# Reflections on the Meanings of Religious Belonging in Eastern European Legal Culture: An Introduction

This book is about the interconnections of religion and law in East Central European legal culture – or more precisely cultures. It delves into the role of religion in legal thought, in political constitutions, legal practice and performance, as well as in understandings of justice from the 16th century to 1939. During this long period the Polish, Lithuanian, Belorusian and Ukrainian lands that are at the core of our common project were continuously inhabited by multiple religious communities and settlers of various religious belongings.[1] This continuity notwithstanding, many political, social and cultural changes occurred, one of them being essential shifts in the understanding of religion and the religious community itself.

While being part of a religious community during the early modern period, apart from common worship and rites, went hand in hand with a specific legal, social, and economic status,[2] from the late 18th century on, the all-encompassing

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1    This historical fact is testified by many publications, among others Adam Kaźmierczyk, Andrzej K. Link-Lenczowski, Mariusz Markiewicz, Krystyn Matwijowski, eds., *Rzeczpospolita wielu wyznań*. (Kraków: Księgarnia Akademicka, 2004); Tomasz Ciesielski and Anna Filipczak-Kocur, eds., *Rzeczpospolita państwem wielu narodowości i wyznań. XVI–XVII wiek* (Warszawa-Opole: DiG, 2008); Jerzy Tomaszewski, *Ojczyzna nie tylko Polaków. Mniejszości narodowe w Polsce w latach 1918–1939* (Warszawa: Młodzieżowa Agencja Wydawnicza, 1985); idem, *Rzeczpospolita wielu narodów* (Warszawa: Czytelnik, 1985); Christhardt Henschel and Stephan Stach, eds., *Nationalisierung und Pragmatismus. Staatliche Institutionen und Minderheiten in Polen 1918–1939* (Marburg: Herder-Institut, 2013) = *Zeitschrift für Ostmitteleuropaforschung* 62, no. 2.

2    Myron M. Kapral', *Natsional'ni gromadi L'vova XVI–XVIII st.* (L'viv: Literaturna agencia Piramida, 2003); Leszek Ćwikła, »Sytuacja prawna mieszczan wyznania prawosławnego Rzeczypospolitej po unii brzeskiej (1595–1596 r.),« *Prace historyczno-archiwalne* 17 (2006): 5–26; Wojciech Kriegseisen, *Stosunki wyznaniowe w relacjach państwo-kościół między reformacją a oświeceniem (Rzesza Niemiecka – Niderlandy Północne – Rzeczpospolita polsko-litewska)* (Warszawa: Wydawnictwo Naukowe Semper, 2010), esp. 533–660; idem, *Ewangelicy polscy i litewscy w epoce saskiej (1696–1763). Sytuacja prawna, organizacja i stosunki międzywyznaniowe*

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competences of the religious community were heavily contested by internal schisms, new types of leaders, state authorities, as well as secular social institutions.[3] Such re-evaluations occurred similarly in other European countries. Yet, in terms of statehood, Poland in particular, from the early modern Polish-Lithuanian Commonwealth to the so-called Second Republic between 1918 and 1939 underwent radical territorial and political reconfigurations – namely the integration into three different empires in the late 18th century[4] and the re-building of statehood after 1918 – which implied reconfigurations in the status of the various religious communities as well as their individual members.[5] For a *longue durée* study of the interaction of religion and law, this means that there is no continuous status of religious minority vs. majority, but constellations in flux, as can be exemplified with the development of the previously underprivileged Uniate Church in Austrian-ruled Galicia in the long 19th century.[6]

(Warszawa: Semper, 1996), esp. 19–49; Tomasz Kempa, *Wobec Kontrreformacji: Protestanci i prawosławni w obronie swobód wyznaniowych w Rzeczypospolitej w końcu XVI i w pierwszej połowie XVII wieku* (Toruń: Wydawnictwo Adam Marszałek, 2007); Gershon D. Hundert, *Jews in Poland-Lithuania in the 18th Century: A Genealogy of Modernity* (Berkeley–Los Angeles: University of California Press, 2004); Adam Kaźmierczyk, *Żydzi w dobrach prywatnych w świetle sądowniczej i administracyjnej praktyki dóbr magnackich w wiekach XVI–XVIII* (Kraków: Uniwersytet Jagielloński, Katedra Judaistyki, 2002); Eli Lederhendler, *The Road to Modern Jewish Politics: Political Tradition and Political Reconstruction in the Jewish Community of Tsarist Russia* (New York–Oxford, 1989), 11–12, 26–28.

3   Helmut Reinalter, »Einleitung. Der Josephinismus als Variante des Aufgeklärten Absolutismus und seine Reformkomplexe,« in: Josephinismus als Aufgeklärter Absolutismus, ed. Helmut Reinalter (Wien–Köln–Weimar: Böhlau, 2008), 9–16; Lederhendler, *The Road to Modern Jewish Politics*, 36–57; Yvonne Kleinmann, *Neue Orte – neue Menschen. Jüdische Lebensformen in St. Petersburg und Moskau im 19. Jahrhundert* (Göttingen: Vandenhoeck & Ruprecht, 2006), 70–75, 290–302.

4   The initial phase is intensely analysed in Hans-Jürgen Bömelburg, Andreas Gestrich, Helga Schnabel-Schüle, eds., *Die Teilungen Polen-Litauens. Inklusions- und Exklusionsmechanismen, Traditionsbildung – Vergleichsebenen* (Osnabrück: fibre, 2013).

5   See the recent study by Stephan Stach, *Nationalitätenpolitik aus der zweiten Reihe. Konzepte und Praktiken zur Einbindung nationaler und ethnoreligiöser Minderheiten in Piłsudskis Polen* (1926–1939), Ph.D. thesis, Martin-Luther-Universität Halle-Wittenberg, 2014.

