DRAFT LIMITED TO SYMPOSIUM PARTICIPANTS

Jay R. Berkovitz

Autonomy and Integration: Jewish Law and Legal Pluralism in Eighteenth-Century Metz

The records of the Metz Beit Din, dating from the last decades of the *ancien régime*, offer a unique and arguably valuable perspective on the development of Jewish law prior to the attainment of citizenship and the dissolution of the traditional *kehillah*. These documents encompass the full range of legal issues facing the community— especially the realms of commercial law and family law. But irrespective of the particular issue under debate, the interaction between Jewish and general law is an underlying theme throughout the Metz proceedings. In this paper I will examine how the Beit Din functioned alongside the French civil courts in order to shed light on the tensions between communal autonomy on the one hand and the challenges of social and cultural integration on the other. The Metz records illustrate clearly that Jewish law, though commonly understood in talmudic and later rabbinic sources to be an autonomous realm, is in fact viewed by the rabbinic court as a contingent system shaped by social, economic, political and cultural forces.

Gaining insight into the interaction between discrete legal systems demands close attention to the prevailing social and cultural context. More than other extant sources, the records of the Metz Beit Din offer clear evidence that law and society are "mutually constitutive." With that in mind, I shall consider the responsiveness of the Beit Din to the socio-economic realities of the day as a foundation for gauging the impact of broader cultural influences in the late eighteenth century.[1] I am equally interested in how rabbinic court jurists responded to the challenges posed by non-Jewish legal systems, that is, to what degree was judicial procedure in the Beit Din and its interpretation of Jewish law itself influenced by French law or by the possibility of recourse to French civil courts?[2]

In the last third of the eighteenth century, as the Jewish communal leadership of Metz became highly attentive to the complex relationship that drew the Jews, the state, and French society together, the rabbinic court adapted to a world of multiple jurisdictions of comparable validity. Implicit in the rabbinic court's adaptational approach was the acknowledgement that the Jewish population was heavily dependent on the surrounding society not only for its economic well-being but also for the innumerable services that it could not provide for itself. Furthermore, evidence of intricate economic interaction with members of the general population and various

[1] See *Crossing Boundaries: Traditions and Transformations in Law and Society Research*, ed. Austin Sarat, et al (Evanston, 1998), 1-17.

[2] Jacob Katz, *Exclusiveness and Tolerance: Studies in Jewish-Gentile Relations in Medieval and Modern Times* (Cambridge, Mass., 1961), 52. See also Simḥa Assaf, *Batei ha-din ve-sidreihem aḥarei ḥatimat ha-Talmud* (Jerusalem, 1924), 11-24.

collaborations with non-Jews entailed a working relationship between the Jewish and French judiciaries. By the 1770s the myth of an independent Jewish judicial system that existed entirely outside the state's civil system had begun to be replaced by a broader conception of shared laws and institutions that formed a mosaic of interlocking pieces.

Two competing models in the eighteenth century—legal centralism and legal pluralism—offer a framework for understanding the relationship between the two legal systems.

1. **Legal centralism** embodied the idea that law was the exclusive domain of the state and the foremost instrument of state bureaucracy; it demanded that foreign systems subordinate themselves to state authority. In practical terms, legal centralism posed a challenge to the Beit Din and to Jewish communal autonomy whenever the state decided to enforce strict adherence to its laws.
2. **Legal pluralism**, by contrast, acknowledged the validity of multiple legal orders and jurisdictions. Sometime after the appointment of R. Aryeh Loeb Günzberg (the Sha'agat Aryeh) as *av beit din* of Metz in 1765, the grip of legal centralism was tempered by the pluralist model, and the Beit Din came to be viewed as one among many judicial institutions in the region. The legitimacy of the Jewish community's jurisdictional authority was implicitly confirmed alongside that of royal and provincial institutions. For its part, the Beit Din obliquely adopted the idea of shared laws and institutions while acknowledging more concretely the interdependence of cases brought to its chamber and to the French civil court system.[3] Under these circumstances, a collaborative relationship between the Jewish and French courts emerged.[4]

Historical conditions after mid-century reveal the common interest shared by the Jewish community and French authorities. Jewish leaders were well aware that members of their communities could hardly ignore the bureaucratic demands required by government offices or the legal services provided by state or municipal authorities. The state, for its part, viewed the Metz Beit Din and its adjudication of civil cases as compatible with the project of French state-building that had intensified in the second half of the eighteenth century. In fact, it appears that the cooperative relationship between the French civil courts and the Metz Beit Din was rooted in the idea that the rabbinic court was one among many institutions in the French judicial system.[5]

---

[3] See, for example, PMBD, vol. 1, pt. 1, 27a, no. 77. See, also, PMBD, Vol. 2, 47b, no. 256 and 64b, no. 345 for references by the Beit Din to cases that had been settled in the *bailliage*.

