

Shifts in Political Rule and the Reorganization of Law

Blasphemy's Long Shadow: Confessional, Legal, and Institutional Conflict in the Tsarist Partition of Poland under Catherine II

In 1780, Prince Aleksandr Alekseevich Viazemskii, the prosecutor general (*general'nyi prokuror*) in St Petersburg, Empress Catherine's right hand in important matters concerning the dispensation of justice, received information concerning a number of difficult cases that had occurred in the newly acquired Belarusian territory. These cases shed light on the integration of this part of the Polish-Lithuanian Commonwealth into the Russian Empire, one which was anything but smooth. Tensions were high in the region, as demonstrated by information from the local authorities that a peasant had repeatedly uttered words of blasphemy against Christ and the mother of God.¹ The case file does not tell us what these words were, but it reports that a group of 35 peasant witnesses questioned by the court in charge had corroborated the blasphemy. The subsequent conflict revolved around who should then deal with it.

The case was supposed to be passed on to the magistrate of the town of Kopy's'. However, the consistory in charge of the Greek Catholic population in the region protested against the move. The institution, which bore the responsibilities of a tribunal for cases in the competence of the church, had just been founded by the Tsarist authorities as a means of overseeing members of the Uniate Church.² In the case under consideration the consistory complained that

- 1 Rossiiskii gosudarstvennyi arkhiv drevnikh aktov/Russian State Archive of Historical Records (hereafter RGADA), fond/f. (collection) 7, opis/op. (inventory) 2, delo/d. (file) 2561, list/l. (folio) 1. Elena B. Smilianskaia was the first scholar to analyze this case, see Elena B. Smilianskaia, »O evree Girshe Notoviche, khulivshem Khrista; sudebnyi kazus ekaterinskogo vremeni,« in *Svoi ili chuzhoi? Evrei i slavianie glazami drug druga*, ed. Olga V. Belova (Moskva: Dom evreiskoi knigi, 2003), 151–160. Elena B. Smilianskaia is also the author of the only comprehensive work on blasphemy in Russia, see Elena B. Smilianskaia, *Volshebniki, bogokhul'niki, eretiki. Narodnaia religioznost' i »dukhovnye prestupleniia« v Rossii XVIII u.* (Moskva: Indrik, 2003).
- 2 About the foundation of the consistory for the Uniate Church in the Polotsk and Mogilev *namestnichestva*, see Uladzimir I. Navitski, ed., *Kanfesii na Belarusi (Kanets XVIII–XX st.)* (Minsk: Ekaperspektyva, 1998), 6. There had been a

both mayors and a member of the municipal council were Jews.³ The consistory polemically stated that the individuals in question were »of the same false belief« as the delinquent himself. Their books were alleged to contain the blasphemies he was accused of.⁴ The consistory insisted that they were therefore incapable of judging the case. Moreover, it also claimed that Jews had manipulated peasants to support the blasphemer by stating that he was innocent.⁵ Given the growing sensitivity to testimony and proof in this age,⁶ this was a serious accusation.

We are unable to verify how the local population actually felt about this case and to what degree the so-called delinquent, who had been denounced to the authorities by a priest, received any support. As it is, the story presents well-known stereotypes of a Jewish anti-Christian conspiracy. However, it was not only the Jews who were reproached as being too biased to be judges. According to Lieutenant Colonel (*podpolkovnik*) General Rebinder, the empress' representative in the Polatsk region, the Catholics who dominated the local institutions were considered no better: they could not be trusted properly to judge in critical cases.⁷

What were the cases this high official had in mind? Men of the area's nobility, who had recently challenged Russian hegemony,⁸ verbally attacked converts to the Orthodox faith as »Muscovites« and »apostates«, as did Uniate burghers, peasants, and workers on peasant farms.⁹ Confronted by the new authorities'

Catholic consistory in Mogilev since 1773. Ibid., 21. The Uniate consistory was founded after Archbishop Smohozhevs'kyi's departure for Poland, with the clear intention of replacing the authoritative representative of the Uniates by a mere institution of control. Barbara Skinner, *The Western Front of the Eastern Church. Uniate and Orthodox Conflict in 18th-century Poland, Ukraine, Belarus, and Russia* (DeKalb, IL: Northern Illinois University Press, 2009), 161; RGADA, f. 7, op. 2, d. 2561, l. 7.

3 After the Russian annexation, the Jews in the towns of the region had been integrated into the structures of municipal self-government and could hold offices.

4 RGADA, f. 7, op. 2, d. 2561, l. 11 oborotnyi/ob. (verso).

5 Ibid., l. 1 ob.

6 This growing sensitivity can at least be observed in cases concerning lese-majesty, which were also dealt with under the auspices of the procurator general, see Angela Rustemeyer, *Dissens und Ehre. Majestätsverbrechen in Russland 1600–1800* (Wiesbaden: Harrassowitz, 2006), 353–358.

7 RGADA, f. 7, op. 2, d. 2561, l. 5. Rebinder's function was the one of a vice-governor, but it is designated in different terms (*praviashchii dolzhnost' pravitelia polotskogo namestnichestva*).

8 Henads Sahanowitsch, »Die Agonie der Adelsrepublik,« in *Handbuch der Geschichte Weißrusslands*, eds. Dietrich Beyrau and Rainer Lindner (Göttingen: Vandenhoeck & Ruprecht, 2001), 93–105, here 115.

9 »The Uniates do not stop calling those who convert to Orthodoxy names: scoundrels, abominable Muscovites, damned apostates (Unity vstupaishchikh

takeover of a Uniate church in Vitsebsk, assigning it to the Orthodox Church, one burgher, for instance, said they would not join the Orthodox priest even at the price of their heads. A priest tried to make this particular burgher enter the church that had been made Orthodox, provoking him to utter disrespectful words about the empress: »Damned one, why do you not become Orthodox? It is the will of our gracious sovereign«. The Uniate burgher, who feared being forced to swear an oath to Orthodoxy, silently told himself that he would rather die,¹⁰ thus trying to make the oath invalid.

