

LITHUANIAN LAW OF THE 15TH-16TH CENTURIES

“New ways to bypass ‘outdated’” regulations

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LITHUANIAN LAW OF THE 15th-16th CENTURIES

“New ways to bypass ‘outdated’” regulations

The student of the history of the Grand Duchy of Lithuania (GDL) repeatedly encounters the following, rather surprising, statement in different sources, as for instance privileges or court sentences: “*Stariny ne rukhaem, a noviny ne vvodim*” [We do not break old custom, neither do we introduce novelties], which became a kind of motto describing Wilno’s [Vilnius’, Vil’na’s] policy on annexed lands. One first sees in this short sentence a will to preserve the inviolability of something on a given territory — as a rule, existing customs (statutes, regulations, etc.), which the word *starina* usually denotes. Accordingly, *novina* [novelties] had to mean something fundamentally different from *starina*, since its introduction, let us say, in the legislation, could lead to considerable changes in both the GDL’s political and social life.

Was this loudly proclaimed conservatism, however, applied in real life? The purpose of the present article is to answer this question, through an analysis of the GDL’s legal sources.

In the historiography of the second half of the nineteenth century and first half of the twentieth, the statement under study practically did not arouse any doubts. For example, it is Matvei Liubavskii’s opinion that the Lithuanian grand dukes, as rulers, “did not show enough creative will and mind, always making references to *starina* and custom...” so that “it [*starina*] remained the juridical basis of social and political relations,” and was therefore inviolable.¹ S. Kutrzeba, comparing “privileges” (or *ustavnye gramoty*, statutory charters) granted to landowners with

1. Matvei K. Liubavskii, *Ocherk istorii Litovsko-Russkogo gosudarstva do Liublinskoi unii vkluchitel’no* [An outline of Ruthenian Lithuania’s history up to and including the Lublin Union], M., 1910, p. 100-101, 295.

those conceded to regions² of the GDL, found two main differences: (1) the latter, as a rule, were written in Ruthenian and in some cases duplicated in Latin, whereas the former were only in Latin; (2) statutory charters did not guarantee the liberties and rights of the gentry, but only the inviolability of *starina* and local customs.³

A. Hrushevs'kii paid special attention to the functioning of *starina* and *novina* institutes: in one of his monograph's chapters, entitled "*Starina* and *novina* in the life of small towns, 14th-15th centuries: The fight for *starina*," he wrote that from the end of the fourteenth century, only big cities were able to maintain their *starina*. The grand duke's administration treated it with extreme caution and issued special written documents which guaranteed the inviolability of old customs, and any attempts by the governor (*namestnik*) at breaking the documents' provisions met with strong protest from citizens, who immediately filed suit to the grand duke.⁴ On the other hand, the population of small towns, who also valued their *starina*, did not have enough power or opportunities to preserve it from the grand duke's deputies. According to A. Hrushevs'kii, the major cause for inequality was that "in big cities *starina* dated centuries back, whereas in small towns — only decades."⁵

In his fundamental work, *The History of Ukraine-Rus'*, Mykhailo Hrushevs'kii wrote, "Conservatism [i.e., "*stariny ne rukhaem, a noviny ne vvodim*", D.V.] became a motto describing the Lithuanian state's policy [...]; the old Ruthenian customs imported through the annexation of Ruthenian lands to the new political body, the GDL, had to be left untouched." The government laid down only one condition — military service. In the historian's opinion, that proviso alone triggered "considerable changes in local society."⁶ Although Hrushevs'kii's judgment is actually ambiguous, he never subjected what he called "conservatism" to in-depth analysis.

A. Efimenko was one of the first to question the truth of this postulate. According to him, Lithuanian-Ruthenian society of the fifteenth and sixteenth centuries "had nothing in common with the social phenomena of the period of appanage principalities. A different organisation, different social relations, different

2. Before the adoption of the First Lithuanian Statute (September 1529), regional (or territorial) privileges (or *ustavnye zemskie gramoty*) were official legislative acts which regulated life in the GDL's regions.

3. Stanisław Kutrzeba, "Unia Polski z Litwą" [The Union of Poland with Lithuania], in *Polska i Litwa w dziejowym stosunku [Poland and Lithuania in the XVIth century]*, Warsaw, 1914, p. 540; *Idem, Historia ustroju Polski w zarysie; Część druga: Litwa [A history of Poland's institutions, Second part: Lithuania]*, Lviv, 1914, p. 44.

4. Modern historian E. Mahovenko also considers that preservation of local *starina* in towns, non-interference with standard-setting and self-government systems were part of the grand dukes' policies (J. Mahovenko, *Nelietuviškų žemių teisinė padėtis Lietuvos Didžiojoje Kunigaikštystėje (XIV-XVIII a.) [Legal status of non-Lithuanian territories in the Grand Duchy of Lithuania, XIVth-XVIIIth centuries]*, Vilnius, 1999, p. 173).

