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A Two-Headed Janus: Continuity and Change within the Legal History of Jews in Ukraine, 1905–1932

Abstract

Continuity and Change within the Legal History of Jews in Ukraine, 1905–1932 This article deals with some crucial aspects of the legal history and culture of Jews in the late Russian Empire and the early Soviet Ukraine, 1905–32. Considering numerous unique archive and printed sources, this paper examines the following fields: the legal and political features of the Jews; the tax on kosher meat; the court cases involving participation by Jews; the development of legal terminology; and finally Jewish lawyers before and after 1917. The article argues that the so called »Jewish question« was in essence a legal question. The cases presented in this paper prove a continuity of certain norms and practices between the tsarist and Soviet periods.



A Two-Headed Janus: Continuity and Change within the Legal History of Jews in Ukraine, 1905–1932

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- 1 RUDOLF IERING, *Bor'ba za pravo. Perevod Ershova s 13 nemetskogo izdaniia*, Moscow 1901, in: *Tsentral'nyi Derzhavnyi Istorychnyi Arkhiv Ukrainy (TsDIA)*, Kyiv, f. 274 (Kievskoe Glavnoe Zhandarmskoe Upravlenie), op. 3, d. 130 (Rechovi Dokazy, vylucheni u Gercfel'da Jankelia Chaimovicha u lypni 1907 r.), 9. (f. = fond; op. = opis' = register; d. = delo = file)
- 2 BENJAMIN NATHANS, *Beyond the Pale. The Jewish Encounter with Late Imperial Russia*, Berkeley, Los Angeles, London 2002, 326.
- 3 *Arkhiv Akademii Nauk Ukrainy (Instytut Arkhyvoznavstva)*, Kyiv, f. 257, op. 5, d. 7 (SERHII EFREMOV, *Evrejs'ka sprava na Ukraini*, Kyiv 1909), 45. To Jewish History

In June 1907 Iankel Khaimovich Gertsfeld, a revolutionist, was arrested in Kiev. He was accused of revolutionary propaganda and terrorism. Apart from other items, the following books and pamphlets were confiscated as pieces of evidence from Gertsfeld's home: S. Vyshegodskii's »Tactics of street fighting« (1907), »About territorialism« (1907) and »Government and Duma« (1906), L. Buechner's »God and Science« (1906) and R. Jhering's »Fight for the Law« (1901). The last pamphlet, a widely known translation of a lecture held in Vienna in 1872 by the German legal theorist Rudolf von Jhering, stated that the »fight for the law« is mainly an »ethical-pragmatic« rather than a »theoretical« issue. According to von Jhering, law is not »thought« but »vital power«.¹ This pamphlet, one of the incriminating pieces secured from Gertsfeld's house, illustrates this article's theme. In contrast to the »Tactics of street fighting«, von Jhering's pamphlet (and Gertsfeld's possession of it) reflects a universal phenomenon of early twentieth-century Jewish life in the Russian Empire: the constant struggle for law and legality.

The history of Jews in late Imperial Russia and the early Soviet Union can be usefully understood in terms of legal history. The »Jewish question« was, in essence, a legal question; the Jewish population continuously strove for the rule of law, or legality (*zakonnost'*), as an antidote to »Tsarist arbitrariness« (*proizvol*).² This article deals with some of the legal aspects of Jewish history before and after 1917, concentrating on the territories within and beyond the Pale of Settlement in the Russian Empire, which became the Ukrainian People's Republic in 1917 and the Ukrainian Soviet Republic in the 1920s. As one activist in the Ukrainian nationalist movement observed, post-revolutionary Ukraine involuntarily became the site of a »babylonian captivity of an entire nation« – the Jews.³

The period between the first Russian revolution (1905–1907) and the great upheaval under Stalin in 1932 was remarkably uni-

in the Left and Right Bank Ukraine before 1917, see: PAUL ROBERT MAGOCSI, *A History of Ukraine*, Seattle 1996, 337–344. Pale of Settlement (*cherta osedlosti*) was the administrative term given to a significant territory in the Russian Empire, in which permanent residence of Jews was allowed. The Pale was created in 1791 and existed until the February Revolution of 1917.

4 There was a famine in the Ukraine (1932–33) which completely altered the political landscape of the republic. The *Evseksia* (Jewish Section) of the Communist Party was closed down in 1930. According to Benjamin Pinkus, 1931 became the »peak year« of Jewish legal-courts in the Ukraine (BENJAMIN PINKUS, *The Jews of the Soviet Union. The History of a National Minority*, Cambridge

fied in legal terms; a continuum existed in the typology of legal cases.⁴ As Jewish (legal) history is multi-polar, with each legal case having to be regarded individually, the revolutionary year of 1917 can by no means be considered »zero hour«.⁵ What happened to the highly complex and contradictory ›Law‹, or the Tsarist legislation of the Jews after 1917? In the turn to socialism, was a new beginning guaranteed, as Peter Stuchka (1865–1932), the leading figure of Soviet jurisprudence and legal theory of the 1920s, pointed out, »in a figurative sense of the word«, by »burning« the former law (in the shape of the sixteenth volume of the Legal Collection (*Svod Zakonov*) and the fourteenth volume of the Senat's Cassation decisions):⁶ Was the Russian jurisdiction of the Jews, which according to many contemporaries meant a »legislative pogrom«, the first victim in the *fire* of the Revolution?⁷

The cases presented in this article prove a continuity of certain norms and practices between the Tsarist and the Soviet periods. In the end, Soviet jurisprudence, said to possess both a destructive and a constructive function, resembled a *two-headed Janus*. It had one face directed towards the past, which, in the case of the Jewish population was at least as meaningful as its other face pointing towards the future.⁸ Unsurprisingly, as the majority of the Jews in the region remained traditionally observant, Jewish life in the early 20th century was still strongly influenced by traditional Jewish law (*halacha*). As Michael Stanislawski states, the »vast majority of the Jews in Russia until 1917 (or in Poland to 1939) never became Zionists or Bundists or Autonomists or any other ›ists‹,« instead, they were leading traditional Jewish lives, »with one foot in their tradition and the other outside of it«.⁹ The *halacha* was a point of reference both for the Jewish population and for the various governments before and after the Red October. The post-1917 government's overwhelmingly negative perceptions of traditional Jewish law is, in my view, one of the focal points for the continuity in the legal cases in Ukrainian-Jewish history. The next focal point is the lack of differentiation in the thinking and activities of diverse administrations with respect to the Jewish population. Even after 1917 the destructive effect of the *Janus* was not capable of destroying past ways of thinking about and treating the Jewish population in Ukraine.

In this article, I will focus on the following fields: the legal and political features that pertained to Jews living in Russia and Soviet

1988, 68). In 1932 passports with the column *Natsional'nost'* were introduced which expressed the Soviet national politics of the previous year. In 1934 the »Jewish Autonomous Republic« was proclaimed in Birobidzhan. In the legal sphere numerous obvious changes could also be observed. For example, in 1932 the meaning of the concept »speculation« (*spekuliatsiia*) was legally altered.

While in 1926 a »fraudulent overestimation of prices« (*zlostnoe povyshenie tsen*) was considered *spekuliatsiia*, in 1932 »all forms of private trading prohibited by law« were regarded as *spekuliatsiia* (see: ARON TRAININ, *Obschchee uchenie o sostave prestupleniia* (1957), published in: ARON TRAININ, *Izbrannye trudy / Selected Works*, St. Petersburg 2004, 199 (15–246) (= Antologija

iuuridicheskoi nauki). Furthermore, Eugene Huskey defined 1932 as »the beginning of a gradual reorientation of Soviet legal policy«, which had the »protection of the status quo« rather than »social change« at its core. Cf.: EUGENE HUSKEY, *Russian Lawyers and the Soviet State. The Origins and Development of the Soviet Bar*, 1917–39, Princeton 1986, 180.

5 On the »bipolar continuum« of Jewish political life of the early 20th century from Socialism to Nationalism see: JONATHAN FRANKEL, *Prophecy and Politics. Socialism, Nationalism, and the Russian Jews, 1862–1917*, Cambridge, London, New York 1981, 552, 560.

The concept that one should go beyond the idea of the year 1917 as *zero hour* and investigate »processes« rather than »discrete events«, in: PETER HOLQUIST, *New Terrains and New Chronologies. The Interwar Period through the Lens of Population Politics*, in: *Kritika. Explorations in Russian and Eurasian History* 4 (2003) 1, 163 (163–175).

6 PETR STUCHKA, *Zametki o klas-sovoi teorii prava*, in: *Sovetskoe pravo* 3 (1922), 3 (3–19). By issuing the Decree No. 1 the Soviet powers indeed condemned the outdated legal system to disappear – together with its norms, bearers and institutions – »On Courts« of 11.24.1917 – ref. to: WILLIAM E. BUTLER, *Soviet Law*, Second edition, London 1988, 98. With reference to the »law disposal« as theoretical problem compare: MICHAEL STOLLEIS, *Vom Verschwinden verbrauchten Rechts*, in: *Summa*. Dieter Simon zum 70. Geburtstag, ed. by RAINER MARIA KIESOW, REGINA OGOREK, SPIROS SIMITIS, Frankfurt am Main 2005, 539–558 (539).

7 SEMEN DUBNOV, *Noveishaia istoriia evreiskogo naroda*, Vol. 3, Moscow, Jerusalem 2002, 314.

8 See: A. PIONTKOVSKII, *Obzor iuridicheskikh zhurnalov za 1922*, in: *Pechat' i revoliutsiia*, 3 (1922), 140.

9 MICHAEL STANISLAWSKI, *For whom do I toil? Judah Leib Gordon and the Crisis of Russian Jewry*, New York, Oxford 1988, 5.

