

## *Imagining Law – Imagining Society*



## Polemics and Participation: Anti-Jewish Legislation in the Polish Diet in the 16<sup>th</sup> Century and its Political Context

During the 16<sup>th</sup> century, religion and religious differences played a major role in political debates and in law-making in Poland. While these discussions were mainly centred on the Reformation and the Catholic Church's reaction to it, they were of a political and not a theological character and therefore focussed on the topics of rights, freedoms, and their potential or actual infringement in connection with religious arguments. During the sessions of the Polish Diet (*Sejm*), religious arguments served as a means of negotiating concepts of political order. This especially concerned the relations between the king and the estates, or – in other words – the range and limitations of royal power versus the personal and political liberties of the nobility.

Debates on religion also served as a means of negotiating the social order and delimitating social discipline – and in this regard they also affected Jews. The present paper addresses legislation concerning the Jewish population which was passed in an atmosphere of political as well as religious tension in the middle decades of the 16<sup>th</sup> century. I examine the social and political groups promoting these laws and the arguments they brought forward in the debates. While it is impossible to trace the specific actors, the persons responsible for drawing up the legislature, or the participants of the Sejm debates, one can attribute the arguments to certain social groups – burghers, clergy, middle nobility (*szlachta*) – and thus gain insight into the political agenda behind the laws.

The laws – known in early modern Polish political terminology as Constitution or *constitutio* – passed at the Sejm conventions in Piotrków 1538 and in Cracow 1539 both seem to indicate a major shift in the legal status of the Jewish population in the Kingdom of Poland. The Constitution of Piotrków included a number of regulations concerning the Jewish population that constricted their economic and social position in the Kingdom of Poland. Most surprisingly, although these laws were passed with the consent of the king and the nobility, after the Diet, neither the king nor the nobles took any measures to enforce them in practice. Nevertheless, during the following decades, the Sejm Constitution of 1538 was repeated several times by the Diet, only again to be neglected in legal

practice. The Constitution of Cracow issued in 1539 did not show an anti-Jewish bias, as it chiefly involved the relations between the king and the nobility: King Sigismund (Zygmunt) I renounced his exclusive right to the highest jurisdiction over the Jewish population in the kingdom, granting the nobility the right to pass judgement over the Jews living on their property. While this constitution was put into practice, the Piotrków legislation of 1538 was not. This article attempts to provide an explanation for this fact.<sup>1</sup>

There were often cases of laws not being enforced in the early modern period, not only in Poland-Lithuania, but all over Europe. Michel Foucault identified a similar tendency in his study on the movement in favour of a reform of the juridical system in late 18<sup>th</sup>-century France. He pointed out that early modern law was characterized by intensive law-making processes, which differed significantly from law-making in modern times. In retrospect, early modern laws appear to have been lacking in efficiency and showed a considerable amount of arbitrariness in their application.<sup>2</sup> Jürgen Schlumbohm has drawn from Foucault's thought and – using examples from German territories – puts forward the proposition that non-abidance by the law might even be characteristic of early modern legal systems.<sup>3</sup> As he points out, the reasons for this well-known phenomenon are more complex than they might seem at first glance. He discusses problems of administrative organisation, i.e. the technical implementation of laws, the important question of the acceptance of legal norms in society, as well as performative aspects of law-making.

In this paper I would like to stress these last points – acceptance in society and the performative aspects of law-making. Unlike Schlumbohm, who discussed the performative character of law as a means for the authorities to demonstrate their power over their subjects, I will draw attention to aspects of negotiation in the course of law-making procedures, which leads to several further questions: Who are the actors of these negotiations, where do their main interests lie – even

- 1 For a closer analysis, including a discussion of older works, see Adam Kaźmierczyk, *Żydzi w dobrach prywatnych w świetle sądowniczej i administracyjnej praktyki dóbr magnackich w wiekach XVI–XVIII* (Kraków: Uniwersytet Jagielloński/Katedra Judaistyki, 2002), 21–27; Jürgen Heyde, »Polnischer Adel und jüdische Elite. Über rechtliche Oberhoheit und soziale Kontakte 1454–1539,« *Leipziger Beiträge zur jüdischen Geschichte und Kultur* 3 (2005): 103–115; Jürgen Heyde, *Transkulturelle Kommunikation und Verflechtung. Die jüdischen Wirtschaftseliten in Polen vom 14. bis zum 16. Jahrhundert* (Wiesbaden: Harrassowitz, 2014), 67–74, 211–220.
- 2 Michel Foucault, *Surveiller et punir. Naissance de la prison* (Paris: Gallimard, 1993 [1975]), especially 98–106.
- 3 Jürgen Schlumbohm, »Gesetze, die nicht durchgesetzt werden – ein Strukturmerkmal des frühneuzeitlichen Staates?« *Geschichte und Gesellschaft* 23 (1997): 647–663.

if they are not overtly expressed –, and why may such an incentive have seemed suitable in reaching an overarching goal?

Looking at the legislation from 1538 concerning the Jewish population, it seems at first difficult to understand why these charters were not implemented in practice. The estates convened at the Diet – the king, the envoys to the lower house (*izba poselska*) and the senators – passed regulations aimed at restricting the social and economic position of another group not represented politically, namely the Jews. The wording of the laws leaves little doubt: The prevailing legal, social, and economic position of the Jews constituted a wrong that urgently needed to be changed; therefore, appropriate legislation was to be passed at the Diet. Nevertheless, after the sessions were closed, neither the king nor the nobles undertook any effort to enforce these laws in practice. In the following paragraphs, I explore the reasons for this contradiction by examining the political context of the legislation on the Jews (*De Judaeis*).

