Baltic German yoke. So the constitutional traditions developed by Baltic German were considered by Latvian researchers in interwar period as insignificant for Latvians, because it was an element of the oppressors' culture. Latvian researchers of the history of constitutionalism mostly paid their attention to the constitutional history of the Republic of Latvia, ignoring the formation of a Western constitutional tradition in territory of Latvia in medieval times. That trend of interwar period was continued also in Soviet period after World War II. Baltic Germans were mainly depicted by Soviet authors as cruel exploiters of Latvian labour people, but their role in education and development of culture life of the native people was suppressed<sup>3</sup>.

Only in the last decades we may see the efforts of some Latvian historians to overcome the misleading myth in history of Latvia about 700 years of slavery of Latvian people<sup>4</sup>.

The returning of Latvia into Europe after restoring the independent state in 1990 – 1991, formation of the system of rule of law, harmonisation of the legal system of Latvia according to the norms of EU law, its integration in the European Union raises an issue about the historical roots of the Western constitutional and legal culture in Latvia. It is necessary to form more objective historical picture of constitutional development at Latvian territory, to notice Western legal impact on it and to overcome superficial national myths.

Table 1. Periodization of Constitutional History in Territory of Latvia

<i>Periods of Constitutional History</i>	<i>Chronological Frames of Periods</i>	<i>States and Other Political Entities</i>
1) Prehistory Period	Approx. 9000 BC-IX century AD	Tribes and Chiefdoms
2) Period of the Barbarian States and Chiefdoms	IX-XIII century	Early states – Jersika, Koknese; Chiefdoms (Zemgale, Kursa); Tribes (Livs)
3) Period of Ecclesiastical Feudal States	XIII-XVI century	Riga Archbishopric; State of Livonian Order; Courland Bishopric; Livonian Confederation
4) Period of Secular Feudal States	XVI-end of XVIII century	Province of Livonia ( <i>Polish Lithuanian Commonwealth</i> ); Duchy of Courland

5) Absolutism State Period	End of XVII-beginning of XX century	Swedish Livonia ( <i>Kingdom of Sweden</i> ) Governorate of Livonia; Governorate of Courland ( <i>Russian Empire</i> )
6) National State Formation Period	Early XX century-1940	Republic of Latvia
7) Period of the Socialist State	1940-1990	Latvian Soviet Socialist Republic ( <i>Soviet Union</i> )
8) Transitional Period of Post-Socialist State	1990-2004	Republic of Latvia
9) Period of the Integration of the National States in Regional Union	2004-?	Republic of Latvia ( <i>European Union</i> )

## 2. The Genesis of the Elements of Parliamentarism and Constitutionalism in Livonia

If we analyse which factors had stimulated the progress of constitutional law in the Middle Ages and Early Modern Times in territory of Latvia we may conclude that specific political reasons (mainly determined by interests of great powers in Baltic region) dominated over all others – economic, cultural, religious ones. Before Baltic Crusade was initiated by the Catholic church in the end of XII century in territory of Latvia a political dominance of Kievan Rus must be remarked, especially, in the eastern part of the modern time Latvia. It was confirmed by the following fact in the significant historical source of early XIII century – *Chronicle of Henry de Lettis (Heinrichi Hronicon Livoniae)*. The first German missionary – Augustin monk Meinhard after his arrival in 1184 in territory of lower reaches of River Daugava inhabited by Livs with mission to convert them to Christianity required Russian prince of Polotsk Vladimir for permission to start his mission, because Livs were obliged to pay the dues to Vladimir<sup>5</sup>.

There were two principalities in territory of eastern Latvia before German expansion in it – Jersika and Koknese which were founded in XI century and ruled by orthodox Christian princes. These states, probably, were initially vassals of the principality of Polotsk, but in the end of XII and early XIII century they were sovereign<sup>6</sup>. We have no more detailed data about the constitutional order of these principalities, but, obviously, it was similar to principality of Polotsk and other Russian principalities of that time. It is necessary also to point out that in the last years Latvian historian Andris Šnē expressed an opinion that Jersika and Koknese may be qualified as chiefdoms, not states, because archeologic materials from these territories do not approve the concept of hierarchical society<sup>7</sup>.