6   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; Oleh Turiy, *Hreko-katolyts'ka tserkva v suspil'no-politychnomu zhytti Halychyny, 1848–1867*, Ph.D. thesis, Ivan Franko National University of Lviv, 1994; John-Paul Himka, *Religion and Nationality in Western Ukraine: The Greek Catholic Church and the Ruthenian National Movement in Galicia, 1867–1900* (Montreal: McGill-Queen's University Press, 1999).

Although research on the coexistence of ethno-religious communities in the outlined region is abundant, some aspects are underrepresented. Most studies are conceptually based on minority studies and focus on inferior legal status;[7] another research branch concentrates on ethno-religious conflict.[8] In contrast to these tendencies, two basic ideas were at the origins of this collection: First, a withdrawal from the ideological aspect of religious coexistence, particularly from the concentration on interreligious conflict. We departed from the simple observation that, over the centuries, severe juridical confrontation as well as mass violence occurred rather rarely[9] compared to the extended periods of unspectacular coexistence. We therefore paid special attention to the legal tools that formed the basis for cooperation, negotiation, mediation, and compromise between different religious communities and between individuals of different confessions. From this angle, conflict is seen as a dysfunctional moment or phase in a functioning system. Taking the above-mentioned political and economic aspects of religious communities into account, it also must be stressed that conflict between different religious groups or individuals did not necessarily occur for religious reasons.[10]

Secondly, we decided to adopt a concept of law beyond the examination of its normative and juridical aspects that are traditionally expressed in constitutions,

7    E. g. Adam Kaźmierczyk, Andrzej K. Link-Lenczowski, Mariusz Markiewicz and Krystyn Matwijowski, eds., *Rzeczpospolita wielu wyznań* (Kraków: Księgarnia Akademicka, 2004), esp. 391–495; Tomasz Ciesielski and Anna Filipczak-Kocur, eds., *Rzeczpospolita państwem wielu narodowości i wyznań, XVI–XVIII wiek* (Warszawa–Opole: Wydawnictwo DiG, 2008), esp. 263–380.

8    E. g. 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); Magda Teter, *Jews and Heretics in Catholic Poland: A Beleaguered Church in the Post-Reformation Era* (Cambridge et al.: Cambridge University Press, 2006); Erich Fröschl, Maria Mesner, Uri Ra'anan, eds., *Staat und Nation in multi-ethnischen Gesellschaften* (Wien: Passagen Verlag, 1991), esp. 23–168.

9    The most prominent examples being the so-called Chmelnicki (Khmelnytsky) massacres in the mid-seventeenth century and the pogroms in the Ukrainian governments of tsarist Russia in 1881/1882 and 1905/1906. See e. g. Frank E. Sysyn, »The Jewish Factor in the Khmelnytsky Uprising,« in *Ukrainian-Jewish Relations in Historical Perspective*, eds. Howard Aster and Peter. J. Potichnyj (Edmonton: Canadian Institute of Ukrainian Studies Press, 1990), 43–53; John D. Klier and Shlomo Lambroza, eds., *Pogroms: Anti-Jewish Violence in Modern Russian History* (Cambridge: Cambridge University Press, 1992); Edward H. Judge, *Easter in Kishinev: Anatomy of a Pogrom* (New York: New York University Press, 1992); Jonathan Dekel-Chen, David Gaunt, Natan M. Meir, and Israel Bartal, eds., *Anti-Jewish Violence: Rethinking the Pogrom in East European History* (Bloomington: Indiana University Press, 2010).

10   See the articles by Jürgen Heyde and Yvonne Kleinmann in this volume.

laws and court proceedings. Some of the articles presented in this volume take narrative aspects of normative texts into account; others look at law as a cultural field that is closely interlinked with other social fields like politics, economy, and the arts. Legal anthropologist Lawrence Rosen has stressed that law is inextricably bound up with culture and that it should not merely be seen as a »mechanism for attending to disputes or enforcing decisions« but »as a framework for ordering relationships, an orderliness that is itself dependent on its attachment to all other realms of its adherents' lives.«[11] Another inspiration comes from Law and Society Studies, an approach that frequently stresses the links between law, institutions, and the public sphere.[12]

On this basis we look at law as a phenomenon that is often disconnected from the existence of a state and based in much smaller units. Therefore, various understandings of justice, the establishment of social institutions, the settling of disagreements beyond courts, etc. are considered as law. This kind of inquiry begins to look at law long before the establishment of legal norms by political rulers or governments and pays special attention to the evolutionary and dynamic character of law, the »pathways of law«.[13] Some of the articles therefore focus on »emergent« and »imagined« law rather than on law as a fixed norm or legal corpus.

The book assembles a great variety of approaches reaching from a close reading of normative texts, interpretations of legal theory, literature and press, biographical research, the analysis of institutions, through local and micro-studies. The individual articles are arranged into four clusters: *Imagining Law – Imagining Society* focuses on symbolic and idealistic functions of law rather than on its practical aspects, whereas the contributions to *Shifts in Political Rule and the Reorganization of Law* delve into the concrete consequences of establishing a new political power for different religious communities and their representatives. The authors of the section *Competing Laws – Competing Loyalties* scrutinize the fields of conflict between the state and religious communities as well as the legal

11    Lawrence Rosen, *Law as Culture: An Invitation* (Princeton–Oxford: Princeton University Press, 2008), 4–5, 7.
12    See for example, Lawrence M. Friedman, »The Law and Society Movement,« *Stanford Law Review* 38, no. 3 (1986): 763–780 and Alan Hunt, *Explorations in Law and Society: Toward a Constitutive Theory of Law* (London: Routledge, 1993). In addition, the Law and Society Association has published the *Law and Society Review* since 1966, and the British-based *Journal of Law and Society* has been published since 1982.
13    The term is based on the project *Pathways of Law in Ethno-Religiously Mixed Societies: Resources of Experience in Poland-Lithuania and Its Successor States*, funded by the German Research Foundation: http://www.religion-and-law-in-east-cen tral-europe.de; http://gepris.dfg.de/gepris/projekt/56603816.

antagonism between different factions within religious communities. *Ethno-Religious Coexistence in Legal Norm and Practice* concentrates on regional and local studies on neighborly interaction, and forms of mediation between different religious groups.