5. A. Hrushevs'kii, *Goroda Velikogo kniazhestva Litovskogo [The Towns of the Grand Duchy of Lithuania]*, Kiev, 1918, p. 18-42, 24.

6. M. Hrushevs'kii, *Istoriia Ukrainy-Rusi v 11 tomakh, 12 knigakh [History of the Ukraine-Rus' in 11 volumes and 12 books]*, t. V, "Sotsial'no-politichnii i tserkovnyi ustroi i vidnosini v ukrains'ko-rus'kih zemliakh XIV-XVII vekiv" [Socio-political and ecclesiastical organisation and relations in Ukrainian-Ruthenian territories, XIVth-XVIIth centuries], 2^d edition, Kiev, 1998, p. 5. (reprint).

institutions, different customs and manners [...]” Moreover, the grand ducal power kept declaring, “*Stariny ne rukhaem, noviny ne vvodim*” while at the same time permanently violating this rule and “introducing novelties” which aimed to do away with legislative disparities across regions. However, Efimenko lacked consistency, since he wrote not about “two different societies [Lithuanian and then Lithuanian-Ruthenian, which would be more logical, D.V.], but about two stages in the evolution of the same social organism.”⁷ I. Kryp’iakevych was more critical. He thought that “although Lithuanian dukes declared that ‘*noviny ne vvodiat,*’ it was they who actually *made drastic changes* [italics mine, D.V.] in Ukraine’s political practice by taking power away from Ukrainian princes and passing it on to their deputies.”⁸

In modern historiography, Mikhail Krom conducted a special study of the principle *Stariny ne rukhaem, a noviny ne vvodim* and produced the first earnest critical work on the subject. Krom’s main question was, “How could *any* changes happen in a society whose motto was *My stariny ne rukhaem, a noviny ne vvodim*?”⁹ In Krom’s view, the most interesting feature was that “authorities most loudly proclaimed their regard for *starina* precisely when considerable changes were going on at full speed in the Grand Duchy.”¹⁰ We need not give a complete analysis of Krom’s article, but only quote its conclusion:

Inviolability of custom by no means signified that all changes and innovations were inadmissible. It was “immunity” in a way, but a selective one: the only innovations branded as “*noviny*,” and therefore rejected, were those deemed harmful by popular opinion, while new exemptions and privileges were readily accepted.¹¹

One of my articles, dealing with the reception of the *Russian Law*’s¹² regulations in the law of the GDL, also has a bearing, albeit indirect, on the subject of *starina*. Comparison between privileges granted to the Novogradok, Samogitia [lit.: Žemaičių, biel.: Žemaitiya], Kiev, and Volynia regions and the rules of the *Russian Law* led to quite interesting findings: the influence of the old Rus’ law

7. Aleksandra Ia. Efimenko, *Istoriia ukrainskogo naroda* [A History of the Ukrainian people], Kiev, 1990 (reprint of the 1906 edition), p. 112-113.

8. Ivan P. Kryp’iakevych, *Istoriia Ukrainy* [History of Ukraine], Lviv: Svit, 1990, p. 114.

9. Mikhail Krom, “‘*Starina*’ kak kategoriia srednevekovogo mentaliteta (po materialam Velikogo kniazhestva Litovskogo XIV-nachalo XVII vv.)” [‘*Starina*’ as a category of medieval mentality (the case of the Grand Duchy of Lithuania, XIVth-beginning of XVIIth century)], in *Medievalia ucrainica: mental’nist’ ta istoriia idei* [Medievalia ucrainica: mentality and history of ideas], vol. III, Kiev, 1994, p. 68.

10. Ibid., p. 71.

11. Ibid., p. 76.

12. *Russkaia pravda*, Engl. transl.: George Vernadsky, *Medieval Russian Laws. Records of Civilization: Sources and Studies*, vol. 41. New York : Columbia University Press, 1947, p. 26-56; French transl.: Marc Szeftel, *Documents de droit public relatifs à la Russie médiévale*, Bruxelles : Librairie encyclopédique, 1963, p. 31-37, 68-70. “Russian” here refers not to present day Russian territory, but to ancient “Rus’”, which encompassed parts of Belorussia and Ukraine as well.

could be traced only in a few provisions of regional privileges. First, widows' and children's rights: in the *Russian Law* they appear only in the longer version, while expressed with ultimate concision in privileges. This can probably be explained by the existence of common law standards, so well-known they did not have to be worded. Second, the restriction of the liability of a thief's wife and children: in the *Russian Law* this regulation applied only to slaves (*khology*), with minor reservations for free men, whereas in the Kiev privilege — to members of the gentry. Third, slaves could not be witnesses in court. Apart from these few points, the legal procedure and regulations relative to *tat'ba* [theft] in regional privileges had nothing in common with those described in the *Russian Law*.¹³

To sum up, in my opinion the *Russian Law* did not have any marked effects on privileges granted to the Kiev, Volynia, Samogitia and Novogradok regions. It is not entirely correct, therefore, to consider as a fact the reception of Ancient Rus' legal heritage in the GDL. This conclusion, in turn, casts doubt upon Krom's conclusion that regional privileges guaranteed, in a way, the preservation of local *starina*, itself rooted in ancient Rus' law.