First, I provide an introduction to the 1538 Sejm Constitution concerning the Jews. In the following section, I look into whether or not the various points of the Constitution were implemented, looking for clues and evidence – albeit circumstantial – indicating their implementation or lack thereof. This leads to an evaluation of such regulations within the context of other political and legal motivations in the first half of the 16<sup>th</sup> century, providing a clearer idea of the political significance of the legislation passed at the Sejm of Piotrków.

#### *The chapter »De Judaeis« in the Piotrków Constitution of 1538*

The chapter on the Jews<sup>4</sup> is the 13<sup>th</sup> of a total of 48 chapters passed by the Diet in 1538 »by mutual consent of the councillors of the kingdom and the envoys of the lands«.<sup>5</sup> The chapter's paragraphs do not comprise a concise legislative program, nor do they reflect the actual interests of the nobility, but include several well-known demands of burghers and clergy. Most of the points mentioned are characterized by thoroughly anti-Jewish phrases, whereas others simply repeated typical administrative provisions. The first paragraph forbade the Jews from running custom houses of any kind:

We hereby state to be observed without fail that Jews shall not and cannot lead any type of custom house, as we deem it unworthy and against divine law that

4 »Konstytucje Sejmu walnego Piotrkowskiego 1538,« in *Volumina Constitutionum*, vol. 1, part 2: 1527–1549, eds. Waław Uruszczak, Stanisław Grodziski and Irena Dwornicka (Warszawa: Wydawnictwo Sejmowe, 2000), 160–192, especially 169–170.

5 Ibid., 164.

people of this sort should be allowed to hold any kind of honours and offices amongst Christians.<sup>6</sup>

Originally, a similar demand had already figured in a legislative proposal from 1505 for the Sejm of Radom, which had not ultimately been included in the debates and proceedings.<sup>7</sup>

The second paragraph determined that objects pawned to Jews should be recorded in the local court records.<sup>8</sup> This passage had already been approved by the Diet of 1532 upon the request of the Jewish communities. The Constitution claimed that it had become common practice to assign the supervision of pawned objects allocated to Jews to their elders, a custom that was, however, deemed impractical. The pawnbrokers dearly wished not to cause offence or to arouse distrust as the result of uncertainties connected to a pawn. Therefore, the Diet decreed that pawns and the day of their submission be inscribed into public court records (*libri Iudaeorum*), as had been customary in earlier times.<sup>9</sup>

The next part considers receiving and trading stolen goods. As thieves were potentially able to sell their loot to Jews, if stolen goods were found in a Jew's home, Jewish merchants would not be able to provide bailsmen and would be sentenced to the same punishment as the thieves.<sup>10</sup> This paragraph refers to a passage in the first general privilege issued to the Jews by Duke Bolesław the Pious of Kalisz back in 1264, freeing Jewish merchants from the obligation to give up stolen goods without compensation.<sup>11</sup> The Catholic Church had criticized this law as early as the 13<sup>th</sup> century, and the 1285 Synod of Łęczyca pressed the duke to nullify this privilege, because Christian creditors were not allowed to claim acquisition in good faith and had to return stolen pawns to their rightful owners without compensation.<sup>12</sup>

6 »Statuimus inviolabiliter observandum, Iudaeos teloneis quibuscunque praefici non debere neque posse, indignum et iuri divino contrarium censentes, eius generis homines aliquibus honoribus et officiis inter christianos fungi debere.« in »Konstytucje Sejmu walnego Piotrkowskiego 1538,« 169–170.

7 Ferdinand Bostel, »Tymczasowa ustawa radomska z r. 1505,« *Kwartalnik Historyczny* 3 (1889): 658–686, here 666, 679. A new edition of the project is printed in Stanisław Grodziski, Irena Dwornicka and Waław Uruszczak, *Volumina Constitutionum*, vol. 1, part 1: 1493–1526 (Warszawa: Wydawnictwo Sejmowe, 1996), 143–147.

8 »Konstytucje Sejmu walnego Piotrkowskiego 1538,« 169.

9 *Volumina Constitutionum*, vol. 1, part 2, no. 41: Sejm walny krakowski 1531–1532, 99.

10 »Konstytucje Sejmu walnego Piotrkowskiego 1538,« 169.

11 [I[gnacy] Zakrzewski and] F[ranciszek] Piekosiński, eds., *Kodeks dyplomatyczny Wielkopolski/Codex diplomaticus Poloniae Maioris*, vol. 1 (Poznań: Nakład Biblioteki Kórnickiej, 1877), 563–566 (no. 605), here 563.

12 Hanna Zaremska, »Rzecz skradziona w żydowskim zastawie,« in *Kościół, kultura, społeczeństwo. Studia z dziejów średniowiecza i czasów nowożytnych*, ed. Stanisław

In the following points the nobles adopted arguments brought into the political debate by town officials during their struggle with Jewish merchants in the large royal towns at the end of the 15<sup>th</sup> and the beginning of the 16<sup>th</sup> century. Paragraph 4 decreed an end to free commerce for Jewish merchants: They were to be obliged to abide by a new trading law which had yet to be issued, and adhere, in the meantime, to the agreements with the burghers that already existed in several towns.<sup>13</sup>

Paragraph 5 stated that the Jews had abandoned their old custom of marking themselves with a sign on their clothing so that they could be distinguished from the Christians. From now on they were obliged to wear a yellow hat, and if somebody reported a violation of this rule, the Jew was to pay half the fine to him and the other half to the king's official. An exception was made for Jews who were travelling; they were allowed to take off or hide the yellow sign, because wearing it might cause them danger.<sup>14</sup>

The following paragraph dealt with the treatment of bailment sums that were often issued by the king when conflicts between burghers and Jews turned violent. Even though such provisions usually had to be taken in order to guarantee the safety of the Jews against attacks by the burghers, the paragraph decreed that the entire Jewish community was to be held responsible for this deposit.<sup>15</sup> The last paragraph stated that Christian merchants were not allowed to trade in villages, and it was even less acceptable for Jews to do so. Therefore, the envoys prohibited Jews from trading beyond urban settlements upon the threat of severe punishment – in this case the confiscation of all merchandise.<sup>16</sup>

