»Imagined Law« and »Imagined Communities«: Confessional Collectives and their Ideas for a Federal Habsburg Partition of Galicia

Nations do not just exist, nations are »made«. For several decades, contemporary historiography has been stressing the constructed character of national collectives, ever since Benedict Anderson coined the term »imagined communities«.[1] The constructed character of communities does not apply only to the concept of the nation, but also to the social and religious arenas. What counts as characteristic and essential with regard to a certain confessional community is dependent, to a significant degree, on the practices of its members and is the result of a process of negotiating, arguing, and imagining. These attempts serve to distinguish the respective denomination from others and to form its self-image and self-perception. The borderlines of the confessional communities imagined in this way are negotiable and shifting.

In contrast to this perspective, I claim that the law, while also being constructive, is capable of drawing distinctive lines between different groups at least from a normative perspective. It constructs, creates, and delineates certain communities by way of its specific normative means, including statutes, patents, and administrative acts, and through legal practice as it is reflected in court decisions. The law is often flexible enough to integrate newly emerging communities into its framework; although it is often too inflexible to answer social or political challenges. The federal plans for Galicia in the 19th century serve as an example for this.

Historical debates over legal reforms serve as an ideal mirror to reflect and to merge both the constructedness of confessional communities and the norma-

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1   Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 2006); Idem, *Die Erfindung der Nation: Zur Karriere eines folgenreichen Konzepts* (Frankfurt am Main et al.: Campus, 1996). Compare also the introduction in Hans Peter Hye, Brigitte Mazohl and Jan Paul Niederkorn, eds., *Nationalgeschichte als Artefakt: Zum Paradigma »Nationalstaat« in den Historiographien Deutschlands, Italiens und Österreichs* (Wien: Verlag der Österreichischen Akademie der Wissenschaften, 2009), 3–19.

tiveness of law. In this context, law becomes a field of imagination in itself, in which the representatives of »imagined communities« construct a law that cannot yet be implemented. I refer to this, therefore, as *imagined law*.

However, the logics of both of these discourses differ. Modern law, once normatively set, never refers to any single community, always dealing instead with competing and overlapping collective structures. This attribute of modern law, its universality, has influenced the discourse on *imagined law*. In contrast to concepts of nation or religion that refer to a single community, concepts of law and attempts at legal reform have to be phrased in a more general manner in order to be perceived as legal arguments and to serve more than only one community. In this respect, *imagined law* appears to be rather inclusive, whereas the imagination of national and religious communities tends to be exclusive.

In the second half of the 19th century, the conflict between socially constructed, »imagined« communities in the Habsburg Empire with their blurred borderlines and their legal-normative status resulted in attempts to bring about legal renewal and plans for federalization. The Habsburg partition of Galicia serves as a good example for the national, social, political, and religious contexts of these federalization plans.[2] My paper will focus on the question of how the proposed *imagined law*, and thus the imagined federal state, would deal with religious diversity of the imagined communities in Galicia, and which religious implications these plans contained. The Galician Jews and their federal ideas serve as the main example for this, while the role of Roman and Greek Catholicism is examined briefly.

Although all of the attempts to federalize the Habsburg monarchy in the 19th century ultimately failed, interest in a federal and multilayer state structure persisted throughout the century, both in the dynastic centre in Vienna and in the imperial peripheries. Considering the failure to put federalization plans into political practice, the underlying reasons for the remaining popularity of federal ideas deserve our attention. In the course of the second half of 19th century, at the latest, the Habsburg monarchy shifted from being a pre-modern empire with dynastic structures to an empire with elements of a composite state that relied on legal unity, the rule of law, and a rationalized administrative body.[3] This attempt

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2   Joachim Kühl, *Föderationspläne im Donauraum und in Ostmitteleuropa* (München: Oldenbourg 1958); Rudolf Wierer: *Der Föderalismus im Donauraum* (Graz–Köln: Böhlau, 1960).

3   I follow Osterhammel's opinion that the Habsburg monarchy can historically be regarded as an empire; see Jürgen Osterhammel, *Die Verwandlung der Welt: Eine Geschichte des 19. Jahrhunderts* (München: Beck, 2009), 624–627. For the debate on this question compare also Johannes Feichtinger, Ursula Prutsch, and Moritz Csáky, eds., *Habsburg postcolonial: Machtstrukturen und kollektives Gedächtnis* (Innsbruck et al.: Studienverlag 2003); Kerstin S. Jobst, Julia Obertreis, and

at legal unity was rather fragile, a fact that is best expressed with regard to the fragmentary character of Austrian constitutional law.[4] The dynastic unity was in fact also placed in question in the light of the historical formations to which the representatives of various national movements frequently referred, including former kingdoms, counties, and principalities.[5]

Attempts to rationalize and to centralize political governance through legal and administrative means, however, were mainly hindered by the lack of homogeneity within the society. Multi-ethnicity, different denominations and religious confessions, and social and economic divides did not provide the ideal ground for a homogenous national state – at least not in the case of the Empire – in accordance with what was perceived as the »Western model« realized for example in France. Federalism offered alternative ways to overcome this impasse, since it was based on decentralization and on a multilevel structure as befits a society with overlapping collective and individual identities and loyalties. Therefore, not only did parts of the Viennese bureaucracy favour federal models, but representatives of different social milieus participated in the debate on federalism as well.

The ideal of federalism as a viable alternative to both a centralized monarchy and the development of nation states led even to an overestimation of the federal model. Even today, especially in some national historiographies, the view has persisted that the thorough federalization of Austria could have successfully prevented the clash of nations that culminated in the breaking apart of the monarchy and the emergence of nation states in the aftermath of World War I. This perspective is caused by the prevailing national paradigm that still determines the historiography on federalism in the Habsburg Empire.[6] In this

Ricarda Vulpius, »Neuere Imperiumsforschung in der Osteuropäischen Geschichte: Die Habsburgermonarchie, das Russländische Reich und die Sowjetunion,« in *Ostmitteleuropa transnational*, ed. Peter Haslinger (Leipzig: Leipziger Universitätsverlag, 2008), 27–56; Pieter M. Judson, »L'Autriche-Hongrie était-elle un empire?,« *Annales, Histoire, Sciences sociales* 63 (2008): 563–596.