### Imagining law – imagining society

In recent decades, scholars of legal anthropology have analyzed how in a comparative sense specific contexts and expressions of law are linked to larger macro-level systems. They have conceptualized relationships between law, state and society at various levels and have acknowledged the important role that ideology plays as a cultural framework in which law is presented and practiced.[14] The sub-field of legal anthropology includes a range of perspectives and approaches to the study of law, in particular approaches that stress legal pluralism, performative aspects of law, and ideology that are especially useful for the study of religion and law in historical contexts. Nevertheless, very few scholars in the field have addressed historical topics.[15] One of the more compelling ways that legal anthropology is connected to law and religion in historical Eastern Europe is through frameworks that express ideology as well as the language and practices of empire.

The first section of this book examines various ways of thinking about law and what it means in specific contexts. One goal is to suggest more flexible concepts as a means of expanding the ways that scholars approach the study of law. This flexibility includes examining the connections of law to other aspects of life. In this regard it is also significant that the articles cross disciplinary boundaries and include approaches from literature, history, legal studies, and ethnography. The themes that the authors address include entanglements of law, society, and culture, the role of social networks and activism, and the concept of performance. In this regard they are close to approaches espoused by Austrian legal

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14 Franz and Keebet von Benda-Beckmann, »How Communal is Communal and Whose Communal is it? Lessons from Minangkabau,« in *Changing Properties of Property*, eds. Franz and Keebet von Benda-Beckmann and Melanie Wiber (Oxford: Berghahn, 2006), 194–217; Franz and Keebet von Benda-Beckmann, »Einleitung,« in *Gesellschaftliche Wirkung von Recht. Rechtsethnologische Perspektiven*, eds. Idem (Berlin: Reimer, 2007), 7–19.

15 Some exceptions include Andrea L. Smith, »Citizenship in the Colony: Naturalization Law and Legal Assimilation in 19th Century Algeria,« Political and Legal Anthropology Review 19, no. 1 (1996): 34–49; Jean and John Commaroff, *Of Revelation and Revolution: The Dialectics of Modernity on a South African Frontier* (Chicago et al.: University of Chicago Press, 1997); the above-mentioned text by Lawrence Rosen also includes analysis of historical contexts.

scholar Eugen Ehrlich, writing at the turn of the 20th century in Czernowitz, Bukovina at the eastern periphery of the Austrian Empire. Ehrlich, often regarded as the founder of the field of the sociology of law,[16] stressed the importance of studying law as a component of society. He also emphasized the importance of examining how law functioned in life rather than merely regarding law that existed in written texts.[17]

The idea of »performance« is central in this section, though interpretations of this concept vary.[18] Studies which focus on the performative aspect of law and analyze the processes by which legal disputes are negotiated are especially useful in revealing the everyday workings of law and often provide a counter to more abstract notions of the ways in which law works. Performance approaches can also demonstrate the ways that the negotiation and implementation of law take on theatrical qualities and provide contexts for the performance and display of power.[19]

In addition, this section underscores the notion that law exists beyond normative categories of law. For example, it shows that imperial authorities were well aware of the important role that art and social institutions played in lending legitimacy to or to undermining the empire. Each of the authors addresses law and its connections to ethnic and religious identity. A common theme is how concepts of religious identity changed over time, and how social activism and networks challenged previous categories and shaped new ones.

*Jürgen Heyde*'s article deals with legal discourse and its political functions in 16th-century Poland, namely with the Sejm's anti-Jewish legislation around 1538. The author stresses that although at first glance the legislation appears to have endangered the legal, social, and economic position of the Jews, later documentation reveals that the laws were never put into practice. A closer interpretation demonstrates that the anti-Jewish legislation of the Sejm in actual fact mirrored the nobles' effort to reduce the king's power. Heyde points to the

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16  See among others Marc Hertogh. *Living Law: Reconsidering Eugen Ehrlich* (Oxford: Hart, 2009).

17  Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (New Brunswick: Transaction Publishers, 2001 [1913]).

18  Key texts include Richard Bauman, *Verbal Art as Performance* (Prospect Heights, IL: Waveland Press, 1977); idem, *Let Your Words Be Few: Symbolism of Speaking and Silence among Seventeenth Century Quakers* (London: Cambridge University Press, 1998); Richard Bauman and Charles L. Briggs, »Poetics and Performance as Critical Perspectives on Language and Social Life,« *Annual Review of Anthropology* 19 (1990), 59–88; Judith Butler, *Bodies That Matter: On the Discursive Limits of Sex* (London: Routledge, 1993) and *Gender Trouble: Feminism and the Subversion of Identity* (London: Routledge, 1990).

19  See for example, Beverly J. Stoeltje, »Gender Ideologies and Discursive Practices in Asante,« PoLAR: Political and Legal Anthropology Review 23 (2000): 77–88.

performative aspects of law-making in the Polish Sejm and claims that political discourse on a religious group functioned as a means of negotiating social hierarchies between other actors and setting standards for social discipline. Judaism in the sense of theological positions and ritual, he argues, was not the object of attack. His analysis considers discrepancies between the law on the books and what occurred in actual practice – an aspect of what Ehrlich has described as »the living law.« He explains these gaps as expressions of the nobles' striving to compete against the king for sovereignty over the Jews.