The real situation was paradoxical: since regional "privileges" did not square with the *Russian Law*, they were nothing else but *noviny*, and on the strength of that the local gentry actively fought against them, on principle. But at the same time they applied for confirmation of these same privileges to the newly elected grand duke of Lithuania! For example, at the end of the Kiev regional charter, confirmed by Sigismund I the Old in 1507, we can read:

We do not break old custom, neither do we introduce novelties, we want everything to remain as it was under Grand Duke Vitovt and under Sigismund.¹⁴

For all that, in the same document, the grand duke himself, at the request of Kiev's gentry, added several new favourable clauses which do not appear in Alexander Jagiellon's¹⁵ privilege:

13. Dmytro Vashchuk, "Retseptsiia norm 'Rus'koi Pravdi' v pam'iatkakh prava Velikogo kniazivstva Litovs'kogo (na materialah oblasnih privileiv drugoi polovini xv st.)" [The influence of *Russian Law*'s regulations on legislative documents of the Grand Duchy of Lithuania (in the case of regional privileges of the second half of xvth century)], *II Mizhnarodnii naukovii kongres ukrains kih istorikiv "Ukrains'ka istorichna nauka na suchasnomu etapi rozvritku"* [IInd international scientific congress of Ukrainian historians, "Ukrainian historical science to-day"], Kamenets-Podolskii, 17-18 September 2003, Kamenets-Podolsk, Kiev, New York; Ostrog, 2005, vol. I, p. 136-142.

14. "My stariny ne rusaem, a noviny ne vvodim, khochem vse po-tomu meti, kak budet bylo za velikogo kniazia Vitovta i za Zhigkimonta," manuscript: RGADA, f. 389, "Litovskaia Metrika" [*Lithuanian Metrika*], no. 8, f. 214. Publication: *Lietuvos Metrika (1499-1514)* [*Lithuanian Metrika — LM*], Uzhrashymq knyga [Book of inscriptions]8, Vilnius, 1995, p. 242.

15. About the reconstruction of the first draft [*protograf*] of Kiev's privilege, see: Dmytro Vashchuk, "Oblasni privilei Kiivshchini ta Volini: problema pohodzhennia, datuvannia ta harakteru (xv-poch. xvi st.)" [Regional privileges of Kiev et Volynia regions: on their origin, datation and nature (xvth-beginning of xvith centuries)], *Ukrains'kii istorichnii zhurnal*, n° 1, 2004, p. 90-101. Alexander Jagellon (pol.: Aleksander Jagiellończyk, lit.: Aleksandras Jogailaitis) was grand duke of Lithuania (1492-1506) and king of Poland (1501-1506). His

At the request of princes, and gentry, and inhabitants of the Kiev région, who have made known to us the innovations brought about by our deputies, the governors of Kiev [...] and begged us to cancel them¹⁶

It seems logical to wonder about the inviolability of *starina*. It turns out that various “new” provisions, favourable to the gentry, were considered as *starina* at the very moment of being granted, and without having to pass the test of time were declared, in accordance with official “conservatism,” not subject to modification. On the other hand, the introduction by local officials of any kind of innovation was opposed right away through an appeal in court if the local inhabitants disliked it, and, more remarkable still, most of the time successfully, as demonstrated by our sources.

Let us for instance consider the case between Mozyr governor (*namestnik*) Andrei Nemirovich and the townsmen of Mozyr district (December 8, 1510). The latter complained to Grand Duke Sigismund I the Old about the governor, who

was unfair to them and introduced novelties [boldface mine, D.V.], took from them every week six *kops* of *grosz* for his upkeep, and made them cut his hay for him, and carry his firewood, and man the watch for Tatars, and upkeep our [*the grand duke*’s] envoys and couriers, and supply transportation to them.¹⁷

Andrei answered that he was not unfair to them, you yourselves [the town dwellers] pledged to give me each week six *kops* of *grosz* for my upkeep. As far as other taxes are concerned, the previous governors of Mozyr collected the same from you, and you carried out the same duties and gave the same fees to them.¹⁸

It is worth noting that according to the privilege of 1507, dependents had to serve duties only to their masters:

Art. 27: As regards people belonging to the Church, and to princes, and to nobles, they do not have to build fishing weirs, or to cut hay, or to settle in our houses; they take their orders only from their respective masters.¹⁹

brother Sigismund I the Old (pol.: Zygmuny Stary, lit.: Zhygimantas Senasis, bel. Zhygimont Stary) succeeded him on both thrones (1506-1548).