The first political change by which territory of the present time Latvia was included into political field of Western Europe was Baltic Crusade (end of XII century - 1290) which official aim was a conversion of indigenous pagan people of Eastern Baltic coast to Christianity by military power when previous attempts to convert Livs by peaceful means were not successful. German knights organized in military monastic Order of the Brothers of the Sword

(established in 2003, in 1237 after defeat in battle of Saule against Lithuanians it was incorporated into the Order of Teutonic Knights as autonomous branch named Livonian Order) under supervision of the Holy See ensured the conquest of territory of modern Latvia and Estonia (the Northern Estonia was conquered by Denmark in the early XIII century, but later in the middle of XIV century after uprising of Estonian people against yoke of Danes it was ceded to Livonian Order). The conquered territory was named Livonia in the name of Finno-Ugric tribes *Livs* which inhabited the territory around the mouth of Daugava River where Germans arrived at first and where their political and economic centre – city of Riga was founded in 1201. By the decision of the bishop of Riga Albert von Buxhoeveden Livonia had ceded in 1207 to the Holy Roman Empire and had received it from German king Philip as a fief<sup>8</sup>. So Livonia from this year became an autonomous part of the Holy Roman Empire, but its ruler – the bishop Albert obtained the title of prince of the Holy Roman Empire.

The feudal system of administration was also without hesitation implemented in Livonia. So the Order of the Brothers of Sword became the vassal of the bishop of Riga and got from him the third part of the conquered territory of Livonia as fief<sup>9</sup>. The state of Livonian Order was stronger military than all the other states in Livonia, but it was formally under lordship of Riga bishop. The rulers of Livonia in their turn granted the smaller land territories as fiefs for their vassals in return to military, administrative and judicial service in favour of the lord. The first feudal contract between Riga bishop Albert and two his vassals was concluded in 1201<sup>10</sup>. The pre-Livonian states

of local sovereign rulers also sometimes were incorporated into Livonia through fief system. So after defeating of the king (*rex*) Visvaldis in the battle of 1209 and capturing his capital Jersika that located on the right coast of River Daugava in the eastern part of modern Latvia, bishop Albert demanded that Visvaldis recognise himself as vassal of bishop of Riga. Visvaldis was forced to agree because his wife and her servants were captured by crusaders as prisoners of war, so he submitted his state to Catholic church (in fact to Riga bishopric state) receiving back only part of his kingdom territory as a fief<sup>11</sup>. Not only local rulers, but also other remarkable persons of indigenes, of course, if they were ready to be converted into Catholicism, were included in feudal relations by Livonian rulers, especially, in XIII century, forming a relevant part of vassals of Livonia<sup>12</sup>.

Livonia never was centralized politically, it consisted till its end in the middle of XVI century of four bishopric states (Riga bishopric (after 1245 archbishopric), Dorpat (Tartu) bishopric, Ösel-Wieck bishopric, Courland bishopric) and a state of the Livonian Order. There were regular conflicts between Livonian Order and Archbishopric of Riga in fighting for hegemony in Livonia. But in early XV century when Teutonic Order was defeated by Polish and Lithuanian troops in the battle of Grunwald (1410), its autonomous branch – Livonian Order was ready to seek political compromises with Riga archbishop. Growing strength of two great powers of the eastern Europe – Polish-Lithuanian union and Moscow Grand Duchy stimulated formation of the union of states in Livonia.

So both parties (archbishop of Riga and master of the Livonian Order initiated the Livonian Diet (*Landtag*) which was con-