[4] See PMBD, Vol. 1, pt. 1, 27a, no. 77, and Vol. 2, 47b, no. 256 and 64b, no. 345. See Bruce Duthu, *Shadow Nations: Tribal Sovereignty and the Limits of Legal Pluralism* (Oxford, 2013).

[5] In the last third of the eighteenth century there appears to have been a realignment—built on a collaborative model—of the Monarchy, the Parlement, and the Beit Din

Is there any evidence that judicial procedure in the Beit Din, or the interpretation of the law itself, was influenced by French law or by the prospect of recourse to French civil courts? What was the impact of legal bureaucracy that had become integral to the workings of the state? Specifically, how did the phenomenon of legal pluralism influence the methods of adjudication employed in the Metz rabbinic court?

There is little doubt that communal leaders were driven by a powerful impulse to work cooperatively with the French legal system. The impact of legal pluralism may be discerned in the court's adoption and adaptation of legal perspectives and mechanisms from general jurisprudence, both in the realm of procedure and in substantive areas of law. Although there are no signs of coercive pressure exerted by either the monarchy or the municipal authorities, the need to coordinate was felt keenly in every area involving property, monetary exchange, and contractual agreements. Accordingly, one finds evidence in the records of the Beit Din of procedural cooperation with the general courts and strategic efforts to navigate between the competing jurisdictions of the Jewish and French legal systems. Invariably, the Beit Din's method of adjudication reveals tensions between its role as guardian of communal autonomy and its responsibility to meet the political demands imposed by legal centralism—tensions between its role as arbiter of Jewish law and agent of the Kahal, on the one hand, and its awareness of the contingent nature of the relationship between Jewish law and general law, on the other.

These developments typified a broader trend in France in relation to mounting tensions between clerical and civil authorities. In sharp contrast to the ecclesiastical courts, the Metz Beit Din enjoyed substantial independence from state interference and control. Royal courts imposed their jurisdiction firmly and exercised the right to overturn the decisions of the ecclesiastical courts when there was evidence of a procedural irregularity. With the full support of the Kehillah leadership, the Beit Din was granted greater latitude by the state to resolve internal differences on the basis of Jewish legal traditions. Nevertheless, neither the Kahal nor the Beit Din was able to ignore pressures to coordinate with and adapt to general law. To be sure, adaptation was, in the broadest sense, a highly complex phenomenon that posed numerous dilemmas for any minority seeking to maintain its cultural distinctiveness while acknowledging the need to be part of the larger social, economic, and cultural matrix.

To answer these questions, it will be necessary to consider, first, the shift in the attitude toward recourse to civil courts. That individuals who took their disputes to the *ʿarkhaʾot shel goyim* were consistently denounced by medieval and early modern rabbinic authorities is well-known and hardly needs to be rehearsed here.[6] Despite the unequivocal insistence on the exclusivity of Jewish jurisdiction, the historical record

[6] See Azriel Hildesheimer, "Gentile Courts in Ashkenaz at the End of the Middle Ages" *Proceedings of the Tenth World Congress of Jewish Studies* 3 (1990): 217–224.

confirms that throughout the Middle Ages Jews frequently turned to non-Jewish courts to resolve their disputes. Even so, in spite of its growing prevalence in the eighteenth century, recourse to royal and municipal courts remained, in theory, a contentious act in betrayal of Jewish law.