*Anna Juraschek's* article on the reinterpretation of Shakespeare's character Shylock in the *Merchant of Venice* by the Austrian novelist Karl Emil Franzos in the late 19th century explores the connections between legal scholarship and literature. The focus is on various depictions of Shylock and the influence of the ideas of legal scholar Rudolf von Jhering on Franzos' work. Juraschek demonstrates changes in the author's depiction of the problematic character, shifting from ambivalence in *Der Shylock von Barnow* (1868–1872) to portraying him as a more positive force in *Der Pojaz* (1895). In fact, in his later work, due to the impact of Jhering's legal thinking and elaboration of the famous court case in Shakespeare's *The Merchant of Venice*, Franzos ultimately recast his Shylock as a Jewish civil rights activist. Juraschek addresses the ways that literary and theatrical representations are reframed to comment on the situation of Habsburg Jewry in the 19th century, demonstrating that literature can be both inspired by and play a role in promoting legal concepts.[20]

According to *Jana Osterkamp*, historical debates over legal reforms provide an ideal context in which to explore both the constructedness of confessional communities and the normativeness of law. Referring to Benedict Anderson's concept of »imagined communities,«[21] she introduces the concept of »imagined law,« which she defines as »law that cannot yet be implemented.« More specifically, she examines the promise that federalization might have held for the Habsburg Empire, arguing that it had the potential of allowing ethnic and religious groups to develop into new political and legal territorial bodies. The text explores how collectives are formed and how they change the state and legal order. For example, Osterkamp claims that municipal self-government changed the Jewish community from merely a religious institution to a »political corporative body,« allowing for personal autonomy. However, even as the legal

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20 Another example of connections between literature and legal concepts is Lynn Hunt's *Inventing Human Rights: A History* (London: W. W. Norton & Co., 2007), which makes the case that emergence of the novel as an influential literary genre played an significant role in expanding support for the concept of human rights.

21 Benedict R. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 2006), originally published in 1983.

position of Austrian Jewry became more negotiable, the Austrian administration and courts were not prepared to fully alter its status.

*Tracie Wilson*'s article on women's charity and anti-sex-trafficking associations in Lviv explores changing legal concepts in the context of social activism at the turn of the 20th century. Drawing on the work of Eugen Ehrlich, she introduces the concept of »emergent law« to refer to institutional shifts and innovative thinking about law and social practices that were undergoing change and becoming increasingly accepted. The author analyses legal aspects of changes taking place regarding categories of membership, increased participation of women in public life, the development of supra-ethnic and religious consciousness with regard to charity, and the influence of charity organizations in enforcing morality and law. Based on an ethnographic perspective, Wilson's article examines the processes through which institutions were made more inclusive and examines the role of legal concepts in shaping the practices of religious institutions and social activist networks. Such examples demonstrate that the social acceptance of new concepts and practices was also rooted in culture.

### Shifts in political rule and the reorganization of law

As law is and has always been highly dependent on political rulers or representatives who codify law and are responsible in their executive role for its organization and enforcement, changes in political rule often result in legal reorganization of society. This holds true for the territories of Poland-Lithuania that were incorporated into the Habsburg, Prussian, and Russian Empires as the result of the partitions of Poland-Lithuania in the late 18th century, as well as for the creation of an independent Polish state following World War I, when largely the same territories formed the new Republic. In both processes, the integration of annexed territories into the three empires, as well as the reunion of most of these territories into one state, legal regulation and law had to be reshaped in order to fit the new political and social situations. These processes took place at various levels of society.

Helga Schnabel-Schüle has pointed out in her considerations of shifts in political rule (*Herrschaftswechsel*) that, to begin with, the new ruler had to legitimize his or her authority.[22] She draws on the typology of rule by Max Weber who observed that legitimacy can be derived from three sources:

22 Helga Schnabel-Schüle, »Herrschaftswechsel – zum Potential einer Forschungskategorie,« in *Fremde Herrscher – fremdes Volk. Inklusions- und Exklusionsfiguren bei Herrschaftswechseln in Europa*, eds. eadem and Andreas Gestrich (Frankfurt a. M. et al.: Lang, 2006), 5–20, here 6–7.

charismatic, traditional, and rational-legal rule. In his view charismatic rule is based on emotional devotion to a person considered to be exceptionally able to lead, whereas traditional rule derives its power from the supposed holiness (*Heiligkeit*) of the ruling order. In turn, rational-legal rule draws its legitimacy from the popular perception that authority is based on commonly accepted laws and customs.[23]

If rule was based on holiness it necessarily related to religion as well so that religious difference between the ruler and his new subjects could pose a threat to his legitimacy. In practice, however, both the Romanov and the Habsburg administrations generally proved to be able to integrate religious difference into their imperial rule. While the status of a religion could change – as in the case of Catholicism in the former Polish territories coming under Tsarist rule – the imperial bureaucracies were willing to cooperate with religious communities, and integrated religious elites into their system of state administration.[24] The Austrian Empire, for instance, raised the status of the Uniate Church in Galicia, renaming it Greek-Catholic and cultivating a loyal clergy in the process.[25] Authorities of the Tsarist Empire also made use of religious communities under the »spiritual administration« of the state to strengthen their rule.[26] Nevertheless, as the case of the Uniate Church shows, which was abolished in the Russian Empire in 1839, imperial tolerance ended if a religious community that was considered to be inferior challenged the position of the monarch's faith.[27] The major source of legitimacy for a ruler was not to be called into question. However, empires not only drew their legitimacy from the religion of the ruler himself, but in cases where no direct conflict between his religion and that of his subjects occurred, religious communities were usually integrated into the administrative framework of the state, as for instance in the registry of births

23  Max Weber, *Wirtschaft und Gesellschaft, Grundriss der verstehenden Soziologie* (Tübingen: Mohr, [5]1972), 124.

24  Mikhail D. Dolbilov, *Russkii krai, chuzhaia vera: Etnokonfessional'naia politika imperii v Litve i Belorussii pri Aleksandre II* (Moskva: Novoe literaturnoe obozrenie, 2010), 17.

25  John Paul Himka, »The Greek Catholic Church and Nation-Building in Galicia, 1772–1918,« *Harvard Ukrainian Studies* 8, nos. 3/4 (1984): 426–452; Ivan L. Rudnytsky, »Galicia under Austrian Rule,« in *Essays in Modern Ukrainian History*, ed. idem (Edmonton: CIUS, 1987), 325–352.