4   After the failure of Austrian constitutionalism, from December 21, 1867 on, Austrian constitutional law consisted of five special statutes known as the *Staatsgrundgesetze des Kaiserthums Österreich* or *Dezemberverfassung* that referred only to certain important aspects of the state's organization; they were not introduced through the usual set of general constitutional principles common to modern constitutionalism. For details, see the German version of the constitution at http://www.verfassungen.de/at/.

5   Rudolf Schlesinger, *Federalism in Central and Eastern Europe* (London: Kegan Paul, 1945), 155–158.

6   See Csilla Dömök, *Nationalitätenfrage und Verfassungsgeschichte in Österreich zwischen 1848–1867: Österreich und der Föderalismus* (Berlin: wvb, 2010). Compare also Helmut Rumpler, *Eine Chance für Mitteleuropa: Bürgerliche Emanzipation und Staatsverfall in der Habsburgermonarchie* (Wien: Ueberreuter 1997);

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context federalization is seen as a legal mean of placating the demands of national movements and of creating nationally more or less homogenous spaces. Helmut Rumpler has depicted this perspective as naïve and called it a »myth« that a federal order in the Danube area would have served to »reconcile the nations«.[7]

In addition to the national aspect, however, one must not overlook the social, economic, and religious components of a federal order. Especially with regard to the history of the Habsburg Empire, federalism stands for an order that would integrate the vast social heterogeneity of the region, i.e. federalism is the organization of diversity.

The partition plan for Galicia, 1848–1849

Galicia played a major role in many of the discussions held on introducing federalism to the Habsburg Empire. One has to look at its social, ethnic-national, and religious settings in order to understand these attempts. The strong entanglement between religion and nationality or ethnicity in Galicia contrasted sharply with the situation in other Habsburg crownlands (*Kronländer*). In Galicia the degree of differentiation between one's national or ethnic identity and one's religious adherence could be quite significant. The largest ethnic groups in Galicia were the Poles, Ruthenians, and Jews,[8] whereby the Poles and Ruthenians also corresponded with the major denominations of Roman Catholics and Uniates, later Greek Catholics.[9] Uniatism was supported by the Ruthenian Palatinate at the beginning of the 18th century in opposition to Orthodoxy, although before the three partitions of Poland-Lithuania it had often been regarded as a form of second-class Catholicism by the Polish rulers and society. The name of the Uniate Church was thus changed to the Greek Catholic Church during the Habsburg period as a means of associating with it a higher status, and it was granted at least formal-legal equality with other denominations during the Enlightenment era under Maria Theresa and Joseph II. While the Roman

Robert A. Kann, *Das Nationalitätenproblem der Habsburgermonarchie: Geschichte und Ideengehalt der nationalen Bestrebungen vom Vormärz bis zur Auflösung des Reiches im Jahre 1918*, 2 vols., 2. ed. (Graz–Köln: Böhlau, 1964); Kühl, *Föderationspläne*; Wierer, *Föderalismus*.

7   Helmut Rumpler, *Das Völkermanifest Kaiser Karls vom 16. Oktober 1918: Letzter Versuch zur Rettung des Habsburgerreiches* (München: Oldenbourg, 1966), 5.

8   For more details, see Rudolf A. Mark, *Galizien unter österreichischer Herrschaft. Verwaltung-Kirche-Bevölkerung* (Marburg: Herder-Institut, 1994), 53–65.

9   For the following compare John-Paul Himka, »Confessional relations in Galicia,« in *Galicia: A multicultured land*, eds. Christopher Hann and Paul R. Magocsi (Toronto et al.: University of Toronto Press, 2005), 22–35.

Catholic Church clung to its lost privileges in Galicia, the Greek Catholics profited in the long run by the emergence of an educated Ruthenian clergy that later played an important role within the national movement.[10] After the failure of the revolution of 1848–1849 the antagonism between the Roman and the Greek Catholics increased further, and hence between Ruthenians and Poles.

The reasons for this confrontation were threefold. They were national, since the majority of Ruthenians gradually became pro-Russian or at least anti-Polish in orientation; they were social, since land ownership was predominantly the domain of the Polish Roman Catholic landlords, despite the abolition of serfdom in 1848 that had emancipated the Ruthenian Greek Catholic peasants; and they were religious, since the inter-confessional struggle for influence, dominance, and souls persisted between the Roman and Greek Catholics. Conflicts thus hardened along social, ethnic, and religious lines.

The situation was also aggravated by the fact that 19th-century Viennese politics relied mostly on the Poles and the Roman Catholic Church.[11] This is illustrated by the fact that a ministry was established, officially without portfolio, to deal with Galician affairs, but which was led exclusively by a Pole who acted more as a representative of his nation than of his region.[12] In the last decade of 19th century, Vienna intervened quite often in the internal matters of the Greek Catholic Church, e.g. by supporting the reforms of monastic life within the Basilian order that were implemented by the Vatican. It also took measures to further the process of Polonization and to nurture Roman Catholicism as a means of opposing religious Russophilism.[13]

This bi-confessional and bi-national conflict is reflected in the discussions on the creation of a federal order throughout the 19th century. One example can be found in the debates on a new constitution in the Kremsier Revolutionary Assembly (*Reichstag*) of 1848–1849. Although federalists were much the minority, both sides, Poles and Ruthenians, made efforts toward the federalization of the

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10   Oleh Turij, »Die Griechisch-Katholische Kirche und die Entstehung der ukrainischen nationalen Bewegung in Galizien,« *Ostkirchliche Studien* 47 (1998): 3–21. Compare also Oksana Leskiv in this volume.

11   See Rumpler, *Chance für Mitteleuropa*, 287–289, 429–431; Himka, »Confessional Relations,« 29; compare also Idem, *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).

12   For details, see Christoph von Bieberstein, *Freiheit in der Unfreiheit: Die nationale Autonomie der Polen in Galizien nach dem österreichisch-ungarischen Ausgleich von 1867. Ein konservativer Aufbruch im mitteleuropäischen Vergleich* (Wiesbaden: Harrassowitz, 1993), 125–132.