To be sure, medieval and early modern codes had spelled out guidelines indicating how to proceed when it was clear that adjudication within the Jewish judicial system would not yield a just resolution of a dispute.[7] In some instances the Metz Beit Din conceded that the goal of redress would occasionally be served as well, and possibly better, through recourse to the French civil courts. But beyond the enforcement of rabbinic court rulings in cases in which the defendant refused to appear in the Beit Din, when authorization to seek relief in a non-Jewish court was justified on the grounds of "rescuing funds,"[8] the Metz Beit Din took a different position, a position that echoed legislation enacted by the Kahal earlier in the eighteenth century. The Kahal had issued a *taqqanah*, dating from 1720, that any member of the community who brought a dispute to the local non-Jewish court would be subject to the *ḥerem*, "with the exception of a *ḥilluf ketav* or *billet à ordre* (promissory note) [for which] it was permissible to sue in the *arkha'ot*."[9] Article 68 of the 1769 *taqqanot* appears to have gone a step further than the 1720 *taqqanah* by stating that while the prohibition against suing a fellow Jew in the general court was very grave, it did not apply when the matter in dispute was money lent for merchandise, a *ketav yad*,[10] a *ketav yad au porteur*,[11] an *ordre*,[12] or a *ḥiluf ketav* contract.[13] It appears, then, that the Beit Din interpreted the recovery of funds corresponding to each of the foregoing instruments as a non-adversarial proceeding because the document in each instance constituted legal proof of the claim. In other words, in such cases there was no dispute regarding the claim per se; the legal action was little more than a procedural matter. Accordingly, the claim could be satisfied in the civil court and did not fall under the prohibition of *arkha'ot shel goyim*. By authorizing plaintiffs to use the power of the state to recover funds that would otherwise be lost, the Kahal in effect had acknowledged the centralism of the state when this advanced the cause of justice. The Beit Din, for its part, was naturally

[7] Moses Maimonides, M.T., Laws of Sanhedrin 26:7; Jacob b, Asher, Commentary to Sanhedrin, ch. 1, parag. 1 (Sanhedrin 23a); and Joseph Caro, *Shulḥan 'Arukh*, *Ḥoshen Mishpat*, §26. Also see Solomon b. Aderet, *Resp. Rashba* 6:254.

[8] See Maimonides, M.T., Laws of Sanhedrin 26:7 and *Shulḥan 'Arukh*, Ḥ.M. §26:2.

[9] CAHJP, FMe 139.

[10] A *ketav yad* is a written promise to pay. Though signed by the debtor, it was unattested and therefore it did not constitute a lien

[11] Lit, "to the bearer," referring here to a promissory note "payable to the bearer."

[12] A draft that direct a person to pay money or deliver goods to another person.

[13] Pinkas ha-Kehillah of Metz, Arch. JTS, ms. 8136, art. 68. See Stefan Litt, *Jüdische Gemeindestatuten aus dem aschkenasischen Kulturraum, 1650–1850* (Göttingen, 2013), 353-395.

obligated to uphold legislation issued by the Kahal, and its rulings were consistent with this policy.[14]

In Metz the issue tended to be framed in practical terms. It is evident from the 1769 communal *taqqanot* that Jewish property transactions in the French courts were a commonplace; the Kahal regulated only those transactions that placed the rights of other Jews in Metz at risk. If an individual who owed money to another Jew sold a house in the French court, no Jew was permitted to purchase that house, with the exception of the creditors to whom the money was owed.[15] It is also apparent that the objection to litigation in the civil courts was rooted in the concern that court costs were significantly greater than in the Beit Din and, as one respected merchant argued, a civil suit could be harmful to one's reputation. In the latter case, the merchant demanded payment for having been publicly shamed; he threatened—and not without some irony—to seek redress in the civil court if he failed to gain satisfaction under Jewish law. In opposition to his claim, the Beit Din issued an injunction that banned further action either in the civil court in order to obtain *dommages-intérêts* (compensation for public humiliation) or in the Beit Din where one might seek an award for *boshet* (shame) according to Jewish law. Based on the foregoing dispute and on a case involving a *melamed* who sued his employer in civil court for failure to pay his wages, it appears that in the eyes of the Beit Din legal efforts by defendants seeking to recover civil court costs were unjustified.[16] While in some instances the Beit Din imposed fines on those who initiated legal action in the civil courts, these tended to be quite modest. By the mid-1770s, recourse to the civil courts was an undeniable fact that the Beit Din could oppose only symbolically. In addition, litigation in the gentile courts was permitted by halakhic authorities when a legal matter concerned maintenance of public order, land purchase, or taxation.

By displaying a neutral and, at times, positive orientation toward the French judicial system, the Metz Beit Din appears to have abandoned a longstanding adversarial tradition *vis*-à-*vis* the much deprecated *arkha'ot shel goyim*. In the latter years of the *ancien régime*, the rabbinic court adopted an understanding of general law qua civil custom (*minhag*) that evidently served to justify the incorporation of French civil procedures that had gained currency among members of the Jewish community. The Beit Din's familiarity with the basic structure and principles of French law, as well as its cooperative relationship with royal and municipal judicial institutions, offer unmistakable proof of the considerable interplay between the two legal systems. By accommodating itself to the French legal system, the Beit Din

[14] Also see Pinkas ha-Kehillah of Metz, Arch. JTS, ms. 8136, art. 71.