26  Heinz-Dietrich Löwe, »Poles, Jews, and Tartars: Religion, Ethnicity, and Social Structure in Tsarist Nationality Policies,« *Jewish Social Studies* 6, no. 3 (2000): 52–96.

27  Theodore R. Weeks, »Between Rome and Tsargrad: The Uniate Church in Imperial Russia,« in *Of Religion and Empire, Missions, Conversions, and Tolerance in Tsarist Russia*, eds. Robert P. Geraci, and Michael Khodarkovsky (Ithaca, NY: Cornell University Press: 2001), 70–91, here 75.

and deaths, and helped to uphold the social order. In exchange, the clergy of these communities received certain material benefits, education, as well as high social status.[28] This privileged position, in turn, could lead to alienation and thus to conflicts between the clergy and the communities they were meant to serve.[29]

The emergence of new self-appointed ethno-religious elites who became integrated into the imperial administration also led to re-negotiations of power within the different communities. During changes in governance, the ruling elites struggled to hold on to their positions, while new groups sought the support of the new rulers to advance their standing.[30] Religious communities were one arena where such struggles took place.[31]

When in the second half of the 19th century national movements in Eastern Europe gained momentum, many religious practices were adapted by national cults. Frequently national movements integrated religion into their vision of the nation, thus providing a modern justification for religion.[32] Religious communities became objects of nationalization and often even vehicles of national movements. Especially in multinational empires, but also in young nation states, where national minority movements had limited opportunities for institutionalization, nationalized religious communities served as their organizational backbone. This development is particularly evident in the close connection of

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28    Himka, »The Greek-Catholic Church,« 428–429; Oleh Turij, »Die griechisch-katholische Kirche und die ukrainische nationale Identität in Galizien im 19. Jahrhundert,« in *Konfessionelle Identität und Nationsbildung. Die griechisch-katholischen Kirchen in Ostmittel- und Südosteuropa im 19. und 20. Jahrhundert*, eds. Hans-Christian Maner and Norbert Spannenberger (Stuttgart: Franz-Steiner-Verlag, 2007), 41–49, here 43; Löwe, »Poles, Jews, and Tatars,« 65–67.

29    See the article by Oksana Leskiv in this volume.

30    On old and new Jewish elites see Eli Lederhendler, *The Road to Modern Jewish Politics: Political Tradition and Political Reconstruction in the Jewish Community of Tsarist Russia* (New York–Oxford: Oxford University Press, 1989), 84–110; Isaac Levitats, *The Jewish Community in Russia, 1772–1844* (New York: Columbia University Press, 1943), 69–86.

31    On the concept of *arenas* see Karsten Holste, Dietlind Hüchtker, and Michal G. Müller, »Aufsteigen und Obenbleiben in europäischen Gesellschaften des 19. Jahrhunderts. Akteure – Arenen – Aushandlungsprozesse,« in *Aufsteigen und Obenbleiben in europäischen Gesellschaften des 19. Jahrhunderts. Akteure – Arenen – Aushandlungsprozesse*, eds. idem (Berlin: Akademie-Verlag, 2009), 9–19, here 9–11. On the competition of different groups within one religious community see Yvonne Kleinmann, »Jüdische Eliten, polnische Traditionen, westliche Modelle und russische Herrschaft. Kulminationen in den Jahren 1804, 1844, 1869 und 1881,« in *Ibid.*, 193–222.

32    Martin Schulze Wessel, »Einleitung,« in *Nationalisierung der Religion und Sakralisierung der Nation im östlichen Europa* (Stuttgart: Franz Steiner Verlag, 2006), 7–14.

the Polish national movement with the Roman Catholic Church during the 19th century[33] as well as in the entanglement of Ukrainian nationalism with the Greek Catholic Church.[34] It accompanied a direct interconnection of national and religious affiliation in 19th century imperial discourses, where Roman Catholic and Polish or Greek Catholic and Ruthenian/Ukrainian became largely synonymous.[35]

The interconnection of religion and nationality became even more powerful in independent Poland, when the state administration used religion, along with the people's native languages, to determine the nationality of the state's population.[36] Thus, while the nation, in some ways, replaced religion as a source of legitimacy of rule, religion still remained an important component of national belonging. In this context religious communities were seen as a kind of natural mediator between the state and the various national groups. Therefore, confessional politics became an important part of the state's nationality policy and ongoing legal regulation of one's religious community became of vital importance for the respective nation or nationality.[37]

The articles in this section focus on changes in the legal position of religious communities evoked by changes in political rule from different perspectives. *Angela Rustemeyer* analyses the limits of the tsarist administration's ability to integrate religious communities into the new imperial framework. She delves into confessional, legal, and institutional conflict following the annexation of the eastern parts of Poland-Lithuania, using the example of a court case involving alleged blasphemy in the Belarusian territories after the first partition of Poland-Lithuania. According to the author, Catherine II deepened the already existing lines of religious and ethnic conflict in the cities by integrating the Jews into the urban community in a reform of urban law, and also provoked new conflicts between Uniate burghers and the Orthodox Church. Rustemeyer demonstrates how this development led the tsarist government to withdraw from its conventional strategy of integrating religious authorities of the various

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33    Jerzy Kloczowski, *A History of Polish Christianity* (Cambridge: Cambridge University Press, 2000), 215–252.

34    On the role of the Greek Catholic Church in the Ukrainian movement see Turij, »Die griechisch-katholische Kirche,« and John-Paul Himka, »The place of Religion in the Ukrainian National Revival,« in *Nationalisierung der Religion*, ed. Schulze Wessel, 89–99. On the role of the Orthodox Church see Ricarda Vulpius, »Kirchenkampf in der Ukraine als Beispiel für die Sakralisierung der Religion und die Nationalsierung der Religion (1917–1921),« in *Ibid.*, 101–118.