### *Jews in economic life before and after the Constitution of Piotrków*

In the paragraphs of the chapter *De Judaeis* the Sejm addressed the most important fields of Jewish economic activity. Both regulations concerning the lease of public revenues and those on trade and merchandise were tied to political discussions that were consistently present in public debates at least since the beginning of the 16<sup>th</sup> century. The request to ban Jews from leasing tolls and customs had first been raised in the statutes of the Wrocław Synod of 1267. At the beginning of the 16<sup>th</sup> century this demand was raised again,<sup>17</sup> and even

Bylina (Warszawa: Semper, 2000), 337–350; Hanna Zaremska, *Żydzi w średniowiecznej Polsce. Gmina krakowska* (Warszawa: Instytut Historii PAN, 2011), 216–238.

13 »Konstytucje Sejmu walnego Piotrkowskiego 1538«, 169.

14 Ibid., 169–170.

15 Ibid., 170.

16 Ibid.

17 Ibid., 143–147; Bostel, »Tymczasowa ustawa radomska z r. 1505«.

though it had not been submitted for discussion by the parliament, it may be seen to have influenced the policy of the Polish king in the following years. After Sigismund I ascended to the Polish throne in 1507, most leases that had been in the hands of Jews and burghers were not renewed once the contracts expired. It is noteworthy, however, that not only Jews, but also burghers were affected by this policy. In fact, new contracts were almost exclusively issued to noblemen, who after 1520 gradually attained the remaining customs offices as well, so that there were no longer any Jewish leaseholders appointed by the king from the middle of the 1530s.

In practice however, Jews continued to manage customs offices, but were now appointed by the noblemen who leased them from the king. Unlike them, the Jews had the experience and the personnel to run customs offices successfully.<sup>18</sup> During the reign of Sigismund Augustus (Zygmunt August) in the middle of the century, the king began to assign public offices to Jews again, demonstratively neglecting the legislation of 1538. But he was not alone in his disregard of the Piotrków laws concerning Jews. During the great inspections (*lustracje*) of all royal estates and revenues in 1564 and 1570, it became apparent how many sources of public revenue were farmed out to Jews by the local officials (*starosta* and *wojewoda*) in the southern and eastern provinces of the kingdom, whether tolls and taxes, mills, fishponds, or taverns. There were occasional commentaries mentioning that many such leases had already belonged to Jews for a long time.<sup>19</sup>

Through 1538, the Polish nobility had never demanded that restrictions be made on Jewish trading rights. Paragraphs 4 and 5 of the Constitution referred to the conflicts between burghers and Jews in the large royal cities. From the end of the 15th century, the town councils of Lviv and Krakow had tried to marginalize Jews in local trade and to enforce the legal superiority of the municipality over the Jewish population. Several decades later – since the second decade of the 16<sup>th</sup> century – they were followed by Poznań, where the magistrate escalated the conflict even further.

In the beginning the burghers of Krakow had managed to achieve some manner of success: A treaty on Jewish trade in their city that was signed by the

- 18 Maurycy Horn, »Żydzi i mieszczenie w służbie celnej Zygmunta Starego i Zygmunta Augusta,« *Biuletyn Żydowskiego Instytutu Historycznego* 141 (1987): 3–20; idem »Mieszczenie i Żydzi na służbie królów polskich i wielkich książąt litewskich w latach 1506–1572 (w kopalnictwie i mennicach państwowych),« *Biuletyn Żydowskiego Instytutu Historycznego* 147–148 (1988): 3–20.
- 19 Maurycy Horn, »Działalność gospodarcza i pozycja materialna Żydów czerwonoruskich w świetle lustracji i inwentarzy z lat 1564–1570,« *Biuletyn Żydowskiego Instytutu Historycznego* 82 (1972): 15–26; idem, *Żydzi na Rusi Czerwonej w XVI i pierwszej połowie XVII wieku. Działalność gospodarcza na tle rozwoju demograficznego* (Warszawa: PWN, 1975), especially 223–250.



magistrate and the Jewish Elders in 1485 was about to eliminate almost all Jewish trade within the city and to give the burghers far-reaching control over Jewish economic activity. When, ten years later, Krakow's Jewish quarter burned down, the Jewish community opted to resettle in neighbouring Kazimierz. In Lviv during the 15<sup>th</sup> century, the Catholic burghers had managed to subordinate the Armenian and Ruthenian populations to the jurisdiction of the magistrate, but attempts to do the same with the Jewish population failed several times, being declined by the king himself. In the 16<sup>th</sup> century the burghers of Poznań used religiously founded anti-Jewish polemics in their attempts to convince the king of their ultimate goals: to marginalize the Jews in the city economically, rendering them dependent on the magistrate and – after the fire in the Jewish quarter of 1536 – to expel them altogether from the town. Similar to Jews in other towns, the Jews of Poznań were able to defend themselves against the pressure to exclude them, protecting not only their settlement within the town walls but also their trading rights.<sup>20</sup>

Just a few years after the Piotrków Constitution, the king, upon the initiative of noble town lords, signed privileges for several Jewish communities. In each case he emphasized the unrestricted trading rights for the Jewish population, e.g. in 1547 for Międzybóż and in 1550 for Komorno.<sup>21</sup> Similar provisions had been included into the medieval general privileges, but only in very general terms. Therefore, their inclusion into the new community privileges may be seen as a sign that the Jewish Elders were expecting resistance by the burghers and opted to have their trading rights explicitly guaranteed by the town lord and the king.<sup>22</sup>