[15] See 1769 *taqqanot*, art. 65. For additional evidence of how the Kahal navigated between the two French and Jewish judicial systems, see art. 66.

[16] See PMBD, Vol. 2, 60b, no. 319.

acknowledged a modified—and possibly more limited form of—judicial autonomy, as did the Kehillah leadership.[17]

Returning to the question posed above—did the prospect of recourse to French civil courts impact judicial procedure in the Beit Din—the answer is a resounding yes. The fact that there opportunities to settle civil disputes in the French courts was a reality to which the Kahal and the Beit Din were unquestionably reconciled. While the Kahal narrowed the definition of prohibition of *arkha'ot shel goyim*, the Beit Din sought to ensure that its rulings and the documents it produced were compatible with the French judicial system. It is for this reason that the Pinkas is filled with references to bi-lingual contracts, assurances of compliance with French civil law, and consultations with French legal experts. In fact, the Beit Din deliberations contain many examples of **procedural coordination**:

1. There are instances when litigants came before the Beit Din in order to reinforce the judgment of a French court. In a case in which a litigant had renounced in a French court property to which he was entitled as an heir, the Beit Din validated the renunciation from the standpoint of Jewish law.[18]
2. Splitting civil court costs -- In one instance, three litigants approached the Beit Din seeking a judgment on the apportionment of legal expenses incurred in the recovery of unpaid debts owed to each of them. In response to the question whether the court fees were to be shared equally or divided proportionately according to the size of the debt, the Beit Din ruled that they must consult an *avocat* to determine how such matters were handled in the courts of Lorraine.[19]

   This case exemplifies a complexity with which Metz Jews were repeatedly confronted when a financial transaction involving a gentile required legal action in the general courts. In such cases, though the dispute before the Beit Din was an internal one, it was the fact that the case would ultimately be resolved in the general court that prompted the Beit Din to seek the advice of French legal counsel. Similarly, when a widow sought authorization to deduct certain expenditures from her husband's estate in order to ensure that her *ketubah* settlement would be sufficient to meet her needs, the Beit Din ruled that she must present documentation of her expenses to an *avocat* who would then determine whether in French law these were excluded when creditors

[17] Since the conferral of autonomy was not viewed as a threat to the state's hegemony, the jurisdiction enjoyed by the Metz Beit Din may be viewed as a weak form of legal pluralism. On the weak and strong pluralism, see John Griffiths, "What is Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law* 24 (1986): 1-55.

[18] PMBD, Vol. 2, 146a, no. 660.

[19] Also see PMBD, Vol. 1, pt. 1, 35a, no. 102, where the Beit Din called for sharing civil court costs. Cf. PMBD, Vol. 1, pt. 2, 38b, no. 157. On sharing the legal costs of an appeal, see PMBD, Vol. 2, 45b, no. 246.

sought restitution.[20] Here, too, because the dispute involved creditors who were not Jewish, the Beit Din found it necessary to ensure compliance with general legal practice.

3. Contractual agreements
    - The spirit of procedural cooperation is also apparent in the Beit Din's eagerness for contractual agreements between Jews to be recognized in French courts. It is clear that in some instances litigants who had first brought their disputes to the French civil courts subsequently went to the Beit Din for arbitration, and no doubt vice versa. In a case of alleged malfeasance on the part of guardians responsible for managing the estate of minors, the Beit Din acknowledged in no uncertain terms that the arbitration ruling would be implemented "with full force, as if it were enacted before the Beit Din."[21]
    - After crafting an arbitration agreement concerning the division of disputed assets in an estate case, the Beit Din stated, as it often did, that neither party could deny the validity of the compromise that they had duly accepted as binding. The court then declared that "what is written in the translation executed today complies with the law of the land and shall be upheld to the fullest extent of the law." This example reflects the consciousness of parallel systems of justice, Jewish and French, that required diligent efforts to ensure coordination between them. [22]
    - Conversely, the Beit Din arranged arbitration agreements that were recognized in French courts.
4. Administrative duties[23]
    - Certification of debts, provision of licenses for leasing property.
    - Defining duties required of guardians, facilitating their contacts with translators and *avocats* in preparation for court appearances.

Traces of the influence exerted by French law can be found in the innumerable borrowings of terms from French jurisprudence and in mutual contacts and encounters between jurists of the two systems. In the rabbinic court proceedings evidence of consultations with French lawyers is not uncommon, though it is unlikely that there were direct contacts between Jewish and French judges. It is also improbable that *dayyanim* on the Beit Din read French legal tracts. Nevertheless, however this was accomplished, Jewish jurists gained familiarity with French law and legal procedure and took that law into account, particularly when disputes involved the two legal systems.

