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Security, Accommodation and Integration: The "Law of the Land" and Jewish Privileges in Old Poland

Abstract: The article discusses royal privileges granted to the Jews in Old Poland and examines the jurisdiction over Jews from the new perspective of relations with Polish customary law—"Law of the Land." More precisely, it analyzes the content and procedures of the clauses guaranteeing Jewish physical security and shows their connection with land law and the practice of district courts, a connection that contributed to the incorporation of the Jews into the Polish legal system and practice.

Keywords: privileges, land law, security, oath, penalties, accommodation, integration, law enforcement, Old Poland.

In the second half of the sixteenth century Isaac ben Abraham of Troki (1533–1594), an east European Karaite scholar and spiritual leader, wrote his famous apology of Judaism titled *Ḥizuk emunah*.[1] In chapter forty-six, in which he articulates a prophecy of punishment for those oppressing Jews, Isaac of Troki criticized the expulsion of Jews from west European countries and juxtaposed it with the favorable conditions of Jewish life in the Polish-Lithuanian lands:

[1] For more information on Isaac of Troki see, for example, Golda Akhiezer, "The Karaite Isaac ben Abraham of Troki and His *Polemics against Rabbanites*," in Chanita Goodblatt, Howard Kreisel (eds.), *Tradition, Heterodoxy and Religious Culture: Judaism and Christianity in the Early Modern Period* (Beer-Sheva, 2007), 437–468; Marek Waysblum, "Isaac of Troki and Christian Controversy in the XVI Century," *The Journal of Jewish Studies* 3 (1952), 2: 62–77.

> In other lands where we live [Poland] . . . they persecute and punish those oppressing and harming them [the Jews] and the [rulers] support the Jews with their privileges, so that they can live in their lands in peace and tranquility. For the kings and their ministers, may God protect them . . . they love kindness and justice and so do not harm or oppress the Jews who live in their lands.[2]

In addition to the praise of the Polish kings' attitude toward the Jews, this short fragment mentions two interrelated factors which contributed to the solution of interreligious crises and to a relatively peaceful and tranquil existence of Jews in the Polish-Lithuanian Commonwealth: royal Jewish privileges and the enforcement of their rules against those oppressing the Jews.[3] Although royal charters of rights are among the earliest and most studied subjects in the field of Polish-Jewish historiography,[4] there has been no independent study of the clauses of these charters promising to guard the physical security of the Jews.[5] While many studies have discussed foreign prototypes of the Statute of Kalisz (1264)[6] or the authenticity of

[2] Isaac of Troki, *Sefer ḥizuk emunah* (Leipzig, 1857), 92. Available at http://www.hebrewbooks.org/pdfpager.aspx?req=37302&st=&pgnum=1&hilite= [retrieved: 20 Sept. 2016]. Unless indicated otherwise, all translations are by the author.

[3] In medieval Poland, the rules guarding Jewish physical security were included specifically in the royal charters, while the economic activities of the Jews were treated also in non-Jewish statutes. For a discussion on general legislation mentioning Jews, see: Hanna Zaremska, "Przywileje Kazimierza Wielkiego dla Żydów i ich średniowieczne konfirmacje," in Marcin Wodziński, Anna Michałowska-Mycielska (eds.), *Małżeństwo z rozsądku? Żydzi w społeczeństwie dawnej Rzeczypospolitej* (Wrocław, 2007), 11–34.

[4] For a bibliography and discussion on privileges in Polish-Jewish historiography see, for example, Jerzy Wyrozumski, "Dzieje Żydów Polski średniowiecznej w historiografii," *Studia Judaica* 1 (1998), 1: 3–17; Shmuel A. Cygielman, "The Basic Privileges of the Jews of Great Poland as Reflected in Polish Historiography," *Polin* 2 (1987), 117–149; *Przywileje gmin żydowskich w dawnej Rzeczypospolitej z XVI–XVIII w*., vol. 3: *Wersja polska wstępów, regestów i przypisów z 1–2 tomu*, ed. Jacob (Jakub) Goldberg (Jerusalem, 2001), 1–8.

[5] For a classical discussion on jurisdiction over Jews, see Stanisław Kutrzeba, "Studya do historii sądownictwa w Polsce. Sądownictwo nad Żydami w województwie krakowskim," *Przegląd Prawa i Administracji* 26 (1901), 925–944; Roman Grodecki, "Dzieje Żydów w Polsce do końca XIV wieku," in Jerzy Wyrozumski (ed.), *Polska piastowska* (Warsaw, 1969), 644–648.