The actors in this complex story are thus from a mixed Uniate, Jewish, Roman Catholic, and Orthodox population, all claiming or being ascribed religious-based allegiances. The story's setting is an area with an ambiguous image, the far East of the former Polish-Lithuanian Commonwealth and the far West of the Russian Empire of the time. The plot involves a conflict over religion and law with local and imperial dimensions. What can the story tell us? The situations described in this case file are too specific to say to which degree religious conflicts dominated everyday life. We can, however, reliably interpret this source as an indicator of the limits of legal and institutional conflict management as the government conceived it. By doing so, we can see the outlines of some important topics of the period. Firstly, the case cited above provides hints regarding the contemporary perception of civic identity in Poland-Lithuania and Russia. It sheds light on how the contemporary understanding of the civic character of institutions and the transformation of the former East of the Polish-Lithuanian Commonwealth into the West of the Russian Empire were interrelated. Secondly, the case hints at strong and weak factors of religious diversity in the territories annexed by Russia in the third partition of Poland-Lithuania. It makes these factors visible against the background of tendencies both towards secularization and towards a new role of religion as an instrument employed to stabilize the order imposed by a monarchy claiming to be enlightened.

Both aspects, civic identity in the area under consideration and the way autocracy dealt with religious diversity in the region, have been treated in recent research. Referring extensively to the uses of law and the court system, Iauhen K. Anishchanka's study of the relations between the Belarusian gentry and its new Petersburg overlords comes to the conclusion that the gentry had in fact renounced the defence of the autonomous status of the region. This is indeed remarkable, for they could have done so by using the authority of the influential

v blagochestie ne perestaiut rugat' nazyvaia kanaliiami, skvernymi moskaliami, prokliatymi apostatami).« RGADA, f. 7, op. 2, d. 2561, l. 5 ob.

10 Ibid., l. 12–12 ob.

Lithuanian Statutes.¹¹ While the differing religious identities of the newly conquered subjects were clearly prone to encourage resistance to the conqueror, the gentry's propriety interests favoured accommodation.¹²

Useful hints at how to fruitfully look at civic identity in late 18th-century Belarus are given in Larry Wolff's study on the Uniate Church under Catherine II. Wolff avoids explicitly ascribing an attitude of accommodation or resistance to the actors. However, he does state that the Uniate faith prepared the ground for a popular Ruthenian national identity. He also discusses the point of view of the Petersburg authorities as well as other representatives of the secular and clerical European elites concerning the foundations of civic identity or, more precisely, civic obedience. The most explicit position the author cites is the perception of Uniate peasants in both Belarus and Ukraine as too underdeveloped to confess civic obedience independently of religious obedience.¹³ In this article, I am most prominently interested in such perceptions by historical actors. As the case presented above shows, the perception of civic (or un-civic) behaviour by the authorities is easier to establish from the sources than any »real« attitude of resistance or accommodation held by the population. This perception is telling if not about the autocracy's subjects' action itself, then at least about the conditions in which their actions took place.

Wolff also refers to the autocracy's policies towards religion and the churches. In his opinion, a secularized understanding of religion during the last years of Catherine's reign was responsible for the repression of the Uniate Church: the autocracy »sponsored a missionary campaign, conceived in an aggressively modern spirit, to meet the modern challenge of national integration«.¹⁴ In contrast to Wolff's view, Barbara Skinner argues that Catherine's repression of the Uniate Church from the late 1770s continued the autocracy's traditional policy of not recognizing the Uniates as a confession separate from Orthodoxy, ending a short period during which the empress' observance of international obligations had restricted her freedom of action.¹⁵ According to Skinner,

11 The Lithuanian Statutes were a major law code edited in three versions: 1529, 1566, and 1588, see Iauhen K. Anishchanka, *Belarus' u chasy Katsiryiny II (1772–1796)* (Minsk: Vedy, 1998), 184–187.

12 About propriety, see Anishchanka, *Belarus'*, 186.

13 This was a statement by the papal nuncio. Larry Wolff, »The Uniate Church and the Partitions of Poland: Religious Survival in an Age of Enlightened Absolutism,« *Harvard Ukrainian Studies* 16, no. 1–4 (2002–2003): 153–244, here 229. The former Polatsk archbishop's remark about the »rough people« (with reference to the allegedly ignorant and superstitious peasants) being the target of Orthodox harassment suggests a similar perception. *Ibid.*, 173.

14 Wolff, »The Uniate Church,« 190.

15 Skinner, *Western Front*, 168.

Catherine's repression of the Uniates was a notorious case of deviation from the main direction of her imperial politics, with the empress following the path to forced cultural unification prepared by the Orthodox clergy in this particular case.

An approach to the conflicts in the area of the first partition focusing on the institutional order permits us to assess the scope of explanations that refer to confessional conflict and emerging national attitudes. The story told above sheds light on some largely unnoticed aspects of the conquest, which we may consider to be relevant factors leaning in the direction of repression. Religious policy cannot be regarded in terms of a transnational transfer of ideas or a continuity of tradition without taking into consideration its relations to the law and institutions of jurisdiction. I do not refute the significance of both tradition and modernization for policies toward the region's religious groups, but I suggest considering these policies from a different perspective.

Referring to the development of the court system during the reign of Catherine II, the story discussed on the following pages demonstrates conflicts over a modernized understanding of institutions in Russia.¹⁶ From this Enlightenment perspective the institutions of the state could not function without the subjects' trust in them. This understanding of institutions is crucial to the course of events referred to in the case file. I will first provide a brief overview of the developments which most conspicuously marked this course of events: the annexation of Belarus from the Polish-Lithuanian Commonwealth and Catherine's politics of law enforcement. I follow this with a discussion of two areas of government activity in Catherinean Russia: the prosecution of religious crime and the confirmation of rule through institution-building. In doing so, I show why the Uniates were considered the weakest element in a religiously diverse context and thus became the target of enlightened absolutism.

The Conflict and its Setting: Conquest and Law Enforcement

In order to build empires, the disciplinary and participatory institutions of imperial states had to interact with the modes of conquest of their respective periods. This was indeed the case for 18th-century Russia, which followed disciplinary and participatory models, and modes of conquest differing from those of the pre-Petrine era.