---

[20] PMBD. Vol. 1, pt. 1, 40a, no. 119.
[21] See PMBD, Vol. 1, pt. 1, 37a, no. 110.
[22] PMBD, Vol. 1, pt. 2, 14b, no. 49.
[23] *Protocols of Justice*, vol. 1, 68.

As an institution serving a minority population, the Metz Beit Din was alert to the importance of adjusting to the changing social and economic environment, especially in areas pertaining to marital property, inheritance, guardianship, purchase and sale, and contracts. The adaptability of the Metz rabbinic court was reinforced by the assimilation of a long list French legal terms and their application to certain internal procedures that corresponded to bureaucratic actions and to judicial processes observed in the general courts. For example, in a case in which a defendant refused on five occasions to respond to an order issued by the Beit Din to come to court, the plaintiff executed a *sommation*, an official summons to appear before the Beit Din.[24] The use of French terms is consistent with the suggestion that the Beit Din was, for all intents and purposes, part of the French judicial system. In some cases, the dominant legal system served as a catalyst that awakens legal norms or procedures that had been in a latent state until then.

Three procedural trends in the Metz Beit Din reflected a clear acknowledgment of legal pluralism, which it could scarcely deny, and an acceptance of legal centralism, which was the product of pragmatic considerations: (1) The pervasiveness of French law in specific areas such as the appointment of guardians, the division of marital property, and inheritance promoted cooperation with the French civil courts and authorities. (2) The close acquaintance of the Beit Din with procedures of the French legal system, together with the universal acceptance of notarization to certify civil transactions, contributed to a broadly conceived approach to law. (3) Aware of the limits of its authority, the Beit Din was willing to rein in its own judicial powers while conceding the validity and even the advantage of French civil procedures. It therefore sought the opinion of experts in French law on the legality of certain kinds of transactions. The Beit Din recognized that occasionally redress would be better achieved in the French civil court system.

1. Pervasiveness of French law

The cooperation of the Beit Din with the French civil courts was evident in most areas of law. In the realm of debt collection, for example, the Beit Din undoubtedly relied on the well-established ruling of R. Moses Isserles, for example, in acknowledging that an agreement in the civil court established binding rules for extending additional time to pay off debts beyond what the Halakhah envisioned.[25] In

[24] PMBD, Vol. 2, 132a, no. 612.

[25] See PMBD, Vol. 1, pt. 2, 10b, no. 3. Rema, in H.M. 369:11, based his approach on *le-taqqanat benei ha-medinah* ("for the betterment of society"). Accordingly, in H.M. 73:14 he ruled that the *beit din* must honor a civil law forbidding a lender from selling an item he holds as collateral until one year has passed, even though the *halakhah* permits a lender to sell the collateral after thirty days in case of default on payment of the loan. Such a law serves to better society, as the government perceives a need to stimulate the economy by easing the terms of repaying a loan. Shach, H.M. 73:39, strongly disagreed: "Since according to

matters of family law, such as the appointment of guardians and inheritance, rulings in the French courts were considered no less authoritative than those issued by the Beit Din. So it would seem from a dispute that arose when court-appointed guardians responsible for the estate of orphans under their tutelage were accused of mismanagement of funds by the orphans' relatives. Because the dispute involved guardianship, the case was brought before three French arbiters in order to determine which course of action was in the best interests of the children. For its part, the Beit Din acknowledged that the French arbitration ruling would be implemented "with full force, as if it were enacted before the Beit Din." Even so, the rabbinic court proceeded to issue its own ruling in accordance with the decision of the arbiters, namely, that the guardians were required to make restitution to the orphans in order to fully discharge their responsibilities.[26] The step taken by the Beit Din represented a formal ratification of the arbiters' decision, giving it greater standing in the Jewish community, even though the second ruling was hardly necessary from the standpoint of law. Equally revealing is the crossover between the two legal systems in areas involving property transfer – marital property and post-mortem transfer of property.[27] These were routine matters that characteristically entailed the cooperation of the rabbinic court.