[6] See, for example, Ludwik Gumplowicz, *Prawodawstwo polskie względem Żydów* (Kraków, 1867), 121–135; Philipp Bloch, "Die General-Privilegien der polnischen Judenschaft," *Zeitschrift der Historischen Gesellschaft für die Provinz Posen* 6 (1891), 69–72; Grodecki, *Dzieje Żydów w Polsce*, 641–643, 652–677; Józef Sieradzki, "Bolesława Pobożnego Statut kaliski z r. 1264 dla Żydów," in Aleksander Gieysztor (ed.), *Osiemnaście wieków Kalisza. Studia i materiały do dziejów miasta Kalisza i regionu kaliskiego* (Poznań, 1960), 1: 131–143; Zofia Kowalska, "Die grosspolnischen und schlesischen Judenschutzbriefe des 13. Jahrhunderts im Verhältnis zu den Privilegien Kaiser Friedrichs II. (1238) und Herzog Friedrichs II. von Österreich (1244): Filiation der Dokumente und inhaltliche Analyse," *Zeitschrift für Ostmitteleuropa-Forschung* 47 (1998), 1–20.

later charters,[7] no detailed research has been carried out either on the relation of the charters' security clauses to the Polish legal system or on the issue of law enforcement as reflected in the text of the royal rules protecting the Jews. In this short article, I will confine my discussion on royal Jewish privileges to laws included in them whose purpose was to guarantee the physical security of the Jews in Old Poland. I will show that far from being incongruous, the principles and content of these laws were in line with the existing Polish customary law known as the "Law of the Land" (*prawo ziemskie*), and thus constituted one of the factors that contributed to the integration of the Jews into Polish legal system and society.

Royal Privileges and the "Law of the Land": Juridical Accommodation and Integration

In the thirteenth century, the medieval German colonization movement brought the Magdeburg Law to the developing Polish towns, where its adaptation reformed the system of justice and redefined the legal status of Christian town dwellers. The modification of the urban juridical system necessitated a regulation of the legal position of urban groups excluded from the reformed municipal jurisdiction, Jews being a prime example.[8] Jewish legal status was first defined in 1264 by Prince Bolesław the Pious who following the location (*locatio civitatis*) of Kalisz granted the Jews of Great Poland a charter of rights,[9] which defined Jews as *servi camerae principis*,[10] and guaranteed them physical security, freedom of worship and movement and economic rights equal to Christian merchants. Bolesław's privilege served as a basis for further charters issued by Casimir the Great

[7] See: Stanisław Kutrzeba, *Historia źródeł dawnego prawa polskiego* (Lwów–Warsaw–Kraków, 1926), 2: 302 and notes. For a discussion on the privileges of Casimir the Great and Casimir Jagiellon, see Romuald Hube, "Przywilej żydowski Bolesława i jego potwierdzenia," *Biblioteka Warszawska* 1 (1880); Bloch, "Die General-Privilegien," 78–105.

[8] Hanna Zaremska, *Żydzi w średniowiecznej Polsce. Gmina krakowska* (Warsaw, 2011), 120–121.

[9] Ibid., 125–126. For the original text of the statute, see *Kodeks dyplomatyczny Wielkopolski* (Poznań, 1877), 1: 563–566, no. 605. For an English edition, see: *The Monuments of Human Rights*, ed. Marek Zubik (Warsaw, 2008), 1: 49–54. For a short survey of the statutes' historiography, see: Zaremska, *Żydzi w średniowiecznej Polsce*, 116, n. 35.

[10] Wacław Uruszczak, *Historia państwa i prawa polskiego*, vol. 1: *966–1795*, 2nd edn. (Warsaw, 2013), 76. For differences between the concept of *servi camerae* in Poland and in German lands, see Adam Teller, "Telling the Difference: Some Comparative Perspectives on the Jews' Legal Status in the Polish-Lithuanian Commonwealth and the Holy Roman Empire," *Polin* 22 (2010), 109–141.

(1334, 1364, 1367) and for the so-called extended privilege confirmed (1453) and later abolished (1454) by Casimir Jagiellon,[11] which was subsequently included—with some interpolations—in Łaski's Legal Statute (1505) and confirmed by most of the Polish kings. Until the partitions of Poland at the end of the eighteenth century, royal privileges provided the basic frame for Jewish legal status.[12] Supplemented with urban agreements known as *pacta* and later with communal privileges granted by kings and nobles to the Jews of their towns,[13] the charters defined Jews as a separate burghers' group with established social and juridical status,[14] and contributed to their integration into the Polish legal system in a number of ways.

First, in Old Poland, the social structure was that of an estate society, and the status of all social and ethnic groups was regulated by privileges.[15] Consequently, the fact that Jewish status was defined through a legal act belonging to the same category as privileges of other groups incorporated the community into the prevailing legal and social system.[16] The kings emphasized this incorporation further and often agreed to confirm Jewish charters together with privileges of other estates, for example on the occasion of coronation. In the *arengae*[17] of the charters, the monarchs proclaimed the act of reaffirmation as an inherent part of the royal policy to confirm "all charters, laws and privileges of all subjects of all estates living in our kingdom and lands."[18]

Second, the privileges laid the foundation for juridical incorporation of Jews into the contemporary Polish system by subjecting the Jews to jurisdiction modeled not on foreign law codes but on the local customary

[11] See n. 6 above.

[12] See Kutrzeba, *Historia źródeł*, 302 and notes.

[13] The largest collection of communal privileges was published by Jacob Goldberg, *Jewish Privileges in the Polish Commonwealth: Charters of Rights Granted to Jewish Communities in Poland-Lithuania in the Sixteenth to Eighteenth Centuries* (Jerusalem, 1985).