- 10 Vserossiiskoe soveshchanie evreiskikh obshchestvennykh deiatelei v g. Kovne, Tret'e zasedanie, 20. Noiabria 1910, Stenogramma. Fragments in: YIVO, New York, Elias Tcherikower Archives, File 1056, Folio 79148. I am grateful to YIVO archivist Gunnar Berg, who gave me access to the missing pages of this original.
- 11 This was revealed most obviously in the activities of the *Soiuz dlia dostizheniia polnopraviiia evreiskogo naroda v Rossii* (Union for the Attainment of Full Rights for the Jewish People in Russia). On *Soiuz* see: CHRISTOPH GASSEN-SCHMIDT, *Jewish Liberal Politics in Tsarist Russia, 1900–14. The Modernization of Russian Jewry*, Oxford, London 1995.
- 12 Similarly to Jane Burbank with reference to the peasants I would not support the argument that it was the Russian government's intention to allow the development of a legal consciousness amongst the Russian / Ukrainian Jews. The creation of permanently updated norms for the Jews, however, automatically had this result. For information on the legal consciousness of Russian peasants see: JANE BURBANK, *Legal Culture, Citizenship, and Peasant Jurisprudence: Perspectives from the Early Twentieth Century*, in: *Reforming Justice in Russia, 1864–1996. Power, Culture, and the Limits of Legal Order*, ed. by PETER H. SOLOMON, New York, London 1997, 82–106 (94); see also: JANE BURBANK, *Russian Peasants go to Court. Legal Culture in the Countryside, 1905–1917*, Bloomington, Indianapolis 2004, 5.
- 13 Benjamin Nathans remarks that nearly all Jewish historians of the late 19th century were lawyers. See: Chapter »Law, Historiography and the Jews«, in: NATHANS, *Beyond the Pale* (Fn. 2), 315–320; for this topic see also: MAXIM VINAVER, »When Lawyers Studied History«, in: *The Golden Tradition: Jewish Life and Thought in Eastern Europe*, ed. by LUCY S. DAWIDOWICZ, Syracuse 1996, 257–263. Chronological: *Polnyi khronologicheskii sbornik zakonov i po-*

Ukraine; the tax on kosher meat (*korobka*) before and after 1917; the under participation of Jews in court cases; the development of legal terminology; and, finally, Jewish Lawyers in Russia and early Soviet Ukraine.

Status, Standards and Norms

According to the jurist Genrikh Sliozberg's (1863–1937) statement made in 1910, the Tsarist jurisdiction took care to »unite« (*soedinit'*) the »destroyed edifice« (*rassypannuiu khraminu*) of the Russian Jewry. In Sliozberg's words, this edifice was »regarded by the law as a homogenous construction«.¹⁰

Tsarist legislation on Jews was widely regarded as unjust. At the turn of the 20th century the establishment of equality for the Jewish people before the law and emancipation were at the top of all Jewish political agendas. Therefore, Jewish »integrationists« found common ground with Bundists and Zionists who, each in their own way, championed for the rights of the Jewish people.¹¹ By creating an increasingly complicated system of laws pertaining to Jews, the Tsarist government produced hundreds of thousands of unprofessional legal experts without intending to do so.¹² Thus, the complex legal conditions under which the Jews lived rendered the acquisition of a practical knowledge of the law necessary for daily business and family life. At the beginning of the 20th century the navigation of Tsarist laws on Jews nearly became an independent species within (also non-) Jewish jurisprudence.¹³ Similarly, after the Red October Jewish legal scientists offered responses regarding the Russian, Ukrainian and, respectively, Soviet law to various sections of the Jewish population.¹⁴ As the interpretive tradition is a continuous and essential element of Jewish traditional rabbinical culture, not only »progressive lawyers«¹⁵ but also ordinary people reacted to and pondered law and administrative practice in Russia.

Since the passing of the Statute on Jews (1804), Jewish religious law was »privatized« and »nationalized« by the Russian

lozhenii, kasaiuschikhsia evreev, ot ulozheniia tsaria Alekseia Mikhailovicha do nastoiashchego vremeni, 1649–1873, ed. by V. O. LEVANDA, St.-Petersburg 1874; I. G. ORSHANSKII, *Russkoe zakonodatel'stvo o evreiaikh: Ocherki i issledovaniia*, St. Petersburg 1877; I. GESSEN, I. FRIDSHTEIN, *Sbornik zakonov o evreiaikh: s raz'iasnieniiami po opredeleniiam pravitel'stvuiushchego Senata*, St. Petersburg 1904; M. MYSH', *Rukovodstvo k russkim zakonam o evreiaikh*, Izd. 3, *Pererabotannoe i znachitel'no dopolnennoe*, St. Petersburg 1904;

MYSH', *Rukovodstvo k russkim zakonam o evreiaikh: dopolnenie, uzakoneniia i Senatskie raz'iasneniia za 1903–1909 gg.*, St. Petersburg 1910; G. SLIOZBERG, *Zakony o evreiaikh i praktika ich primeniia*, St. Petersburg 1907; G. VETLUGIN, *Polnaia spravochnaia kniga o pravakh evreev s raz'iasnieniiami, opredeleniiami i resheniiami pravitel'stvuiushchego Senata*, St. Petersburg 1913; *Zakony o evreiaikh. Sistematische obzor deistvuiuschikh zakonopolozhenii o evreiaikh s raz'iasnieniiami pravitel'stvuiushchego Senata i tsentral'nykh pravitel'*

state. In other words, *halacha* was exercised by the rabbis of different Jewish communities with exclusive reference to affairs concerning family and religion. Here, the greatest importance was attached to the vertical movement of any given case from the province into the offices of the Department of the Interior in Petersburg.¹⁶ The predestined route of a »Jewish case« broke through the »semantic unity« of the legal norms of *halacha* on its way to the administrative top in Petersburg. In this way, the religious law was continuously transformed and interpreted anew.¹⁷ The political events of 1905 destroyed the unity of these legal norms, which had at least theoretically existed before. The »people's spring« of 1905 turned into the late fall of the Tsarist's legal jurisdiction over the Jewish people.¹⁸ Subsequently, the events of the years 1914 and 1917 brought this process to a formal end. The Pale of Jewish settlement was a main characteristic of the Jewish legal situation in the Russian Empire, with its demise in 1917 the entire system of Jewish jurisdiction ceased to exist.

According to Russian law, before 1917 Jews were considered to be »alien born« (*inorodtsy*), which was more of a »legal marker of racial difference« than an »indicator of a given people's purported level of civilized development«. ¹⁹ Like other non-Christian denominations, Judaism was defined as a foreign confession. The ethnic classification of Jews as a nationality (nation) was only seriously considered by the government after the Revolutions of 1917. First the independent Ukrainian government granted Jewish national-cultural autonomy, later, following Stalin's definition, the Bolsheviks recognized the Jews as a nation. By being constantly reproduced in the official and private documents of the Jewish population, the »baroque lexicon« of the legal and political features of the Jews in Imperial Russia and the early Soviet Union became part of the Jewish legal consciousness.²⁰

However, the semantics which espoused the social prestige of Jews, for the most part, only provided a linguistic framework for their legal culture. Behind this framework, real Jewish life, in the shape of uncountable legal cases, was hidden. The dynamics of Jewish life were dramatic and, at this time, hardly had any con-

stvennykh ustanovlenii, T. 1–2, ed. by IA. GIMPEL'SON, L. BRAMSON, St. Petersburg 1914.

14 M. Choyski's manual, for instance, which was supposed to explain the updated laws on the *artelles*, served this purpose. In its responses to specific questions, such as: in which institution does an *artelle* have to be registered? How are the taxes for manual workers organized? are offered. Cf.: M. CHOYSKI, Enderungen un hoysofes zum iurdishn Handbukh far kustarn un mitglieder fun arteln, Moskve, Kharkov, Minsk 1931, 3–4, 21.

15 In regards to their role in the reform of the laws pertaining to Jews, especially family and matrimonial law from around the turn of the century, see in: CHAE RAN FREEZE, *Jewish Marriage and Divorce in Imperial Russia*, Hanover, London 2002, 274–276.

16 See a divorce case from the early 20th century under the assistance of the rabbi of Kherson, the *Khersonskoe Gubernskoe Pravlenie*, the first department of the Senate, the director of the Department of Religious Matters, the Department of the Interior and the Rabbinical Commission of 1910:

Rossiiskii Gosudarstvennyi Istoricheskii Arkhiv (RGIA), St. Petersburg, f. 821 (Departament dukhovnykh del inostrannykh ispovedanii), op. 9, d. 40 (Delo ravvinskoi Komissii 1909 g. po zhalobe El'ki Rabinovich na byvshego Khersonskogo Ravvina Pogorel'skogo za razvod ee s muzhem bez ee vedoma i soglasia, 1895–1909). The same can be found in an abbreviated form in: *Sbornik reshenii Ravvinskoi Komissii sozyva 1910 goda*, St. Petersburg, 1912, 7–12.

17 On semantic openness and closeness of police norms in the early Modern Age see: MICHAEL STOLLEIS, Was bedeutet »Normdurchsetzung« bei Polizeyordnungen der frühen Neuzeit? in: *Grundlagen des Rechts. Festschrift für Peter Landau zum 65. Geburtstag*, ed. by RICHARD H. HELMHOLZ, PAUL MIKAT, JÖRG MÜLLER, MICHAEL STOLLEIS, Paderborn 2000, 739–757 (748).

18 For information on Jews' reactions to the jurisdiction v. 1905 see: EUGENE M. AVRUTIN, Returning to Judaism after the 1905 Law on Religious Freedom in Tsarist Russia, in: *Slavic Review*, 65, No. 1 (Spring 2006), 90–110; on the Revolution of 1905 as »people's spring« (*Völkerfrühling*): ANDREAS KAPPELER, *Russland als Vielvölkerreich. Entstehung, Geschichte, Zerfall*, Munich 1993, 268.

19 Cf.: JOHN W. SLOCUM, Who, and When, Were the Inorodtsy? The Evolution of the Category of »Aliens« in Imperial Russia, in: *Russian Review*, Vol. 57, No. 2 (Apr. 1998), 173–190 (175–176).