35    Weeks, »Between Rome and Tsargrad«.

36    Henschel and Stach, *Nationalisierung und Pragmatismus*.

37    On the example of the Jewish communities see Stach, *Nationalitätenpolitik aus der zweiten Reihe*, 225–239.

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confessions into state government, and to criminalize adherents of the Uniate Church. As she argues, the reasons for this were mainly rooted in the proximity of the Orthodox and the Uniate Churches. The Uniate Church was thus suppressed because it was not different enough to fit into the imperial Russian system that tolerated controlled diversity.

In the Austrian Empire the fate of the Uniate Church was completely different as *Oksana Leskiv* demonstrates in her biographical article on the priest and Ukrainian national figure Iosif Levytskyi: Renamed as Greek-Catholic, its status was elevated under the new ruler which in turn provoked conflicts between the privileged priests and their communities. In her microstudy, Leskiv examines how the relation of Greek-Catholic priests and peasants in Galicia changed as a consequence of enlightened absolutist rule under Maria Theresa and Joseph II. Due to their reforms, she argues, in the medium term, priests became part of the imperial administration and received academic training which led to an improvement of their social status, but also often resulted in their alienation from rural society. Therefore, the claim of many Greek-Catholic priests to take a leading position in the emerging Ukrainian national movement was thwarted by their growing personal distance to the peasants, the nucleus of that nation. In addition, the abolishment of serfdom strengthened the self-confidence of the peasants who began to question the privileges of the clergy. In her analysis of the trial against Iosyf Levytskyi in the mid-19th century, Leskiv exemplifies the economic conflicts and the struggle for dominance that emerged from these developments.

*Hanna Kozińska-Witt*, who delves into municipal self-government in Austrian Krakow in the second half of the 19th century, exemplifies to what extent the new imperial order stimulated changes in the local legal system, in the division of urban space, and the emergence of new elites: The integration of the former free city of Krakow into the Habsburg Empire went along with several changes, such as the emancipation of the Jewish population and reforms of communal law that materialized in a new municipal statute. At the same time, the spatial division between Jewish and Christian areas in the city decreased. Under these circumstances, the author argues, the newly consolidated »progressive« Jews – a secularly educated, rather marginalized group within the Jewish community – used the implementation of federal law to increase their influence in municipal politics as well as in the Jewish Community vis-à-vis its Orthodox majority.

The rising interference between religious communities and national groups is addressed by *Stephan Stach*, who examines the Institute for Nationality Research in independent Poland after World War I: Initially founded as an institution that was meant to provide the government with scholarly-based policy advice on nationality questions, after Józef Piłsudski's coup d'état in 1926 it became an important forum of communication between the state administration, politi-

cians, and representatives of the national minorities. Due to the weakening of the parliament, Stach claims, the institute served as a mediator between the national minorities and the government: While the latter sought information and advice for its projects on the legal regulation of religious communities, the minorities' representatives used this channel to promote their propositions and shape such regulations. Using the examples of the Orthodox Church and the Jewish communities the author demonstrates that even though the government was interested in the minorities' opinion on these issues, it only considered concessions to the minorities' demands when they went along with other political benefits.

### Competing laws – competing loyalties

Shifts in political rule always led to the reorganization of law, at times also to competition between legal systems and – at least temporarily – to legal pluralism, as understood according to John Griffiths' classical definition as a »state of affairs, for any social field, in which behavior pursuant to more than one legal order occurs.«[38] In the phase immediately after annexation, the continental empires of the 19th century, for the sake of social peace, relied strongly on the cooperation with traditional elites in their newly conquered territories. The imposition of political control depended on mediators in the annexed societies who were ready and able to communicate the rulers' expectations to their newly acquired subjects, and to explain the latter's traditions to the new rulers. Imperial administrations needed time to begin to grasp foreign cultures, namely languages and legal traditions. Jane Burbank has analyzed this ratio of the empire using the example of tsarist Russia;[39] she has also studied how non-Russian local elites developed into junior partners of and even merged with the imperial administration practicing ethno-religious legal traditions, while at the same time accepting the superior authority of tsarist rule. As a result initial legal pluralism turned into a differentiated »imperial rights regime«[40] or in other words into a system of derivative power.

Religious elites – in the Russian as well as in the Austrian Empire – played a prominent role as holders of derivative power. In the annexed non-Christian

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38   John Griffiths, »What is legal pluralism?« in *Journal of Legal Pluralism* 24 (1986): 1–55, here 2.
39   Jane Burbank, »Thinking like an Empire: Estate, Law, and Rights in the Early Twentieth Century,« in *Russian Empire: Space, People, Power, 1700–1930*, eds. Jane Burbank, Mark von Hagen, and Anatolyi Remnev (Bloomington: Indiana University Press, 2007), 196–217.
40   Eadem, »An Imperial Rights Regime: Law and Citizenship in the Russian Empire,« *Kritika* 7, no. 3 (2006), 397–431, here 400–402.

societies, namely the Jewish society at the western periphery of tsarist Russia and the northeastern periphery of the Habsburg Empire, law and jurisdiction originated in religious law. The same was true for Muslim peoples in the southeastern regions of the Russian Empire whose legal system was rooted in *Sharia*.[41] The imperial administrations of the 19th century were essentially at ease with these traditions, as one of their principles was to »outsource« at least one legal sphere, namely marital law, to the various religious communities.[42] However, this decision was based on a rather homogeneous understanding of religion in these »traditional« societies whereas in the course of modernization – marked by industrialization, urbanization, the emergence of secular education and science – important changes took place. It was mainly enlightened thought and secular social movements that challenged the monopoly of religious authorities in this sphere. Competing with the established religious elites emerging secular elites also tried to win over the empires' rulers to gain their cooperation.[43] Therefore special attention has to be paid to competing under-standings of law within the individual communities, which in some ways were turning from religious into increasingly ethno-national entities.