[14] Stanisław Grodziski, "The Kraków Voivode's Jurisdiction over Jews: A Study of the Historical Records of the Kraków Voivode's Administration of Justice to Jews," in Antony Polonsky, Jakub Basista, Andrzej Link-Lenczowski (eds.), *The Jews in Old Poland 1000–1795* (Oxford, 1993), 200.

[15] Andrzej Dziadzio, *Powszechna historia prawa* (Warsaw, 2008), 96; Juliusz Bardach, Bogusław Leśnodorski, Michał Pietrzak, *Historia ustroju i prawa polskiego* (Warsaw, 2005), 250.

[16] *Przywileje gmin żydowskich*, 1.

[17] *Arenga* (Lat.): in the field of diplomatics, it is the term for an opening part of the protocol of the document, in which the motives for issuing are usually presented in general terms.

[18] The confirmation by Sigismund II Augustus (1548) translated from Moses Schorr, "Krakovskii svod evreiskikh statutov i privilegii," *Evreiskaya Starina* 2 (1910), 81.

law, i.e., "Law of the Land" or, in short, a land law (Lat. *ius terrestre* / Pol. *prawo ziemskie*).[19] Prevailing in medieval and early modern Poland,[20] this was the law applicable to the nobles. Contrary to the law of the cities and the law of peasants, which were based predominantly on German legal sources,[21] land law was based on both district custom (*norma*) and royal statutes (especially of Casimir the Great),[22] and hence it was often referred to as general Polish law.[23] Royal privileges accommodated the structure and principles of the jurisdiction over the Jews to this domestic law. While accepting the tradition of combining Jewish self-government with non-Jewish jurisdiction, the charters recognized the autonomy of the Jewish Court of Elders,[24] and simultaneously subjected communities to a district authority of a prince or voivode (*palatinus*) and not of a crown treasurer (*camerarius*) as prescribed in the Czech privilege of Ottokar II.[25] While emphasizing the exclusion of the Jews from the domain of municipal authorities, the privileges assigned trials between Christians and Jews to the court of voivode or the *wojewodziński* court, over which a specially appointed "Judge of the Jews" (*iudex iudaeorum*) presided. These courts were both structured similarly to district courts and operated according

[19] Hanna Zaremska, "*Iuramentum Iudaeorum*. Żydowska przysięga w średniowiecznej Polsce," in Marcin Drzewiecki (ed.), *E scientia et amicitia. Studia poświęcone Profesorowi Edwardowi Potkowskiemu w sześćdziesięciolecie urodzin i czterdziestolecie pracy naukowej* (Warsaw–Pułtusk, 1999), 233.

[20] Polish land law was not much different in its content and character from the European customary law, although it was closer to the old Russian law (*Russkaya Pravda*) than to *Sachsenspiegel*. See Dziadzio, *Powszechna historia*, 94.

[21] Stanisław Płaza, *Historia prawa w Polsce na tle porównawczym. Część 1: X–XVIII w.* (Kraków, 2002), 9.

[22] District (*terra*): lands united legally after the end of the period of Provincial Fragmentation in 1320. From the time of Casimir the Great the ruler could control, modify or even change the custom through his legislation. See Uruszczak, *Historia państwa*, 165.

[23] With time, parliamentary legislation known as "constitutions" (*konstytucje sejmowe*) also became a source of land law and as such was included in the first part of Łaski's Statute. Even when west European countries subjected their customary laws to the influence of Roman law, Polish nobility insisted on preserving the original character of their land law. For more information on the "Law of the Land," see Bardach, Leśnodorski, Pietrzak, *Historia ustroju*, 250, 257–277.

[24] The Court of Elders judged cases between Jews and consisted of three judicial boards (*batey din*): the lowest for smallest civil cases, the middle board for cases up to 100 zł. and the highest board for cases of more than 100 zł. The information about the court can be found in Jewish sources, such as the statute of the Cracovian community of 1595—see Anna Jakimyszyn, *Statut krakowskiej gminy żydowskiej z roku 1595 i jego uzupełnienia* (Kraków, 2005), XIV–XVII—, or in various regulations issued by voivodes—see, for example, the regulations issued by the voivode Andrzej Tęczyński in 1527 in Majer Bałaban, *Historja Żydów w Krakowie i na Kazimierzu 1304–1868* (Kraków, 1931), 1: 361–362.

[25] Zaremska, *Żydzi w średniowiecznej Polsce*, 121.

to the "Law of the Land," and not according to foreign or exclusive legal code.[26] As in a district court, the staff of the *wojewodziński* court included a judge (the aforementioned "Judge of the Jews"), a scribe, an usher and assessors (*asesorzy*).[27] Both the scribe and the judge were Christians adept in land law, preferably with professional experience from a district court.[28] In order to accommodate the district model to the interreligious reality, the court usher—*szkolnik*—was Jewish and served as a link between the community and the court.[29] Moreover, the assessors were chosen from Jewish community elders and their obligatory presence during the trial helped to accommodate the rulings of land law to Jewish customs.[30]

In addition to structuring the *wojewodziński* court according to the district model, the privileges strengthened the connection between the jurisdiction over the Jews and the domestic law both by transferring severe criminal cases between Jews from the Court of Elders to voivode's court,[31] and by applying the system of appeal practiced in the "Law of the Land" and its courts to cases involving Jews: appeals from the *wojewodziński* court were lodged to the voivode's court and from the voivode's court to the

[26] Customary land law dominated district courts, dictated their structure and functioning at least until the end of the Jagiellonian dynasty, when written compilations of law and attempts at its codification became more influential. See: Uruszczak, *Historia państwa*, 165–172.