16. “Takożh prosily nas kniazi i panove, i zemiane kievskie, izby im noviny uvodili vriadniki nashy, voevody kievskie... i bili nam cholom, abyh im tye noviny otlozhyli.” RGADA, f. 389, “*Litovskaia Metrika*,” no. 8, f. 213v°; LM, *Uzhrashymų knyga* [Book of inscriptions] 8, p. 241.

17. “[...] im krivdy delal i noviny uvodil [boldface mine, D.V.], bral na nikh na kazhduiu nedeliu po shesti kop groshei sobe na stravu i seno vele im na sebe kositi, i drova voziti, i storozhu ot tatar sterechi, i posly nashi i gontsy statseiu podnimati, i podvody pod nikh davati...” *Akty Litovsko-russkogo gosudarstva, izdannye M. Dovnar-Zapol’skim* [Acts from Ruthenian Lithuania, edited by M. Dovnar-Zapol’skii], vol. I (1390-1529), M., 1899, p. 144-145.

18. “im tykh krivd ne delal, nizhli dei vy sami so mniju vmovili davati mne na kazhuiu nedeliu po shesti kop groshei na stravu. A shtosia tychet inykh poshlin, ino di i pervye namestniki mozyrskie takzhe z vas biryvali i sluzhby i dachki este po tomuzh sluzhivali i daivali,” *ibid*.

19. “A tserkovnym liudem i kniazhskim, i panskim, ezov ne eziti, a sena ne kositi, dvorov ne seliti, tolko im znati svoikh gospodarov, khto komu sluzhyt,” RGADA, f. 389, “*Litovskaia Metrika*,” no. 8, f. 213; LM, *Uzhrashymų knyga* [Book of inscriptions] 8, p. 241.

This was probably the townsmen's ground for complaint: the Mozyr governor violated article 27 of the privilege and that is why Sigismund's decision was mostly in their favour:

Having thought about this matter, and seeing that in so doing he burdens our people heavily, we have laid down their duties regarding his and our other Mozyr governors' upkeep. First they will give him, every year, from each township, each part of the district and each household half a *kopa grosz* and half a barrel²⁰ of grain. He himself will take out of that what is needed for his servants, and the upkeep of our envoys and couriers, and for their transportation on hired wagons, and for manning the watch for Tatars [...] Besides, our townsmen and peasants of the Mozyr district do not have to give him anything more than what is laid down in the present document. And what they gave him before, they do not have to give any longer.²¹

The annual dues were thus reduced to thirty *grosz* and half a barrel of rye. The governor and his servants had to serve their duties using part of this sum.

According to a rule of the Kiev privilege, dependents of the gentry did not have to take part in the tracking of criminals: "Art. 33: People belonging to the Church, princes, and nobles, cannot be compelled to go in pursuit."²² The violation of this provision gave Kievan townsmen a new opportunity to complain to Sigismund I about Andrei Nemirovich on June 18, 1522:

you [the governor] have burdened them unfairly, and introduced novelties [...], if a townsman does not have a charger, you order him to *go with you in pursuit*, whereas before such townsmen on foot went to (or: manned) the castle.²³

The verdict was:

We, who have been eyewitnesses of this, have told you how it was done in this fashion: if a townsman had a charger, he rode with Your Grace in pursuit; those who were too poor to buy a charger had to be in the castle.²⁴

20. A *barrel* was a unit of measurement equivalent, in Lithuania, to approximately 154 l.

21. "I my tomu porozumevshy, izh tym liudem nashym v tom tiazhkost' siia velikaia deet, vstanov ili esmo im vrokom, chym maiut ego i inykh namestnikov nashikh mozyrskikh podnimati. Napervei maiut' emu v kozhdyi god davati z mesta i z volosti i s kazhdogo dymu po polukope groshei a po pol-bochke zhyta. A on maet s togo sam zhivnost' meti iz slugami svoimi, i posly nashy i gontsy statsciu podnimati, i podvody pod nikh nanemshy davati i storozhu ot tatar sterech [...] Takzhe meshchane nashi i volostnye liudi mozyrskie bol'shi togo dachok, kotoryi zh vsheii togo v tom liste nashom vriazheny, ne maiut emu nikotorykh davati. A shto pered tym emu daivali [...] ne maiut' emu davati," *Akty Russko-Litovskogo gosudarstva*, p. 145.

22. "A v oblavu tserkovnym liudem i kniazhskim, i panskim, ne khoditi," RGADA, f. 389, "Litovskaia Metrika", no. 8, f. 213v"; LM., *Uzhrashymų knyga* [Book of inscriptions] 8, p. 241.