In the present volume two articles examine the partly concurring, partly competing understandings of law of the imperial administration, religious communities, and individual actors. *Dror Segev* delves into different interpreta-tions of Jewish law (*Halakhah*) as well as into the competition of Jewish and imperial law in late tsarist Russia. His test case is the debate on Jewish burial, which according to orthodox rabbis, had to take place on the day of death whereas imperial law on the basis of medical expertise prescribed a wake of three days. Segev focuses on the evolution of this controversy on the pages of the Hebrew press of the 1880s that emerged as a new public sphere. He analyses the tactics of Jewish enlighteners (*Maskilim*) who, through press accounts, tried to discredit the practice of immediate burial as a dangerous superstitious custom before the tsarist authorities, as well as the response of orthodox rabbis who claimed that immediate burial was part and parcel of Jewish law and therefore not negotiable. At a second level, he examines the position of the imperial administration that considered immediate burial as intolerable interference into

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41    Robert D. Crews, »Islamic Law, Imperial Order. Muslims, Jews, and the Russian State,« *Ab Imperio* 2004, no. 3: 467–490; idem, *For Prophet and Tsar: Islam and Empire in Russia and Central Asia* (Cambridge, Mass.: Harvard University Press, 2006).

42    Burbank, »An Imperial Rights Regime«, 407–410.

43    Kleinmann, »Jüdische Eliten, polnische Traditionen, westliche Modelle und russische Herrschaft«.

its legal sovereignty, but due to a lack of medical personnel and police officers was not able to control such circumventions.

*Vladimir Levin* analyses the interaction between orthodox rabbis and tsarist administrators in the sphere of law from 1908 to 1910. He focuses on the preparations, proceedings, and outcome of the sixth Rabbinical Commission, an irregular assembly of state-elected rabbis within the Ministry of the Interior that was established in 1848 in order to provide the government with expertise in Jewish religion and law. Levin describes the activities of the numerous Russian and Polish rabbis as an effort to achieve a coalition between Jewish Orthodoxy and the tsarist government against strong secularizing tendencies, and the revolutionary movement in particular. For the rabbis involved this mainly implied strengthening the power of *Halakhah* within the imperial system of law, which was consistent in part with Russian legislation that generally delegated the vast field of marital issues to the legal institutions of the various religious communities. Nevertheless, he claims, the interests of the rabbis did not match with those of the tsarist government, which, like other European imperial powers of the time, tried to increase control over its subjects and rejected any autonomous strivings. In legal practice, however, Levin observes that there was actually little friction between state law and Jewish law so that the Russian Empire was a relatively safe place for observant Jews.

The strong interconnection of religious and communal leadership with political power must be seen as principally accepted characteristics of the imperial system of the 19th century, which admitted concurring religious, ethno-national, as well as imperial loyalties.[44] This compatibility was called into question by at least some actors when national states were proclaimed and established beginning in 1918. If we consider nation, religion, confession, social group, and ideological adherence in the new nation states not as aspects of »identity« but as expressions of »loyalty«, the focus of analysis can be placed on the various relations within ethno-religious communities, between ethno-religious groups, between these groups and the new governments.[45] From this perspective the question arises as to how the multiple loyalties of the imperial

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44  For the Habsburg Empire this has been verified by various case studies in Laurence Cole and Daniel L. Unowsky, eds., *The Limits of Loyalty: Imperial Symbolism, Popular Allegiances, and State Patriotism in the Late Habsburg Monarchy* (New York et al.: Berghahn Books, 2007).

45  On the concept of loyalty as a relational category see Martin Schulze Wessel, »Loyalität als geschichtlicher Grundbegriff und Forschungskonzept: Eine Einleitung,« in *Loyalitäten in der Tschechoslowakischen Republik 1918–1938. Politische, nationale und kulturelle Zugehörigkeiten*, ed. idem (München: Oldenbourg, 2004), 1–22.

period reconfigured during the shift of political rule, and whether they were compatible with the new understanding of the state and its monopolies.

*Liliana Hentosh* explores this question using the example of the Greek Catholic Church hierarchy's changing political and legal status in Galicia after the collapse of the Austrian Empire. Like Oksana Leskiv she takes a biographical approach analyzing the political career of Andrei Sheptytskyi who by appointment of the Vatican and the Austrian emperor in 1900 served for forty years as the Archbishop of Lviv and Metropolitan of Halych. Her investigation concentrates on the question of ambivalent loyalties during the shift from imperial rule to competing Ukrainian and Polish national states. Hentosh stresses that Sheptytskyi, who came from a Polish-Ruthenian family, had faced no choice of national belonging during imperial times and as the head of the Greek Catholic Church had enjoyed the status of a Habsburg official. After 1918, both his prominent political status as a cleric and his dual nationality, she claims, were unacceptable to the political leaders of the young nation states. Sheptytskyi's efforts to mediate between the competing national groups during the Ukrainian-Polish War (1918–1919) and at the international negotiations on the status of Eastern Galicia at the peace conference in Paris (1919–1923) were therefore to no avail. As a result, the metropolitan had to withdraw from political activity and through a symbolic oath swore loyalty to the Polish state while his Greek Catholic community drew him into the Ukrainian national movement.

### Ethno-religious coexistence in legal norm and practice

Throughout the entire period under consideration, the various ethno-religious communities and their individual members did not enjoy equal legal status. During the early modern period, personality of law, which meant that everyone was treated before the court in accordance with the law of his or her religious community or social estate, was the norm.[46]

Throughout the long 19th century, the confession of the empires' monarchs and at the same time of the dominant ethno-religious group enjoyed a privileged status while other confessions were tolerated in principle, but in practice often played a subordinate role in public life. Access to higher education and to state service was granted to members of some minority groups only gradually and not always permanently.[47] Only the establishment of democratic states and the

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46    Gillian R. Evans, *Law and Theology in the Middle Ages* (London et al.: Routledge, 2002), 87–90.

47    On the Jewish case see Benjamin Nathans, *Beyond the Pale: The Jewish Encounter with Late Imperial Russia* (Berkeley et al.: University of California Press, 2002), 201–309.