[27] *Asesor* (plur. *asesorzy*): an old Polish term for councilor, a judge's or magistrate's lay assisstant. At the beginning of the early modern period, distric courts in Lesser Poland usually had from four to six assessors elected from the nobility.

[28] Grodziski, "The Kraków Voivode's Jurisdiction," 206–207, 216. By the seventeenth and eighteenth centuries the judge of the Jews was usually a lawyer who had practiced in a district court or in a court of the *grod* (*sąd grodzki*), both of which applied the "Law of the Land."

[29] *Szkolnik* (*scolny*/*scolni ministerialis iudaicus*) was a court usher with many different duties, such as the summoning to trial, the stating of claims, the inspection of wounds, the administration of Jewish oaths, keeping order during the trial and more. For a discussion on the *szkolniks*' function from the perspective of interreligious coexistence see Anat Vaturi, "Voivodes and Their Office as Agents of the Law in Chrisitian-Jewish Coexistence: The Example of Early Modern Krakow," in Yvonne Kleinmann, Stephan Stach, Tracie L. Wilson (eds.), *Religion in the Mirror of Law: Eastern European Perspectives from the Early Modern Period to 1939* (Frankfurt am Main, 2016), 263–282. See also Schorr, "Krakovskii svod," 85–86.

[30] For some explanation of the role of Jewish assessors see, for example, clause 3 in the status of the king Stefan Batory granted to the Jews in 1567, in: Gumplowicz, *Prawodawstwo polskie*, 64. For a more elaborate discussion on integrative elements and functioning of the *wojewodziński* court in the interreligious reality see Vaturi, "Voivodes and Their Office."

[31] Despite the strong opposition of Jewish authorities, also civil cases between Jews could be judged by a voivode's court if the parties applied to it. The subject of Jewish use of Polish courts still awaits proper research. See n. 53 below.

king's court.[32] Even appeals of cases decided by the Court of Elders—which ruled explicitly according to Talmudic law—usually followed the district model and were examined by the voivode in compliance with the land law or by the king's court.[33]

Last but not least, royal privileges fostered Jewish juridical and social integration by using the "Law of the Land" as a legal basis for many of their clauses. They adopted its major principles and procedures, and stated, for example, that if any Christian was wounded by a Jew, "the Jew must pay according to the law of the land" (*iuxta compositionem terrestrem*).[34] Moreover, when necessary, the charters prescribed a combination of the "Law of the Land" with Jewish custom—"more *Judaeorum*," and thus contributed to the accommodation of courts to interreligious coexistence and made them more accessible to Jews. Consequently, by helping to incorporate litigations related to the Jews into the existing legal system of multiple codices, the royal privileges contributed to "accommodation [of the Jews] within an estate based society."[35] What's more, they also helped to establish courts and litigations as a platform of reconciliation in interreligious conflicts, such as cases of physical harm discussed below.

Physical Security in Royal Privileges

Royal privileges contained a number of clauses directly discussing the issue of Jewish security. Through their proclamation and enforcement, the charters granted physical security to individuals and protected Jewish possessions. In general, security clauses can be divided into two interrelated types: those protecting an individual and those guarding communities and their possessions. While medieval charters concentrated on the security of an individual, additions to early modern confirmations or new royal statutes also mentioned the safety of Jewish communities in the context of riots. However, a closer examination of both categories shows that the decisive factor in rulings remained the protection of an individual and his

[32] The procedure of appeal was later included in the project known as *Formula processus* (1523), which attempted to codify the "Law of the Land."

[33] Majer Bałaban, "Ze studiów nad ustrojem prawnym Żydów w Polsce. Sędzia żydowski i jego kompetencje," in *Pamiętnik trzydziestolecia pracy naukowej prof. dr. Przemysława Dąbkowskiego: 1897–1927* (Lwów, 1927), 385.

[34] The Privilege of Casimir the Great, paragraph 17, in: Schorr, "Krakovskii svod," 89.