13   For details, compare Himka, *Religion and Nationality*, 73–134, especially 79–84, 121–125.

Austrian monarchy. One interesting proposal for a federal partition of Galicia into two parts was made by one of the leading Ruthenian deputies, the Greek Catholic bishop of Przemyśl, Gregor Jachimowicz. His request was already widely supported by the Ruthenian inhabitants of Galicia before the elections to the Kremsier Reichstag, but was rejected by the Polish Galicians.[14] Jachimowicz was part of the Ruthenian clergy and intelligentsia that formed a parliamentary alliance with Ruthenian peasant deputies, representing an »awakening of national sentiment«.[15] With the support of Polish deputies, however, he was elected to the Constitutional Commission of the Kremsier Reichstag.[16]

While Florian Ziemialkowsky, the Polish Galician deputy of the Constitutional Commission in Kremsier, favoured the federal partition of the monarchy along the existing borders of the crownland and thus upheld the territorial unity of Galicia, Jachimowicz and his supporters in Ruthenian society sought the federal division of Galicia into Polish and Ruthenian parts. None of these attempts succeeded in the end.[17] Especially interesting at this point, however, are the roles that religion and nation played in the logic of the accompanying discourse. According to contemporary self-perception, the Ruthenian movement of 1848 was part of a national awakening, although from the perspective of *the other*, that is Polish politicians and representatives, the Ruthenians did not form a nation, but were bound together only by a common dialect and faith. The Ruthenians adamantly and emotionally argued against this point of view,[18] as illustrated in a speech given by Prokopczyk, a representative at Kremsier:

14   Anton Springer, *Protokolle des Verfassungs-Ausschusses im Österreichischen Reichstage 1848–1849* (Leipzig: Hirzel, 1885), 24; Wierer, *Föderalismus*, 38; Rudolf Wagner, *Die Revolutionsjahre 1848/49 im Königreich Galizien-Lodomerien (einschließlich Bukowina): Dokumente aus österreichischer Zeit* (München: Der Südostdeutsche, 1983), 54–73; Andreas Gottsmann, »Der Reichstag 1848/49 und der Reichsrat 1861–1865,« in *Die Habsburgermonarchie 1848–1918*, vol. 7/1/1, *Verfassung und Parlamentarismus: Verfassungsrecht, Verfassungswirklichkeit, zentrale Repräsentativkörperschaften*, eds. Helmut Rumpler and Peter Urbanitsch (Wien: Verlag der Österreichischen Akademie der Wissenschaften, 2000), 569–665, here 583; Jan Kozik, *The Ukrainian National Movement in Galicia, 1815–1849* (Edmonton: Univ. of Alberta, 1986).

15   Gottsmann, »Der Reichstag 1848/49,« 586–587; John-Paul Himka: *Galician villagers and the Ukrainian national movement in the nineteenth century* (New York: St. Martin's Press, 1988), 123–142.

16   Leopold Sacher-Masoch, *Polnische Revolutionen: Erinnerungen aus Galizien* (Prag: Credner 1863), 320.

17   Wierer, *Föderalismus*, 38; Larry Wolff, *The Idea of Galicia. History and Fantasy in Habsburg Political Culture* (Stanford: Stanford University Press, 2010), 191.

18   Bieberstein, *Freiheit in der Unfreiheit*, 40; Schlesinger, *Federalism*, 158. Schlesinger mentions the fact that, at the Prague Slavic Congress, left-wing Polish politicians agreed with the Ruthenians/Ukrainians on the basis of equal rights for both Galician peoples, ibid.

> I do not understand how religion is to be seen to define who is a Ruthenian; it is my view that ancestry alone accounts for a nation […] I hope that these representatives do not follow this […] as such a distinction only arises from a disposition towards persecution.[19]

Even if one agrees with Prokopczyk's argument, one has to admit that the Ruthenian nation-building process was nevertheless partly founded on the basis of the Greek Catholic clerical infrastructure, both institutional and intellectual. Jachimowicz explicitly stated at the Kremsier Constitutional Commission that it was natural for the Greek Catholic clergy to represent Ruthenian national interests.[20] This presages the processes of the nationalization of religion and sacralization of the nation that would take place later.[21] The Polish Galician representative Ziemialkowsky pointed to the fact that Ruthenian peasants who supported the partition of Galicia into two parts had signed the relevant declaration only after being asked by representatives of the Greek Catholic Church to do so.[22] Polish Galicians from Lviv, alarmed by the suggested partition and ready to weaken the increasing political power of the Greek Catholic Church, wrote to the Crown in November 1848:

> We thus dare to lay at the steps of the throne of His Majesty our plea that the decision about the partition of Galicia (into two provinces) not be made before public opinion is consulted via political avenues and not via the church.[23]

Although these concrete Ruthenian partition plans failed as did similar Polish attempts, federalization plans remained on the political agenda. After the Austrian-Hungarian Compromise they led to the »Resolution Campaign« of 1868 that was initiated in the Galician *Landtag* by the federalist and national democrat Frantiszek Smolka as a protest to centralistic Viennese politics.[24] These

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19 Sacher-Masoch, *Polnische Revolutionen*, 322.
20 Springer, *Protokolle des Verfassungs-Ausschusses*, 25.
21 Compare Ricarda Vulpius, »Der Kirchenkampf in der Ukraine als Beispiel für Sakralisierung der Nation und Nationalisierung der Religion (1917–1921),« in *Nationalisierung der Religion und Sakralisierung der Nation im östlichen Europa*, ed. Martin Schulze Wessel (Stuttgart: Steiner, 2006), 101–118.
22 Springer, *Protokolle des Verfassungs-Ausschusses*, 20.
23 »So wagen wir es, an den Stufen des Thrones Eurer Majestät die Bitte niederzulegen, daß die Frage über die Theilung Galiziens (in zwei Provinzen), nicht entschieden werde, bis die Meinung der Bevölkerung auf politischem, nicht auf kirchlichem Wege eingeholt werden wird.« Wagner, *Revolutionsjahre 1848/49*, 60.
24 Compare Stanislaw Grodziski, »Der Landtag des Königreiches Galizien und Lodomerien,« in *Habsburgermonarchie 1848–1918*, vol. 8/2, *Politische Öffentlichkeit und Zivilgesellschaft: Die Presse als Faktor der politischen Mobilisierung*, 2163–2165; Hans-Christian Maner, *Galizien: Eine Grenzregion im Kalkül der Donaumonarchie im 18. und 19. Jahrhundert* (München: IKGS Verlag, 2007) 129–146; Bieberstein, *Freiheit in der Unfreiheit*.

and later attempts were crucial in the establishment of an elevated while not fully autonomous status of Galicia within the Empire.[25] However, church activity and nationalist politics had then ceased to be as intertwined.[26]

The concept of personal autonomy

The federalist concepts that were discussed at the Kremsier Reichstag in 1848–1849 and later debated in the Imperial Council (*Reichsrat*) by representatives of the emerging national movements[27] were founded on the premise of homogeneity within the imagined constituent states of the proposed federation. They were inspired by the examples of existing federal countries such as the United States of America and Switzerland and sought to draw new borders in accordance with presumed historical, national, and linguistic areas. The guiding idea behind these attempts was the creation of a set of homogeneous spaces within a heterogeneous unit, an idea that reflected the contemporary territorialization of national discourse.[28] As discussed above, the prevailing national, social, confessional, and economic diversity within the Habsburg monarchy – both at the micro- and macro-levels – contrasted with these visions of federal territorialization as based on such an assumption of homogeneity.