23. "izhby siia im ot tebe krivdy i tiazhkosti vsiakie delani i noviny uvodish' [...] , koli dei kotorii meshchanin konia ne maet i ty dei kazhesh' im z soboiu na pogonu khoditi [boldface mine, D.V.], a pered tym takovye peshie meshchane v zamok khozhyvali," LM (1440-1523), *Uzhrashymų knyga* 10, Vilnius, 1997, p. 97.

24. "My tobe v tom ocheviste roskazali tym obychaem: estli kotorii meshchanin mozhet meti konia, tot maet s tvoieu milost'iu na pogoniu ezditi, a khto by ne mog z dostatchichi konia kupiti, tot maet v zamku byti," *ibid.*

That is, those who were able to buy a horse rode in pursuit, the others had to work in the castle.

Obviously the formula *Stariny ne rukhaem, a noviny ne vvodim* cannot be taken at face value for it does not fit with historical reality. Moreover, even in official legal documents, after some time, references to *starina* gradually disappear. This tendency is best illustrated by the comparative table (below) of regional privileges granted to the Kiev district in 1507 and 1529.

Kiev privilege of December 8, 1507 ²⁵	Kiev privilege of September 1, 1529 ²⁶
<p>Art. 15. A o podymshchine, <i>kak budet bylo za velikogo kniazia Vitovta</i>²⁷ [all italics mine, D.V.] [As regards the household tax, <i>it will be as it was in Grand Duke Vitovt's time</i>]</p>	<p>Art. 42. A o podymshchine liudem ikh nam, gospodaru, ne davati, nizhli maiut oni panom svoim davati, khto komu sluzhit. [As regards the household tax, their men do not have to pay it unto us, the sovereign, but each one to his own master]</p>
<p>Art. 24. A tserkovnym liudem i kniazhskim i panskim selo ot sela podvod ne davati, <i>kak budet bylo za velikogo kniazia Vitovta</i>. [Men belonging to the Church, and to princes, and to nobles do not have to provide transportation from one village to the next, <i>as it was in Grand Duke Vitovt's time</i>]</p>	<p>Art. 21. A tserkovnym liudem i kniazhskim, i panskim selo ot sela podvod ne davati. [Men belonging to the Church, and to princes, and to nobles do not have to provide transportation from one village to the next]</p>
<p>Art. 27. A tserkovnym liudem i kniazhskim, i panskim, ezov ne eziti, a sena ne kositi, dvorov ne seliti, tolko im znati svoikh gospodarov, khto komu sluzhyt, <i>kak budet bylo za velikogo kniazia Vitovta</i>; nashi dvory nashymi ljudmi seliti. [As regards people belonging to the Church, and to princes, and to nobles, they do not have to build fishing weirs, or to cut hay, or to settle in our houses; they take their orders from their respective masters, <i>as it was in Grand Duke Vitovt's time</i>. Settlers in our houses will be our own men]</p>	<p>Art. 24. A tserkovnym liudem i kniazhskim, i panskim ezov ne eziti, i sena ne kositi, i dvorov nashikh ne seliti, tolko im znati svoikh gospodarei, khto komu sluzhit. Dvory nashi nashymi ljudmi seliti. [As regards people belonging to the Church, and to princes, and to nobles, they do not have to build fishing weirs, or to cut hay, or to settle in our houses; they take their orders from their respective masters. Settlers in our houses will be our own men]</p>

25. RGADA, f. 389, "Litovskaia metrika", no. 8, f. 212-214; LM., Uzhrashymų knyga 8, p. 240-242.

26. RGADA, f. 389, "Litovskaia metrika", no. 25, f. 157v°-162v°; LM. (1387-1546), Uzhrashymų knyga 25, Vilnius, 1998, p. 187-191.

27. A reference to "Vitautas' time" is another way of saying: "*stariny ne rukhaem*". Vytautas (bel. *Vitavt* or *Vitaut*, germ. *Witavdt*, pol. *Witold* or *Vitovt*) was grand duke of Lithuania from 1392 to 1430.