- 16 Jörg Baberowski dates this modernization of the understanding of institutions into a later period: Iorg [Jörg] Baberowski, »Doverie cherez prisutstvie: Domo-dernye praktiki vlasti v pozdnej rossiiskoi imperii,« *Ab Imperio* 2008, no. 3, 71–95.

This justifies a closer look at the time before the Petrine period. To ascertain the specific traits of Russia's second move into Belarus in the first partition, a massive move that was decisive in the long term, we shall turn to the first such move for comparison. Muscovy had annexed a part of the region in 1654 with the conquest of Smolensk. From the Muscovite viewpoint the task had then been to integrate a group of nobles, the Smolensk *szlachta*, into Muscovy. However, the annexation was not followed by any sort of transfer of institutions from the Polish-Lithuanian Commonwealth to Muscovy.

In contrast, the 18th-century annexation was conditioned by the necessity to integrate municipal communities with multiple confessional profiles. While the integration of the Smolensk *szlachta* had added a new facet to the Empire's multiconfessional and polyethnic elite without altering its principles of domination, the mode of integration applied to Belarusian towns 120 years later reflected the change the 18th century had brought about. According to the Petrine principle of borrowing from the West, Catherine introduced a new type of town administration into the Empire that would serve as an example for the reform of Russian towns that was accomplished in the 1780s.

But to what degree was the western model of town administration prone to stabilize a larger political, social and economic system? Unlike the cities and towns of central Russia, some important Belarusian towns lived under Magdeburg Law, which had been accorded to them in the late Middle Ages.¹⁷ However, it is questionable whether the Belarusian towns with their different ethnic groups and confessions corresponded to the ideal of city autonomy and inner peace established by Magdeburg law. In the key period of the mid-17th century, the inner cohesion of the Belarusian towns had been rather limited.¹⁸ During the 18th century there were no hints at a situation closer to the ideal described above. After its acquisition by Russia, the Jews of the newly annexed Belarusian province petitioned the central government for less discriminating terms for themselves against the resistance of the Christian municipalities. These

17 Stanisław Aleksandrowicz, »Städte in den weißrussischen Gebieten des Großfürstentums Litauen (15.–18. Jahrhundert),« in *Handbuch der Geschichte Weißrusslands*, eds. Dietrich Beyrau and Rainer Lindner (Göttingen: Vandenhoeck & Ruprecht, 2001), 276–290, especially 277.

18 The inhabitants of the cities of Mahilioŭ and Vitsebsk reacted differently to Muscovite military pressure in 1654, with Mahilioŭ surrendering and Vitsebsk resisting. Stefan Rohdewald characterizes the early-modern Belarusian city of Polatsk as an example of the coexistence of Jews and non-Jews, which had failed in the German-speaking territories of the Holy Roman Empire in the middle of the 14th century. Stefan Rohdewald, *Vom Polocker Venedig. Kollektives Handeln sozialer Gruppen in einer Stadt zwischen Ost- und Mitteleuropa* (Stuttgart: Steiner, 2005), 251. However, this does not mean that there was a coherent community.

local authorities, for their part, correctly assessing the government's strategy of preserving the status quo whenever this did not endanger the establishment of the empress' rule, insisted upon the discrimination of the Jews as justified by the Commonwealth's tradition.¹⁹ In this situation law and law enforcement were crucial, both as a means for the central authorities to put down local conflicts, and as a field where participatory rights were gained and lost.

Law enforcement in Catherine's Russia was not untypical of the European context of the period, with limitations on torture changing interrogation procedures.²⁰ Furthermore, attempts were made to more clearly differentiate felonies from less serious crimes. Some of the latter were ascribed to the sphere of the everyday maintenance of the public order (*Policey*).²¹ Not surprisingly, the discourse about the reform of criminal law and criminal justice in Europe, notably the restriction of the monarch's ability to interfere with jurisdiction,²² had no political implications in the frame of Catherine's enlightened absolutism.²³

The law cannot be considered without referring to the tribunals that had to apply it. They were the object of the interreligious conflict in the situation analysed here. Thus religious contradictions were not only present in the legal conflict under consideration, but even structurally enrooted in it. As the case demonstrates, four religious communities – Uniates, Orthodox, Roman Catholics, and Jews – were involved in these contradictions. Concerning the Jews, interreligious conflict played a prominent role in thwarting the autocracy's attempts to rebuild municipal institutions.

The reform of town life and municipal administration in the Russian Empire under Catherine II as carried out in the newly conquered area was, on the one hand, an adoption of the existing basic city model of that area. On the other hand, it was a step towards subordinating traditional religious discrimination to

- 19 E. K. Anishchenko [= Ia. K. Anishchanka], *Cherta osedlosti: beloruskaia sinagoga v carstvovanie Ekateriny II*. (Minsk: Art-Feks, 1998), 82–85.
- 20 Aleksandr B. Kamenskii, *Ot Petra I do Pavla I. Reformy v Rossii XVIII v.* (Moskva: Rossiiskii gosudarstvennyi gumanitarnyi universitet, 1999), 403–404.
- 21 Oleg A. Omel'chenko, »Zakonnaia monarkhiia« *Ekateriny Vtoroi: Prosveshchennyi absoliutizm v Rossii* (Moskva: Iurist, 1993), 308.
- 22 Karl Härter, »Die Entwicklung des Strafrechts in Mitteleuropa 1770–1848,« in *Verbrechen im Blick. Perspektiven der neuzeitlichen Kriminalitätsgeschichte*, eds. Rebekka Habermas and Gerd Schwerhoff (Frankfurt a. M.: Campus, 2009), 71–107, here 78.
- 23 Compare Wolff, »The Uniate Church«. The rejection of the term »absolutism« has not been accepted in the historiography of Eastern Europe. Recent studies use it with ease on a conceptual level, see, for example, Ralph Tuchtenhagen, *Zentralstaat und Provinz im frühneuzeitlichen Nordosteuropa* (Wiesbaden: Harrassowitz, 2008).

the needs of municipal institution-building, which was not a purpose in itself: It was conceived to open up fiscal resources and to create a local foundation for the state. Including the Jews into municipal self-government was a step towards secularization in a pragmatic style. Yet, at the same time the Orthodox claim on Uniate churches made the cities a place of traditional religious confrontation in a spatial dimension,²⁴ as a struggle over sacred places put its stamp on city life. I will demonstrate that, in spite of the tendency towards secularization, religion was preserved – or even revitalized – as a force marking city life in the era of Catherine II. It is significant that a religious institution, the consistory, played a particular role in the case cited above.