Beyond this national territorial discourse, however, that was taking place in parliamentary bodies such as the *Reichstag* and the *Reichsrat* as well as in regional assemblies (*Landtage*), important alternative ideas also evolved that did not adhere to a territorial paradigm of national discourse or, for that matter, to the traditional territorial view of federalism. The most intriguing concept, developed with regard to national diversity by the Social Democrats Karl Renner and Otto Bauer, was described as »autonomy based on the personality principle« or simply

25   Bieberstein, *Freiheit in der Unfreiheit*.
26   Himka, *Religion and Nationality*, 158–162.
27   Compare Wierer, *Föderalismus*; Erika Weinzierl, »Föderalismus und Zentralismus in den Verfassungskämpfen des 19. Jahrhunderts,« in *Der österreichische Föderalismus und seine historischen Grundlagen*, ed. Institut für Österreichkunde (Wien: Hirt, 1969); Robert A. Kann, *Das Nationalitätenproblem der Habsburgermonarchie: Geschichte und Ideengehalt der nationalen Bestrebungen vom Vormärz bis zur Auflösung des Reiches im Jahre 1918*, vol. 2, *Ideen und Pläne zur Reichsreform*, 2. ed. (Graz–Köln: Böhlau, 1964), 20–45; Josef Redlich, *Das österreichische Staats- und Reichsproblem: Geschichtliche Darstellung der inneren Politik der habsburgischen Monarchie von 1848 bis zum Untergang des Reiches*, vol. 1, *Der dynamische Reichsgedanke und die Entfaltung des Problems bis zur Verkündigung der Reichsverfassung von 1861* (Leipzig: Der Neue Geist Verlag, 1920), 221–323; Springer, *Protokolle des Verfassungs-Ausschusses*.
28   On this aspect of »imagined territories« and political discourse, see Peter Haslinger, *Nation und Territorium im tschechischen politischen Diskurs, 1880–1938* (München: Oldenboug, 2010), 1–33.

»personal autonomy« as a form of non-territorial ethnic autonomy.[29] This kind of *imagined law* creates boundaries among national cultural collectives, not according to territoriality, but on the basis of personal decisions. It was a consequence of Renner's insight that it was impossible to determine even county boundaries along national lines without seriously violating legitimate cultural, economic, and administrative interests.[30] His system of dual federalism involved two elements: first, the historical crownlands were recognized as the cornerstones of a classical form of territorial federalism; and second, within those component states, power would be devolved to the nations that made up the population of the Empire. Thus, the population within a certain territory was divided into different national cultural collectives available for individual citizens to choose. These individual cultural and linguistic rights were not tied to a certain place or territory, but portable throughout the Empire.

Issues that dealt with questions of nationality such as culture, education, and language were to be administered at the level of the *Kronländer*, whilst political, economic, and material affairs were to be handled at the central federal level. Both legislative bodies would be elected by direct, equal, and universal male suffrage, but also be internally divided into separate *curiae* of nationalities. To insure the highest possible degree of autonomy, moreover, there would be elected regional and local bodies for each ethnicity and each locality in order to raise taxes and funds for cultural and educational programs. After a modified version of *personal autonomy* had been established as a legal principle in the Moravian Compromise of 1906, its implementation was discussed for Galicia and Bukovina as well.[31] This concept did not only attract the attention of the

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29   On the following, see Karl Renner, *Der Kampf der Oesterreichischen Nationen um den Staat* (Leipzig: Franz Deuticke, 1902); Otto Bauer, *Die Nationalitätenfrage und die Sozialdemokratie* (Vienna: Verlag der Wiener Volksbuchhandlung Ignaz Brand, 1908); Hans Mommsen, »Otto Bauer, Karl Renner und die sozialdemokratische Nationalitätenpolitik in Österreich 1905–1914,« in *Studies in East European Social History*, ed. Keith Hitchins, vol. 1 (Leiden: Brill, 1977), 3–32; John Coakley, »Approaches to the Resolution of Ethnic conflict: The strategy of non-territorial Autonomy,« *International Political Science Review* 3 (1994): 297–314; Börries Kuzmany, »Der Galizische Ausgleich als Beispiel moderner Nationalitätenpolitik?«, in *Galizien. Peripherie der Moderne – Moderne der Peripherie*, eds. Elisabeth Haid, Stephanie Weismann and Burkhard Wöller (Marburg: Herder-Institut, 2013), 123–141.

30   Schlesinger, *Federalism*, 215.

31   The Moravian Compromise of 1906 was meant to solve the problem of equality for nationalities without territorial autonomy. Each individual Moravian citizen had the opportunity to opt for a certain national cadastre, German or Czech. This cadastre formed a mutually exclusive corporative body from which members of the Moravian Diet were elected, each with powers for self-government in areas such as agriculture, commerce, and education. See Horst Glassl,

Polish and Ruthenian national movements there, but also served as an important intellectual inspiration for another group, whose legal definition shifted in line with various ethnic, national, and religious perceptions – the Jews.