- 20 Hanna Zaremska, »Crossing The River: How and Why the Jews of Cracow Settled in Kazimierz at the End of the Fifteenth Century,« in *Polin* 22 (2010): 174–192; Zaremska, *Żydzi w średniowiecznej Polsce*, 493–504; Bożena Wyrozum-ska, »Did King Olbracht Banish the Jews from Cracow?« in *The Jews in Poland*, vol. 1, ed. Andrzej K. Paluch (Cracow: Jagiellonian University, 1992), 27–37; Heidemarie Petersen, *Judengemeinde und Stadtgemeinde in Polen. Lemberg 1356–1581* (Wiesbaden: Harassowitz, 2003), especially 57–79; Majer Bałaban, *Historia Żydów w Krakowie i na Kazimierzu 1304–1868*, vol. 1 (Kraków: Nadzieja, 1931), 55–66; Rex Rexheuser, »Zurückdrängen oder Aussiedeln. Die Stadt Posen und ihre Juden 1518–1538,« in idem, *Kulturen und Gedächtnis. Studien und Reflexionen zur Geschichte des östlichen Europas* (Wiesbaden: Harassowitz, 2008), 13–38.
- 21 Jacob Goldberg, ed., *Jewish Privileges in the Polish Commonwealth*, vol. 2 (Jerusalem: Israel Academy of Sciences and Humanities, 2001), 139–140; Mathias Bersohn, *Dyplomatariusz dotyczący Żydów w Polsce na źródłach archiwalnych osnuty (1388–1782)* (Warszawa: Drukarnia Edward Nycz, 1910), 49 (no. 53).
- 22 On the conflicts between burghers and Jews in the large royal cities of Krakow, Lviv, and Poznań, see Jürgen Heyde, »Topographie und Kommunikation. Zur Entwicklung der jüdischen Viertel im spätmittelalterlichen Polen,« in *Frühneu-*

The third chapter of the 1538 Constitution dealt with compulsory clothing marks for Jewish merchants. Such a demand had been voiced in synod statutes as far back as the 13<sup>th</sup> century. However, the Polish bishops had always pointed out that – in contrast to other countries – this request had never been enforced in Poland. And that was not about to change after 1538. When in 1565 a papal diplomat travelled through Poland, he remarked:

In these principalities one still comes upon masses of Jews who are not disdained as much as in some other lands. They do not live here under pitiful conditions and do not engage in lowly pursuits [...] But rather, they possess land, engage in commerce, and devote themselves to study, especially medicine and astrology [...] They possess considerable wealth and they are not only among the respectable citizens, but occasionally even dominate them. They wear no special marks to distinguish them from Christians and are even permitted to wear the sword and to go about armed. In general, they enjoy equal rights.<sup>23</sup>

The envoy listed all the points usually involved in anti-Jewish legislative discrimination and, on the whole, they matched the provisions of the 1538 Constitution concerning the Jews. But in his conclusion referring to »equal rights« he voiced the impression that there was no legal discrimination against the Jews in Poland. It was not the absence of discriminatory legislation, however, but the absence of discriminatory practice that defined the situation of Jews within Polish society.

*The legal position of the Jews in the political debates  
of the early 16<sup>th</sup> century*

The crucial question is: Why was the discriminatory legislation of 1538 not translated into practice? Polish and Jewish historiography alike have traditionally posited that the king was too powerless to enforce his own legislation.<sup>24</sup> Upon closer inspection, however, such an assumption does not seem to fit the role of the king in 16<sup>th</sup> century Poland, as no crisis of royal power had as yet unfolded as would be the case in the late 17<sup>th</sup> or 18<sup>th</sup> century. It was not a lack of power, but apparently a lack of will to enforce the legislation of Piotrków that emerges from the actions of the king, as well as the nobility, towards the Jews in the following

*zeitliche Ghettos in Europa im Vergleich*, ed. Fritz Backhaus, (Berlin: trafo, 2012), 405–429.

- 23 Cited after Gershon David Hundert, *Jews in Poland-Lithuania in the Eighteenth Century: A Genealogy of Modernity* (Berkeley: University of California Press, 2004), 7.
- 24 Salo Wittmayer Baron, *A Social and Religious History of the Jews*, vol. 16: *Poland-Lithuania 1500–1650* (New York: Columbia University Press, 1973), 25–29; Rexheuser, »Zurückdrängen oder Aussiedeln«.

decades. The practical manifestations of a policy aimed at integrating the Jews, but not discriminating against them, showed clearly during the reign of Sigismund's son, Sigismund II. Augustus (1548–1572). Looking at the political debates from the early 16<sup>th</sup> century on, one may find characteristics more reminiscent of later political practice than of the Piotrków Constitution.

In 1506, King Alexander explained to the Magistrate of Lviv why he was not willing to tolerate any discrimination against the Jewish population by the burghers of the town: »It is true that the Jews of Lviv share the same civil burdens as the Christians and persons of other faiths [...] and therefore they are to enjoy the same freedoms as their fellow citizens«. <sup>25</sup> In 1532, King Sigismund I issued two decrees confirming Jewish trading rights – one directed at the royal towns of the kingdom, and one especially for the towns in Royal Prussia. In the last document the king referred to a complaint brought before the Diet that had just ended, made by »the entirety of the Jews, ours [i.e. the king's] as well as our subjects' [i.e. the nobles'] in our kingdom,« <sup>26</sup> because the Prussian towns had denied Jewish merchants entry. At the request of all the estates of the kingdom the king ordered the Prussian towns to grant the Jews – again explicitly the king's as well as the nobles' – access to their towns and the ability to conduct trade unhindered. <sup>27</sup>

The attitude of the king and the nobility towards the Jews at that time was also reflected in a law passed at the Diet in 1532 concerning the recording of objects deposited with Jewish pawnbrokers. These pawns were traditionally recorded in Jewish communal records, but from then on were to be recorded in the local court records. The law claimed that this was for the sake of the Jewish elders who wished to avoid uncertainty and conflict in these delicate matters. Although the law partly restricted Jewish communal autonomy, it did so at the initiative of Jews and without any polemical undertones.