20 According to Benjamin Nathans' summary, in various official documents the Jews called themselves a »people« (*narod*), a confession (*religiia*), an association / society (*obshchestvo*) and a nation (*natsiia*), whereas before 1917 the confessional attribution dominated. See: NATHANS, *Beyond the Pale* (Fn. 2) 73.

- 21 On the »mechanics of the law cases«, which only were the »painful fragments« (»leidvolle Teilstücke«) of life, see: MICHAEL STOLLEIS, Von den Rechtsnormen zur Rechtspraxis. Zur Rechtsgeschichte der Juden im Heiligen Römischen Reich Deutscher Nation, in: Juden im Recht. Neue Zugänge zur Rechtsgeschichte der Juden im Alten Reich, ed. by ANDREAS GOTZMANN, STEPHAN WENDEHORST, Berlin 2007, 11–24 (23).
- 22 Cf.: Law of April 17th, 1919 regarding the self-government of the Jewish community, in: Die Lage der Juden in der Ukraine. Eine Dokumentensammlung, (Berlin: Ukrainischer Pressedienst, 1920), 7. The organization of the monograph by Henry Abramson who under the heading »Autonomism in Practice« deals with the activities of the Ministry for Jewish Affairs and the »fruitless« activities of Jewish parties (chapter I, 67–102) and subsequently investigates the pogroms of 1919 (109–140) that represented a distinct and influential reality of Jewish life. Cf.: HENRY ABRAMSON, A Prayer for the Government. Ukrainians and Jews in Revolutionary Times, 1917–1920, Harvard 1999.
- 23 William Wagner has described the situation in Tsarist Russia after the legal reform under Alexander II as a situation of »new men, new courts, and old laws,« see: WILLIAM WAGNER, Marriage, Property, and Law in Late Imperial Russia, Oxford, New York 1994, 13.
- 24 ISAAK BABEL', Bagritskii, in: BABEL', Sochineniia v dvukh tomakh, Vol. 2, Moscow 1992, 362–363 (362).
- 25 Derzhavna Biblioteka im. M. I. Vernads'kogo, Kyiv, Viddil Iudaiky, f. 321 (Sobranie pinkasim), op. 1, d. 36, Pinkas shel darchei ieshirim, 1864–1924 (Solomenskaia Sinagoga, Kiev), 75 (Entry of 1923). To the Kiev's Pinkasim collection: YOHANAN PETROVSKY-SHTERN, Obzor kollektsii pinkasov v Otdel Rukopisei Tsentral'noi Nauchnoi biblioteki im. Vernads'kogo Natsional'noi Akade-

nection to the legal decrees which recognized the rights of Jews.²¹ For instance, the law regarding the autonomy of Jewish communities, which for the period was surprisingly progressive, was never effectively implemented. Thus, the theory of Jewish autonomism was met by the praxis of absolute lawlessness and pogroms.²²

The search for a certain degree of stability to compensate for the daily turbulence and the rapidly changing legal norms was another characteristic of the legal consciousness and behavior of Jews during this period, summarized in the expression »new laws and old men«. ²³ In other words, the rapid development of legal norms concerning the Jewish population between 1915 and 1925 led to a situation in which the »old men« were no longer able to keep pace with societal transformation. Although the »old men« were concerned with carrying on with normal life, after 1917 »the standards and norms were dictated by the new circumstances«. ²⁴ In 1923, the year of radical persecutions through the »servants of the cult«, an entry was made in *Pinkas*, the community register of a synagogue in Kiev, which tells of the purchase of two tablecloths, a larger one for the *Bima* (Ambon) and a smaller one for a different table. ²⁵ The »old men« tried to gain some stability in an extremely drastic situation. But the non-consideration didn't help.

The numerous continuities between Russian law and Soviet legality revealed themselves in the legal conflicts dealing with Jews in the early 20th century. In late Imperial Russia, »law« was a »method of communicating demarcations of acceptable and unacceptable behaviour, rather than a mechanism for the protection of the rights of citizens.« ²⁶ An efficient and well-structured administration was part of the state's behaviour towards »their« Jews, in which the role of the executive, either of the offices of the respective Governor in the Russian Empire or of the executive committees (*Ispolkoms*) in the Soviet Union, was equally important. Legal matters resolved outside the courts (for instance decisions regarding various public petitions) also continuously gained significance. ²⁷

As Otto Mayer, one of the founders of German theory of administrative law said, »Constitutions come and go – administrations stay« (*Verfassung vergeht – Verwaltung besteht*). ²⁸ In Ukraine, constitutions disappeared and the names and the ideological contents of the organs of the administration also changed, but the interactions between the Jewish population and the relevant offi-

mii Nauk Ukrainy, Moscow 1996 (= *Evreiskii Arkhiv*, Vypusk 5).

- 26 REGINALD E. ZELNIK, Law and Disorder on the Narova River. The Kreenholm Strike of 1872, Berkeley, Los Angeles, London 1995, 218.

27 Grigorii Zinov'ev had already noticed in 1920 how increasingly important the *Ispolkoms* were becoming not only in »Jewish cases« when he wrote that the councils

(*Sovety*) were »building up« (*smorshchivaiutsia*) and *Ispolkoms* were replacing them. See: STANISLAV KUL'CHYTS'KYI, Komunizm v Ukraini: Pershe desiatyrichia (1919–1928), Kyiv 1996, 61.

- 28 Cf.: THOMAS ELLWEIN, Das Dilemma der Verwaltung. Verwaltungsstruktur und Verwaltungsreform in Deutschland, Mannheim, Leipzig 1994, 8.

ces, and the typology of the cases that came in to question, did not. Ideas about certain Jewish religious and social practices proved to be transportable from one political regime to the next and, thus, found their place in »socialist legality«. ²⁹ In imperial Russia legal administration was, especially in cases related to Jews, »above the law« (*vyshe zakona*) and had »pre-eminence before the courts«. ³⁰ Therefore, it is understandable that in an article written by a liberal jurist in the early 20th century, legality (*zakonnost'*) was described as »self-restriction of power«. ³¹ The development of the Soviet Union marked a new understanding of the concept of »legality« – *socialist legality*. However, the actual functions in reference to the Jewish population, in many respects, remained the same.

The reasons for trials concerning Jews were not as important as the organization of the Jewish courts and the information which had to be reported to their superiors – the Committee of national minorities (*Natsmen* committee) in the executive committees, *Ispolkoms*. ³² Jewish courts in the Ukraine were involved in the administrative system and, therefore, became part of the construction of the »Jewish nation« in Soviet Ukraine.

Korobka before and after 1917

The tax on kosher meat in the Russian Empire (*korobochnyj sbor*) is one example reflecting both the continuity and change within legal and administrative matters pertaining to Jews during the first third of the 20th century. This tax was unofficially called the *korobka* and before 1917 was at the core of both internal Jewish debates and discussions within the Russian government.

Rabbis, mainly from the Ukrainian province, expressed their opinion on the tax in various letters and petitions to the Rabbinical Commission, which commenced its activities in Petersburg in 1910. ³³ While on one side, opponents of the tax argued that the *korobka* only further burdened the poorer sections of the population and rendered it impossible for them to nourish themselves according to religious laws, on the other side, proponents argued that the tax ensured the existence of Jewish religious institutions and, thereby, compliance with religious laws. ³⁴

Many participants at a »Convention of Jewish Politicians« (*Soveshchanie evreiskikh obschestvennykh deiatelei*) held in Kovno

29 Referring to this issue Laura Engelstein remarked: The »new regime's hostility to legality itself opened the door to mechanisms of control rooted in the same administrative tradition that Old Regime reformers had opposed«. See: LAURA ENGELSTEIN, *Combined Underdevelopment: Discipline and the Law in Imperial and Soviet Russia*, in: *The American*

Historical Review, Vol. 98, No. 2 (Apr. 1993), 338–353 (351).

30 See: NATASHA ASSA, *How Arbitrary Was Tsarist Administrative Justice? The Case of the Zemstvos Petitions to the Imperial Ruling Senate*, in: *Law and History Review*, Vol. 24, No.1 (Spring 2006), 1–44 (5).

31 V. MAKRAKOV, *Zakonnost' v rus-skoj zhizni*. (Publicnaia lektisia, pročitannaia 17. marta 1909

goda v zale Tenishevskogo uchilishcha), in: *Vestnik Evropy*, Mai 1909, 238–275 (249, 253).

32 On reasons for the establishment of Yiddish Courts and their positions in the early Soviet minorities administration see: BENJAMIN PINKUS, *Betai ha-Mishpat b'brit ha-moatsot*, in: *Heavar*, 20 (5731/1970), 124–139 (129); PINKUS, *Yiddish-Language Courts and Nationalities Policy in the Soviet Union*, in: *Soviet Jewish Affairs*, 2, (November 1971), 40–60 (43). On »Yiddishization of the Courts« see: ZVI GITELMAN, *Jewish Nationality and Soviet Politics: The Jewish Section of the CPSU, 1917–1930*, Princeton 1972, 364–366. On the atmosphere in the Jewish courts and daily problems: Tsentral'nyi Derzhavnyi Arkhiv Vysshchikh Organiv Vlady ta Upravlinnia (TsDaVO), Kyiv, f. 413 (Tsentral'na Komissia natsional'nykh menshyn pry VUCVK), op. 1, d. 98, Dokumenty pro robotu natsionalnykh sudovykh kamer (postanovy, dopovidi, akty, plany, lystuvannia), 1925–26.

33 Chae Ran Freeze has outlined the evolution of the local Beit Din (Rabbinical Court) into (at mid-nineteenth century) a centralized institution, the Rabbinical Commission in Petersburg, which she calls a »Jewish Supreme Court«: So this forum at which the »korobka« was a central point of discussion was quite representative. See: FREEZE, *Jewish Marriage and Divorce* (Fn. 16), 82.