The strong tradition of self-government: Jewish attempts at personal autonomy

After the partitions of Poland-Lithuania, the Habsburg Empire became home to the largest group of Jews living outside Russia. The Jewish population of Galicia of that period constituted the largest number of Jews within the Empire and outnumbered the Jews living in all the states of Western Europe.[32] However, the Galician Jewish community was not only remarkable in terms of its sheer number. For the question of federalism it is of greater relevance that Jews held special rights as a corporative body, inherited from the times of the Polish-Lithuanian *Rzeczpospolita*. From a legal-normative point of view this status had carved out a community with distinct boundaries. During the Polish era, this status did, however, have discriminating features involving prescriptions, duties, regulations, and interdictions in various social and economic respects; and it did not include citizenship. On the other hand, the status guaranteed self-administration, self-jurisdiction, and self-government within the existing network of Jewish communities; Jewish municipalities were not only in charge of cultural affairs but decided on judicial matters within the Jewish community as well.[33] This remained a central matter with regard to Jewish identity in Galicia even after the loss of the Jews' particular legal status during the Era of Enlightenment under Maria Theresa and Joseph II.[34] Due to their relative independence, the Galician Jews were not only regarded as a religious, but also as a »political group«.[35] John

Der mährische Ausgleich (München: Fides, 1967); Gerald Stourzh, Die Gleichberechtigung der Nationalitäten in der Verfassung und Verwaltung Österreichs 1848–1918 (Wien: Verlag der Österreichischen Akademie der Wissenschaften,1985), 213–228, 233–240; Tara Zahra, Kidnapped souls: National indifference and the battle for children in the Bohemian Lands, 1900–1948 (Ithaca, New York: Cornell University Press, 2008), 32–39.

32 Victor Karady, *The Jews of Europe in the Modern Era* (Budapest–New York: CEU Press, 2004), 149; Maner, *Galizien*, 233.

33 For details see *Österreichisches Staatswörterbuch: Handbuch des gesamten österreichischen öffentlichen Rechtes*, ed. Ernst Mitschler and Josef Ulbrich, vol. 2 (Wien: Hölder, 1906), s.v. »Juden«, 946–971, here 965–966; Wolfgang Häusler, *Das galizische Judentum in der Habsburgermonarchie: Im Lichte der zeitgenössischen Publizistik und Reiseliteratur von 1772–1848* (München: Oldenbourg, 1979).

34 Israel Bartal, *Geschichte der Juden im östlichen Europa 1772–1881* (Göttingen: Vandenhoeck & Ruprecht, 2010), 89.

35 *Österreichisches Staatswörterbuch*, vol. 2, s.v. »Juden – Israelitische Kultusangelegenheiten«, 971–981, here 972.

Coakley has called this status an »early form of non-territorial ethnic autonomy«.[36]

Within the Habsburg Empire, the situation changed drastically. The policies pursued towards the Galician Jewry under Maria Theresa had three aims: restricting the growth of the Jewish population; profiting from their economic activities; and centralizing the administration of Jewish affairs at the state level.[37] Formally, Jewish political and cultural autonomy as well as Jewish legal autonomy in religious affairs remained unquestioned. The Jewish institutions of self-government, however, were subjected to the control and authority of state officials and thus dismantled.[38] Joseph II took additional measures towards dismantling Jewish self-administration as part of his modernization policy. Its general aim was, first, to legally, politically, and culturally unify an Empire with few common constitutional and socio-political structures by way of integrating autonomous and corporate institutions into a centralized administration. Secondly, he attempted to implement his political vision of separating state politics and religion.[39] Thus, due to this new enlightened and integrationist approach based on Joseph's view of tolerance,[40] Jews gained a number of new political and civic rights and became subject to general laws, although a large number of discriminating statutes were not in fact abolished. In 1789, furthermore, the establishment of a new municipal order meant that the Galician Jews definitively lost their particular legal status as a separate political body and henceforth counted only as a religious group.[41] This development continued during the constitutional era after 1848, which provided for confessional equality and freedom of movement, even as this did not go into practice until 1867/1868. By 1868, the Jews of Galicia were fully emancipated, at least from a legal perspective.[42]

36   Coakley, »Resolution of ethnic conflict«, 299.
37   Karady, *Jews of Europe*, 151; Bartal, *Geschichte der Juden*, 81–83; Teresa Andlauer: Die jüdische Bevölkerung im Modernisierungsprozess Galiziens, 1867–1914 (Frankfurt am Main et al.: Lang, 2001), 63–68.
38   Maner, *Galizien*, 236. For a European perspective, see Philipp Lenhard, *Volk oder Religion? Die Entstehung moderner jüdischer Ethnizität in Frankreich und Deutschland 1782–1848* (Göttingen: Vandenhoeck & Ruprecht, 2014).
39   Bartal, *Geschichte der Juden*, 86; Andlauer, *Jüdische Bevölkerung Galiziens*, 63–68.
40   Dirk Sadowski, *Haskala und Lebenswelt: Herz Homberg und die jüdischen deutschen Schulen in Galizien 1782–1806* (Göttingen: Vandenhoeck & Ruprecht, 2010), 13–15.
41   Karady, *Jews of Europe*, 156; Maner, *Galizien*, 238. For further details, see *Österreichisches Staatswörterbuch*, vol. 2, s.v. »Juden«, 966–967, and s.v. »Juden – Israelitische Kultusangelegenheiten«, 973.
42   Himka, »Confessional relations,« 29; Maner, *Galizien*, 246; Andlauer, *Jüdische Bevölkerung Galiziens*, 75–80; Małgorzata Śliż, *Galicyjscy Żydzi na drodze do*

The case of Galician Jewry during the transition period from the early modern era to modernity brings greater clarity to the constructive and deconstructive power of the law. During the Polish era, the Jews' special legal status had normatively carved out a political community and had influenced its identity at least to a certain degree by way of both legal privileges and discriminative measures.

During the Habsburg era, however, the legal abolition of privileges and – although with a considerable delay – that of discriminative acts, removed the boundaries of what had formed a type of legally constituted »gated community«. Deprived of their special legal status, the Galician Jews found themselves integrated into the general legal order of the Empire, but reduced to the status of a religious community. Nevertheless, tearing down the normative boundaries of this collective as a political body led neither to the sacralization of the community nor to the individualization of its members. The Galician Jews were legally emancipated at a time when the national question had been coming to a head in a manner hitherto unknown. Jewish identity was thus shaken through the elimination of a Jewish special legal status in three ways: It was impossible to return to the early modern understanding of Jews as a corporative political body anchored in special rights, since that would have fully contradicted the contemporary modern ideal of law as a system of universal rules and civic equality. The Jews, however, did need to respond both to the official legal perception of Judaism as a religion and to the challenges of the national agenda of the time. Positively speaking, the shaking of Jewish identity and the removal of prohibitions and hindrances broadened the scope for new ideas, whether from legal-normative or socio-political perspectives.