25 »verum cum judei Leopolienses cum cristianis et aliorum rituum personis illuc commorantibus equaliter civilia ferunt onera sumptusque pares ad reformationem civilem tribuunt et impendunt, merito eadem libertate cum concolis sunt potituri.« Sergei A. Bershadskii, ed., *Russko-evreiskii arkhiv. Dokumenty i materialy dlia istorii evreev Rossii*, vol. 3: *Dokumenty k istorii pol'skikh i litovskikh evreev v 1364–1569 gg.* (St. Petersburg, 1903), 71–72 (no. 48); Miron Kapral, ed., *Privilei natsional'nykh hromad mista L'vova XIV–XVIII st.* (Lviv: Mis'ke Hromads'ko-Kul'turne Ob'iednannia »Dokumental'na Skarbnytsia L'vova«, 2000), 400–401 (no. 118).

26 »accepimus querelam universitatis Judaeorum tam nostrorum quam subditorum nostrorum Regni nostri«. Vladislaus Pociecha, ed., *Acta Tomiciana per Stanislaum Gorski Canonicum ejusdem Petri Tomicii, post Serenissimae Bone Sforce Regine Poloniae Secretarium collectae*, vol. 14 (Poznań: Bibliotheca Kornicensis, 1952), 89–90 (no. 49).

27 A similar decree was issued to all royal dignitaries and town magistrates in the kingdom. See *ibid.*, 89 (no. 48).

The Diet of 1532 discussed another project that might have affected the Jews, but was not passed. This so-called »correction of laws« (*korektura praw*) was meant to provide an amendment and unification of law throughout the whole kingdom. This was based on general privileges in the passages concerning the Jews, although it did revoke some of the economic rights granted exclusively to Jews but not to Christians, such as the release from responsibility in accepting stolen objects as pawns. On the other hand, the project underscored, among other things, paragraphs providing for Jewish homes to be protected from attack and for Jewish children to be protected from being abducted for baptism.<sup>28</sup> In these clauses, as well as in the general wording, the bill of 1532 differed substantially from the way that this subject was handled six years later at the Sejm of Piotrków.

By the following Diet in 1534, something already seemed to have changed in the political climate towards the Jews – the tone had ceased to be balanced and objective, but had become confrontational. King Sigismund himself was absent, remaining in the Grand Duchy of Lithuania due to the war between Lithuania and Muscovy, with the senators representing him instead during the deliberations. They were presented with a submission of noble envoys attacking Jewish trade, with the words:

Thus, the unbridled Jewish trading rights, which have brought severe danger upon all the estates of the kingdom for a long time, are to be restricted. It has come to a situation, in which almost all trade is in the hands of the Jews. They corrupt and spoil all goods, especially those destined for human usage. Furthermore they have commercial ties to foreigners, as no Christian was allowed, thus depriving the king's treasure of due income and evading taxes. There is no place they would not penetrate. They go to Wallachia to buy cattle, exporting skins and other goods from the kingdom and thus causing a great increase in the price of everything. If they would limit themselves to usury and just live from the interest, the price increases, from which almost the entire kingdom is affected, would cease as well. They are, in fact, of no use to the Republic whatsoever and do not contribute to its defence either. According to ancient custom, Jews should be made to wear a sign on their clothing and to provide witnesses, if in one of their houses stolen goods were to be found. They should not enjoy greater rights than the Christians, because they [the Jews] themselves are often stealing.<sup>29</sup>

28 Wacław Uruszczak, *Korektura praw z 1532 roku. Studium historycznoprawne*, vol. 1 (Warszawa: PWN/Kraków: Nakład Uniwersytetu Jagiellońskiego, 1990), 117–119; *ibid.*, vol. 2 (Kraków: Nakład Uniwersytetu Jagiellońskiego, 1991), 91–92.

29 »Item, ut cohibeatur infrenata Iudaeorum in negotiando licentia, quae omnibus ordinibus Regni longe est perniciosissima. Nam eo ventum est, quod omnibus fere negotiatio a Iudaeorum manibus pendeat. Illi merces omnes, praesertim humanibus usibus destinatas, corrumpunt vitiantque et quod nemini christianorum licet, commercia habent cum externis, fiscum principis nostri clementissimi et vectigalia defraudantes. Nullus est locus, quem Iudaei non

The authors of this interpellation are not known, but they seem to have prepared it thoroughly in advance. The wording of this paragraph conveys a very emotional message, leaving little room for discussion. It combined the polemical views of burghers with ecclesiastical writings and new allegations referring to the ongoing war, accusing Jews not only of being useless for the defence of the kingdom, but also of conspiring with the enemy.

Never had a similar attack on the legal, economic, and social position of the Jews been launched in a Diet while the king was present. The interpellation seems to have taken the senators by surprise. They did, however, reject the main point of the interpellation quite clearly:

To prohibit Jewish trade completely, as the envoys demand in their third article, did not appear appropriate to the senators at present, above all as the voivodes [*domini Palatini*] had said that they [the Jews] were in possession of privileges allowing them to engage in trade, and that they paid the king both regular and extraordinary contributions. Furthermore, one could not decide anything in this matter without consulting the king, whose subjects they [the Jews] are. So that there should be a differentiation between them [the Jews] and Christians, it is agreeable to everybody that they should wear yellow hats or caps.<sup>30</sup>

The senators were not the only ones who were surprised by the envoys' initiative. Even among their fellow noblemen, the demands presented at the Diet were not accepted as self-evident, and the reaction was in fact unequivocally negative. When the envoys returned home from the Diet they convened at regional dietines (*sejmiki*) to give an account of their activity. When the envoys of Lesser Poland related the initiative concerning Jewish trade to the *Sejmik* of Parczów, they were greeted with rejection and disbelief. The nobles of Lesser Poland supported the opinion that the Diet had to encourage Jewish trade, especially in

penetrent. Illi ad Valachiam euntes coemunt boves, cutes et alia eius generis extra Regnum educunt atque inde oboritur tanta rerum omnium caristia. Quod si suis usuris suoque fenore contenti viverent, a negotiatione abstinentes, cessaret haec, de qua omnes queruntur, caristia, quae calamitas totum fere regnum affligit. Neque vero alicui sunt usui reipublicae nec pro defensione aliquid impendunt. Signa rotarum more solito portent et cum res furto ablatae apud eos repertae fuerunt, evictores statuunt nec maiori quam christiani praerogativa gaudeant, quoniam ipsi soli saepius furantur.» *Acta Tomiciana*, vol. 16, part 1, 100–107 (no. 51), here 102 (§ 3).