To sum up the setting underlying the case presented above, the existing lines of conflict between ethnic and religious groups in the town were presumably deepened by the tsarist government's urban reform, which legally integrated the Jews into the town administration as passive, or even as active members. These lines cut across those of the conflict between Uniate burghers, on the one hand, and the Orthodox Church and the central government, on the other. A third conflict occurred between the imperial state and the nobility, the social stratum which the autocracy relied on in core areas of the empire. This situation prompted the imperial state to introduce measures to settle the situation, as social strata with otherwise divergent interests²⁵ now held similar anti-government opinions.

Defining Crime

The conflicts under consideration were portrayed as scandalous in terms of religious crime. In the early modern era, religious crime had been largely applied as a mode of interpretation of what was perceived as deviant behaviour. Given the Enlightenment's call for religious tolerance, which entailed, all over Europe and including the Russian Empire, a ban on the criminalization of religious practice perceived as deviant or alien, the prosecution of religious crime at the turn of the 19th century is quite striking. A rather banal reason for the criminalization of religious behaviour that continued throughout the Enlightenment era lay in an enlightened absolutist government striving for control: Even while the empress was preaching tolerance, both she and the central authorities nevertheless claimed a monopoly on the power to determine how far tolerance should go.

- 24 Skinner hints at similarities with the age of the religious wars in Europe. Skinner, *Western Front*, 229.
- 25 About gentry, peasant, and clerical interests, see Anishchanka, *Belarus'*, 9 and 183.

However, the case I examine here shows that the initiative to criminalize religious behaviour could also emerge from a local constellation with the central authorities assuming a reactive role. Local actors representing Christian confessions accused Jewish members of the municipality of adhering to a blasphemous religion, and Uniate believers called those who adopted Orthodoxy apostates. In order to understand the semantics of these accusations of religious crime in the case at hand, one has to consider their transnational historical and contemporary background. The criminalization of religious behaviour at the end of the 18th century was bound to both traditions and contemporary circumstances which transcended state borders and thus the reach of a single monarch and her administration. The forms of religious crime alluded to in the case referred to the past and present of the Polish-Lithuanian and the Muscovite-Russian legal spaces. These spaces were interconnected in many ways, as a look at the legal definitions of religious crime in early-modern law demonstrates.

With regard to law codes, Muscovy²⁶ and the Lithuanian part of the Commonwealth were closely linked, with the Lithuanian Statute being the most systematic legal code in all of Poland-Lithuania. This is, for example, true for the definition of crimes against the sovereign, which reflected the political essence of early modern law-making. In the middle of the 17th century, when working out the first comprehensive treatment of crimes against the ruler to occur in a Muscovite law code, the tsar's law-makers could rely on the corresponding chapter of the Third Lithuanian Statute as their most important source.²⁷ With regard to religious crime, however, the Muscovite law-makers profited from the Statute only as far as the criminalizing of improper behaviour at church was concerned. The Statute did not reflect much concern about religious deviance: It had no particular chapter about crimes against God,²⁸ which the Muscovites felt they needed. On the one hand, this hints at the Grand Duchy's central authorities not being particularly eager to prosecute such deeds themselves. On the other hand, it might indicate that as far as secular law is concerned, the sanctioning of religious crimes was mostly delegated to the level of local or urban law.²⁹

26 This is the correct name of »Russia« before Peter the Great: Only in the Petrine era is the term »Russia« systematically used in Russian sources to refer to the country and state.

27 Arkadii G. Man'kov, ed., *Sobornoe Ulozhenie 1649 g. Tekst, kommentarii* (Leningrad: Nauka, 1987), 144.

28 Ivan P. Shamiakin, ed., *Statut vialikaha knjastva Litouskaha 1588: teksty, davednik, kamentaryi* (Minsk: Belarускаia Savetskaia Enciklopedyia, 1989).

29 Juliusz Bardach, *Historia państwa i prawa polskiego* (Warszawa: PWN, 1966), Vol. 2, 353.

Muscovy and subsequently the Russian Empire lacked the density of urban law that had been provided by the transfer of law from Central Europe to the Commonwealth. Definitions of religious crime in secular law were provided by the central law codes. One of the religious crimes that had been defined by secular law since the mid-17th century was apostasy.³⁰ Russia's legal system, just like the legal system of the Commonwealth, reflected being in a country with a great variety of religious communities, but one with an official state religion as well. Leaving the state religion for another religion was indeed defined as a crime deserving of capital punishment.

With regard to conversions to Judaism and Islam, the criminalization of abandoning the Orthodox faith in Russia and the Catholic faith in the Commonwealth was rather unambiguous. A denomination as close to both Roman Catholicism and Orthodoxy – although at different levels – as the Uniate faith was a more complicated case. In 17th-century Muscovy there had been strong reservations about both Uniates and Orthodox believers in Poland-Lithuania, including doubts about the validity of the baptisms of adherents to Orthodoxy living under the rule of a non-Orthodox monarch.³¹ Such an attitude far less matched the Russian authorities' position in the 18th century, as it would have meant doubting the authenticity of the Orthodox in the Commonwealth, whose rights as Orthodox believers the emperors claimed to defend. By contrast, Orthodox and Uniates remained each other's religious rivals more so than they were those of Jews or Muslims. This also explains the depiction of the Orthodox as »apostates« by the Uniates, as cited by the aforementioned tsarist official Rebinder in the case in question.