Jewish intellectuals around the turn of the century were very productive in developing or modifying concepts to answer these challenges. While Samuel Bloch, a politician of Galician origin, imagined a transnational Austrian identity for the Jews against a religiously imprinted background, Simon Dubnow, a prominent historian and political leader of the Russian Jewish community,[43] transformed the tradition of self-government into a positive self-image for Jews. He claimed that Jews with their more personal rather than territorial ties to each other formed the »most historical nation« among nations, as they did not have to rely on territory to shape their national identity. This point became part of his concept of diaspora-nationalism. Like the Bundist movement that offered a secular concept of Jewishness, this view had a

równouprawienia 1848–1914. Aspekt prawny procesu emancypacji Żydów w Galicji (Kraków: Księgarnia Akad., 2006).

43   Viktor E. Kelner, *Simon Dubnow: Eine Biografie* (Göttingen: Vandenhoeck & Ruprecht, 2010).

preference for local *personal autonomy*. In the following I will set aside the strong assimilative tendencies of the Jewish liberals of the period, who aimed to merge Jewish identity into the national culture of surrounding peoples, as well as the branches of the Zionist movement that sought to bring about a Jewish national state beyond the borders of the empires. Instead I will focus on the intellectuals in question who dealt with an imagined form of federalization, i.e. with an imagined »personal autonomy« in a federal state.

These ideas of a renewed state order built on the principle of personal autonomy evoke a type of federalization without territory based on *personal autonomy*. Not surprisingly, there were no attempts to create a »Jewish crown-land« within the Habsburg Empire. The lack of a Jewish core territory that could serve as part of a federal state was too glaring, even if one were to submit that there were cases of other nationalities and groups without as clear-cut a homogeneous homeland as might have been claimed by their national move-ments. These could also be seen to be historical and political constructs to some degree. However, even if some Jewish politicians like Samuel Bloch favoured the model of a federalized Austria at the macro-level, they stressed the non-territorial features of such an imagined federal state at the local level. Bloch supported the federal plans of the moderate democrat Adolf Fischhof and thus stood in contrast to many liberal Jews of western Austria who favoured a centralized, German-speaking governmental system.[44] The federalization of Austria was meant to assure reconciliation among the nationalities in connection with the idea of an Austrian identity.

Bloch's concept of an Austrian Jewish identity consisted of two elements that are more complementary than contradictory: an ethnic, cultural, and religious element that tied primarily to non-political contexts; and a civic Austrian element connected to the political arena that was based on equal rights and equality before the law as fundaments of a modern democratic Austrian state (*Rechtsstaat*).[45] Jewishness, as Bloch saw it, was thus more a question of ethnicity than nationality. In contrast to Fischhof's idea of an Austrian identity, Bloch pointed out that his conception was not only inspired by enlighten-ment, but also by Talmudic law and Jewish thought as well.[46] The federal legal state Fischhof and Bloch imagined was structured territorially along historic and national lines, but also provided for strong autonomy rights at the local level, comprising all matters of municipal nature, schooling, health, culture,

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44   Ian Reifowitz, *Imagining an Austrian Nation: Joseph Samuel Bloch and the Search for a Multiethnic Austrian Identity, 1846–1919* (New York: Boulder, 2003), 39, 123–124.

45   Reifowitz, *Imagining an Austrian Nation*, 127, 161–162.

46   Ibid., *Imagining an Austrian Nation*, 162.

and police, while transnational matters were to be solved at the central level.[47] Not surprisingly, Bloch found his most receptive audience in Galicia and Bukovina.[48]

While Bloch did not directly tackle the problem of Jewish non-territoriality, Simon Dubnow re-interpreted the early modern history of Jewish self-government during the Polish-Lithuanian era, with its non-territorial aspects, as a specific Jewish path toward modernity. Jewish autonomy as it had been realized in Poland-Lithuania was, as he saw it, not so much a model for the future as a constructive element for his national narrative. He did not thus fall back upon ideas of a legal corporative status for the Jews with special rights and privileges that would have adhered more to the logic of an early modern legal system than to the modern legal ideals of universality and equality. The tradition of Jewish self-government became a cornerstone of his conception of nationalism within the diaspora and was combined with political visions of a pluralistic, democratic, multinational polity.[49]

Dubnow argued that the Jewish municipality, the *kahal*, was to be regarded as a surrogate for the territorial nation state, and went even further than that.[50] He distinguished among three stages in the evolution of nations: the first, a natural state, was defined by way of tribe or race; the second was characterized by territorial-political bodies; and the third, most recent and elaborate stage was defined spiritually, historically, and culturally.[51] In this last stage, a historically and spiritually defined nation would be virtually indestructible once freed of being anchored to a territory or state. In his view, only the Jews had taken this path of a spiritual-cultural nation by way of an uninterrupted chain of autonomous rule.[52] This tradition of autonomy thus represented a sociological basis for a Jewish national history. Dubnow's concept was not meant to proclaim a »religious nation«, as Judaism was defined as a cultural entity; nevertheless, adherence to the Jewish nation still remained deeply connected to Jewish faith.[53] The core of Dubnow's autonomist thinking displayed striking similarities with

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47   Wierer, *Föderalismus*, 99–100. For similarities with Renner, see Reifowitz, *Imagining an Austrian nation*, 198–213.
48   Ibid., 127.
49   Anke Hilbrenner, *Diaspora-Nationalismus: Zur Geschichtskonstruktion Simon Dubnows* (Göttingen: Vandenhoeck & Ruprecht, 2007), 119–121.
50   Ibid., 121.
51   Ibid., 111–116; Simon Dubnow, »Essays on the Old and New Judaism,« in *Nationalism and History*, ed. Koppel S. Pinson (Philadelphia: Jewish Publication Society of America, 1958), 73–241.
52   Hilbrenner, *Diaspora-Nationalismus*, 114; Karady, *Jews of Europe*, 292.
53   Compare Dieter Langewiesche, *Reich, Nation, Föderation: Deutschland und Europa* (München: Beck, 2008), 78.