- 30 »Mercaturam Iudaeorum in totum prohibere, ut petunt nuntii in suo tertio articulo, non fuit visum dominis in praesens, praesertim cum domini palatini dicerent habere illos privilegia, quibus mercatura illis permetteretur, pendereque illos M[aiestati] regiae tributa ordinaria et extraordinaria et ob hoc non videbatur statui posse aliquid contra illos inconsulta M[aiestate] sua, cuius sunt subditi. Ut autem discrimen sit inter illos et christianos, placuit omnibus, ut gestarent pileos aut birreta crocei coloris.» *Acta Tomiciana*, vol. 16, part 1, 111–116 (no. 53), here 113–114 (§ 3).

Cracow, because the Jews provided goods at better prices than Christian merchants. For the nobles it was not the Jews but the Christian merchants of Cracow who were to blame for the ruin of the nobility.<sup>31</sup>

As the interpellation of the nobles had not been signed, the authors cannot be traced, but taking the responses of the senators at the Diet and the local nobles at the *sejmik* into account, one may still draw a rough sketch of the groups involved: The demands did not reflect the economic interests of the nobility, but especially in the sections phrased most harshly, followed the lines of argument in the burghers' anti-Jewish polemics. From the reaction of the *sejmik* in Lesser Poland it becomes clear that their position did not have much of a following among the broader noble public. The envoys most probably belonged to a group of politically active noblemen, very likely belonging to the upper stratum of the *szlachta*, well acquainted with Sejm politics, connected to church circles and townspeople, but not overly dependent on the king, whose authority they challenged.

### *The nobility's struggle for political participation*

If the anti-Jewish polemics displayed at the Diets of 1534 and 1538 were not representative of the nobility's interests – at least not on a broader scale –, the question arises as to why such a program was devised at all? A general line of conflict emerges at the Diet of 1534: The envoys to the lower house (*izba poselska*) demanded changes while the senators defended the *status quo* – in the name of the king. This line of conflict was nothing new; it dated back to the very origins of Polish parliamentarism and formed the essence of the debates on the state of the monarchy, labelled at the time as the »execution of rights«, i.e. the enforcement of the nobility's participation rights.<sup>32</sup> The Diet of 1538 ended with an informal settlement, as the king acknowledged the demands posed by the Chamber of Envoys.

Since the Statutes of Nieszawa of the middle of the 15<sup>th</sup> century the question of the *szlachta*'s rights and opportunities for political participation had re-

31 *Acta Tomiciana*, vol. 16, part 2, 358–361 (no. 573), here 360.

32 Igor Kąkolewski, »Sozialverfassung und adelige Privilegiensicherung.« in *Polen in der europäischen Geschichte. Ein Handbuch*, vol. 2: *Der ständische Unionsstaat in der Frühen Neuzeit*, ed. Hans-Jürgen Bömelburg (Stuttgart: Hiersemann, 2011), 61–90; Anna Sucheni-Grabowska, »Przeobrażenia ustrojowe od Kazimierza Wielkiego do Henryka Walezego,« in *Tradycje polityczne dawnej Polski*, ed. Anna Sucheni-Grabowska and Alicja Dybkowska (Warszawa: Ed Spotkania, 1993), 16–74; Anna Sucheni-Grabowska, *Monarchia dwu ostatnich Jagiellonów a ruch egzekucyjny*, part 1: *Geneza egzekucji dóbr* (Wrocław: Zakład narodowy im. Ossolińskich, 1974).

peatedly dominated political discussions. When, in 1493, the Chamber of Envoys was installed as a continual representative body of the middle and lesser nobility, the *szlachta*, it was an institutional acknowledgement of their participation rights. Another milestone was the Constitution *nihil novi* at the Diet of 1505, setting up the legal ramifications of royal power: From now on, the king could not introduce any new legislation without consent of the two chambers of parliament representing the aristocracy and the *szlachta*.

During the early reign of Sigismund I, it became clear, however, that further adjustments were necessary because the king still was able to outmanoeuvre the *szlachta* while relying on the aristocracy, as represented in the king's council and the senate.<sup>33</sup> During King Sigismund's rule, which was based almost exclusively on the support of the aristocracy, the representatives of the *szlachta* presented him with a program of the »execution of rights« at the Diets of 1519 and 1520. It was agreed that a special reform Diet would be held to discuss the demands that had yet to be implemented. When this promise was not fulfilled, tensions arose between the monarch and the nobles of the Chamber of Envoys.

After Sigismund's marriage to Bona Sforza and the birth of their son, Sigismund Augustus, it became increasingly evident that the monarch would seek to base his rule on dynastic rights rather than parliamentary representation. When, in 1529, the nine-year-old Sigismund Augustus was declared Grand Duke of Lithuania and elected and crowned king of Poland *vivente rege* the following year, fears grew that the king might seek to abolish what had come to be called the concept of *Corona Regni Poloniae*, and subsequently diminish the *szlachta*'s parliamentary participation. At the Diet of 1530, Sigismund I made a first step toward mitigating these concerns, assuring the nobility that its right to elect the king would remain unabated in the future.