The relative proximity of religious denominations also plays a role when we turn to the religious crime most prominent in the given case, which was blasphemy. Blasphemy was defined as a crime in the first chapter of the 1649 Muscovite law code. However, the law was not everything. A look across the borders of the Eastern European countries shows that blasphemy is the best example of a crime being defined not just by law codes, but also by community practices. It was to a considerable degree perceived and prosecuted according to the ways in which communities were organized and symbolically represented.

Gerd Schwerhoff distinguishes two types of accusations of blasphemy in medieval and early modern European societies. The first are accusations of blasphemy as a means of restoring God's honour within a culture of communication generally marked by a continually perceived need to defend one's own honour. Such accusations were levelled at persons who, driven by anguish or

30 About conversion to Islam, see Man'kov, *Sobornoe Ulozhenie*, 131.

31 Tatiana A. Oparina, *Inozemtzy v Rossii XVI–XVII vv. Ocherki istoricheskoi biografii i genealogii* (Moskva: Progress-Traditsiia, 2007), 5–21.

despair, or simply as a means of mockery, swore and took the name of the Lord in vain. The prosecution of this kind of blasphemy, closely linked to the authorities' efforts to impose discipline on early modern men and women, worked best in communities of persons that spoke the same religious language. Nevertheless, Schwerhoff supposes that it was also promoted by the juridical identity of the respective communities: in the late medieval Holy Roman Empire it was mainly the task of city authorities to prosecute run-of-the-mill blasphemy, as swearing at God was understood as an insult to the local Christian community, consolidated in the burghers' oath that constituted the city as a body politic.³² There was nothing similar which could have promoted people being accused of this kind of blasphemy in early modern Russia, and that may be one reason why the prosecution of blasphemy was rare there.³³

The quantitatively insignificant, but nevertheless highly important accusations occurring in the context of interreligious polemics provide the second type of the prosecution of blasphemy in the societies Schwerhoff refers to.³⁴ This use of blasphemy charges is notorious for having instigated excesses of anti-Jewish violence from the Middle Ages. It also occurred in the Polish-Lithuanian Commonwealth, for example during inter-confessional conflicts in early modern Polatsk.³⁵ It is no surprise that it played a role in the case under discussion as well.

The confessional tensions between Orthodox and Uniates crystallized in conflicts over Uniate churches which were assigned to the Orthodox: what was regarded as an act of legitimate transfer by the authorities was perceived as an act of desacralization by Uniate believers. As concrete instances of religious conflict, the Belarusian cities with their Uniate burghers, considered to be neither Orthodox nor completely un-Orthodox, must have been a greater challenge to the central authorities than the annexed Protestant cities in the Baltic provinces, the Russian Empire's most recent conquest of non-Orthodox Christian communities at the time: The deeper demarcation between the religious denominations there presumably made religious spaces less convertible and therefore less likely to generate conflict. By contrast, in the situation in question, the step towards claiming sacred places of the conquered for the

32 Gerd Schwerhoff, »Gotteslästerung«, in *Enzyklopädie der Neuzeit*, vol. 4, ed. Friedrich Jäger (Stuttgart: Metzler/Poeschel, 2006), 1054–1056, especially 1054. About blasphemy prosecuted as a mockery of the burghers' oath, see Gerd Schwerhoff, *Zungen wie Schwerter: Blasphemie in alteuropäischen Gesellschaften 1200–1650* (Konstanz: UVK, 2005), 184.

33 Smilianskaia found 133 case files for the 18th century, see Smilianskaia, *Vol'sheb-niki, bogokhul'niki, eretiki*, 209.

34 Schwerhoff, »Gotteslästerung«.

35 Rohdewald, *Vom Polocker Venedig*, 289.

religion of the conqueror was a small one. Under these circumstances, accusations of blasphemy, made in order to justify the occupation of the others' religious spaces or, conversely, to assert resistance to this occupation, were a convenient strategy.

These accusations made use of motives common to interreligious polemics, with both Jews and Catholics declared too biased to be proper judges. In the case of the Jews this was sharpened by the argument that they adhere to a religion blasphemous in itself.³⁶ The above-cited analysis of the role of accusations of blasphemy in communities also demonstrates that the definition and the use of this crime were closely connected to the political fundamentals of these communities. In the present case the political substance of blasphemy becomes visible in the context of both legal traditions and the acute legal situation in the annexed territory. In spite of common interpretations underlining the sacral character of tsarist rule, religious crimes and crimes against the sovereign had generally been separated in Muscovy and in Petrine Russia. However, we may suspect that, in the eyes of the authorities, they drew close in the period and under the circumstances discussed here, with religious conflict and the problem of political allegiance being so closely linked.³⁷ If religious crime was understood as a negation of allegiance, the question of who was going to judge it and according to which law was a crucial one. It was, however, part of a more general problem which the Petersburg authorities faced in the Belarusian cities.

In spite of all the traditional links between Lithuanian and Muscovite law and all similarities in jurisdictional practice, it cannot be ignored that after the annexation of Belarus the tsarist government sharply distinguished which law was to be applied in which cases in the newly acquired territory. Generally speaking, while civil law matters continued to be resolved on the basis of Lithuanian law, criminal cases were to be judged according to Russian law.

36 RGADA, f. 7, op. 2, d. 2561, l. 11 ob.

37 Somewhat later, religious and political crime were to be closely linked even far beyond the areas with elevated interreligious tensions, when the autocracy took notice of the first people calling into question its very legitimacy as a political order and when the French Revolution offered an example of how efficiently anti-ecclesiastic attitudes could connect with anti-monarchic ones. See Skinner, *The Western Front*, 197. However, accusations of lese-majesty referring to religious dissent can already been seen in the area about 1780: Provocation could quickly turn religious invectives against Orthodox believers into insults against the Orthodox empress: An Orthodox dweller of one town quarter (*slobozhanin*) which had formerly belonged to or still belonged to the Vitsebsk Basilian monastery replied to the Uniates who called him a »Muscovite schismatic« (*moskal' syzmatyk*) that they were all subjects of the empress and owed obedience to her orders (*ukazy*). He was promptly told that »your *ukazy* are as important as kissing a dog's ass.« RGADA, f. 7, op. 2, d. 2561, l. 6.