34 RGIA, St.-Petersburg, f. 821, op. 9, d. 51 (Protokoly zasedanii gubernskikh s'ezdov ravvinov Rossii, dokladnye zapiski i predstavleniia uchenykh evreev i ravvinov o rassmotrenii razlichnykh voprosov kanonicheskogo kharaktera, podlezhashchikh peredache na rassmotrenie komissii, 1904–1909gg), 7.

(1910) argued for the abolition of this tax, despite remaining ambivalent to the benefits of doing so. V.T. Freidenberg, for example, pointed out that in Warsaw the money from the *korobka* was not used for religious and practical necessities (*nuzhdy*) and, consequently, there was no public Talmud-Torah (Jewish school for boys).³⁵ According to Shmarya Levin (1867–1935), a Zionist political activist and rabbi of Ekaterinoslav and later of Vilna, a »direct income and progressive tax« (*priamoi podokhodnyi progressivnyi nalog*) was a good alternative to the *korobka*, but would only be practical in the future. In general the convention's participants argued that the *korobka* had to be abolished, yet only gradually.³⁶ The dominant position taken amongst the participants was already expressed in Mendele Mocher Sforim's (Sholem Y. Abramovich) play *Di takse* (*The Tax*, 1869). In reaction to a rumour that the *korobka* was to be abolished, the hero of the play, Spodek, states: »Yes, that would be a real calamity. My word, it's the cashbox that keeps alive the last bit of Jewishness, isn't it?«³⁷

On November 26th, 1913, 66 members of the Russian Duma issued a Bill (*Zakonodatel'noe predpolozhenie*) pleading for the prompt abolition of the *korobka*, which, it was argued, supposedly favoured Jewish »ritualists« and butchers. The religious way of slaughtering (*uboi skota*) was not to be tolerated due to its »school of cruelty« (*shkola izuverstva*), especially not »in our time, the time of people's unruliness (*dichaniia*) and a threatening growth in the number of crimes.«³⁸ The abolition of the *korobka*, the members of the Duma argued, was, moreover, an »urgent demand of public hygiene« because non-Jews buying meat with one of the eight »damages« (*povrezhdenii*), which render it unkosher (*trefe*), would be exposed to deadly risk.³⁹ This line of argumentation, to be sure, not especially consequential.

Mixed opinions on the *korobka* developed as early as 1835 when the government made the tax obligatory for local communities; hitherto this enforcement, the tax had been voluntary (*samooblozhenie*). Accordingly, the Jewish politician Shtern from Odessa was of the opinion that the *korobka* had to be maintained because it offered Jewish communities the possibility to pay taxes (*povinnosti*) owed to the government in smaller amounts (*pogashat*). On the other hand, as was emphasized by Shtern, the tax was a nuisance to the common people because the meat tax was released in lease (*na otkup*). The Jewish lessee became a

- 35 Vserossiiskoe Soveshchanie, in: YIVO, File 1056, Folio 79139.
 36 Id., 79140a–79141. On the increasing universalization of the tax system in Russia at the turn of the century see: YANNI KOTSONIS, »Face-to-Face«: The State, the Individual, and the Citizen in Russian Taxation, 1863–1917, in: *Slavic Review* 63, No.2 (Summer 2004), 221–246 (223).
 37 See: Sh. Y. ABRAMOVICH, *Di takse, oder di bande shtot baley-toyves,*

in: ABRAMOVICH, *Alle shriftn*, Vol. 1, New York 1910, 56, quoted in: ELI LEDERHENDLER, *The Road to Modern Jewish Politics. Political Tradition and Political Reconstruction in the Jewish Community of Tsarist Russia*, Oxford, New York 1989, 81. Lederhendler describes *korobka* as funds in the communities to pay for the unofficial, so-called religious (*dukhovnye*) rabbis: p. 81.

- 38 See: *Zakonodatel'noe predpolozhenie. Ob otmene korobochnogo sbora i ob ustanovlenii sposobov uboia domashnikh zhitovnykh.* (Vneseno za podpis'iu 66 chlenov Gos. Dumy 26 Noiabria 1913 g.), in: *Gosudarstvennaia Duma* 146, IV/2, 1913g, 1, 3 (1–7). Here quoted from a copy in: YIVO Archives, New York, Rg 116 9/96.
 39 Id.

monopolist, often leading to inner-Jewish conflicts.⁴⁰ For example, in 1910 the butchers in Boguslav near Kiev did not pay the excise duty on kosher meat to the lessee, instead they threatened him and demanded to obtain the rest of the meat on long term credit. These »people gorged with blood«, the lessee wrote in his petition, had already been ordered to peace court and deserved to be punished. In this case, however, the state confiscated all property of the leaser Mordko Staviskii.⁴¹

Although the *korobka* was abolished in 1917, it continued living in people's minds and was often seen as a legal reference for the Jewish community's relations with the state. Soviet legislation stipulated that the state's revenue from the butchering of animals and birds was to be the same from any group in the Soviet population. In 1927–28 representatives of the Odessa Jewish community presented a petition to the executive organs mentioning that the government was planning to reconstitute the abolished *korobka*, which would lead to the closure of various butchereries. This would constitute – in the argument of the representatives of the Odessa community – considerable damage to the Jewish religion. Is it legitimate, the community asked, »in light of the legislation about the separation of church and state, for the state to interfere in religious matters and profit from a religious ritual?«⁴² Attached was a letter from the *shokhetim* (Russian: *rezniki*), who were responsible for the kosher butchering of animals. As »servitors of a religious cult« the *shokhetim* were being deprived of their civil rights and were classified as »aliens« (*lishentsy*).⁴³ In their letter they argued that the specificity of *shokhets'* activities were not religious in nature, but rather scientific or veterinary. Indeed, a *shokhet* has to say a prayer but not a prayer that endows the animal's body with a kosher character; above all, they argued, this is an anatomical test of the animal and not a ritual action. The *kashrut* depends not on »God« but on the »veterinary care« of the experts.⁴⁴ This conflict called the Tsarist legislation on the *korobka* into remembrance.⁴⁵

Remembering and drawing from a past law when outlining succeeding legislative steps is common practice.⁴⁶ However, the gap opened by the incorporation of Jewish religious law into Russian legislation was huge and the memory of Jewish law reached far beyond the current legal environment.⁴⁷ A long time after the abolition of the *korobka*, this »memory« (the *shokhetim*'s reflection on the *korobka* and the *kashrut* rules) remained a political issue.

40 See: IU. GESSEN, Korobochnyi sbor, in: Evreiskaia Entsiklopediia, ed. by A. GARKAVI and L. KATSENEL'SON, St. Petersburg 1913, Vol. 9, 758–771 (763) (Reprint: Moscow 1991).

41 Derzhavnyi Arkhiv Kyivs'koi Oblasti (DAKO), Kyiv, f. 1 (Kievskoe Gubernskoe Pravlenie), op. 143, d. 1113 (O torgakh na otdachu v otkupnoe sodержanie Boguslavskogo korobochnogo sbora na

chetyrekhetie s 1910 g), 48. In pre-revolutionary Ukraine it was not rare that *Korobka* funds became the object of financial legal irregularities. Cf.: DAKO Kyiv, f. 1, op. 144, d. 52 (Delo o Zloupotreblenii Upolnomochennykh ot evreev mestechka Korina Sheinisa i Zil'bershteina den'gami, poluchennymi iz summ korobochnogo sbora na sodержanie blagotvritel'nykh uchrezhdenii).

42 TsDAVO, Kyiv, f. 5 (Narodnyi Komissariat Vnutrennikh Del Ukrainy), op. 3, d. 335 (Narodnyi Komissariat Vnutrennikh Del Ukrainy, 1927–28, Polozhenie o evangelicheskoi-liuteranskoii tserkvi v SSSR, perepiska s administrativnym otdelom Odesskogo okrispolkoma o registratsii religioznykh obschin, razreshenii konfirmatsii liuteranskim obschinam i uboia ptits evreiskoi religioznoi obschine), 110.

43 On *lishentsy* in general and especially on Jewish *lishentsy* in Soviet Russia: GOLFO ALEXOPOULOS, Stalin's Outcasts. Aliens, Citizens, and the Soviet state, 1926–1936, Ithaca, London 2003, 103–104.

44 TsDAVO, Kyiv, f. 5 (Narodnyi Komissariat Vnutrennikh Del Ukrainy), op. 3, d. 335 (Narodnyi Komissariat Vnutrennikh Del Ukrainy, 1927–28, Polozhenie ..., 110.

45 The religious Jews hoped that by adapting their language to Soviet ideology they could continue to practice their religion.

46 See the introductory chapter »Die Erinnerung an das Preußische Polizeiverwaltungsgesetz von 1931« in which the significance of this law for the police in post-war Germany is analyzed, in: STEFAN NAAS, Die Entstehung des Preußischen Polizeiverwaltungsgesetzes von 1931. Ein Beitrag zur Geschichte des Polizeirechts in der Weimarer Republik, Tübingen 2003, 1–10.

47 Consequently, it was important for many Ukrainian Jews to be granted – through the national court – an analogon to Beit-Din, the Rabbinical court. See: JA. KANTOR, Natsional'noe stroitel'stvo sredi evreev v SSSR, Moscow 1934, 32.

Is it possible to identify ›Jewish‹ court cases?

In the early Soviet time, civil and criminal cases involving Jews were sometimes transformed into ›Jewish cases‹. The legal or ideological characterisation of a case, I argue, established it as a Jewish matter or not.⁴⁸ Without a doubt, the pre-revolutionary trials connected with pogroms, accusations of ritual murder or with anti-Semitic riots can be defined as ›Jewish‹ (or better ›anti-Jewish‹) cases. But this leaves the question whether there were crimes of a ›general nature‹ which mostly involved Jews. For Russia and the early Soviet Ukraine there are no specific statistics available.

Statistics do exist, however, for Poland in the 1920–30s, where the illegal activities in question were also typical of the Jewish milieu in Russia before 1917. These illegal activities include: official malfeasance, financial infringements (mostly bribes and speculations) and cases connected with the illegal registration of people.