[35] Teller, "Telling the Difference," 113.

life, whether he was perceived as an independent victim or as a member of a group of individuals, i.e., a community:

> Besides, while in the frequent anti-Jewish tumults that happen in our cities and towns, persons, synagogues, houses and possessions of the Jews are put at risk and harmed, we stipulate and order in this charter that in the future there will be no more such tumults and excesses in our cities and towns.[36]

There is no doubt that charters depicted Jews as a group in need of royal protection. Yet simultaneously, they did not define Jewish security exceptionally, but in terms of the existing legal system. In their essence, the privileges applied the "Law of the Land" to guard Jews in the same way it protected other groups living in the violent early-modern society in which "blood was cheaper than wine, and a man cheaper than a horse:"[37]

> Whoever dares to injure or kill somebody with a rifle, he should be severely punished, and for killing should be subjected to *scrutinium*. No one is allowed to walk around the city with a loaded rifle under penalty of fourteen grzywnas.[38]

While adopting some principles and procedures of the land law, royal charters established punishments according to the severity of harm to the individual and the character of the harm. Although it was significant in court's final rulings, they did not mention the social status of the accused. Since the nature and status of sources prevent us from reaching clear conclusions regarding the actual application of privileges in judiciary practice, the following textual analysis of royal security clauses will discuss how exemplary principles and procedures acquired from the "Law of the Land" were accommodated to the interreligious reality and interwoven in the text of charters. It will underline the importance of that process for the integration of Jews into the Polish legal system and for the establishment of litigation as part of the reconciliation process in interreligious conflicts.

[36] Privilege of Vladislaus IV (1633) translated from: Schorr, "Krakovskii svod," 234–235. See also the edict of 1530 issued by Sigismund I the Old and later included in the parliamentary constitution of 1538, in Gumplowicz, *Prawodawstwo polskie*, 36–39.

[37] Władysław Łoziński, *Prawem i lewem. Obyczaje na Czerwonej Rusi w pierwszej połowie XVII wieku* (Warsaw, 2005), 25.

[38] "Statuta Seymu Warszawskiego roku pańskiego 1557," paragraph 9, in *Volumina Legum*, ed. Jozafat Ohryzko (Petersburg, 1859), 2: 12. Available at http://www.wbc.poznan.pl/dlibra/docmetadata?id=64472 [retrieved: 20 Sept. 2016]. *Scrutinium*: here an investigation carried out by a voivode and district court during public assembly.

Adaptation of Principles and Procedures

The clauses of royal charters granting Jewish security were substantially based on the "Law of the Land." Whether discussing the legal procedures, institutions, or setting the punishment for "those oppressing and harming the Jews,"[39] the privileges ruled according to laws applied by the land law in lawsuits it defined as private cases, i.e., cases in which only a victim or his closest relatives could lodge a lawsuit (also of a private sort [*zasada prywatnoprawna*]).[40]

As mentioned above, one of the major principles acquired from the "Law of the Land" and incorporated into royal Jewish charters was the establishment of the actual danger posed to the life of an individual as a decisive argument in security clauses. Following this principle, the privileges prescribed sentences and penalties according to the severity of harm to the individual:

> if a Christian and a Jew get into an argument in any way, and if that Christian wounds the Jews with a gory (*cruentato*) or livid (*livido*) wound, or pulls out hair from his head, then we [the king] provide the Jew with our jurisdiction, so that the aforementioned wounded Jew can take the oath according to their custom "over knocker or *Kolce*,"[41] at the door of their synagogue. Then the Christian, if proven guilty by the Jewish oath, shall be required to give to that Jew five marks for the jaw, ten marks for a livid wound, but for a bloody wound [he should give] half of his possessions both movable and immovable to the aforementioned Jew, and the remaining half of these goods we reserve for us and our successors, and the palatine of that district. And other [crimes] will be judged according to our aforesaid will. Yet, for pulling hair out from the head of a Jew, the aforementioned Christian should pay according to the decree of the lords, residing in this court, according to law.[42]

While verifying the severity of harm, the security clauses emphasized physical wounds and used the categories used in the "Law of the Land":

[39] See the quote from *Sefer ḥizuk emunah* by Isaac of Troki at the beginning of this paper.

[40] While the "Law of the Land" contained no general definition of a crime, it divided unlawful deeds into private and public acts according to legal procedure. In opposition to private cases, in public crimes criminals were accused by a public institution. From the sixteenth century on the crime was defined according to the object of wrongdoing, and so public crimes were those violating public good.

[41] *Kolce*: here a heavy door knocker or rattle, usually of a rounded shape, used to knock at the gate. The oath taken "over the *Kolce*" was taken outside the synagogue door and was used in minor cases.

[42] Schorr, "Krakovskii svod," 85–86.

(1) livid wounds (*rany sine*) usually resulting from blows; (2) severe wounds which deprive the victim of his ability to function normally or to work and earn money (e.g., loss of a finger, loss of teeth, blindness); (3) severe injury posing a danger to human life, e.g., a bloody wound. In courts applying the "Law of the Land" the type of wound was usually established through a necessary physical examination (*obdukcja*) of the victim. Although not mentioned in the above clause, in case of a wounded Jew, such an examination was necessary as well, and was usually carried out by the *szkolnik*.[43] As with cases between Christians, the results of the examination were used as a basis to lodge a lawsuit (presented already in *propozycja*/*indukta*), as part of the accepted pretrial evidential procedure,[44] and as a primary factor in the choice of penalty.