the Austrian Social Democratic view of *personal autonomy*.[54] Similarly, also branches of the Zionist movement, as demonstrated by the Zionist Krakow Programme of 1906 and its representative Hermann Kadisch, supported the implementation of »personal autonomy«, that is the idea of an Austrian federation of nationalities based on personal affiliation.[55]

Another definition of Galician Jewry was propagated by the Bundist movement, the General Jewish Workers' Union in Lithuania, Poland, and Russia (*Algemeyner Yidisher Arbeter Bund in Lite, Poyln un Rusland*), that had founded a Galician sister organization in 1905. The *Bund*, as a social class organization, at first represented the interests of Jewish workers but, as a reaction to anti-Semitic violence, soon moved toward a more general advocacy of Jewish interests. The organization's main demands were the cultivation of the Yiddish language, an autonomous secular and often even antireligious nationalism, and the recognition of Jews as a national minority.[56] In contrast to Bloch and Dubnow, the Bundists did not refer to religion as a constitutive element of Jewishness. Until 1901, they, moreover, partly rejected Dubnow's view of a global Jewish identity and nation.[57] Instead, the Bundists' »imagined community« continued to be defined primarily in ideological terms and in terms of class interest. They criticized Dubnow's concept of a Jewish nation for glossing over social struggles and differences. However, as it became inevitable that the national question needed to be addressed, the *Bund* fully adopted the ideas of *personal autonomy* within a federal state as proposed by Austrian Social Democrats such as Renner.[58]

These competing concepts of Jewish identity, ethnicity, and nationality represent only a small selection of the ideas on Jewishness at the time. However, all of these contrasted strongly with the legal status of the Jews as a mere religious community within the Habsburg Empire. The government and bureaucracy were, moreover, unwilling to accept the different Jewish factions as legal entities – even if they were ready to negotiate with all of them – but

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54 Hilbrenner, *Diaspora-Nationalismus*, 124–126.
55 Marsha L. Rozenblit, »The Dilemma of Identity: The Impact of First World War on Habsburg Jewry,« in *The Habsburg Legacy: National Identity in Historical Perspective*, eds. Ritchie Robertson and Edward Timms (Edinburgh: Edinburgh University Press, 1994, 144–157, here 148–149.
56 Karady, *Jews of Europe*, 294–295.
57 Henri Minczeles, *Histoire générale du Bund: Un mouvement révolutionnaire juif* (Paris: Austral, 1995), 278–279; Enzo Traverso, *Die Marxisten und die jüdische Frage: Geschichte einer Debatte 1843–1943* (Mainz: Decaton, 1995), 108.
58 Minczeles, *Histoire générale du Bund*, 242–243; Traverso, *Marxisten und jüdische Frage*, 108.

referred to Judaism as to a religion only.[59] The *imagined law* of a federal state with strong elements of *personal autonomy* that was postulated by Jewish intelligentsia challenged the Viennese political centre; the arena where conflicts of collective status and identity were usually carried out was in fact language politics.

Confronted with national conflict, the central Habsburg administration tended to leave questions of nationality open, refraining from defining the evolving boundaries between nationalities or from making use of the constructive potential of the law and norms as a means of drawing distinctive lines among collectives. In line with this policy, none of the censuses that were carried out every ten years, beginning in 1880, raised data on nationality in order to prevent a sharpening of the conflict, referring instead to religion and language only. Much in contrast to the intentions of the government, however, the category of *language* was soon becoming a political substitute for the term *nationality* and language statistics were commonly used as a means of pursuing national politics.

The statistics are nevertheless to be read carefully with regard to the Jews.[60] While the census did not expressly deny the Jews a status as a nationality – as it did not refer to such a category in the first place – it also did not offer the opportunity to choose a language specific to the Jewish community as neither Yiddish nor Hebrew were recognized as official languages spoken in the Empire (*landesübliche Sprachen*).[61] The combination of the parameters of religion and language reveals that the Galician Jews moved, somewhat ambivalently, among the languages German, Polish, and Ruthenian in the official statistics. This can be interpreted in two ways – as a parameter for national, political, or cultural belonging, or as a declaration of political loyalty. In the eyes of contemporaries, however, this lack of homogeneity seemed rather suspicious.[62] Part of the Jewish intelligentsia wanted to have clear-cut categories and official recognition as a Yiddish-speaking linguistic community.[63] Further momentum toward these aims was provided by the aforementioned Moravian Compromise and the subsequent failure of similar negotiations in Galicia and Bukovina that would

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59 Karady, *Jews of Europe*, 165–166; Andlauer, *Jüdische Bevölkerung Galiziens*, 326–327. This rule differed from the legal situation e.g. in Prussia, see *Österreichisches Staatswörterbuch*, vol. 2, s.v. »Juden – Israelitische Kultusangelegenheiten«, 975.

60 With respect to Galicia and for further details, compare Emil Brix, *Die Umgangssprachen in Altösterreich zwischen Agitation und Assimilation: Die Sprachenstatistik in den zisleithanischen Volkszählungen 1880–1910* (Wien–Köln–Graz: Böhlau, 1982), 353–389.

61 Brix, *Umgangssprachen*, 355.

62 Ibid.

63 Andlauer, *Jüdische Bevölkerung Galiziens*, 318–320.

have led to a Jewish electoral register and parliamentary representation. Such a compromise would have opened the possibility for the recognition of Jews as a national minority.

Negotiations collapsed, however, due to intervention of Galician Polish politicians in Vienna who feared the interruption of the ongoing pro-Polish assimilation process and the creation of a third competing ethnic and political group of appreciable strength.[64] Galician bishops also opposed an anticipated Jewish dominance in the administration of Galician towns.[65] Still, in 1908–1909, Bukovinian liberal electoral politics paved the way for Jewish deputies to join the *Landtag* and municipal councils. Electoral districts with Jewish majorities were subsequently represented by two deputies: one for the Jewish population and one for the non-Jewish minority.[66] This system provided the Jews of Bukovina with a degree of political recognition, albeit without any consequences for their recognition as a political-national entity at the central level.[67] In Galicia, electoral reform was introduced only in 1914; it remained without practical consequences due to the impending World War.[68]