Comparable to Imperial Russia and the Soviet Ukraine, the Polish statistics reveal that capital crimes (especially murders) were rarer in the Jewish than in the non-Jewish milieu. Indeed, in Jewish communities they were three times rarer than in the former Russian territories and six times rarer than in Galicia. The same can be found for plundering (*razboi*). In Jewish communities plundering occurred four times less often than in the former Russian territories and 25 times less often than in Galicia.⁴⁹ Regarding criminal cases amongst the Jewish milieu in Eastern Ukraine in the 1920s, the entries made by the chambers ›on duty‹ (*dezturnaia*) and the national chambers of the ›Record of the People's Court of the City of Dnepropetrovsk‹ (*Kniga reestrov narodnogo suda g. Dnepropetrovska*) for the years 1928–30 provide a glimpse into what made a crime ›Jewish‹. The register for the year 1929 contains information on 90 crimes, among them 65 crimes committed by men, 20 by women and five mixed cases (families, couples).⁵⁰ The following civil law articles are mentioned: No. 97: Abuse of power or official malfeasance; No. 127: sale and resale for reasons of speculation; No. 153: intentional infliction of blows; No. 167: insult; No. 169: calumny; No. 170: theft; No. 180: cheque fraud; and, No. 187: usury (*rostovshchichestvo*).⁵¹ Article No. 170/1: theft without the use of technical means for the first time and without aggravating circumstances, is listed most frequently (32 times) – only three perpetrators were

48 The following civil case seems to be a ›non-Jewish‹ matter: petty bourgeois (*meshchanin*) Leiba Gek submitted a complaint to the district peace court of Gaisin accusing the South-Western railway of damaging his goods; he sought compensation of 108 rubels. Gek's complaint was based on the losses he had suffered due to the railway agents destruction of his goods (fresh fish). The specific features of railway transport at the beginning of the 20th century and the resulting conflicts, in my opinion, are not directly related to Jews. See: 1912 goda. Aprelia 11 dnia. Proshenie meschanina Leiby Geka ob otmene resheniia Gaisinskogo mirovogo s'ezda po isku Geka k upravleniiu iugo-zapadnykh zheleznykh dorog o 108 rub. Ubytkov, in: Resheniia Grazhdanskogo

kassatsionnogo departamenta Pravitel'stviushchego Senata 1912, St.-Petersburg 1912, 294–296.

49 Cf.: L. HERSH, *Farbrekherishkait fun yidn un nityidn in Polen*, Vilne 1937, III–VI and § 12, Table VII–VIII, 240–245.

50 Derzhavnyi Arkhiv Dnipropetrovs'koi Oblasti (DADO), Dnipropetrovs'k, f. R-1900 (Dnepropetrovskii narodnyi Sud, Ev-

reiskaia Natsional'naia Kamera) op. 1, d. 1 (Kniga reestra ugovolnykh Del. Narodnyi Sud, Dezturnaia i natsional'naia kamera), 1928–30gg. Reestr za 1928g.

51 In ›Kniga reestra‹ only the numbers of the articles are mentioned. The content is quoted according to the following edition: *Ugolovnyi Kodeks USSR, s izmeneniami i dopolneniami na 1 noiabria 1934*, Kiev 1934, 43, 51–63.

over thirty years of age, suggesting that this type of crime had a ›Soviet character‹. 24 people were accused of »wilful physical and verbal abuse«, according to article 153 (which was often combined with No. 167).⁵² But what about the other cases beyond the national legal organizations (*Sudebnye kamery*) which involved Jews? As argued here, one has to proceed on a case by case basis.

In 1927 the Yiddish newspaper »*Der Shtern*« reported that a district court in Khar'kov had reached a verdict concerning the heads (*makores*) of a textile syndicate.⁵³ All the *makores* were given prison sentences ranging from 18 months to three years for bribing and, respectively, taking bribes and the *gut-brudershaft*. Only half of the accused were Jewish, yet the case won the attention of the Jewish press and was granted a great deal of space in a Jewish newspaper. Through the attention given to the case through the Jewish newspaper, the »mixed« case was rendered *Jewish*.

The administration of Jews as a nation and a national minority during the time of »Soviet international nationalism« reflected a change, cases suddenly assumed national (read: Jewish) character.⁵⁴

Language as an Impetus for Change? Two Dictionaries

In 1926 and in 1941 two legal dictionaries were published, neither of which were ever used in everyday practice. The first dictionary, the Russian-Ukrainian dictionary of legal terminology, published by Ahatanhel Kryms'kyi (1871–1941), became a victim of the Sovietization and Russification of legal terminology. The second dictionary, in which linguist Elie Spivak (1891–1950)⁵⁵ collected Russian-Yiddish legal and administrative lexicon, was published only months before the extinction of the majority of its potential users – the Yiddish-speaking population of the Ukraine.⁵⁶

The editors and authors of the Russian-Ukrainian dictionary stressed the importance of the vocabulary's Ukrainian spirit and intentionally romanticized expressions. Kryms'kyi emphasized the significance of the fact that the dictionary contained »words which hitherto had beautifully (*liubisen'ko*) lived on in the tongues of the Ukrainian people«. The authors were concerned with the demand to reactivate the outdated Ukrainian legal language (the language

nyi slovar', ed. by E. SPIVAK Kiev 1941. The beginnings of a Yiddish legal terminology can also be found before Spivak's dictionary. See the Short Dictionary of Legal Terminology published in Belorussia: Iuridicheskaia terminologija, Minsk 1926 (= Evreiskaia nauchnaia terminologija, No.1) (Text in Russian, Yiddish and Belorussian). In the Ukraine during the 1920s, as for administrative matters, it was often improvised on behalf of *Evseksia* und *Natsmen*. See the 15 forms *fir militsie oif jiddish* which had already been prepared in 1928 by the philological section of the chair for Yiddish culture, but not published: In the copies conserved in the archives the Yiddish words are printed while the Russian copies are written by hand in pen. DAKO, Kyiv, f. R-112 (Kyivs'kyi Okrvykonkom), op. 1, d. 516 (Materialy Evseksii), 1928, 26.

52 DADO, Kniga reestra (Fn. 53), 3–170.

53 SHIN, »Urteil iber di makores fun tekstil-sindikats«, in: *Der Shtern*, 242 (733) October 22, 1927.

54 TERRY MARTIN, *The Affirmative Action Empire. Nations and Nationalism in the Soviet Union, 1923–1939*, Ithaca 2001, 75.

55 On Spivak, who in 1950 became a victim of the anti-Jewish Stalinist campaign, see: OLEG BERENSH-

TEIN, Elie Spivak: Zhyttia, tvorchist', dolia, in: *Z arkhiviv VUCHK, GPU, NKVD, KGB 3/4 (8/9)*, Spetsial'nyi vypusk, Kyiv 1998, 21–29.

56 See: (Ed.), *Rosii's'ko-ukrains'kyj slovnyk pravnychoi movy*, 2 vydannia za redaktsieiu K. Tserkevycha i V. Pavlovs'kogo, ed. by A. KRYMS'KYI, New York 1984 (First edition: Kiev 1926); *Russko-evreiskii pravovoi i administrativ-*

- 57 Peredne slovo redaktsiinoi komisii do pershogo vydannia, in: Rossiis'ko-ukrains'kyi slovnyk, V, VIII (III–IX).
- 58 Quoted from: D. ZASLAVSKII, Na protsesse vyzvolentsev, in: Prosveshchenie natsional'nostei, 6, 1930, 13. Quoted in: YURI SLEZKINE, The USSR as a Communal Apartment, or How a Socialist State Promoted Ethnic Particularism, in: Slavic Review, Vol. 53, No. 2 (Summer 1994), 414–452 (441). Yury Slezkine talks of a »rural Utopia« of the accused in contrast to an »urban Utopia« from »the near but ethnically fragmented future«, p. 441.
- 59 See: N. MAKSIMENKO, Ob ukrainskoi iuridicheskoi terminologii, in: Vestnik Sovetskoi Iustitsii, 21 (1924), 698–702. More can be found in: Iu. S. SHEMSHUCHENKO, Instytut Derzhavy i Prava imeni V. M. Korets'kogo NAN Ukrainy ta inshi akademichni naukovi ustanovy iurydychnogo profilii, in: Akademichna Iurydychna Dumka, ed. by Iu. S. Shemshuchenko, Kyiv 1998, 47–50 (54–77). On legal terminology: I. B. USENKO, Ukrains'ka iurydychna terminologiiia, in: Mala entsiklopediia etno-derzhavstva, ed. by Iu. I. RYMARENKO, Kyiv 1996, 242–244.
- 60 The criticism of the claim on the *samobytnost'* of the Ukrainian and Belorussian language in: M. SHUL'MAN, O sovetizmakh i internatsional'nykh terminakh v natsional'nykh iazykakh, in: Revoliutsia i pis'mennost', Sbornik No. 2, Moscow 1936, 55–65 (59).
- 61 Arkhiv Akademii Nauk Ukrainy, Instytut Arkhivoznavstva, Kyiv, f. 242 (Spivak El' Gershovych), d. 51, Ottisk stat'i »Vyiavlennia spil'nosti v radians'kij slovtvorchosti«, in: I. V. Stalinu. Akademiia Nauk USSR, Sbornik trudov, Kiev 1940, 53–67 (54–55). On Yiddish in Soviet Russia of the 1920s, see: DAVID SHNEER, Yiddish and the Creation of Soviet Jewish Culture, 1918–1930, Cambridge 2004.
- 62 E. SPIVAK, Rekhhtlekh-administrativne leksik, in: Afn Sprachfront, 3, Kiev 1939, 3–19 (3).
- 63 It is remarkable that in his informal review of Spivak's complete

of Ukrainian customary law) and to simultaneously prove that Ukrainian was not a »coincidental, constructed« (*shtuchne, kovane*) language.⁵⁷ Their work was based on old Ukrainian legal records, documentation of the era of the *Hetmanats*, and Western-Ukrainian legal documents. Later, during the trial of *Spilka vyzvolennia Ukrainy* (1929–30), a group of Ukrainian intellectuals, amongst them the authors of the dictionary, were accused of being faithful to the old agrarian Ukraine, »dotted with farmsteads and manor houses«, and of misunderstanding »Soviet-Ukrainization«. ⁵⁸ In other words, the authorities of Soviet-Ukraine believed that Europeanized and Latinized Russian legal terminology should be the basis for a Ukrainian understanding of law.⁵⁹