vened for the first time in 1419 and later it was convened more or less regularly every year. It was the first Livonian scale power institution which had the supreme legislative and judicial power. It was formed on the grounds of representation of estates as it was usual in the medieval European states, but with some local specific. There were four chambers in it – 1) Chamber of prelates in which bishops and the members of chapters of priests of bishoprics were represented, 2) Chamber of Order in which the Master of Livonian Order and members of the Order's Council were represented, 3) Chamber of vassals which represented vassals of all the clerical states of Livonia, 4) Chamber of cities in which mainly were represented the members of city councils, and also of guilds from three bigger cities – Riga, Reval (Tallinn) and Dorpat (Tartu). The specific in structure of chambers was that in Livonia it was not one chamber for all the clerics, but two different ones. A special chamber of Livonian Order was established to take in account its political and military role in Livonia. The peasants were not recognised as political estate and there was a viewpoint that their interests were represented in Livonian Diet by their landlords, but in reality the interests of peasants were mostly protected by chamber of citizens interesting in flourishing of the peasants in interests of trade. The peasants were not represented also in the lot of the medieval assemblies of estates in Western Europe. Exception were Sweden, Denmark, Switzerland where representatives of peasants formed one of the chambers of Diet, but in the case of Livonia excluding of peasants from Diet meant simultaneously that indigenous peoples had no representation in Diet and their interests were mainly ignored.

The competence of Livonian Diet in sphere of legislation was not limited, but, of course, these were all-Livonian issues in which the decisions were made, not only in political sphere, but, as well as, in sphere of economy, finance, law. The decisions by Livonian Diet were made on the base of consensus of all the chambers. After plenary meeting which was presided by Archbishop of Riga and at which the agenda of session was considered, every chamber came together to its separate meeting to make its own decision by majority voting on issue of agenda. Then in the next plenary session there was necessary to adopt a compromise solution (if there was a dispute about decision among chambers) which would be acceptable for all the four chambers. So there were a lot of informal discussions for approximating the different viewpoints of chambers before adopting the final act (*Rezess*). If the dissent between chambers was invincible the decision was not adopted. Sometimes also it was fixed in decision that chamber (mostly of citizens) which had the objections against a draft of decision did not took a part in final voting. So the act was adopted and came into the effect, but that estate which was against it was not obliged to observe it.

The legislative acts of Livonian Diet usually were in effect for all the territory of Livonia and the principle of supremacy of these acts was applied. But there was no executive organ of Livonian scale and implementation of this or that act of Livonian Diet was a competence of the executive branch of power of the Livonian states. So there were situations when adopted laws were not applied by government of any Livonian state for definite political reason. There was also no institution which had a competence of

supervision of the applying the adopted acts by rulers of Livonian states.

In 1435 so called Livonian Confederation<sup>13</sup> (the term "Livonian Confederation" never was used in historical period of the existence of union of Livonian states, it was initiated by historians and legal historians in XX century, taking in account a lot of features which characterize the trend of confederalism in relations of Livonian autonomous states) was formed on the base of treaty between Livonian states adopted by Livonian Diet. This treaty established military and political union of Livonian states. The rules of treaty prohibited the wars between subjects of confederation. All the disputes between Livonian states were obliged to adjudicate before the arbitration of Livonian Diet and its decisions were mandatory. The claims for the arbitration of Holy See were forbidden, so the conflicts ought to resolve in Livonian institutions. The Livonian states had no more rights to start separate wars with the third states. The decisions on war and peace issues further ought to adopt in Livonian Diet. So the Livonian states had no more rights to conclude a separate peace treaty, but they obtained a right to get a help from the other Livonian states in the case of aggression of the third state against any subject of treaty<sup>14</sup>. So we may speak about the self-limitation of power of Livonian states on the base of free agreement among them.

The Livonian Diet had also a judicial power. It was mainly an appellant court instance for appeals of vassals on the judgments of courts of Livonian states in private cases, but sometimes Livonian Diet also adjudicated the significant disputes between noblemen as a court of the first instance.

### 3. *Formation of the Constitutional Law in Period of Polish-Lithuanian Commonwealth Dominance in Territory of Latvia*