<p>Art. 30. A bobrov po tserkovnym i po kniazhskim selom, i po panskim, i po boiarskim, ne goniti: goniti nashim bobrovnikom po tym polosam, kuda budut bobrovnytsy gonivali <i>velikogo kniazia Vitivtovy</i>, i nashim bobrovnikom po tym zhe polosam goniti. [Beavers must not be hunted around villages belonging to the Church, or to princes, or to nobles, or to boiars: our beaver hunters should hunt only those tracts, where <i>Grand Duke Vitovt's</i> beaver hunters used to go, and our beaver hunters will hunt on the same tracts]</p>	<p>Art. 27. A bobrov po tserkovnym i po kniazhskim, i po panskim, i po boiarskim selom ne goniti: goniti nashim bobrovnikom po nashim zemliam i vodam. [Beavers must not be hunted around villages belonging to the Church, or to princes, or to nobles, or to boiars: our beaver hunters should hunt only on our lands and rivers]</p>
<p>Art. 31. A kotorye liudi tserkovnye i kniazhskie, i panskie, v Chornobyli nedeli steregut, tym liudem konei ne pastviti i drov ne voziti, tolko im smotreti nedeli svoe, posla da gontsa, <i>kak budet bylo za velikogo kniazia Vitovta</i>. [When men belonging to the Church or to princes or to nobles are on watch duty for the week in Chernobyl' region, they do not have to graze horses or to carry firewood, they only have to mind their watch for the week and envoys and couriers, <i>as it was under Grand Duke Vitovt</i>]</p>	<p>Art. 41. A shto liudi tserkovnye i kniazhskie, i panskie, i boiarskie steregivali nedeli v Chornobyli i podvody daivali voevodam i poslom, i gontsom nashim i tatarskim, my im i liudem ikh, z laski nashoe, to vechno otpustili. [As for men belonging to the Church or to princes or to nobles or to boiars, who were on watch duty for the week in the Chernobyl' region and used to provide transportation to governors and envoys and couriers, ours and Tatars, we have graciously exempted them and their men from this duty forever]</p>
<p>Art 34. A kniazem i panom i boiarom s posly k Orde ne khoditi, slugam khoditi. A kogo budet boiar k Orde nadobe s posly nashymi ekhati, i my maem listom nashim tykh oboslati, i oni maiut ekhati, <i>kak bylo za velikogo kniazia Vitovta</i>. [Princes and nobles and boiars do not have to escort envoys to the (Tatar) Horde, servitors will do it. If there is need for whoever of the boiars to go to the Horde with our envoys, we will send them our letters, and they will go, <i>as it was under Grand Duke Vitovt</i>]</p>	<p>Art. 30. A kniazem, panom i boiarom s posly k Orde ne khoditi, slugam khoditi. Budet li potreba k Orde s nikh kogo poslati, my maem togo oboslati, a on maet ekhati v poselstve. [Princes and nobles and boiars do not have to escort envoys to the (Tatar) Horde, servitors will do it. If there is need to send whoever of them to the Horde, we will write to him, and he will go with the embassy]</p>

A similar situation can be observed with the privilege granted to Samogitia. First of all it is interesting to note that both the archetypal privilege and its subsequent confirmations are still extant^{28*}. Comparative analysis of various articles in the

28. The table compares three versions of the privilege dating from 1441, 1492, and 1529, granted respectively by the Lithuanian grand dukes Casimir (Casimir IV of Poland (pol.: Kazimierz Jagiellończyk, lit.: Kazimieras Jogailaitis) grand duke of Lithuania (1440-1492) and king of Poland (1447-1492), Alexander and Sigismund (see footnote 15). The first privilege included 13 articles, the other two are more extensive and their content is rather different. That is why we have only selected the provisions that partly coincide with the first version.

different versions of the privilege shows that reference to “*starina*” and so-called “Vitautas” time’ disappeared ca. 1529, when the First Lithuanian Statute (FLS) was issued.

Privilege of 1441 ²⁸	Privilege of 1492 ²⁹	Privilege of 1529 ³⁰
<p>A co zdawna dzierzeli przy daninie naszey, przy wielkim xiqzęciu litewskim Witołdzie [all italics mine, D.V.] sioła y co innego, to im tak y po dawnemu dzierzec wolno nieporuszno.</p> <p>[What estates they have held for a long time from our bounty, under Lithuanian Grand Duke Vitolt, villages and such, they will hold as of yore, freely and forever]</p>	<p>Tezh hochem ikh laskami i pryiaznymi nashimi, i darmi nakhoditi, jako ikh panove kniazhata Vitolt i otets nash Kazimir v dan’ju i darovan’ju sut’ zakhovali. Tezh podavan’e, kotorym shliakhtam i boiarom kniazi Vitolt, Shvitrykgal i Zhykgimont, i tezh otets nash darovali, khochem to khovati i derzhat’.</p> <p>[We also want to lavish our graces and blandishments and gifts on them, as did dukes Vitolt and Casimir our father, who kept them well provided with estates and presents. The grants of land given to the nobles and to boiars by dukes Vitolt, Shvitrykgal²⁹ and Zhykgimont, and by our father we want to observe and respect]</p>	<p>Kotoryi zh dvory i volosti vziali esmo v nashu mots i v podavan’e nashe i potomkov nashikh [...] chynim i vstavliaem novuii spravu i platy nashi i vriadnichki [...], kotoryi zh derzhavtsy dvorov nashikh i tivuny volostei zhomoitskikh maıt sia raditi i spravovati ne inachei, odno vodlug voli nashoe i toe ustavy vypisanoe</p> <p>[Regarding the estates and districts we have taken into our hands, and made parts of our and our heirs’ estates ... we thereby lay down new statutes and fees to us and to our stewards ... those who govern our Samogitia estates and judges in Samogitia districts must rule and apply the law not against, but according to our will, as it is written in these statutes]</p>