Elie Spivak, the author of the Russian-Yiddish dictionary, called the search for patterns in the history of Jewish law a futile undertaking, even more so because in the mid-1930s a heated political-scientific battle in the language of the national minorities was being led against the national *samobytnost'* (specificity) discourse.⁶⁰ According to Spivak Yiddish, legal terminology in Soviet Ukraine should be based on different principles. In his dictionary the author explicitly wishes to Latinize and Russianize Yiddish. Spivak was concerned with creating a Jewish legal language which was Jewish only in its formal aspects (using Hebrew letters and a Yiddish-Germanic basis) and socialistic in its content. For him this meant the elimination of vocabulary based on foreign languages (»alien words«, *slova-imorodtsy*) – an obvious allusion to Jewish people's legal status in the Russian Empire. The words were rooted in (*ukorenilis'*) and therefore corresponded to their new socialistic meanings.⁶¹

It was Spivak's intention that legal-administrative terminology be the »generally used vocabulary« in the time of »political knowledge« for all sections of the population.⁶² In contrast to »archaic Ukrainisms«, Hebrewisms should only appear where absolutely necessary. It was clearly important to *opgrentsen* (dissociate oneself) from archaic Hebrew expressions, which »still prevailed« post-1917.⁶³ Spivak argued, however, that a certain number of words and expressions from traditional Jewish law should be used, in particular, those words which were »rooted« (*ukorenilis'*) in the Hebrew language. These included: *get* (letter of a divorce), *gegeter* (divorced person) and *gemishpetkait* (previous conviction) (*sudimost'*).⁶⁴ Yet Spivak also pointed out that 19 years after the

works, Ahatanel Kryms'kyi emphasized, on the one hand, that Spivak was too intense in his renunciation of old-Hebrew, while, on the other hand, he demonstrated enough intuition (*niukh*) for the traditional Jewish language by creating modern Yiddish. See: AKADEMIK A. JU. KRYMS'KYI, Do ekspertnoi komisii v spravi vyboriv členiv-korespondentiv Akademii Nauk Ukrainy (6.2.1939),

in: Arkhiv Prezydiuma Natsional'noi Akademii Nauk Ukrainy, Kyiv, Lichnoe delo Il'i Grigor'e-vicha Spivaka, 65.

- 64 SPIVAK, Rekhhtlekh-administrativne leksik (Fn. 65), 6–7. On the transformation of Hebrew halachian expression in Yiddish see: JEAN JOFEN, Halakhik Sources of Yiddish Sayings, in: The Life and Times of Yiddish: Studies in the Past and Present of the Language,

revolution many Slavisms and Sovietisms had been naturalized into Hebrew.⁶⁵ More importantly, Spivak argued that behind each national (linguistic) conscience equality is hidden and only partially based on analogisms. Determining the relationship of one language towards another at the cultural and political meta-level are necessary.⁶⁶ The experience of the Soviet-Ukrainian courts provided him with material to test his hypotheses.

For instance, in a murder trial in Khar'kov in 1927 the lawyers informed the accused woman that she had not committed an act of retaliation but an *akt fun meschugas* (act of insanity). However, no word for insanity (*nevmenjaemost'*) appeared in the newspaper article in 1927.⁶⁷ Practical and administrative necessities were taken into consideration in Spivak's dictionary of legal and administrative lexicon (maybe after Spivak had read the newspaper article), so *nevmeniaemost'* is translated as *unfarantwortfeikayt* in the dictionary. The German-Latin word – as a sign of advanced Sovietization – thereby replaced the Yiddish colloquial word *meschugas*.⁶⁸

The language politics regarding Yiddish legal terminology, in which Elie Spivak played an active part, became another example of the ›two-headed Janus‹ of Soviet legal jurisdiction. In this case, the face towards the future was dominant. The declaration of (linguistic) equality radicalized the concept of reconciliation between the Jewish and the autochthonous populations, which was rooted in the Russian debates of the 19th century.⁶⁹ Despite this, the Soviet jurisdiction over class and the Soviet ›politics of voice‹ were declared the only valid ›law‹.⁷⁰ The past was meaningless, especially when rooted in the Rabbinical-Hebrew tradition, and had to be left behind. According to this way of thinking there was no Jewish legal history apart from the history of legislative persecutions and archaic traditional law. There was only the present day with its tangible legal and political claims. The logic of Spivak's dictionary was more than a result of the repressive politics of the Stalin government and more than just another example of the ›non-Jewish‹ (Isaac Deutscher), i. e. assimilated, Jewry.⁷¹ Spivak's dictionary represented the communist fear of a continuity of legal ideas and the transferring of the ›outdated‹ into the present. This is probably the reason that the word ›rabbi‹ (*ravvin*) was missing in the Russian-Yiddish dictionary although this word did appear in the new Soviet Russian-Ukrainian dictionary.

ed. by JOSEPH C. LANDIS, New York 2000 (= Yiddish. A Quarterly Journal. Devoted to Yiddish and Yiddish Literature), 197–201.

65 SPIVAK, Rekhlekh-administrative leksik (Fn. 65), 6.

66 SPIVAK, Vyiavlennia spil'nosti v radjans'kii slovotvorchosti (Fn. 64), 55.

67 SHIN, Di merdern fun doktor Esterman afn bashuldikungsbank,

in: Der Shtern, 266 (757) 22. November 1927.

68 SPIVAK, Russko-evreiskii pravovoi i administrativnyi slovar' (Fn. 59), 80.

69 On ›sblizhenie‹ and ›sliianie‹ in the context of the ›Jewish Question‹ in the second part of the 19th century, see: JOHN DOYLE KLIER, Imperial Russia's Jewish Question, 1855–1881, Cambridge 1995, 72–76.

70 On ›Canonization of the Party-State Voice‹ in the 1920–30s, see: MICHAEL S. GORHAM, Speaking in Soviet Tongues. Language, Culture and the Politics of Voice in Revolutionary Russia, DeKalb, Ill. 2003, 120–140.

71 ISAAC DEUTSCHER, The Non-Jewish Jew and other essays, London 1968.

Jewish Lawyers: Definition and Ethnicity

In the case of Russian-Jewish lawyers pre-1917 and during emigration post-1917, one Janus face was constantly looking backwards. In the past, one was searching mainly for parallels between the principles of the legal reform of 1864 and current legal reality – as a pre-revolutionary advocate (either Jewish or non-Jewish) one was the child and the follower of the 1864 reform. In 1950, lawyer Boris Gershun (1870–1954) gave a speech in the »Jewish Palestinian Agency« in Tel Aviv in memory of Oskar Gruzenberg (1866–1940). In his eulogy he emphasized that Gruzenberg had been a *Russian lawyer* who »during the Russian period of his life had helped the Jews in his profession of Russian advocate«. ⁷²

Ideas of this kind granted the advocates of the early 20th century a liberal, yet *imperial* identity – the lawyers of the Tsarist era frequently had a critical attitude towards independent Ukraine. ⁷³ During the »icy December« of 1917 jurist Dmitrii Avdeenko hurried to a court conference in Kherson. In *Sobornaia* square he saw horsemen dressed in Ukrainian clothes: »What kind of masquerade is this? – I asked the judge K. Are they shooting a *cinéma* picture? Oh no, he responded laughingly. Since yesterday the city has been occupied by Ukrainians«. ⁷⁴

In April 1917 attorney Alexei Gol'denveizer (1890–1979) spoke of a »hypnosis« of Ukrainian independence, which was not to be mistaken with the reality of a country ignorant of federalism. It was in the best interests of the Jews to resist the revolutionary zeal of Ukrainian independence. ⁷⁵ Likewise conceptions of an ideal Russian legal representation were preserved post-1917. Gol'denveizer had been working in Berlin as an advocate since 1923. He recorded his thoughts on the topic in one of his notebooks: »After two years of working in Berlin my general conclusion is definitely a negative one: For a Russian attorney, that is an attorney in the true sense of the word, neither a broker nor a merchant, soon there will be nothing left to do. The Russian clients will learn to be satisfied only with German attorneys who are not really up to date but who know the local conditions well [...].« ⁷⁶

The jurists' networks in Soviet Ukraine were created to further common research and work in the Russian empire. The non-Jewish lawyer Valentin Lekhno described his odyssey in the Ukraine be-

72 Rech' B. L. Gershuna pamiati O. O. Gruzenberga 27. iunia 1950 v Evreiskom Palestinskom Agentstve (Tel-Aviv), in: Bakhmeteff Archive, New York, Obshchestvo russkikh advokatov vo Frantsii, Box 4, 2.

73 With respect to Alexei Gol'denveizer refer to: ALLA ZEIDE, *Bez Imperii. Teksty i konteksty zhizni russkogo evreia Alekseia Aleksandrovicha Gol'denveizera*, in: *Ab Imperio* 3 (2005), 331–346 (336).

74 Dmitrii Kondrat'evich Avdeenko, Collection, Box 1, Tetrad' 1,

»Okruzhnoi sud na izlome. Iz vospominanii sudebnogo deiatelia«, in: Bakhmeteff Arkhive, New York, p. 2.