The liquidation of Livonian Confederation was a main result of Livonian war (1558-1583) which was unleashed by tsar of Russia Ivan IV with an aim to conquer a territory of Livonia. Livonian army was defeated in 1560, but new rivals – Polish and Lithuanian union and Sweden did not give Russia a chance to win the war. In 28 of November, 1561, Polish king Sigismund II Augustus and the last master of Livonian Order Gotthard Ketler signed so called Treaty of Submission (*Pacta Subiectionis*)<sup>15</sup>. Polish king was ready to take Livonia under protectorate and defend it against Russian troops, but asked its radical political transformation in the interests of Polish-Lithuanian union. So the greater part of its territory – southern Estonia (northern part of Estonia submitted to Sweden in June of 1561)<sup>16</sup> and central and eastern part of modern Latvia were incorporated into Grand Duchy of Lithuania directly (after Lublin Union treaty of 1569 by which Polish – Lithuanian Commonwealth was founded, province of Livonia was incorporated also in Poland, so obtaining status of condominium). Gotthard Ketler who then dissolved Livonian Order following rules of Treaty of Submission, received as a secular ruler a part of former territory of Livonian Order only – southern and western part of modern Latvia which was transformed into secular Duchy of Courland and Semigallia (shortly – Duchy of Courland) as a vassal state of Lithuania (after Lublin Union of 1569 Duchy of Courland became vassal state also of the Kingdom of Poland).

The replacement of the system of ecclesiastical states was without any doubts

a progressive step, especially, taking in account that from twentieth years of XVI century the Reformation movement stimulated in Livonia conversion of population to Lutheranism. So the paradoxical situation originated in Livonia – rulers were adherents of Catholicism – religion which was not more recognized by majority of population. In these circumstances the appropriate decision was secularization of the state power, as it was made in Prussia in 1525 dissolving Teutonic order and transforming its state in secular Duchy of Prussia as vassal state of Poland. But rulers of Livonia, its political elite lacked this strategic approach and they rejected secularization of political life, so reserving this task for foreign monarch. Yet in sphere of religious life Livonian Diet was able to achieve a consensus to proclaim "religious freedom" in 1554. It was the significant step in recognising the principle of liberty of conscience, of course, in very limited sense ensuring the equal rights for Catholics and Protestants.

In the same day when *Pacta Subiectioonis* was concluded, knighthood of Livonian Order required Sigismund II August for guarantees of their rights submitting to Polish king document which is known to scholars as The Privilege of Sigismund August (*Privilegium Sigismundi Augusti*)<sup>17</sup>. There were different viewpoints of scholars expressed on issue was this document really adopted by Sigismund II August, because the original of this document later was not found, as well as, successors of Sigismund II August did not wish to confirm it aiming to limit the rights of Baltic German knighthood. Only tsar of Russia Peter I the Great whose army occupied the territory of Swedish Livonia in the course of Great Northern War issued a General Confirmation of 30

September of 1710 in which The Privilege of Sigismund August was confirmed along with other privileges of Livonian nobility. But there was also a reservation included in this act that former rights of Livonian knighthood will be recognised "as far as they fit to modern government and time"<sup>18</sup>. For example, Livonian knighthood did not receive a right for manorial court to adjudicate the capital crimes of serfs and execute death sentences without a right to appeal (article 26), because the manorial courts were liquidated by Swedish administration. But in its turn the General Confirmation basing on the Privilege of Sigismund August recognised the rights of Livonian nobility to manorial lands which under the Great Reduction of 1680 were took over in possession of Swedish crown.

The fact of adopting of the Privilege of Sigismund August by ruler of Poland and Lithuania may be proved by fact that Gotthard Ketler as a duke of Courland proclaimed new privilege for nobility of Courland in 1570 (*Des Herzogs Gotthard Privilegium für curländischen Adel*) in preamble of which we may found clear references to the Privilege of Sigismund August as promulgated legal act<sup>19</sup>.

In Privilege of Sigismund II August for the first time in Livonia the certain rights of citizens were guaranteed and the important principles of a rule of law were declared. In this royal document of privileges and legal guarantees (basically for nobility) article 18, which declared that "the government should submit to laws", had a special value. Article 18 prohibited the arbitrary confiscations of fiefs and other real property and fines by administrative institutions without appropriate hearing of the case in the court and its decision on the grounds of law.



"Citizens" and "commons" of Livonia, XVI Century

Presumption of innocence was also included in this article and king of Poland-Lithuania personally was obliged to provide the supervision of the observance of this article reserving the rights for victims of the arbitrary acts to submit the complaint to king.