At that time the Commonwealth was involved in a war between Lithuania and Muscovy and faced the lingering danger of a war against the Ottoman Empire, so that there was no opportunity for an open debate about the constitutional shape of the kingdom. On the contrary, in the face of possible military action the monarch's position was strengthened even more, because as commander-in-chief the estates were obliged to follow his order.

33 There is no recent biography of Sigismund I. For a short overview, see Andrzej Wyczański, *Zygmunt Stary* (Warszawa: Zamek Królewski, 1985); on the political developments and conflicts in the first half of the 16<sup>th</sup> century, see especially idem, *Polska Rzecz Pospolitą szlachecką* (Warszawa: PWN, 1991), especially 58–122; idem, *Szlachta polska XVI wieku* (Warszawa: PWN, 2001), especially 159–212; Sucheni-Grabowska, »Przeobrażenia ustrojowe od Kazimierza Wielkiego do Henryka Walezego«; Waclaw Uruszczak, »Sejm w latach 1506–1540«, in *Historia sejmu polskiego*, vol 1: *Do schyłku szlacheckiej Rzeczypospolitej*, ed. Jerzy Michalski (Warszawa: PWN, 1984), 63–113.

In this particular situation, the political debates at the following Diet engaged in secondary topics, where both sides could stake out their positions without paralysing the kingdom in a constitutional conflict. Such a secondary topic was the status of the Jews within the society of the kingdom, one which was connected to the role of the monarch as their overlord. There were several reasons why precisely this topic seemed appropriate at that particular time. For example, in persuading the Polish nobility of the need to engage in the wars against Muscovy and the Ottoman Empire the royal propaganda referred to the concept of the *Antemurale Christianitatis*, which assigned the role of defender of Christianity against »schismatics« and »infidels« to Poland-Lithuania under the leadership of the Polish king.<sup>34</sup>

Religious arguments were used in domestic debates as well, albeit at the inner-Christian, confessional level, i.e. defending the Catholic faith against the teachings of Martin Luther. From the very beginning of the Reformation movement, Sigismund I emphatically countered the new doctrine and already issued a ban against Luther's writings in 1520 – even before Emperor Charles V decided to take a similar step in the Holy Roman Empire.

From the late 15<sup>th</sup> century, representatives of the burghers, especially in the leading royal towns, repeatedly took to anti-Jewish polemics in order to weaken the economic position of the Jews and strengthen that of the Christian merchants. In the 1520s, for example, the magistrate in Poznań used religious arguments in its struggle against Jewish merchants, and even displayed religious symbols on the market square in order to make it a »holy space« where Jews had no business to be.<sup>35</sup>

Every nobleman in Poland was well acquainted with the basic structure of anti-Jewish polemics, as the chronicles of Wincenty Kadłubek and especially Jan Długosz were the most important books used in rhetoric lessons in their academic education. These works were known to advocate a »republican« ideology and a critical stance toward dynastic politics, but they also conveyed a decidedly negative image of the Jews.<sup>36</sup>

34 Urszula Borkowska, »The Ideology of Antemurale in the Sphere of Slavic Culture 13th–17th century,« in *The Common Christian Roots of the European Nations: An International Colloquium in the Vatican* (Florence: Le Monnier, 1983), 1206–1221; Paul Srodeckij, *Antemurale Christianitatis. Zur Genese der Bollwerksrhetorik im östlichen Mitteleuropa an der Schwelle vom Mittelalter zur Frühen Neuzeit* (Husum: Matthiesen, 2015), 217–265.

35 Rexheuser, »Zurückdrängen oder Aussiedeln«, 26–38.

36 Hans-Jürgen Bömelburg, *Frühneuzeitliche Nationen im östlichen Europa. Das polnische Geschichtsdenken und die Reichweite einer humanistischen Nationalge-*



The Polish monarchs had ultimately defined their position as the sole overlords of the Jews in the general privileges, and in 1505 the Diet had formally accepted that position, which involved the inclusion of the first general privilege of 1264 into the collection of laws of the kingdom *Commune incliti Poloniae Regni privilegium constitutionum ed indultuum*, which was the last step toward the legal unification of the Polish lands after the reconsolidation of the kingdom in the early 14<sup>th</sup> century. As the highest legal instance over the Jews, the monarch delegated his authority to the voivodes and to the judges appointed by them (*Iudex Iudeorum*),<sup>37</sup> but declined to grant the magistrates any juridical power over the Jewish population living in their towns. In a general privilege issued to Jews of Greater Poland in 1453, the same reservation was made in respect to ecclesiastical courts. Sigismund I confirmed this in 1539 upon the request of the Jewish community of Poznań, with the confirmation included into the records of the castle court.<sup>38</sup>

Only the nobility had a particular role to play in the juridical authority over the Jews – as a representative of the king through the institution of the voivode's court and the *Iudex Iudeorum*. In his letter to the Prussian towns in 1532, King Sigismund acknowledged this, speaking about his own Jews and the Jews of the nobility. However, this phrase could not yet be interpreted as a formal acceptance of the nobility as legal overlords of the Jews in Poland in their own right. In 1534, however, the senate clearly indicated in its answer to the envoys that Jewish privileges could not be altered without the consent of the king, as his was the highest authority.

The anti-Jewish polemics were a secondary issue in yet another respect. In the 1530s, discussions between the reform movement and the king appeared to have reached a dead end. The conflict became more vigorous and the political atmosphere nearly hostile. When the »correction of laws« was presented to the Diet in 1532 the envoys did not discuss it right away, doing so only in 1534 when they largely rejected the project. In his absence, the king was criticized more vehemently and openly than before. Nevertheless, even in the aftermath, Sigismund I and his followers were not willing to make substantial concessions

*schichte (1500–1700)* (Wiesbaden: Harassowitz, 2006), 33–41; Urszula Borkowska, *Treści ideowe w dziełach Jana Długosza. Kościół i świat poza kościołem* (Lublin: KUL, 1983).