Although examination of wounds was crucial to the choice of penalty, it was of no help in establishing the identity of a perpetrator. Also for this procedure the royal privileges accepted the rule of the land law and stated that truthfulness of Jewish accusations could be confirmed by an oath (*iuramentum*).[45] While in Western Europe the oath was a central element of evidential process until at least the twelfth century, in the Polish courts it played a significant role until much later.[46] It was viewed as a religious act and it served as an important evidence due to the belief that God would not allow to use his name in support of a lie.[47] All who were at the proper age and whose religion was recognized by the state had a right to take an oath,[48] and "make something dubious into reliable."[49] In most of the places of Jewish settlement, after the oath was accommodated to Jewish custom and its formulae had the power of religious invocation—calling God, confirming Moses' laws and listing punishments

[43] The *szkolnik* was responsible for the examination of the wounds also in cases of a Christian harmed by a Jew. See n. 29 above.

[44] The list of accepted evidential procedures, including physical examination, was included in *Formula processus*. See: *Volumina Constitutionum. T. 1: 1493–1549, Vol. 1: 1493–1526*, eds. Stanisław Grodziski, Irena Dwornicka, Wacław Uruszczak (Warsaw, 1996), 392.

[45] For the most complete discussion on the use of oaths in medieval Polish courts, see: Stanisław Borowski, *Przysięga dowodowa w procesie polskim późniejszego średniowiecza* (Warsaw, 1926). For a discussion on Jewish oaths in municipal courts, see also Zaremska, "*Iuramentum Iudaeorum*"; ead., *Żydzi w średniowiecznej Polsce*, 223–228.

[46] Zaremska, "*Iuramentum Iudaeorum*," 229.

[47] For contemporary examples of a different opinion, see: Adam Moniuszko, "*Iuramentum Corporale Praestitit*. Przyczynek do badań nad przysięgą dowodową w koronnym procesie ziemskim u schyłku XVI stulecia," *Соціум* 9 (2010), 363–364.

[48] Borowski, *Przysięga dowodowa*, 22–26.

[49] Tomasz Drezner, *Processus iudiciarius Regni Poloniae* (Poznań 1640), K. G3v.

for perjury[50]—"Jews, although infidels and strangers, had the right to take a [Jewish] oath."[51] Two texts of the Jewish oath were preserved in Polish medieval compilations. They both closely resemble the German prototypes. The first one was a late addition to the privilege of Casimir the Great. The second text was included in the Mazovian compilation of municipal law,[52] and thus was probably in use in city courts where Jews appeared despite the royal privileges and rulings of Jewish authorities.[53] As in many Western compilations of law, the introductory part of the text described the ritual of the oath according to which a Jew should wear a cloak and a Jewish cap. According to Hanna Zaremska, there was no discriminatory intention behind those elements of the rite, and in Old Poland a swearing Jew was simply allowed to wear a traditional tallit and a Jewish skullcap.[54] Unfortunately, none of the preserved documents from the city or *wojewodziński* court describes the procedure of oath taking. The archival records do indicate that the oath was used in all types of courts and with a distinction between the oath at the synagogue gate and the oath on the Torah. Furthermore, the documents prove that in case of controversy regarding the oath and its procedure, the municipal courts followed the Magdeburg law, while the district and *wojewodziński* courts used royal privileges and the "Law of the Land."[55]

[50] The three-part scheme, which included an invocation of God, a kind of declaration of the obligation validated by the oath, and a list of punishments which would be inflicted in the case of perjury, was common to both Christian and Jewish oaths. See Zaremska, "*Iuramentum Iudaeorum*," 231, n. 8.

[51] Zaremska, *Żydzi w średniowiecznej Polsce*, 220. For a general discussion on the Jewish oath, see also Bernhard Blumenkranz, *Juifs et chrétiens dans le monde occidental, 430–1096* (Paris–La Haye, 1960), 362–365; Guido Kisch, *The Jews in Medieval Germany: A Study of Their Legal and Social Status* (Chicago, 1949), 275–289; Joseph Ziegler, "Reflections on the Jewry Oath in the Middle Ages," in Diana Wood (ed.), *Christianity and Judaism: Papers Read at the 1991 Summer Meeting and the 1992 Winter Meeting of the Ecclesiastical History Society* (Cambridge, 1992), 209–220.

[52] For the first text, see the so-called Codex B. III: *Jus polonicum codicibus veteribus manuscriptis et editionibus quibusque collatis*, ed. Joannes Vincentius Bandtkie (Varsaviae, 1831), 20. For the second text, see Oswald M. Balzer, *Średniowieczne prawa mazowieckiego pomniki, z rękopisu petersburskiego* (Kraków, 1895), 301–302.

[53] The choice of court depended on the parties. A Jew could apply to a city court or give up his right to refuse a municipal trial. For more details on this still under-researched subject of the Jewish use of Polish courts, see: Adam Teller, "In the Land of Their Enemies? The Duality of Jewish Life in Eighteenth-Century Poland," *Polin* 19 (2007), 435–437; Anna Michałowska-Mycielska, *The Jewish Community: Authority and Social Control in Poznań and Swarzędz, 1650–1793*, trans. Alicja Adamowicz (Wrocław, 2008), 243–249.

[54] For Zaremska's interpretation and critics of Kirsch's opinion, see Zaremska, "*Iuramentum Iudaeorum*," 238–239.

[55] Ibid., 241.