Evidence of this sort reveals a keen awareness on the part of the Beit Din that Jews in Metz and its environs inhabited two distinct legal universes—Jewish and French—and that the Jewish judicial system was inexorably interconnected with French law and judicial procedure. That awareness is evident in bilingual contracts and in the use of particular language to indicate compliance with the demands of both judicial systems. Both required of the Beit Din a high level of familiarity with the finer points of civil law and judicial procedure. The Beit Din's adaptation to French law is illustrated by repeated references to judgments that had been issued by the French courts to Jewish litigants who subsequently came before the rabbinic court.[28] Moreover, there was a strong acknowledgment of the interdependence of cases brought before the Beit Din and in the French civil court system.[29] In several instances, the Beit Din decided to await a ruling in the French civil court before issuing its own decision. Legal consultations with French *avocats*, whether initiated by the Beit Din or by the litigants themselves, served as a bridge between the Jewish and French judicial systems. By turning to legal experts, the rabbinic court and litigants revealed their dependence on detailed knowledge of French law and judicial practice. In several instances French lawyers were asked to provide clarification on

---

halakhah the lender may sell the collateral after thirty days of default, how can we follow the non-Jewish laws and ignore the Torah law?"

[26] PMBD, Vol. 1, pt. 1, 37a, no. 110.

[27] Berkovitz, *Protocols of Justice*, vol. 1, 115-116.

[28] See, for example, PMBD, Vol. 1, pt. 2, 14a, no. 49; Vol. 2, 47b, no. 254; and Vol. 2, 64b, no. 345 for references to cases that had been settled in the *bailliage* .

[29] See, for example, PMBD, Vol. 1, pt. 1, 27a, no. 77.

the prevailing law of the land. Adherence to the familiar talmudic maxim, *dina d'malkhuta dina*, which acknowledged the two distinct legal frameworks to which Jews needed to conform, demanded detailed knowledge of the larger legal setting.

Some of the actions recorded in the Pinkas reveal the imprint of broader societal trends on the legal culture of Metz Jews and what they may have expected of the Beit Din. These included the appointment of women as guardians, the weight attached to wills as instruments whose validity could be upheld independently of halakhic strictures, the endorsement of community property in marriage, and the use of certain mechanisms (especially the *b'oheiv*[30] instrument) aimed to formalize the role of women as partners in the financial and commercial activities of their husbands. Although there is undisputed halakhic precedent for each of these developments, social convention and legal conservatism frequently stood in opposition to them. But the fact that each was authorized by the Beit Din suggests the apparent influence of certain cultural shifts that undoubtedly originated in the surrounding French milieu and served as a stimulus in such instances. Internal changes and external influences were without doubt interrelated. It is therefore not unlikely that broader legal trends and cultural influences in early modern France had a bearing on the way Jewish law was adjudicated by the Beit Din and resulted in the penetration of French legal norms into the Metz Jewish community.[31]

2. The Acquaintance of the Beit Din with French Judicial Procedure

The administration of talmudic law in eighteenth-century Metz demanded familiarity with royal legislation, local ordinances, and various types of documentation required by the French judicial system.[32] Expertise in dealing with officers of the civil courts was necessary as well. These skills were widely in evidence, as for example in cases involving compliance with the commercial law and in disputes concerning marriage, divorce, and inheritance. The acquaintance of the Beit Din with many of the particulars of French law and court procedures was consistent with a growing perception of the Jewish judiciary and Jewish law as having become conjoined with, if not incorporated into, the general judicial system of France.

---

[30] The acronym **באוה"ב**, an abbreviation for *baʾah isha ve-hadar baʾalah*, appeared for the first time in Shmuel Halevi Segel, *Naḥalat Shivʾah* (v. 1, no. 31), in 1667. The phrase refers to the precise order of signatures in the execution of a loan note. By signing in this manner, a wife subordinated her right to receive payment for the *ketubah* as a first creditor.

[31] It is important to note that interaction between the Beit Din and the French judicial system was a human encounter that entailed fostering of relationships—sometimes in repeated interactions with a cohort of bureaucratic officials, that included notaries, translators, *greffiers*, scribes, sheriffs, and *avocats*. Cf. Zoë A. Schneider, *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (Rochester, N.Y., 2008).

[32] For example, in a case concerning the appointment of a guardian, the Beit Din stated that "it is known to all that in the civil court it is impossible to do anything large or small, whether to prepare an inventory or to occupy oneself with the estate without the appointment of a guardian and *curateur* where an orphan is involved."