Soviet Union after World War I guaranteed full citizenship and equal rights to all residents regardless of their religious background. If we, however, take the example of Poland's March Constitution from 1921, Catholicism again received a leading position in the state, even though« freedom of religion was generally granted.[48] In stark contrast, religious institutions of any confession were closed down in the early Soviet Union.[49]

But what happens when we dissociate ourselves from these macro-categories? Mainly two questions come to the fore: 1. How were legal norms concerning hierarchies of religious communities put into practice, particularly in places where quantitative proportions did not correlate with the legal minority status? In other words, what role should be attributed to local solutions of ethno-religious coexistence, and should they prevent us from making generalizations?[50] 2. Who were the mediators between coexisting, at times competing religious communities, and what legal instruments did they use or develop for the purpose of successful cohabitation and mutual benefit?

It is in this sense that the contributions to this section explore regional and local constellations and partly focus on sophisticated instruments of legal interaction. *Anat Vaturi* undertakes a thorough revision of the many juridical and administrative functions of the Krakow voivode, the most important royal office holder in the early modern city, particularly with regard to his role in Catholic-Jewish interaction. Whereas older studies have stressed the voivodes' responsibility for jurisdiction over the Jews and classified their judgements as partly anti-Jewish, Vaturi draws our attention to their less visible activities, namely their interventions on behalf of peaceful Catholic-Jewish coexistence. Through a re-reading of privileges, court decrees, and administrative regulations she comes to the conclusion that it was the voivodes' many functions which enabled them to act as successful mediators in conflicts between Catholics and Jews: In cases when their juridical authority could not reach into the Catholic sphere they used their administrative competences to arrange settlements between the competing groups. Another strategy, she claims, was the bi-religious composition of the voievode's court that protected Jews from exclusively Catholic jurisdiction. Therefore, one can conclude that the voievodes fostered

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48    See esp. articles 111 and 114, http://libr.sejm.gov.pl/tek01/txt/kpol/e1921.html (accessed March 20, 2016).

49    William B. Husband, »*Godless Communists*«: *Atheism and Society in Soviet Russia, 1917–1932* (DeKalb: Northern Illinois University Press, 2000), 36–68.

50    An example was provided by Anna Reid who gave up writing a general history of Ukraine in favor of a history of the most prominent Ukrainian cities and towns. See Anna Reid, *Borderland: A Journey through the History of Ukraine* (New York: Basic Books, 2015).

interreligious dialogue through administrative means and soft skills rather than through normative law.

*Yvonne Kleinmann* also looks, in a different way, at instruments of mediation in a religiously heterogeneous setting. She undertakes a close reading of the town and guild privileges issued to the burghers and artisans in early modern Rzeszów, a medium-sized town under noble rule in Red Ruthenia, inquiring as to how religious diversity was reflected (or ignored) in these documents. First of all she states that, deviating from other towns, no privileges were addressed specifically at the Jewish population, whereas Jews, Roman Catholics, as well as small Protestant groups were the addressees of common general privileges. What sense could it make to the town lords, she asks, to integrate all groups into one privilege? In her further analysis she identifies the town privileges themselves as a means of maintaining the social peace between the Magdeburg law community of well-established Christian burghers and Jewish newcomers. The guiding principles, she claims, were proportional shares in taxation and maintenance of the town, mutual responsibility, the acceptance of the Magdeburg law courts in Christian-Jewish legal interaction, as well as neutrality in religious matters. In contrast, the privileges issued to the mixed guilds clearly expressed the Catholic artisans' efforts to impose Catholic symbols and rituals.

*Maria Cieśla* delves into the often neglected specifics of the early modern Grand Duchy of Lithuania. She raises the question whether there was legal equality between Jewish dwellers and Christian burghers in the cities and towns of the Grand Duchy. Though some sources claim that this was the case, using four issues, she demonstrates that the legal and social status of Jews differed substantially from that of Christians – both in normative law and in practice: On the basis of the privileges granted to them the Jews generally had no political rights within the cities, but did organize their own communities. As subjects of the king or of the magnate owning the city, they were subordinate to a different jurisdiction, which at least in some spheres granted them a higher legal status than the Christian burghers'. Cieśla acknowledges that a more or less equal treatment of Jews and Christians developed in terms of taxation whereas the economic activity of Jewish artisans and traders was much more restricted than that of their Christian peers. Differentiating between legal norm and practice, she points out that in everyday life the townsfolk tended toward cooperation, resulting, for example, in consultation with the Jewish communities by the towns' magistrates or in agreements to overlook restrictions imposed on Jewish artisans.

Moving our focus to the Russian imperial framework of the 19th century, *Eugene Avrutin* scrutinizes everyday legal disputes between neighbors of different religious and ethnic groups in the northwest provinces in the mid-nineteenth century. He argues that, although various minor quarrels occurred, archival

documents reveal few cases of intense conflict between members of different ethno-religious groups. Instead, when neighbors were unable to broker disputes satisfactorily among themselves, they made use of legal resources available in the form of civil courts. Avrutin examines the ways that imperial law could serve individuals to address disputes in three key contact zones: the neighborhood, the noble estate, and the marketplace. The central focus is on the ways that Jews and their mostly Catholic and Russian Orthodox neighbors made use of conflicting aspects of imperial law to settle quarrels and disputes over property, contractual obligations, and debt. Through the analysis of a series of court cases Avrutin implements claims made by supporters of the *New Imperial History*[51] over the last decade, based in the exploration of regional interactions rather than top-down relations between the tsarist government and its imperial subjects.

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51    Among others Ilya Gerasimov, Sergey Glebov, Jan Kusber, Marina Mogilner, and Alexander Semyonov, »New Imperial History and the Challenges of Empire,« in *Empire Speaks Out: Languages of Rationalization and Self-Description in the Russian Empire*, eds. Ilya Gerasimow, Jan Kusber, and Alexander Semyonov (Leiden–Boston: Brill, 2009), 3–32.