29. K. Jablonskis, “Archyvines smulkmenos” [Archival minutiae], *Praeitis [Past]*, Kaunas, vol. II, 1933, p. 423-427.

30. LM (1528-1538), *Uzhrashymų knyga* [Book of inscriptions] Vilnius, 15, 2002, p. 181-183.

31. Valikonytė I., Lazutka S., “Lietuvos didžiojo kunigaikščio 1529 metų Nuostatai Zemaityos žemei,” *Lietuvos Metrikos studijos. Mokymo priemonė* [“Lithuanian royal privilege granted to Samogitia (1529)”, *Studies in the Lithuanian Metrika. A Guide for analysis*], Vilnius, 1998, p. 17-53.

32. Lit. Shvitrigaila, pol. Świdrygiełło, bel. Svidrygaila Ol’gerdovich, grand duke of Lithuania, 1430-1432.

<p>Jako zdawna <i>xiqzëciu naszymu wielkiemu krolu y dziadu naszymu wielkiemu xiqzëciu Witołdu</i> służyli, a teraz ani nam takoz słuzyć, a niewoli im niekturey czynic nia mamy.</p> <p>[As they served of yore <i>our Grand Duke and king and our grandfather, Grand Duke Vitold</i>, now they will serve us, and never will they be subjected to coercion]</p>	<p>Tezh kotoraiia shliakhta byla chasu <i>korolia Vladislava i kniazia Vitolta, i tutezh ottsa nashogo</i>, tyi vsi ot togo chasu khochem meti i derzhati shliakhta. A kotoryi liudi s pospolstva postupovali, i sluzhby chasu <i>korolia Vladislava i kniazia Vitolta, i tezh ottsa nashogo</i>, taki tezh sluzhby i nam maiut postupovati.</p> <p>[Likewise, the nobles in <i>King Vladislav's and in Duke Vitolt's and our father's time</i>, we want to have and keep all of them in our service. Men from the people who served <i>King Vladislav and Duke Vitolt and our father</i>, they will serve us in the same way]</p>	<p>A estli by v tyi roki letnii zashla sluzhba nasha i zemskaiia, a poddanyi nashi gde by sia rushili na sluzhbu nashu, a z zemli Zhomoitskoe v tot chas takzhe by sia rushyli.</p> <p>[And if in these summer periods there is a levy for our service or some campaign, and all of our subjects move to our service, those from the territory of Samogitia should also move at this time.]</p>
<p>A do tych, co <i>przy dziadu naszym, przy wielkim xiqzëciu Witołdzie</i>, zamki dwory nasze we Zmoydzi byly, to nam po dawnemu odprawowac powinni będą do tych dworow.</p> <p>[Regarding those, who <i>under our grandfather, under Grand Duke Vitold</i> served in our castle estates in Samogitia, they will have to perform their service for us in the same estates as of yore]</p>	<p>I tezh na raboty zamkovyi ne maiut khoditi, <i>iako za kniazeci Vitolta i Kazimira</i>.</p> <p>[These do not have to work at the castle, as <i>it was under dukes Vitolt and Casimir</i>]</p>	
<p>A zwierz im w lasach y ryby w ieziiorach, w rzekach po dawnemu, iak <i>przy wielkim xiqzëciu Witołdzie</i> było.</p> <p>[(They may hunt) the beasts in the forests and catch fish in lakes and rivers as of yore, as it was under <i>Grand Duke Vitold</i>]</p>	<p>I tezh zver usiakii pospolityi v lesekh, i ryby v rekakh tak, <i>iako s starodavna</i> lovili, togo im i teper dopushchamy.</p> <p>[Any dweller may hunt the beasts in the forests and catch fish in the rivers <i>as they did of yore</i>, and this we allow them to do now]</p>	

<p>A kturzy kuniecznicy przy dziadu naszym, przy wielkim xiqzęciu Witoldzie, kunice dawali, ci y teraz po dawnemu dawac kunicę nam powinni będą.</p> <p>[Those <i>kunichniki</i>³³ who gave marten furs instead of tribute under our grand-father, <i>Grand Duke Vitold</i>, they will now give us furs as they did of yore]</p>	<p>A kotoryi za dan´ davali kunitsy <i>chasu kniazia Vitolta</i>, tyi tepr maiut´ davat´, i platit tyi kunitsy.</p> <p>[Those who gave marten furs instead of tribute <i>in duke Vitolt’s time</i>, they will now have to give and pay these furs]</p>	<p>...ne [...] otpuskaiuchy starodavnogo obychaia, shot sia dotychet kunichnogo platu, kotoryi liudi nashi kunichniki daivali na nas po shestinadtsat´ groshei, my v tom im lasku nashu vchinili, otpustili esmo im ot tykh kunits, po chotyry groshy...</p> <p>[... keeping the ancient custom as regards the payment of the marten furs’ tax, our <i>kunichniki</i> who used to pay unto us sixteen <i>grosz</i> apiece, we have shown them our grace, we have remitted part of this marten furs’ tax, (to the extent of) four <i>grosz</i> apiece]</p>
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Reference to *starina* does not appear in the FLS either. True, in the introductory part, the Lithuanian grand dukes Vitautas, Sigismund Keistutovich³⁴, Casimir and Alexander are still mentioned. For example, article 19 reads:

Whoever possessed in peace an estate or patrimony under King Casimir, and nobody remembered it under Alexander, may keep it in peace. Whoever will ask for land, and the king will give him some, he will possess only what was given to him and held by him from the king. If somebody has taken it from him, since it is the sovereign’s gift, he may go to court to have it back. But if somebody has taken it from him, who held it under Vitovt, and Sigismond, and Casimir, he [the taker] may keep it even now.³⁵

However, the ruling class was interested in a unified law code, which was unquestionably a *novina* for society, but was nonetheless readily accepted by the people, as we can see from court practice immediately after the adoption of the

33. Sing. *kunichnik*; from *kunitsa*, marten [*Martes martes*]; *kunichniki* were originally marten hunters, who were allowed to pay the tribute in kind, i.e. in furs (*cf.* “kunichnogo platu”), and later on to substitute money for furs.

34. Pol. Zygmunt Kiejstutowicz, lit. Zhygimantas Kęstutaitis, grand duke of Lithuania, 1432-1440.

35. “Tezh khto by kotoroe imen´e abo otechiznu za korolia Kazimera vo-v pokoi mel, a za Oleksandra nikhto sia o to ne vspominal, togdia maet vo-v pokii derzhati. A khto budet iskati zemli, a emu korol´ dast, ne maet inogo nichogo, tolko tak, kak emu dano a kak na korolia derzhano; i shot by khto otnial, kak gospodar dal, togo maet iskati. A estli by khto v nego tuii zemlia otnial, a derzhal to za Vitovta, za Zhikgimonta i za Kazimera, tot i teper maet to derzhati.” (*Pirmasis Lietuvos Statutas. Tekstai senąja baltaruių, lotynų ir senąja lenkų kalbomis, Pirma dalis* [First Lithuanian Statute. Texts in old belarussian, latin and old polish languages. First part], Vilnius, 1991, p. 80-82.

FLS. For example, the case between Blazhein Zhykhovskii and Ian Kovolevich was decided on October 4, 1529: the latter had to pay his sister, Blazhein Zhykhovskii's wife Dorothy, one fourth of his estate's value "*vodlug nyneshnego prava novogo*" [according to the new law of today] [i.e., the FLS, D.V.]³⁶, which he did. On November 20, 1530, Sigismund I the Old ordered Lutsk's *starosta* Fedor Czartoryjski to solve the case between Gritsko Senuta, Prince Konstantin Ostrozhskii's servant, and Volynian landowner Yacko about the Prusy estate:

Asking Your Grace [i.e., Czartoryjski] to summon this Yacko to appear before you and [asking you] to discuss the matter with them and solve the case equitably, according to our rules now enforced, given by us recently to all our gentry, thus avoiding injustice and preventing them from coming to us with further complaints.³⁷

Analogous examples abound.

Thus, as the analysis of legal sources has showed, *starina* was no proof of Lithuanian "conservatism." In fact, while the administration of the grand duchy gradually enforced new legislation, local gentry very quickly christened it "*starina*" and defended it as such. This is why progressive broadening of the gentry's rights and the resulting domination of "new" legislation over the "old" one brought about, ca. 1530, the almost complete disappearance of these "old vs. new" oppositions in official legal documentation: under the circumstances, the motto *Stariny ne rukhaem, a noviny ne vvodim* would have sounded anachronistic.

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36. LM. (1528-1547), 6-oji Teismų bylų knyga [Book of law cases], Vilnius, 1995, p. 104.

37. "Aby Tvoia Milost' tomu Iatsku kazal pered soboiu stati i o tom mezhi nimi dosmotrel i spravdlivost' tomu vchinil vodle nyneshnikh prav nashikh ot nas vsemu panstvu novo dannykh [boldface mine, D.V.] tak, pakby im v tom krivdy ne bylo, a nam by oni bolshi togo ne zhalovali," *Arhiwum książąt Sanguszków w Sławucie wydane przez Bronisława Gorczaka, konserwatora tegoż archiwum* [Archives of princes Sanguszko in Sławucie, edited by Bronisław Gorczak, curator of the said archives] — vol. III. (1432-1534), Lviv, 1890, p. 366.