So, it would appear was the significance of the government's dual policy in relation to the Jews. On the one hand, the monarchy continued to endorse and defend the practice of Jewish judicial autonomy, while on the other hand the king and the Metz Parlement demanded in 1740 that the Jewish community undertake an abridged translation of the *Hoshen Mishpat* and *Even Ha-Ezer* sections of the *Shulḥan 'Arukh* into French. Once deposited with the Metz Parlement, the translation was expected to become the legal basis for settling cases between Jewish litigants in French courts. Although it is unclear whether or to what degree the translation ever served its intended purpose, there is little doubt that the initiative reflected the larger goal shared by royal and municipal authorities, that is, to facilitate the integration of Jews as individuals within the legal system.[33]

Initially, the benefits of the integrative model were not immediately apparent to Jewish leaders (rabbinic and lay), and indeed the dangers to their judicial autonomy was accentuated by Rabbi Jonathan Eibeschutz especially. But a generation later there appears to have been greater receptivity to the idea. To gain a fuller appreciation of the dynamics of interaction with French society and culture will require a closer look at the universe of legal discourse that is embedded in the Beit Din records. In example after example of litigation one encounters signs of compliance with administrative and bureaucratic standards imposed by local and state law.

Sweeping social, economic, and political forces in the second half of the eighteenth century fostered a general familiarity with French law among members of the Metz Jewish community. Concretely, the demands of daily life called for even greater acquaintance with the particulars of the French legal system. Familiarity with the French judicial system and with French law is reflected in the Beit Din's acquaintance with French legal terminology, legal concepts, and legislation. In its overall interest in complying with French law, the Beit Din was attentive to various regulations imposed by local authorities and courts, in one case concerning a matter as prosaic as latrines.[34] In one instance, the Beit Din stated emphatically that French law was the basis for the procedure it employed in determining priority in the collection of a debt: "Precedence with respect to the remaining creditors follows the law practiced in the general courts."[35] Regularly confronted with the demands of competing jurisdictions and conflicting legal systems, the Metz Beit Din met the challenges of legal pluralism by adapting to the system of law that prevailed in the Metz region. This was evident in cases involving inheritance, marital property, debt repayment, commercial transactions and partnerships. It is quite clear that neither the Jewish population of Metz nor its rabbinic court were in a position to mount any significant resistance to the powerful trend of legal pluralism – first, because the principle of *dina*

[33] See Jordan Katz, "To Judge and to Be Judged," 27-32 and Lançon's preface to the abridged *Recueil*.

[34] PMBD, Vol. 1, pt. 1, 6a, no. 3.

[35] PMBD, Vol. 1, pt. 2, 10b, no. 32: דין קדימה לשאר ב"ח כדין ערכאות.

d'malkhuta was accommodationist by nature, and, second, because the state's legal and administrative bureaucracy reinforced the need to coordinate with the French legal system.[36]

Numerous cases brought before the Beit Din posed difficult dilemmas from the standpoint of judicial authority. There are quite a number of complex cases where the roles of the two judiciaries and of Jewish and French law more generally, were intricately interwoven. Litigants who brought their disputes to the rabbinic court were undoubtedly aware of the complexities involved in navigating between the jurisdictions of the Jewish and French legal systems. There are quite a number of complex cases where the roles of the two judiciaries and of Jewish and French law more generally, were intricately interwoven.[37]

In a case involving a mutual decision to break off a marital engagement, a young man and woman came before the Beit Din in order to formally nullify their prior agreement and to renounce any monetary claims against each other in the future. It is noteworthy that the parties renounced the agreement to marry "in accordance with Torah law and in accordance with the civil law … in whichever court it will be, whether by Jewish law or by the laws of the nations." This formulation was customarily employed when parties to a dispute wished to release each other from prior debts or agreements regardless of the forum in which such differences might be adjudicated. Each party agreed that the annulment of previous understandings and commitments would stand firm in either of the two systems of law. According to the terms of the release, they were each free to marry another person of their choosing. The two sets of parents were also present for the declaration that was pronounced before the Beit Din, and they likewise agreed to withdraw any remaining claims against each other. As crafted by the Beit Din, the renunciation agreement extended full legal protection to each side in case the other party decided to advance a formal appeal against the agreement.[38]

Efforts to resolve the dilemmas posed by competing/overlapping jurisdictions are most immediately apparent in the Beit Din's treatment of French civil contracts. Such cases often turned on the legal status of civil contracts drawn up in the French civil courts.[39] Resting on Talmudic law (B.T. Gittin 10b-11a) and the medieval

---

[36] See Michael Mann, "The Autonomous Power of the State: Its Origins, Mechanisms and Results," *Archives européennes de sociologie* 25 (1984): 185-213.

[37] For additional examples, see PMBD, Vol. 1, pt. 2, 10a and 10b, no. 32; Vol. 1, pt. 2, 14b, no. 49; 32b, no. 128; Vol. 2, 57b, no. 310; 73a, no. 397.