The significance of this norm in constitutional history of Latvia is comparable to well-known article 39 of English *Magna Carta Libertatum* (the Great Charter of Liberties) of 1215<sup>20</sup> which 800<sup>th</sup> anniversary is widely celebrated this year. The establishment of the constitutional guarantees in province of Livonia should be better understandable if we take in account the unique constitutional status of the Polish-Lithuanian state which was in reality a republic of nobility with king elected by bicameral parliament in what only nobility was represented. That is why laws of *Rzecz Pospolita* guaranteed the wide rights and liberties to nobility, and partly also to other free estates. For example "The Statute of the Grand Duchy of Lithuania" (3<sup>rd</sup>

edition, 1588), which from 1677 till 1832 was in effect also in Polish Livonia (*Inflanty*)<sup>21</sup> – modern time eastern part of Latvia, declared a freedom of religion taking in account that considerable proportion of its subjects were orthodox or protestant Christians, and freedom of movement which allowed all the free subjects of the Grand Duchy of Lithuania to travel freely to any Christian state, if it was not in the state of war with Lithuania<sup>22</sup>.

The first legislative act of Polish – Lithuanian Commonwealth for province of Livonia in which title the term "constitution" was used was "*Constitutiones Livoniae*"<sup>23</sup> adopted and promulgated by Polish king Stephen Bathory in 1582. But term "constitution" then was not used in the modern sense of word. In sense of Polish legal thought of XVI century constitution was legislative act which was adopted in Polish Diet (*Sejm*) of *Rzecz Pospolita*. The plural form "constitutions" was used to denote that every section of this legislative act which regulated some special object was a separate constitution.

The content of the *Constitutiones Livoniae* consisted of several constitutional, but mainly administrative rules which regulated the governing of province of Livonia after its re-conquest from Russia.

*Constitutiones Livoniae* established new representative organ for province of Livonia – Convent, which might be convoked on the will of Polish king for decisions on public affairs. Delegates for this Convent were elected in the meetings of nobility in three presidiates (new territorial administrative units in province of Livonia). Rule prescribed also sending to Convent the delegates from cities – two from Riga and one from Dorpat, Pernau (Pärnu) and Wenden (Cēsis). One delegate represented Duke of Courland. Clergy was not mentioned in *Constituones Livoniae* as separate political estate. How we may see, Stephen Bathory limited the powers of Convent in comparison to these which Livonian Diet had. Before 1598 Convent (which was renamed as Sejmik in 1589 correspondingly to term used in Poland and Lithuania for provincial diet) had no rights to send delegates to common Sejm of Polish – Lithuanian Commonwealth and to take a part in decision of common matters of state. The Livonian Ordination adopted by Sejm in 1598 prescribed that Sejmik of province of Livonia will send six delegates to Sejm – two delegates from every of the three nations – Poles, Lithuanians and Germans. We need to point out that the limited attempts to improve political status of Baltic Germans in political life of *Rzecz Pospolita* in this ordination must be taken in context of serious aggravation of relations between Poland and Sweden in the eve of Polish – Swedish war of 1600. How we may see, representatives of indigenous peoples were not mentioned among delegates to Sejm.

#### 4. The Development of Principle of Constitutionalism in the Duchy of Courland

The significant contribution to a history of a constitutional law of Latvia was given also by the Duchy of Courland (1561 – 1795) which was in vassal dependence from the Polish-Lithuanian Commonwealth. Status of vassal state did not limit Duchy of Courland substantially in sphere of international relations. So Duchy of Courland send its envoys to different European states, concluded a lot of international treaties in sphere of trade and neutrality. Duchy of Courland obtained two colonies – Gambia and Tobago and profited from trade with colonial goods.

One of the first act of constitutional law in Duchy of Courland was Privilege of Gotthard of 1570 which was based on the Privilege of Sigismund August. The most significant in modern sense was article 4 of this source in which duke Gotthard Kettler guaranteed not only inviolability of the property, but also a personal immunity and protection of person to everyone.