In case of a Jewish plaintiff, the royal privilege adopted from the "Law of the Land" a type of a personal oath (*iuramentum corporale*), taken by the plaintiff without witnesses (*solimet*), and viewed it as self-sustained evidence in a "contradictory trial" (*proces kontradyktoryjny*).[56] While rulings regarding a Christian oath included information on the way the oath should be taken and no details regarding the place of the ceremony, the charters' clauses prescribing the oath according to Jewish custom (*secundum constitutionem ipsorum Judaeorum*) did not mention its exact text but specified its place, which was directly related to the severity of the oath. An oath on a Torah scroll (*rodale*) was solely reserved for cases of high value or if a Jew was summoned before the ruler, while the above-mentioned oath at the door of the synagogue was used in minor matters.[57] In security cases, the minor oath was used in case of wounds, while the oath on the Torah (*super rodale decem preceptorum*) was reserved for cases in which a Jew was killed. As with the oath of witnesses, both types of oath ceremony were to be carried out in the synagogue and accompanied by the *szkolnik*. According to Hanna Zaremska, the oath allowed the Jews to function in the Christian legal system and thus helped them to manage their trade and credit activity.[58] In my opinion, the oath—as utilized in security clauses—allowed the Jews to use the existing legal system also as a platform for the solution of interreligious conflicts and thus contributed to reconciliation processes necessary for Christian-Jewish coexistence.

Penalties and Their Enforcement

Two additional principles of the "Law of the Land" were adopted in the security clauses of Jewish privileges, both regarding penalties. The first principle ruled that the severity of the verdict should be measured against the gravity of the crime. As mentioned above, in security clauses the severity of the crime was established according to contemporary perceptions of a danger posed to an individual's life rather than by the legal tradition. For example, if the victim was seriously wounded and there

[56] In cases in which there was no other proof but a testimony of the parties, an oath was regarded as self-sustained evidence. In cases with other proofs, it was regarded as auxiliary evidence. See Stanisław Kutrzeba, *Dawne polskie prawo sądowe w zarysie*, 2nd edn. (Lwów–Warsaw–Kraków, 1927), 98.

[57] See n. 40 above. Cf. Zaremska, *Żydzi w średniowiecznej Polsce*, 223.

[58] Ibid., 224–225.

was danger to his life, the plaintiff could ask for the criminal penalty (*criminaliter*), which was usually a high fine (amounting to even half of one's possessions). The second principle stated that the penalty should reflect the crime and constitute both a kind of payback, defined by Witold Maisel as "a public vengeance,"[59] and a preventive lesson for all to see.[60] Consequently, the security clauses suggested different kinds of punishments and left considerable room for judiciary discretion. The penalties used in the "Law of the Land" were catalogued according to the following categories: capital punishment, corporal punishment, pecuniary punishment, loss of property and imprisonment.[61] Those categories were further divided according to severity of crime. For example, within the frame of pecuniary punishment a number of subtypes were in use: a redemptive corporal punishment (when the offender could pay a certain amount of money instead of suffering mutilation), a partial loss of property, a simple fine, and a compository payment. In the Jewish privileges the pecuniary punishment was most popular, while the capital punishment was reserved solely for cases of killing a Jew:[62]

> If it happens that any Christian kills a Jew, and the kinsman of the killed Jew proves the Christian guilty by taking an oath over the Torah scroll (*super rodale*) according to the Jewish custom, then we decide and establish [that he] must be punished with the imposition of death, a head for a head, and it is not to be done otherwise in this matter. If, however, such a Christian, who killed a Jew, somehow escaped, and he cannot be caught or held, then his movable and immovable property, whichever he has, one half of the aforementioned goods and possessions should be given to the blood relatives of the killed Jew, the remaining half should be given to our Royal Treasury.[63]

[59] Maisel suggests three categories of punishment: private punishment (a kind of private vengeance), pecuniary penalties (e.g., payment to the court) and a real punishment that serves as "a public vengeance" or a response of society to a crime. See: Witold Maisel, *Poznańskie prawo karne do końca XVI wieku* (Poznań, 1963), 108.

[60] Other concepts, such as preventive punishment (e.g., to cut off the thief's hands so that he could not steal again) or even a punishment to ease God's anger, were also present in Polish legal practice. See, for example, Marian Mikołajczyk, *Przestępstwo i kara w prawie miast Polski południowej XVI–XVIII wieku* (Katowice, 1998), 135.

[61] Although nobles were imprisoned in city towers throughout the sixteenth century, this type of penalty became more popular in Poland only in the seventeenth century. In Cracow, penalties aiming at criminal's rehabilitation (*propter correctionem*) were introduced only in the eighteenth century. Ibid., 189–193.

[62] According to Mikołajczyk, capital punishment was most often ruled in cases of monetary forgery or the killing of a kinsman. Ibid., 264.

[63] Schorr, "Krakovskii svod," 86.