Correspondingly, the Petersburg authorities accorded the local nobles the right to be judges in civil cases, but not in criminal ones.³⁸ So while legal pluralism existed, it did not question criminal justice as the core of the realization of the imperial state's presence in the Belarusian provinces.

This had consequences at two levels. In practical terms, central legal regulation gained considerable influence on the fate of the accused. The government could neither be tolerant of the lax treatment of criminal acts, which might be oppositional actions in disguise, nor of the overly harsh treatment of criminals, which would have contradicted the empress' enlightened image. On a more abstract level, one consequence of this form of legal pluralism was a sharp contrast between the government's abstention from defining adherence to an empire-wide legal order in terms of civil law and its readiness to define allegiance in terms of criminal law. The latter was presented as being crucial to the political stability of the conquered region.

Tsarist law did not interfere with civil law relations in the former part of Lithuania discussed here, an area with an agrarian order differing from the one in central Russia.³⁹ So the government did not construct the integrity of propriety and of public order, on the one hand, and political domination, on the other hand, along the same lines. Further research would be needed to indicate if the lack of this link affected legal practices and social life. In Catherine II's empire, legal pluralism was reflected in its institutional pluralism.

Local and Imperial Institution-Building as Regulators of Conflict

In the early 18th century, Russia reformed its institutions for the dispensation of justice, although the law remained stable in its 17th-century core. Modifications were brought about by Peter the Great's additional codes and several unsuccessful proposals for legal codes, which nevertheless served as a source of reference. With avenues of legal change being limited, the reform of tribunals was supposed to lead to the dispensation of justice according to principles of governance. In the age of Catherine II, just as during the reign of Peter the Great, the dispensation of justice was closely linked to the autocracy's distributing restricted local powers to particular social groups.

The city in Catherine's Russia was conceived of as an intersection of state action and a restricted municipal self-administration, while rural Russia remained the sphere of the nobles. The cities were supposed to be islands of productivity, but also centers of good order. To be sure, there was a tremendous discrepancy of lifestyle between the metropolis Petersburg and the provincial

38 Anishchanka, *Belarus'*, 184.

39 Ibid., 69–70, 185.

towns. There was no unique urban way of life that represented the civilizing mission ascribed to the city since Peter the Great. Instead that mission was accorded to reformed administrative structures, independent of lifestyle and thus of the great differences among the cities. This focus on administrative structure rather than on urbanism made the Belarusian towns in some respect useful models for the reform of urban life and urban administration that was undertaken from 1775 to 1785.

For this purpose the Belarusian towns first had to be reformed to expand their capacity to integrate a heterogeneous population. The Jews were recognized as burghers in 1779 and consequently received the right to participate in municipal self-government.⁴⁰ The transition brought about was no less sharp than that in Western Europe of the era. The decisive development in more western parts of Europe, beginning in the 18th century, was the dissolution of the old estate order. In the Belarusian towns, lacking both the classic structure of the traditional city and the ideal of the *bürgerliche Gesellschaft*⁴¹ as well as any significant socio-economic developments that would encourage the rise of a new elite, that decisive step was the end of the exclusion of Jews from urban institutions. This also involved the dispensation of justice. At the threshold of a new era in the history of jurisdiction in Europe, one which was to be inaugurated by the French reform of 1790,⁴² the dispensation of justice in the Belarusian towns was reformed within the framework of tradition, but with an enlightened approach. Trials were not, however, made public, nor was the judicial separated from executive power. The unification of jurisdiction, a strong element of 18th-century reform in Europe,⁴³ took place within the restricted scope of the city. However, even if practised within a narrow framework, the unification of the dispensation of justice implied a unified approach to religion and law. This corresponded with the Catherinean approach to mainstream religion as a guarantee of civic obedience without restricting this to the Christian religion.

40 Rohdewald, *Vom Polocker Venedig*, 372; John Klier, »Polish Shtetls under Russian Rule, 1772–1914,« *Polin* 17 (2004): 109–119, here 109.

41 A term denominating an ideal type of society based on political participation, civil rights, openness towards innovation as well as male hegemony, and according large competences to the state while restricting its means of intervention into the citizens' private sphere. For a comprehensive definition, see Wolfgang Schmale, »Bürgerliche Gesellschaft,« in *Enzyklopädie der Neuzeit*, vol. 2, ed. Friedrich Jäger (Stuttgart: Metzler/Poeschel, 2005), 558–563, especially 558–559.

42 Barbara Dölemeyer, »Justiz,« in *Enzyklopädie der Neuzeit*, vol. 6, ed. Friedrich Jäger (Stuttgart: Metzler/Poeschel, 2005), 203–226, here 211–212.

43 For an example, see Robert Zaugg, »Judging Foreigners. Conflict Strategies, Consular Interventions and Institutional Change in Eighteenth-Century Naples,« *Journal of Modern Italian Studies* 13, no. 2 (2008): 171–195.

Evidence of the fragility of the reform and of its restricted reach is easy at hand, regarding both the towns themselves and the rural inhabitants of the area, who, as we have seen in the case cited, were involved in the religious conflict discussed above. The central government accorded privileges to potentially loyal people in the region whose allegiance they sought to gain.⁴⁴ But the situation remained insecure: How could one make sure that the dispensation of justice for peasants stayed within the framework of established estate-orientated discrimination while, at the same time, not leaving the decision in cases concerning the empress' vital interests to a possibly unreliable nobility?⁴⁵ Against this background, the secular dispensation of justice was not considered to be a sufficient guarantee of order.