The status of vassal state promoted the development of the principles of constitutionalism in Duchy of Courland. The power of Duke, as well as, power of Diet (*Landtag*) of Courland in which from XVII century only nobility was represented, were limited by fundamental laws – Treaty of Submission (1561), Diploma of Investiture (1579) and Formula of Government (*Formula Regiminis*)<sup>24</sup> – the first written constitution in territory of Latvia in the modern sense of this term, prepared by Polish royal commission headed by bishop of Kulm J. Kuchborsky in 1617. So article 27 of Formula of Government prohibited adopting legislative acts which would be in conflict with afore-

mentioned fundamental laws. Formula of Government recognised the eternal authority of these acts so they were irremovable. The fundamental laws were in effect till the liquidation of Duchy of Courland in 1795. Formula of Government also established a functioning system of constitutional control in Duchy of Courland. Every person had a right to submit a complaint on violation of the fundamental laws to king of Poland through Diet or directly if it was not possible to convoke a Diet. King of Poland was empowered to send a special commission to check a complaint which prepared a report on the investigated case for king. The final decision on report was made by king.

As the supreme guarantor of the constitutional order of Duchy of Courland king of *Rzecz Pospolita* had right, in cases when dukes roughly broke and violated the rights of their subjects, to send the commission to investigate the case. If royal commission recognised that duke is guilty in violation of the rights of his subjects the king had authority to dismiss duke from his throne as it took a place in 1616. For ensuring the further observation of the liberties, immunities, rights and privileges by government of Duchy of Courland article 48 of the Formula of Government stated that duke must take an oath to Polish king, state and nobility.

In constitutional order of Duchy of Courland we may see also the elements of the separation of powers and system of checks and balances. So duke of Courland had rights to initiate the draft laws, but the draft laws of government cannot come in effect without adopting in Diet, but for the proposals of Diet to government the approval of duke was necessary.

The fatal role in the destiny of Duchy of Courland was gradual weakening of its sei-

gnior Polish – Lithuanian Commonwealth. The third secession of Poland in 1795 among Prussia, Russia and Austria ended with liquidation of Polish statehood, as well as, liquidation of statehood of Duchy of Courland which territory was included into Russian Empire as Courland governorate<sup>25</sup>.

### *5. Development of the Elements of Parliamentarism and Constitutionalism in the period of Swedish Livonia*

After a long time of hostilities between Poland and Sweden in the first quarter of XVII century part of the former Polish province of Livonia (southern Estonia and Latvian Vidzeme) became a dominion of Swedish Livonia (1629-1710) under Swedish crown, but was not incorporated into Kingdom of Sweden. The period of formation of absolutism in Sweden was in some aspects favourable to development of the principles of constitutionalism. The Swedish administration established a bureaucratic and centralised control system and refused to recognise privileges of the nobility of Livonia granted by Sigismund II August because of the lack of original document of the Privilege.

However, it had abolished manorial courts for bondsmen subordinating them under jurisdiction of state courts similarly as it was in attitude to all free estates in a countryside. So we may see contrasting difference between Swedish Livonia and Duchy of Courland were lords had full rights to judge their serfs in manorial courts and also to adjudicate cases in which lord was a party of dispute. In criminal procedure Swedish government abolished a torture in 1686 as non-effective mean of investiga-

tion<sup>26</sup>. The Baltic German judges of provincial court (*Hofgericht*) unsuccessfully tried to resist to application of this act in Swedish Livonia arguing that necessity of torture is related with ignorance, disbelief of Estonian and Latvian peasants, their willingness to give false oaths, possible arrival of criminals to Swedish Livonia from neighbour countries if torture would be abolished<sup>27</sup>. Karl XI in his resolution, however, did not agree with the arguments of judges, arguing that torture is "the way the truth would be the least achievable" and "it is better to leave the suspects of God's judgment than to torture and to convict an innocent".

We need to take in account that in XVII century Sweden had vanguard role in humanisation of criminal procedure, it was the second state in Europe after England where torture was abolished, but in Central and Western Europe the torture was applied till the second part of XVIII century and somewhere also longer. The prohibition of torture was retained also when Swedish Livonia was included into Russian Empire where torture was legal mean of criminal investigation.