The rule of capital punishment for a Christian who killed a Jew clearly adopted the norms prescribed by the "Law of the Land" in cases of a noble killed by a commoner.[64] Accordingly, a death penalty awaited a killer caught in an act (*in recenti crimine*) or accused by a plaintiff (the kinsman of the killed) who took a proper oath: *iuramentum accusatorium*.[65] The rule was unambiguous and allowed no change of verdict, even in case of mitigating circumstances.[66] As in rulings of the "Law of the Land," kinsmen were obligated to lodge a lawsuit and were not allowed to come to terms with the accused. Furthermore, as in the land law, the above-mentioned clause did not specify the way the death penalty was to be executed. Since a penalty was supposed to match the severity and character of crime, there were many sorts of capital punishment and the choice was customary. According to the "Law of the Land" there were simple death penalties—of which hanging was most popular—and torturous punishments (*kary kwalifikowane*) which included bodily punishments before or after death, e.g., breaking wheel, drawing and quartering.[67]

In the security clauses of the Jewish privileges the basic penalty was pecuniary (*civiliter*). Although a simple fine was probably the most convenient way of solving the disputes, royal privileges usually prescribed compository payments, which consisted of a sum paid to the victim and an additional sum or share in one's property to be paid to a local authority or royal treasury.[68] The sum paid to the victim had a character of pecuniary compensation and usually matched the expenses for medical treatment (e.g., five marks for a jaw) or refunded the victim's temporary loss of the capacity to work. Payment to the authorities was explained by customary law as a penalty for disturbing the public peace paid to the legislator or the court. What was the purpose of this second payment?

[64] Until the eighteenth century, the "Law of the Land" prescribed the penalty for murder according to the social status of the victim and the murderer, e.g., a death penalty for a commoner who killed a noble without a possibility of financial refund, a penalty of *poena capitis* (*głowszczyzna*) in case of a noble killing a commoner.

[65] If a killed person had no family, the city could appoint an instigator to be a plaintiff. See Mikołajczyk, *Przestępstwo i kara*, 140, 143.

[66] The usual mitigating circumstance was the age of the defender being below 14 or his status in the society or the city.

[67] In the sixteenth century some of the punishments were adopted from the *Constitutio Criminalis Carolina* translated into Polish and edited by Bartłomiej Groicki in 1559.

[68] In the "Law of the Land" the compository payments were used until the partitions. See: Zbigniew Zdrójkowski, "Ziemskie prawo karne," in Zdzisław Kaczmarczyk, Bogusław Leśnodorski, *Historia państwa i prawa Polski*, vol. 2: *Od połowy XV wieku do roku 1795*, ed. Juliusz Bardach (Warsaw, 1968), 342.

In my opinion, the additional fine not only added to the severity of the penalty and guaranteed revenues to the voivode's or royal treasury, thereby strengthening the assignment of cases involving Jews to the palatine's and the king's jurisdiction, but also contributed to the enforcement of law. Compository payment established the voivode or the royal treasury as beneficiaries from the execution of monetary penalties or seizure of property and thus enhanced those authorities' interest and secured their assistance in the law enforcement process. It reduced the possibility of jurisdictional conflicts and institutional remissness common in Old Poland, and contributed to the authorities' involvement in the collection of payments and execution of penalties and laws in general. Moreover, whether as a by-product of royal financial policy or as part of the king's efforts to secure his jurisdiction over Jews, the buttressing of law enforcement policy reduced the risks associated with pecuniary penalties, such as the perpetrator's refusal to pay or his delay of the payment, and consequently contributed to developing a perception of the courts as a platform for conflict solution and reconciliation.

Conclusion

In Old Poland, the royal privileges used the Polish customary code of the "Law of the Land" in clauses granting physical security to the Jews. Instead of creating exclusive norms for an "alienated minority," the charters acquired some principles and procedures from the widely accepted customary law; modified them to both the customs of the Jews and the needs of multireligious coexistence; and gave the Jews, excluded from municipal jurisdiction, the right to lodge a lawsuit or appeal. The charters based the structure and functioning of courts dealing with Jews on the organization and practice of land courts with some accommodations towards Jewish norms. Furthermore, they applied the typology of crimes and wounds as well as categories of penalties existing in the "Law of the Land," and adjusted the procedure of the court-oath to Jewish custom. Although the state of the sources prohibits any conclusive statements regarding the actual implementation of royal privileges in judicial practice, the contemporary commentaries as well as a growing body of knowledge on the Jewish use of Polish courts suggest that royal privileges not only granted the Jews a legal status but also incorporated the fast-growing community into the pluralistic system of justice. The analysis of security

clauses that gave a general frame to the "[prosecution] of those harming the Jews" (in the words of Isaac of Troki) shows that the adaptation of the "Law of the Land"—combined with the strengthening of the enforcement policy—contributed not only to the juridical integration of Jews but also promoted litigation as a platform for solution of interreligious conflicts and fostered the perception of courts as active agents in Jewish-Christian coexistence. This article is only a starting point, and further analysis of relations between Polish law, the royal privileges, and Jewish legal status and practice is still necessary in order to understand the juridical aspect of Christian-Jewish coexistence, and why it created a contemporary impression that a Jew "gets justice faster and wins at the court, even if he is not right or honest."[69]

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[69] Szymon Starowolski, *Stacyje żołnierskie abo w wyciąganiu ich z dóbr kościelnych potrzebne przestrogi* (Kraków, 1636), Jagiellonian Library, call no. St. Dr. 5374 I (a), 22.