Catherine not only reformed the administrative structure of towns, but also increased the number of places called towns. Ordering that the places newly established as the »urban« centres of larger administrative units should also be seats of a »spiritual administration« (*dukhovnoe upravlenie*),⁴⁶ she underlined that religious authority was an indispensable part of state authority and its administrative representation in the towns. As to Uniate believers in the annexed Belarusian provinces, the enlightened empress afforded them an ecclesiastic institution to control particular religious groups and enforce obedience through behaviour corresponding to the formal rules of the respective religious community: the above-mentioned consistory. Orthodox consistories had come to Russia from the Ukraine. Protestants in the Empire also had consistories. An actor in the everyday lives of believers, meant to provide for religious discipline, the consistory can be seen to be a factor that strengthened confessional identity. However, in the case of the Uniates, upon whom consistories were imposed by the Petersburg authorities, their effect was probably quite the opposite: the lack of Uniate clerics recognized as qualified legitimized their replacement by Orthodox clerics. This could make the consistories into agents of Orthodox influence on the Uniates' religious matters. As the empress' and the state religion's agents of discipline and control, the consistories harmonized well with the Orthodox clergy's activity in favour of the Crown in this newly annexed region.

44 In 1778 the empress allowed nobles holding offices (*»vsem nachal'nikam, sud'iam«*) to freely purchase and sell peasants. This permission also extended to Belarus, where nobles who held peasants on the basis of possession (*zastava-arenda*) could be elected as judges. Anishchanka, *Belarus'*, 83.

45 Ibid., 67.

46 *Pervoe polnoe sobranie zakonov rossiiskoi imperii*, vol. 21, (Moskva: Gosudarstvennaia publichnaia istoricheskaiia biblioteka, Elektronnyi zapasnik, 2006), document no. 15.153.

Concerning Catherinean municipal institution-building, the consistories adopted a doubly complementary function. They paved the way for a complete administrative structure, including the administration of religion, a structure that made the cities, in the authorities' eyes, centres of a good order to be spread throughout the region. Yet, the consistories were also, in a way, an alternative to the institutions of urban self-government. Establishing clerical control of non-clerics, they would not uphold the idea of self-administration, which always entailed the risk of transcending the limits of autonomy drawn by the autocracy. They could be trusted to play an admonishing role such as the one they had in the case under consideration. Consistories could not, of course, replace secular tribunals in the judging of criminal acts, which was considered a core function of the state. However, as the case demonstrates, they could call into question the legitimacy of these tribunals. They were not easy to handle as an instrument of central secular power, especially in the above-mentioned situation. In the case cited, a spiritual matter turned a magistrate and a consistory into rivals.⁴⁷ The problem in the situation following the conquest was that it was hard to distinguish among the different forms of conflict and deviance, as religious conflicts were closely linked to political conflict, and religious deviance could be closely connected with behaviour questioning the legitimacy of the empress' rule.⁴⁸

Just as the Belarusian territory was integrated into the Western flank of the Empire, the enlightened absolutism in Russia led to ideas about diversity and its consequences for state-building at a larger scale. New tribunals, an indispensable by-product of municipal institution-building, were also a form of »organizing difference«⁴⁹ in the empire. In this context, the Enlightenment was less about the rule of reason than about differences between ethnic groups and about perceived levels of civilization. This sense of difference at the time of Catherine II was the origin of specific imperial institutions for the dispensation of justice. The Bashkirs and the Mishars, two Muslim ethnic groups in the Southern Urals, as well as the Kazakhs all obtained their own judiciary bodies.⁵⁰ According to

47 On the particular status of »spiritual affairs«, see Anishchanko, *Cherta osedlosti*, 83.

48 See a case in which a religious epithet against a newly converted Orthodox (»Muscovite schismatic«) was immediately followed by an epithet against the empresses' orders. RGADA, f. 7, op. 2. d. 2561, l. 6.

49 Lauren A. Benton, *Law and Colonial Cultures. Legal Regimes in World History, 1400–1900* (Cambridge, UK: Cambridge University Press, 2002), passim.

50 Vitalii Voropanov, »Praktika mestnogo pravosudiia: gosudarstvennye sudy dlia sel'skikh obyvatel' orenburgskoi gubernii v poslednei chetverti XVIII – nachale XIX,« *Ab Imperio* 2002, no. 3, 137–160. The Ukrainian Cossacks also obtained particular organs for administration and the dispensation of justice. Voropanov,

Vitalii Voropanov, these special bodies were accorded staff who had to belong to or be familiar with the respective ethnic group and the respective confession. Oaths sworn on the Koran in legal proceedings added a Muslim version to the important part religion played in such matters.⁵¹

The role accorded religion in juridical procedure hints at the authorities' conviction that religion guaranteed civic obedience. The scope of this conviction, which was growing firmer, well exceeded the boundaries of Christian communities. The particular tribunals for specific ethnic groups reflected Catherine's 1767 confession to Voltaire that law-making for a country like Russia with differences in climate, mores, and ways of thinking (*de climat, d'habitude, d'idées mêmes*) was difficult.⁵² Characteristically, the empress did not mention religion as an important factor at this early stage of her rule. Somewhat later, about the time of the conquest of the Crimea with its significant Muslim population, Catherine and her advisors came to the conclusion that different religions in their essence, that is, if not falsified by fanaticism, were apt to stabilize order.⁵³ However, as Larry Wolff has demonstrated, it was Orthodoxy which in the empress' opinion was best able to do so.⁵⁴

Unlike secularization in revolutionary France or in Joseph's II Austria, Catherine's policies in matters of religion were thus marked more by pragmatic measures for a better organization of the heterogeneous population, than by ambitious attempts at reforming age-old ways of life and death. Ultimately, this meant ascribing a new role to religion rather than banning it altogether.⁵⁵ The empress' attitude toward cultures, in general, corresponds with this approach.

»Praktika mestnogo pravosudiia,« 141. This was probably less a measure of enlightened imperial policy than a measure introduced to calm the situation after the destruction of the last remaining symbol of Cossack autonomy, the Zaporozhian Sech, in 1775.

51 Voropanov, »Praktika mestnogo pravosudiia,« 148, 152. Kamenskii stresses the growing role accorded to the priests' appeals to the conscience of the accused when the use of torture, formerly permitted to attain confessions, was being limited. Kamenskii, *Ot Petra I do Pavla I*, 403.