The reluctant attitude of the government and administration in Vienna was supported by a decision of the Imperial Court (*Reichsgericht*) on the question of whether Yiddish was to be regarded as a language customary to the Galician crownland. As Gerald Stourzh explained in detail, it was not until 1909 that the Imperial Court explicitly dealt with the question of a Jewish nationality, although it had been confronted with similar issues before.[69] In 1909, Max Diamant, a Jewish attorney from Czernowitz appealed to the *Reichsgericht* to recognize the legal sufficiency of providing Yiddish documents in an application for permission to open a Yiddish theatre. The particular case was actually a pretext to raise the question of recognition for a common Jewish language and thus, as Diamant himself stated before the court, the »problem of nationality«.[70] Diamant's main argument was based on the constitutionally anchored equality of languages, following the logic used for the census. He argued that Yiddish should be regarded as customary in the Habsburg Empire the same way every

64   Gerald Stourzh, »Max Diamant and Jewish Diaspora Nationalism in the Bukovina,« in *From Vienna to Chicago and back: Essays on Intellectual History and Political Thought in Europe and America* (Chicago–London: University of Chicago Press, 2007), 200–201.
65   Andlauer, *Jüdische Bevölkerung Galiziens*, 321.
66   Stourzh, *Gleichberechtigung der Nationalitäten*, 235–336.
67   Maner, *Galizien*, 250; Andlauer, *Jüdische Bevölkerung Galiziens*, 321.
68   Stourzh, *Gleichberechtigung der Nationalitäten*, 239; Glassl, *Ausgleich*, 243.
69   For the following and further details, see Stourzh, »Max Diamant and Diaspora Nationalism,« 190–203; idem, »Galten die Juden als Nationalität Altösterreichs?,« *Studia Judaica Austriaca* 10 (1984): 73–117.
70   Stourzh, »Juden als Nationalität,« 83.

other major language was, such as German or Romanian. With regard to the question of nationality, Diamant named religion as the main characteristic of Jewish nationality that distinguished the group from others:

> The Jews of the East are the descendants of the Jews who lived in the Jewish kingdom, later in the province of Judaea, and were then scattered; they are part of the same culture and have the same traditions as those who had emigrated from Palestine. Like the Romans and Greeks, this nation was originally the purveyor of a cultural good of its own within the Mediterranean; just as the Romans gave us legal thinking and the Greeks gave us art, the Jews gave us religion […]. However, this cultural good is of greater importance to the Jews than religion is to other peoples of the Occident, encompassing its entire view of life.[71]

Ultimately, however, in spite of heated internal debates, Yiddish was not accepted at the Imperial Court as a language common to all Jews, as it was argued that only the as yet unassimilated »Jews of the East« were using it, an argument that had been submitted by Diamant himself.[72] As the judge Leo Pininski pointed out: »Yiddish, though undoubtedly widely spoken in Galicia and the Bukovina, is not generally recognized by Jews in other countries«.[73] With the rejection of a common Jewish linguistic community and thus – as explicitly stated – of a Jewish national minority, one of the most important conditions for the introduction of federal structures and *personal autonomy* for Galician Jews remained unsatisfied. The upper administrative and judicial levels of the Habsburg monarchy apparently lacked the political will needed to resume the tradition of the early modern Jewish legal status and to transform it into a modern form of minority rights. While these visions of community and federal law held by representatives of the Jewish intelligentsia were thus not converted into practice, they did not lose any of their visionary strength.

Conclusion

I will conclude by returning to my central questions: How are collectives formed and how do they change the state and the legal orders? With regard to the

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71   »Die Juden des Ostens seien Nachkommen der Juden, welche in dem jüdischen Reiche, später in der Provinz Judäa gewohnt haben und dann zerstreut worden seien; sie gehören demselben Kulturkreis an, besitzen dieselben Traditionen wie die aus Palästina Ausgewanderten. Gleich den Römern und Griechen sei nun dieses Volk zunächst am Mittelmeer der Vermittler eines eigenen Kultur-Pro-duktes gewesen; so wie die Römer das Recht, die Griechen die Kunst gebracht haben, so die Juden die Religion. […] Dieses Kulturprodukt bedeute aber für den Juden aber noch mehr als die Religion für die Völker des Okzidents, es umfasse seine ganze Lebensauffassung.« From the protocol of the Imperial Court as cited in ibid., 110.
72   An argument that was made by Diamant himself, ibid., 84–88.
73   Ibid., 112.

partition of Galicia in the Habsburg Empire, I have attempted to exemplify these questions with the Ruthenian plans for a federal union and Jewish attempts at a federal form of *personal autonomy*. I claim that the constructedness of a collective, the normativeness of the law, and propositions of legal reform, the *imagined law*, are strongly entangled. The debates on these legal reforms reveal that the normative legal structure that had once defined certain collectives was competing with the changing ideas, perceptions, and self-perceptions of the respective groups.

The Ruthenian plans for a partition of Galicia in 1848 show that a clerical infrastructure with an educated clergy and direct access to public opinion were conditions essential for legal negotiations to occur, due to a lack of secular representatives at the time. The alliance of the Greek Catholic Church with the emerging Ruthenian and Ukrainian nation-building movements, best expressed in terms of a nationalization of religion, eventually led to the official recognition of Ukrainian nationality. A particular community was thus officially re-interpreted that was previously classified as an exclusively religious community. Federalization plans show how the interaction between this national group and the church could have developed into a new political-legal territorial body as well. Although these plans failed, the »imagined community« did at least benefit later from national minority rights.

The case of the Galician Jews differs from this development in various ways. The early modern legal order of Poland was characterized by a number of special rights, privileges, and restrictions and thus stood in contrast to modern paradigms of universality and equality before the law. The Jewish community was carved out as a distinct body within society and the state. Municipal self-government had moved the Jewish community beyond being only a religious institution but also – from a legal point of view – a political corporative body. During the Habsburg era, however, the Galician Jews were deprived of their special legal status, and reduced to a religious community subject to the general legal order. This process of legal modernization along with the contemporary challenges of nationalism called the nature of Jewish identity into question. The search for a new form of self-perception inspired Jewish intellectuals to envision a federal future for the Empire with elements of *personal autonomy*. The Austrian bureaucracy and courts, however, were not ready to provide for the necessary conditions in terms of altering their legal status. This resulted in severe hindrances to the creation of a legal situation that would have broadened the scope for Jewish identity and culture, even as appeals to the Viennese Imperial Court demonstrated that this status did indeed remain negotiable.

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