75 DAKO, f. 1788 (Kievskaiia evreiskaia obshchina), op. 1, d. 2 (Protokol zasedanii Biuro Kievskoi evreiskoi obshchiny za mart-avgust 1917, Zasedanie 2. aprelia 1917g.), 12–13. Notwithstanding, Gol'denveizer cooperated with Ukrainian politicians but always

remained a »Russian attorney«. On his time in Kiev, see: A. GOL'DENVEIZER, *Iz Kievskikh vospominanii*, in: *Arkhiv Russkoi Revoliutsii*, T. 6, Berlin 1922, 161–303.

76 Cf.: *Zapisnye knizhki A. Gol'denveizera*. Note from August 28, 1923. I am grateful to Alla Zeide who granted me access to Gol'denveizer's notebooks kept in her private archives in New York.

tween 1918 and 1922. With a plan to escape from the Soviet Ukraine, Lekhno was still trying to climb the Bolshevik ladder. He was helped mainly by his Jewish colleagues with whom he had studied in Khar'kov prior to 1917 and who were now working for Soviet legal institutions. Here the feeling of belonging to a group or a »guild« was clearly dominant.⁷⁷

Despite a tendency to romanticize the situation of Jewish lawyers in pre-revolutionary Russia, the reality was quite difficult. Since 1889 »people of non-Christian confessions« needed to receive special permission from the Minister of Justice before they could be accepted as sworn attorneys (*prisiazhnye poverennye*). During the fifteen years following 1889 no Jew was given the status of *prisiazhnye poverennye*, resulting in a professional crisis for thousands of legal graduates.⁷⁸ This situation continued until the »era of confidence« when, after the assassination of Pleve (1904), the Minister of the Interior, Prince Sviatopolk-Mirskii was appointed as his successor. After the Manifest of October 17, 1905 Jewish attorney assistants were accepted as *prisiazhnye poverennye* without further hindrance. This practice continued until 1908 when Jewish »attorney assistants« were again deprived of their legal rights and were prohibited to become sworn attorneys.

Before 1917, which factors made a lawyer of Jewish origin a »Jewish lawyer«?⁷⁹ On the Russian-Jewish side, Genrikh Sliozberg referred to a connection between his intense Talmud studies as a 10 year-old boy with his ability as a grown man and lawyer to analyse different points of view and to find their synthesis.⁸⁰ A different testimony was provided by German-Jewish attorney Hermann Staub (1856–1904) who talked about »his« method of commenting on merchant law: »My way of presenting is the Talmudic one.«⁸¹ In Sliozberg's as well as in Staub's case we are confronted with a slightly romanticized sacralisation of their past. In fact, while the Talmudic argumentation and Jewish law always remained a fascinating subject for them, it remained only a fascinating subject and nothing more. By emphasising the positive aspects they encountered in their religious tradition, for instance by making Talmudic references, Jewish lawyers tried to balance exclusion and the mainstream negative opinion associated with Judaism. Amongst these positive aspects, Sliozberg counted, for example, the plurality of the Talmud, which facilitated and even embraced many different opinions about one topic.

77 VALENTIN LEKHNO, Begstvo, Memoirs 1940–57, in: Bakhmeteff Archive at Columbia University, New York, 7, 9.

78 For more details, see: Iu. G. (IULII GESSEN), Advokatura v Rossii, in: Evreiskaia Entsiklopediia, ed. by A. GARKAVI and L. KATSENEL'SON, St. Petersburg 1913, Vol. 1, 470 (469–473) (Reprint: Moscow 1991). See also: JÖRG BABEROWSKI, Juden und Antisemiten in der

russischen Rechtsanwaltschaft, 1864–1917, in: Jahrbücher für Geschichte Osteuropas 43 (1995) 493–518; BABEROWSKI, Autokratie und Justiz. Zum Verhältnis von Rechtsstaatlichkeit und Rückständigkeit im ausgehenden Zarenreich 1864–1914, Frankfurt am Main 1996, 608.

79 Discussion of this topic to be found in: Deutsche Juristen jüdischer Herkunft, ed. by HELMUT

HEINRICHS, HARALD FRANZKI, KLAUS SCHMALZ, MICHAEL STOLLEIS, Munich 1993, Publishers's preface, X. The historian Thomas Henne, in reference to his protagonists and in the polemically emphasized distinction from the publishers and authors of the book »German lawyers of Jewish Origin«, uses the expression *jüdische Juristen*, explaining his methodical choice as follows: During the next fifty to sixty years in question there will be no possibility to constitute »Jewish lawyers« as a group beyond anti-Semitic criteria. This group's self-perception or, respectively, perception of others due to their belonging to the Jewish religion was, according to Henne, mostly insignificant. Therefore, only a methodically not unproblematic ex-post perspective could distinguish dualistically, yet »linguistically with a firm grip«, between Jewish lawyers and others lawyers. See: THOMAS HENNE, »Jüdische Richter« am Reichs-Oberhandelsgericht und am Reichsgericht bis 1933, in: Antisemitismus in Sachsen im 19. und 20. Jahrhundert, ed. by Ephraim Carlebach Stiftung. Sächsische Landeszentrale für politische Bildung 2004, 142–155 (155).

80 Cf.: GENRIKH SLIOZBERG, Dela minuvshikh dnei: Zapiski russkogo evreia, T. 1, in: Evrei v Rossii, XIX vek, ed. by VIKTOR KEL'NER, Moscow 2000, 247–496 (284).

81 Staub's quotation to be found in: THOMAS HENNE, Diskriminierungen gegen »jüdische Juristen« und jüdische Abwehrreaktionen im Kaiserreich – von Samuel zu Hermann Staub, published 2007 in: Anwalt – Kommentator – »Entdecker«: Festschrift für Hermann Staub zum 150. Geburtstag am 21. März 2006, ed. by THOMAS HENNE, RAINER SCHRÖDER, JAN THIESSEN. The quotation first published in: ARTHUR SCHINDLER-BERLIN, Männer der Wissenschaft, in: Der Orden Bne Briss. Mitteilungen der Großloge für Deutschland VIII. U.O.B.B., Jg. 1932, 98 (= Festnummer zum Ordenstag 1932).

During World War I the rabbis and lawyers from the Ukrainian province turned to the attorney and state delegate Duma Naftali Fridman (1863–1921) with their concerns. The tone of these letters was always very similar: Fridman was continuously addressed as »delegate and Jew« and as »representative of our people« in Petersburg. It was not relevant that one case was about the renewal of the licences of hundreds of Jewish attorneys and the other about the exemption of Ukrainian rabbis from the draft.⁸² This example exemplifies a shift in representation, as the Jewish community started to turn to attorneys in the »court of gentiles« (Benjamin Nathans) rather than to rabbis in the rabbinical court (*Beit Din*). The attorneys represented a »professionalization of shtadlanut« – Jewish political representation – which many of them regarded as an activity in accordance with the ideas of Russian legal reform.⁸³ Until 1917 Jewish attorneys, who themselves were caught in an intermediate position, were in charge of transferring the legal culture of Jews to the Russian courts.

The February revolution of 1917 ceased the restrictions and quotas for Jewish lawyers, a fact which is clearly revealed in the statistics of the Legal Institute inaugurated in Kiev in 1917.⁸⁴ But together with new post-1917 restrictions, the self-attribution of »Jewish jurists« was made superfluous as Soviet lawyers entered the scene.⁸⁵ Indeed, the extremely negative relationship between the authorities and the bar continued post-1917. In unofficial newspaper articles and documents the bar (*advokatura*) in the early Soviet Union was described using categories which had been used before 1917 against Jews in the bar.

When judging the post-1917 situation in the Ukrainian People's Republic and then in Soviet Ukraine one should strictly differentiate between a) personal attitudes and self-definitions and b) the political orientation of the lawyer concerned.⁸⁶ Since 1919 when the »provisional rules (*polozheniia*) of the People's Court of the Ukrainian Soviet Republic« were set up and the bar associations (*kolegii pravozastupnykiv*) were called to life, Jewish lawyers who joined the association – mostly coming from the poorer stratas of the Jewish population and having little connection with the Jewish tradition – came to an arrangement with the Soviet powers and in many respects even represented it.⁸⁷ Despite their Jewish origin, such lawyers must be considered »Soviet lawyers« as they constituted the »lawyers' collectives« during the era of

82 TsDIA, Kyiv, f. 1010 (Naftali Fridman), op. 1, d. 81 (Pis'ma Naftali Fridmanu ot kollektivnykh korrespondentov, 1914–18), 132 pp.; op. 1, d. 58 (Perepiska s ravvinami ob osvobozhdenii ikh ot pryziva na voinskuiu sluzhbu), 1.

83 NATHANS, *Beyond the Pale* (Fn. 2), 320–334. To *shtadlanut* in the post-kahal era (after 1844) see also: ISRAEL BARTAL, *From Corporation to Nation: Jewish Autonomy in Eastern Europe, 1772–1881*, in: *Jahrbuch des Simon-Dubnow-Instituts*, ed. by DAN DINER, V, 2006, 17–32 (26).

84 Of these 1250 personal files (*Lichnye dela*) of the Kievan Legal Institute (1918) only 318 were files of non-Jews, which shows that the breaking of the 5% quota for law students changed the statistics. Cf.: *Istorychnyi Arkhiv m. Kyiva*, f. 243 (Kievskii Iuridicheskii Institut), op. 1.

85 Here is an example from another discourse. A Russian painter of the second half of the 20th century,

Valentin Vorob'ev, wrote about the artist Il'ia Kabakov: »Michail Grobman [...] concluded: »Il'ia Kabakov is a Jewish painter«. But the painter himself [...] contradicts: »What I am doing I cannot connect with any special Jewish trait.« I am supporting my position – Vorob'ev goes on – with Kabakov's interesting self-determination: »I am a Soviet painter!«. See: VALENTIN VOROB'EV, *Vrag naroda*.

Vospominaniia khudozhnika, Moscow 2005, 773.

86 This, for example, could be concluded from forms which every prospective lawyer had to fill in before employment. See: DAKO, f. R-1000 (Kievskaiia Gubprokuratura), op. 1, d. 40 (Gubprokuratura. Ankety iuristov, 1923).