52 Quoted in Maya Lavrinovich, »Sozdanie sotsial'nykh osnov imperii v XVIII v.,« *Ab Imperio* 2002, no. 3, 117–136, here 118. Original text: *Sbornik Imperatorskogo russkogo istoricheskogo obshchestva*, vol. 10 (St. Petersburg: Imperatorskoe russkoe istoricheskoe obshchestvo, 1872), 204.

53 On such a view of Islam, see Kelly A. O'Neill, *Between Subversion and Submission: The Integration of the Crimean Khanate into the Russian Empire 1783–1853*, Ph.D. thesis, Harvard University, 2006, 49–51.

54 Wolff, »The Uniate Church,« 159.

55 For a characterization of secularization in Russia under Catherine II, see Gregory L. Bruess, »Religious Tolerance in the Reign of Catherine the Great,« in *International Perspectives on Church and State*, ed. Menachem Mor (Omaha, NE: Creighton University Press, 1993), 299–315.

Catherine was more tolerant of cultural diversity than were the representatives of the French Revolution: The empress tended more towards a well-calculated tolerance of controlled diversity rather than towards forced unification.⁵⁶ However, Catherine was strongly committed to the position of having a single Orthodox state religion. As Barbara Skinner has demonstrated, the repressions against the Uniates in the area of the first partition have to be considered in this light. Yet, the combination of a pragmatic approach to religion while upholding a firm adherence to the state religion can hardly be held responsible for this form of selective religious repression. In order to explain these policies, we have to take into consideration both the character of the conflict in the region and the logic of Catherinean institution-building.

Even though the empire implemented its ideas about diversity through the introduction of separate institutions for the dispensation of justice among nomadic Muslim groups, in the newly annexed Belarusian territory it pursued policies that were quite different. In the latter context, reforming the dispensation of justice was also on the agenda, but there was an inclination towards having a single tribunal for the entire polyethnic and multiconfessional population of a town. Taken together, the two approaches hint at a desire for the »organization of difference« in the East and the West of the empire. The key towards understanding Catherine's repression of the Uniates may lie here, for they were a particularly vulnerable element in a regional setting of interconfessional conflict, a state of affairs that cast doubt on the institutional structure which was at the very core of the empire that was to be built.

Conclusion

Lauren Benton's study of colonial law cites a North African Muslim legal scholar who condemned one of his coreligionists for remaining under the rule and jurisdiction of Christian Spain after the *Reconquista*. While the scholar did not consider contacts between Christians and Muslims to be »contaminating« in general, he did consider subordination to the jurisdiction of non-believers to be just that.⁵⁷ This underlines the significance of legal institutions as compared to the experience of religious diversity in non-institutional contexts, insofar as the experience expressed in this historically and geographically remote case can be transferred to the situation discussed here.

The conflicts described in the case presented have to be considered within the context of institution-building in its political sense. One important novelty of the era of Catherine II in Russia was an embryonic understanding that

56 Skinner, *Western Front*, 231.

57 Benton, *Law and Colonial Cultures*, 1.

institutions can gain legitimacy and function successfully only if they are believed in by the subjects. There are several indications of this new understanding such as Catherine's reluctance to accept the oath of allegiance of Polish noblemen if it did not reflect genuine loyalty⁵⁸ or the introduction of paper money, the stability of which was dependent on the subjects' trust in it.⁵⁹ From this point of view, institutions had to include a civic element, and in this sense, the Catherinean principle of state-building modernized the Petrine one.

Religious diversity presented a serious obstacle to state-building in the late 18th century when it weakened trust in institutions. In the period under consideration, religion was not a value that historians could define as »absolute«, but there were interrelated concepts of belief, faith, and trust both separating and reconnecting the spheres of religious and secular action. These concepts, and the related claims to authority, were essential to the political order. Authorities in the Belarusian territory doubted the ability of adherents to Judaism or Catholicism to be proper judges, telling the central authorities that such people could not be trusted. This meant that the core of enlightened institution-building was at stake in the newly conquered area. The hybrid idea of imposing and, if necessary, enforcing trust, a powerful contradiction in itself, which characterized Catherinean projects from monetary reform to urban reform and beyond, was seriously challenged.

The belief in the capacity of religious adherence to subvert enlightened absolutism's cherished legal institutions as expressed by official representatives of the empress' interests in the case discussed here, considerably heightened tensions in the area after the first partition. This was all the worse because the different legal institutions were part of an emerging concept of empire. If religious crime was in fact negotiable, enlightened order was much less so. If religious diversity questioned this order, the central authorities were not willing to tolerate it.

Abolishing Judaism or Roman Catholicism in the area was out of the question. The most vulnerable group were neither the Jews nor the Roman Catholics, but the Uniates, because of their proximity to Orthodoxy. As Wolff has stressed, the Uniates were also thought to be particularly underdeveloped in

58 After Kościuszko's uprising the empress gave the command for »only from those present and willing« to take the oath of allegiance. Nikolai Vasil'evich Repnin, Bumagi kn. N. V. Repnina za vremia upravleniia ego Litvoiu. *Sbornik imperatorskago russkago istoricheskago obshchestva*, vol. 16 (St. Petersburg: Imperatorskoe russkoe istoricheskoe obshchestvo, 1875), 62.

59 About money, counterfeiting and trust in the early modern era, see Ludovic Desmedt and Jérôme Blanc, »Counteracting Counterfeiting? Bodin, Mariana, and Locke on False Money as a Multidimensional Issue,« *History of Political Economy* 42, no. 2 (2010): 323–360.

terms of civic identity as the autocracy understood it, that is to say: civic obedience.⁶⁰ If the functioning of the key institutions of rule in the area of the first partition was uncertain, the consequence in the logic of the imperial authorities was to enlarge, at the cost of the Uniate Church, the number of adherents to Orthodoxy.

Finally, the presented story suggests that Russian imperial policy towards the various religious groups of conquered territories depended on how much the autocracy's wish for a controlled »organization of difference« was respected. Not ideology, but institution-building was the neuralgic point. Perceived obstacles to institution-building in the area of the first partition may well have motivated the tsarist authorities to act in a repressive way, which was not typical of their policies concerning the various religions in the empire as a whole.

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60 Wolff, »The Uniate Church,« 159.