Swedish king Charles XI also tried to start the abolishing of the serfdom in Swedish Livonia which was not existed in Sweden but has failed here because of serious resistance of nobility of Swedish Livonia in its Diet (*Landtag*).

Diet (*Landtag*) in Swedish Livonia had some specific features. The participation in *Landtag* was based on individual rights. So every owner of estate had a right and also a duty to take a part in the work of Diet. In the voting the principle "one member of *Landtag* – one voice" was applied. In result upper hand in voting was usually won by small owners. In the end of XVII century Swedish

government made a decision to restrict the political rights of nobility. The reason of it was open resistance of local nobility to Grand Reduction by which Swedish administration took over in possession 80% of all the manorial lands. That is why from 1694 the local Diet sessions were presided by Governor – General with agenda which was adopted by him.

## 6. Some conclusions

Historical epoch of XIII – XVIII century may be characterized by strong influence of western constitutional tradition on territory of Latvia. This period may be characterized by formation and development of representative bodies in territory of modern Latvia on the principle of the representation of political estates. They were formed in the cities of Livonia as city councils (*Rat*), in the ecclesiastical states of Livonia as assemblies of vassals (*Manntag*) in Livonian Confederation as Livonian scale Diet (*Landtag*) of Livonian estates. These representative bodies functioned as legislative and often also as judicial institutions. The representative institutions continued to exist in territory of Latvia also in period of secular feudal state when territory of Latvia was split between different European states, as well as, in vassal state of Duchy of Courland. The representative institutions as predecessors of modern parliamentary institutions continued functioning also in period of incorporation of territory of Latvia into absolutist Russian Empire because of policy of confirmation of previous political institutions and systems of law in Baltic region by Russian emperors till its end in

1917 when they were replaced by democratic parliamentary institutions.

The stable historical traditions of parliamentarism and constitutionalism in territory of Latvia must paid more attention of scholars in Latvia and thoroughly

researches will help to popularize a concept of outstanding role of western constitutional culture in historical development of Latvia.

<sup>1</sup> *Privilegium Sigismundi Augusti*. M. Dogiel, *Codex Diplomaticus Regni Poloniae et Magni Ducatus Litvaniae*, Tomus V, Vilnae, Matthias Dogjela, 1759, pp. 243-248.

<sup>2</sup> J. Pleps, E. Pastars, I. Plakane, *Konstitucionālās tiesības*, Rīga, Latvijas Vēstnesis, 2004; V. Egličis, *Ievads konstitūcijas teorijā*, Rīga, Latvijas Vēstnesis, 2006.

<sup>3</sup> V. Kalniņš, *Latvijas PSRS valsts un tiesību vēsture. I. Feodālisma un topošā kapitalisma laikmets XI-XIX gs.*, Rīga, Zvaigzne, 1972, lpp.50.

<sup>4</sup> K. Klavītš, *Vēsturiskie mīti: latviešu stereotipiskais pagātnes redzējums*, 2013, <<http://www.lvportals.lv/viedokli.php?id=257856>> (October 2015).

<sup>5</sup> *Indriķa hronika. Heinrici Hronicon Livoniae*, Riga, Zinātne, 1993, I, 3, pp. 48-49.

<sup>6</sup> It was stated in the agreement of vassalage of 1209 between bishop of Riga Albert and king (rex) of Jersika Visvaldis that principality of Jersika is a lawful heritage of Visvaldis. See also, V. Blūzma, *Konstitucionālo tiesību elementi Senlatvijas teritorijā līdz Livonijas periodam*, Latvijas Vēsture, 2008, Nr. 1 (69), 67. - 75.lpp., Nr. 2 (70), 5. - 12.lpp.

<sup>7</sup> A. Šnē, *The Emergence of Livonia: The Transformation of Social and Political Structures in the Territory of Latvia during the Twelfth and Thirteenth Centuries*, in A.V. Murray (edited by), *The Clash of Culture on the Medieval Baltic Frontier*, Farnham, Ashgate, 2009, pp. 56-64.

<sup>8</sup> *Indriķa hronika. Heinrici Hronicon Livoniae*, X, 17, pp. 98-99.