87 Cf.: *Istoriia Advokatury Ukrainy*, ed. by T. V. VARFOLOMEIEVA, O. D. SVIATOTS'KYI, Kyiv 1992, 13–16.

forced collectivisation.⁸⁸ These conditions facilitated the ideological controversy amongst lawyers of Jewish origin holding differing opinions.⁸⁹ It is not always useful to consult the relevant statistics in this case. Thus, there were numerous lawyers that were Jewish in Ukrainian legal offices (more than 50% in the big cities of Ukraine, like Kiev, Khar'kov or Odessa),⁹⁰ but because their activities were not exclusively »Jewish«, these lawyers could, paradoxically, not be called »Jewish lawyers«.⁹¹

Lawyers who were practising their profession in the Jewish legal chambers in the Ukraine during the 1920s represented something else altogether. Here the Jewish component was more important than the confessional one, with the language (Yiddish) being its central characteristic. All advocates in the 1920s, including those in the Yiddish courts, were mostly doing business as usual – that is, they were doing what was ideologically expected of them. Accordingly, a journalist of the Ukrainian-Jewish newspaper *Der Shtern* critically reported that Jewish advocates were emphasizing the *unbaflekte* (unblemished) Proletarian past of their clients in their speeches.⁹² The advocates, as was noticed by Yiddish observers, were »Russified« and belonged to those lawyers who, for pragmatic reasons, had recommended that their clients use the Russian language in communicating with the authorities (e.g. at appeals).⁹³ The situation of Ukrainian Jewish courts was similar to that of Belorussian ones. In the notes of a reporter, the reader finds a »[...] vivid picture of the Minsk Yiddish court circa 1927, where a *militzioner*, speaks a »newspaper Yiddish«, an old advocate's »half-Yiddish-and-half Russian« legalese makes the audience laugh, and another advocate, a young man, speaks a »pure, albeit too mannered, Yiddish«.⁹⁴

In the 1920s the »Jewish advocate« had difficulty supporting the specific tasks of the socialist mission. The urban lawyers' use of »Latin« meant that they were constantly misunderstood, which was a phenomenon typical of the perception of lawyers, at least in Tsarist Russia.⁹⁵ The exclamation: »the Proletarian Court is an organ of the dictatorship of the proletariat and not of the factory owner's attorney (*fabrikantskogo advokata*)!«, was typical in this context.⁹⁶ A certain amount of disdain towards the advocate's profession survived 1917 in Russia/Ukraine, yet it was transformed rhetorically as well as ideologically. Without a doubt the Jewish advocates themselves displayed both faces of the legal

as they did in the pre-revolutionary period. An example for this period are the memoirs of M. S. Mazor on his employment as an attorney's assistant to the famous Jewish attorney G. M. Barats in Kiev at the end of the 19th century (M. S. MAZOR, *Vospominaniia o Germane Markoviche Baratse*, Kiev 1923, manuscript, in: YIVO Archives, New York, RG 309, Leon Baratz, Box 1).

88 See: BUTLER, *Soviet Law* (Fn. 7), 82.

89 Cf. the polemics in the Khar'kovian Legal Newspaper »Vestnik Sovetskoi Iustitsii« on the advocates' professional ethics in which lawyers were supporting distinct, i.e. positions, »in favour of and against advocates«: LEV AKHMATOV, *Sud. Zashchita. Prokuratura*, in: *Vestnik Sovetskoi Iustitsii* (Khar'kov), 1 (83), 1927,

15–16; I. FAL'KEVICH, *K voprosu ob advokatskoi etike*, in: *Vestnik Sovetskoi Iustitsii* 1 (83), 1927, 14–15.

90 Eugene Huskey points to this: They were »perhaps the greatest beneficiaries of the rapid growth of the Bar during NEP«; compare: HUSKEY, *Russian Lawyers and the Soviet State* (Fn. 4), 103.

91 One can imagine that in legal offices »Jewish networks« emerged

92 See: SHIN, *Di merdern fun doktor Esterman*.

93 FELIX KANDEL', *Kniga vremen i sobytii*, T. 3, *Istoriia evreev Sovetskogo Soiuza (1917–1939)*, Moscow/Jerusalem 2002/5763, 302.

94 In I. J. SINGER, *Naj Rusland: bilder fun a rajze*, Vilna 1928, 29–33, Quoted in: GENNADY ESTRAIKH, *Soviet Yiddish. Language Planning and Linguistic Development*, Oxford 1999, 56.

95 In his essay on the lawyer's profession Rainer Maria Kiesow quotes Franz Kafka whose protagonist »K.« does not understand the lawyer »due to a great deal of Latin«. Cf.: RAINER MARIA KIESOW, *Der entpflichtete Advokat*, in: *Officium advocati*, ed. by LAURENT MAYALI, ANTONIO PADOA SCHIOPPA, DIETER SIMON, Frankfurt am Main 2000, 135–154 (136).

96 Cf.: DAKO, Kyiv, f. R-3050 (Kievskaiia raionnaia komissiiia evreiskogo obshchestvennogo komiteta po okazaniiu pomoshchi postradavshim ot pogromov. 1921–22), op. 1, d. 128 (Kopiiia sledstvennogo dela Kievskogo Gubernskogo Revolitsionnogo Tribunala po obvineniiu otdel'nykh lits Kievskogo Komiteta »Poalej-Tsion« v zlouoptrebleniiakh (prinuditel'noe uchastie v pogromakh i spekulatsii)), 2–3.

system's ›Janus head‹: one looking to the past (Russian liberal legal reform, 1864) and other looking to the future, a future in which the advocate's profession served Soviet ideology.

Conclusion

The approximately 1.5 million Jews and Jewesses living in the different regions of the Ukraine were socially, culturally and professionally distinct and had a very colourful and varying understanding of law and legality. Of course a distinction must be made between the legal understanding and legal behaviour of a working class man in Kiev in 1908, an advocate in Odessa in the events leading up to World War I and that of a colonist who in the mid-1920s left their *shtetl* and moved to the Crimea. Nevertheless it seems possible to speak of some overarching »cultural attitudes«⁹⁷ that were held by Ukrainian Jews towards the law, which, in turn, determined their models of behaviour. These models – in differing degrees a feature of all »children of Tevye«⁹⁸ – ensured a certain, albeit conditional, continuity during a period when the semantics of ›legality‹ were accompanied by absolute lawlessness in the Soviet Union. The macro-level issues, such as the complex Tsarist jurisdiction, quickly changed and yet continued to live on as a continually weakening memory. The derivations of law – such as legality, justice and emancipation – became the object of interest for the struggles within the Jewish community, independent of social origin and political attitudes. Hybrids developed which allowed both of Janus' heads to thrive. The past was omnipresent in post-1917 Jewish legal conditions. Life's needs was an indispensable part of Jews' legal argumentation (as can be seen in many petitions, legal articles, etc.), and this was not only true post-1917 when the »new life« gained the upper hand.⁹⁹ Jewish traditional law was still an essential starting point for legal debates. In 1918 (soon after the passing of the Balfour Declaration), the Zionists and Jewish lawyers Shmuel Aizenshtadt and Asher Gulak founded the association *Mishpat Ivri* (»Jewish law«) in Moscow to deal with issues related to the adaptation of Jewish legal understanding to the new circumstances and a »revitalization« of the traditional laws in accordance with the Zionist spirit. The association was designed to draw up the laws of the future Jewish state as well as

97 Cf.: Phrasing which is used in another context, in: MICHAEL STOLLEIS, *Rechtsgeschichte, Verfassungsgeschichte*, in: *Geschichte. Ein Grundkurs*, ed. by

H.-J. GOERTZ, Reinbek 1998, 356, quoted in: HARRIET RUDOLPH, *Rechtskultur in der Frühen Neuzeit. Perspektiven und Erkenntnis-potentiale eines modischen Begriffs*, in: *Historische Zeitschrift*, 278, Heft 2 (April 2004), 347–374 (358).

98 For Yuri Slezkine the daughters of Tevye the Milkman, the protagonist of Sholom-Aleikhem, symbolically represent the different

Jewish ways of life in the 20th century. See: YURI SLEZKINE, *The Jewish Century*, Princeton 2004, 204 pp.

99 Jonathan Frankel writes that at the turn of the 20th century the ideologists, the *teoretiki* of Jewish parties, were engaged in their own debate »influenced by local economic realities, by grassroots opinion, by life«. FRANKEL, *Prophecy and Politics* (Fn. 5), 554.

the laws pertaining to the Jewish Diaspora with respect to the Europe-wide tendency towards autonomy for national minorities.¹⁰⁰ In *Mishpat Ivri*, people for whom the »Jewish question« was »a dream about the future« met with those who considered the »liquor trade« in Russia equally vital.¹⁰¹ But the reflections about the law in the light of the *halacha* departed Soviet Union for decades with the people who made them, and leave the country for good or were prosecuted.

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100 Cf.: MENACHEM ELON, *Jewish Law. History, Sources, Principles*, Vol. 4, Philadelphia, Jerusalem 1994, 1588–1589; Pravo evreiskoe, in: *Kratkaia Evreiskaia Entsiklopediia*, ed. by ITSHAK OREN, NAFTALI PRAT, T. 6, Moscow, Jerusalem 1992, 719; *Le-Toledot Hevrat ha-Mishpat ha-Ivri*, in: *Ha-Mishpat ha-Ivri*, II (1927), 220–222.

101 According to the lawyer Genrikh Sliozberg's argument used in a letter to Vladimir (Zeev) Jabotinsky, quoted in: BENJAMIN NATHANS, *The Other Modern Jewish Politics. Integration and Modernity in Fin de Siècle Russia*, in: *The Emergence of Modern Jewish Politics. Bundism and Zionism in Eastern Europe*, ed. by ZVI GITELMAN, Pittsburgh, Pa. 2003, 20–34 (28).

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