37 A close analysis of the office of *Iudex Iudeorum* is provided by Anat Vaturi in this volume.

38 Sh[muel] A. Cygielman: »The Basic Privileges of the Jews of Great Poland as reflected in Polish Historiography,« *Polin* 2 (1987): 117–149; Heidemarie Petersen, »Zwischen Geschichte und Politik. Das Privileg für die Juden Großpolens aus dem Jahre 1453 in der polnischen Historiographie,« *Kwartalnik Historii Żydów/Jewish History Quarterly* 212, no. 4 (2004): 519–527.

regarding constitutional reforms. Only in 1537, when the combined forces of the kingdom, which were convened near Lviv to march against Moldavia, refused their obedience to the king and disbanded, did the political controversy escalate into a military defeat for Sigismund I. He was now forced to send a signal that he was indeed willing to reach a compromise. The Diets in Piotrków 1538 and in Krakow 1539 were meant to deescalate and reduce the tensions between the monarch and the nobility. Even then, neither side was able to achieve meaningful progress on the reform agenda, while the legislation on the Jews sent a clear signal that the king accepted the participation rights of the nobility as a matter of principle. After the escalation in the army camp near Lviv the two sides thus managed to re-establish the groundwork for further talks.

Taking up the long-disputed demands of burghers and clergy, the envoys demonstrated the amount of popular support they could mobilize, creating a sort of common front of all the estates against the king. They could be sure that the burghers and clergy would back their efforts, even if this meant questioning the king's authority. In addition, they challenged the king on what seemed to be a marginal topic, i.e. the legal and economic status of the Jews, so that it would not be interpreted as an assault on the majesty of the king himself. By granting the Constitutions of 1538 and 1539, King Sigismund I showed that he understood the message sent by the envoys without being forced to make concessions on core points of his policy.

The Constitution of Piotrków against the Jews in 1538 was therefore not intended to mark a shift in the attitude of the king or nobility towards the Jews. As one can see in the following years, the policy was indeed not about to change – but it was an element of symbolic politics, aimed at facilitating negotiations on another and more important topic. Even as the efforts toward introducing constitutional reforms and the movement for the »execution of rights« did not reach a conclusion for another three decades, the Diet twice referred to the anti-Jewish provisions of Piotrków during the decisive and difficult phase of negotiations in the 1560s. After the Union of Lublin of 1569, when the reforms were translated into a new constitutional framework for the Commonwealth, this kind of anti-Jewish polemics vanished from the agenda and the discussions of the Polish-Lithuanian parliament for more than a century.<sup>39</sup>

39 Stanisław Grodziski, Irena Dwornicka and Wacław Uruszczak, ed., *Volumina Constitutionum*, vol. 2, part 1: 1550–1585 (Warszawa: Wydawnictwo Sejmowe, 2005), 172 (no. 68: Sejm of Piotrków 1565); *ibid.*, 200 (no. 70: Sejm of Piotrków 1567); Anna Michałowska-Mycielska, ed., *Sejmy i sejmiki koronne wobec Żydów. Wybór tekstów źródłowych* (Warszawa: Wydawnictwo Uniwersytetu Warszawskiego, 2006), 196–110 (no. 116: Sejm of Grodno 1678/1679), here 109.

### *Conclusion: Law-making and politics – a case of domestic diplomacy*

The constitutions of the Polish Diet represent a model of law-making based on a political consensus between the monarch and the nobility. The Constitution *De Judaeis* of 1538 represents a political consensus, yet not a consensus that referred to the legal and economic situation of the Jews in the Kingdom of Poland, but a consensus at a different level. In signing the Constitution both sides signalled their will to reach a compromise on a far more principal issue – the question of noble participation in governing the kingdom. This topic, however, affected the role of the king as supreme ruler and thus could not be discussed openly without the risk of damaging the king's authority and evoking accusations of *lèse majesté*.

As the Polish king traditionally considered himself the supreme and sole overlord of the Jews of his kingdom, the attack on their legal and economic position was ultimately directed at the king as well. The nobles' initiative aimed to shift the constitutional balance of power, as did the »execution of rights«-movement. In the 1530s, it became clear that the differences between Sigismund I and the politically active part of the *szlachta* would be difficult to overcome, and the incidents of 1537 showed that the conflict was gradually escalating. Not being able to address the core issues of the reform movement directly, the envoys at the Diet of 1534 decided to attack just one aspect of Sigismund's authority. The Jews' position looked like a suitable target as the king had also traditionally been seen as the highest defender of the church. Sigismund had asserted this position before, against Muscovy, the Ottoman Empire, as well as domestically at the beginning of the Reformation. The nobles therefore took the ecclesiastical rhetoric of social exclusion, mixed it with the burghers' demands for the Jews to be marginalized economically and presented the king with their demand to share in his sovereignty over the Jewish population. The alliance with representatives of the church and the burghers was meant to underline the importance of their stance – and King Sigismund clearly understood the message. He approved the Constitution of Piotrków in 1538 and, in 1539, even granted the nobility legal authority over the Jews living on their estates.

In this way the king resolved the political tension that had led to the incidents of Lviv in 1537 and cleared the way for further talks on political reforms. The nobility had achieved its objective, and there was no further need to satisfy demands that were important to the Catholic Church and the burghers, but had little to do with the interests of the nobility. Once the hidden political agenda of the Piotrków Constitution was achieved, there was no longer a need to enforce its concrete points. From the very beginning they were not meant to be put into practice. The Piotrków Constitution was a showcase for domestic diplomacy, in

which law-making functioned as an indication of the state of negotiations. At a symbolic level, it represented a sort of truce between the king and the nobles after years of a lingering open conflict.

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