<sup>9</sup> Ivi, X, 3, pp. 102-103.

<sup>10</sup> Ivi, V, 1, pp. 60-61.

<sup>11</sup> Fr.G. Bunge, *Liv-, Esth-, und Cur-ländisches Urkundenbuch*. - Reval, Druck von Heinz Laakmann in Dorpat, 1853, Bd. I, S. 5.

<sup>12</sup> I. Sterns, *Latvijas vēsture 1290-1500*, Rīga, Daugava, 1997, pp. 432-518.

<sup>13</sup> See for example characteristic of Livonian Confederation in A. Plakans, *A Concise History of the Baltic States*, Cambridge, Cambridge University Press, 2011, pp. 54-67.

<sup>14</sup> *Latvijas tiesību avoti. Teksti un komentāri*. I sējums. Seno paražu un Livonijas tiesību avoti. 10.gs.-16. gs., Riga, Fonds Latvijas Vēsture, 1998, 148.lpp.

<sup>15</sup> Text of Treaty of Submission in original Latin see in M. Dogiel, *Codex diplomaticus Regni Poloniae et Magni Ducatus Litvaniae in quo pacta, foedera, tractatus pacis...* Tomus V, Vilnae, Typographia Regia, et Reipublicae, Collegii Scholarum Piarum, 1758, Doc. CXXXVIII, pp. 238-243.

<sup>16</sup> B. Russow, *Chronica der Provinz Lyfflandt*, München, Barth, 1584, S. 64-66.

<sup>17</sup> Dogiel, *Codex diplomaticus Regni Poloniae et Magni Ducatus Litvaniae in quo pacta, foedera, tractatus pacis*, cit., pp. 243-248.

<sup>18</sup> Жалованная грамота дворянству Княжества Лифляндского. - ПСЗРИ, Собрание Первое. 1649-1825 гг. Томъ IV, док. № 2301, с. 576.

<sup>19</sup> Chr.G. (von.) Ziegenhorn, *Staats-recht der Herzogthümer Curland und Semgallen*, Königsberg, Kanter, 1772, S. 85-88, n. 76.

<sup>20</sup> H. Rothwell (edited by), *English*

*Historical Documents*, 1189-1327, London, Eyre & Spottiswoode, 1975, p. 320.

<sup>21</sup> See *Ordinatio Xiestwa Inflantskiego*, in *Volumina Legum. Przedruk zbioru praw staraniem XX. pijarów w Warszawie, od roku 1732 do roku 1782*, wydanego, Tom V, Petersburg, J. Ohryzko, 1860, p. 237.

<sup>22</sup> *Стамут Вялікага княства Літоўскага 1588*. Тэксты, Даведнік, Каментары. Мінск, 1989. Разд. III, арг. 3, 16.

<sup>23</sup> *Volumina Legum*, Tom II, Petersburg, J. Ohryzko, 1859, pp. 220-223.

<sup>24</sup> H.L. Birkel, *Formula Regiminis de Anno MDCXVII*, Mitau, Steffenhagen, 1807.

<sup>25</sup> Именный, данный Сенату. О присоединении на въчные времена къ Российской Империи Княжествъ Курляндскаго и Семигальскаго, также округа Пильтенскаго и о приглашении уполномоченныхъ въ Сенатъ для учиненія присяги на вѣрность подданства. - ПСЗРИ. Собрание Первое. 1649-1825 гг. Томъ XXIII. Съ 1789 по 6 ноября 1796, док. № 17319, с. 664-666.

<sup>26</sup> See text of resolution of Charles XI in Swedish and Latvian in *Zviedrijas karala 1686.gada 22.decembra vēstule Vidzemes galmatiesai par spīdzināšanas noliegumu Vidzemes tiesās*, Tieslietu Ministrijas Vēstnesis, Nr 1, 1938, 202. - 203.lpp.

<sup>27</sup> T. Zemzaris, *Spīdzināšana ka procesa elements Vidzemē* (Sakarā ar spīdzināšanas atcelšanas 250 gadījumi). - Tieslietu Ministrijas Vēstnesis, Nr. 1, 1938, 182.-184.. 200.-202.lpp.