[38] PMBD, Vol. 1, pt. 2, 49b, no. 218. For the phrase בא"ה בין בד"י בין , and slight variants, see B.T. Gittin 44a. The phrase is found as well in a number of early modern responsa; see, for example, Joseph Colon, *Resp. Maharik*, no. 10. According to R. Solomon Luria, *Yam shel Shelomo*, Bava Qama 8:65, the formula, when inserted in a contract, was the equivalent of gaining prior authorization from the Beit Din to litigate in the gentile court.

[39] On contracts produced in non-Jewish courts, see B.T. Gittin 10b-11a and 19b; Isserles, *Shulḥan 'Arukh*, Ḥ.M. §68. Also see Isserles, Ḥ.M. §369:11 regarding limitations on the application of gentile law for fear this would lead to the nullification of Jewish law.

halakhic tradition (Isserles affirmed the legality of notes signed by gentiles and produced in gentile courts when these concerned the purchase and sale of property and the collection of debts), the Beit din consistently considered such contracts, with the exception of divorce decrees, valid.[40]

In the Metz Beit Din, cases involving overlapping jurisdictions often turned on the legal status of civil contracts as understood in Jewish law.

- A woman presented a civil contract stating that the property of her deceased father had been mortgaged to her in the amount of 2446 livres. On that basis, she asked the Beit Din to prevent her brother from selling their father's property and from leasing it to any other person(s) for a period of three years. She argued that by having become part owner of her father's house, she had the status of an abutter, and as such she enjoyed the right of refusal in certain circumstances. She also requested authorization to seize rental money that was owed to her brother and to collect her debt after the payoff of the first creditors. The Beit Din decided in her favor in each matter. It ordered the repossession of the house and ruled that the brother was prohibited from leasing the property to any other person(s) without his sister's consent since she had the first right to collect all of the rent that had accrued since their father's death. This ruling rested squarely on the undisputed weight that the rabbinic court assigned to the civil contract.[41]
- In another case that hinged on the importance accorded to civil contracts, the interplay between Jewish and French civil law emerges with particular clarity. The case concerned a dispute concerning the ownership of a house -- one side had a notarized bill of sale, the other a *contrat de mariage* entitling the wife to a return of the money she had deposited with her husband and to which she was entitled in case the marriage ended in divorce or in the death of the husband. This case is particularly instructive because it made clear that once the Beit Din ruled that the civil marriage contract had legal priority over the bill of sale, the next step was to implement traditional Jewish law— the administration of the oath required of a divorcée or widow (the *shevu'at ketubah*)[42]—before she could be awarded the value of her *ketubah* or the transfer of any property.[43]

---

[40] Shmuel Shilo, *Dina d'Malkhuta Dina* (Jerusalem, 1970).

[41] For the main sources concerning contracts produced in non-Jewish courts, see B.T. Gittin 10b-11a and 19b; Isserles, *Shulḥan 'Arukh*, *Ḥoshen Mishpat* §68.

[42] PMBD, Vol. 2, 10a, no. 50. In compliance with talmudic law (B.T. Gittin 34b), the Beit Din regularly imposed the *ketubah* oath on widows to verify that they did not dispose of property from the husband's estate and did not receive payment from him while he was alive.

[43] For an example of a case where the Beit Din expressed agreement with the bride's attorney that efforts ought to be made by the brother of her fiancé to arrange for a contract in the civil court so that half of the house will belong to her. PMBD, Vol. 1, pt. 1, 44b, no. 138.

3. The Impact of French Law on Rabbinic Jurisprudence

The records of the Beit Din contain clear signs of its having taken French law into consideration in its own deliberations. This was not an unprecedented phenomenon (as is evident from the example of the RoSh who followed Spanish civil law on occasion).[44] In quite a number of cases, litigants sought the opinion of French legal experts when the question was of jurisdictional interest to both Jewish and French law. On some occasions, litigants hired French lawyers when legal representation was required in routine commercial transactions or property transfers.[45] There were also instances when litigants initiated contact with *avocats* whose opinion or advice they believed would strengthen their cases, especially when they sought to protect their assets in the face of multiple contingencies.[46] In one case, amidst a dispute concerning a contested will, the named natural heirs and beneficiaries challenged the distribution of the assets and approached a French attorney, Pierre-Louis Roederer, with a request to clarify their legal rights.[47] Occasionally, the Metz Beit Din instructed parties to a dispute to consult French *avocats* in order to clarify the details of French law, and in several cases the Beit Din itself initiated consultations with legal experts, presumably in order to avoid running afoul of French law and judicial norms. Precisely what motivated these consultations is deceptively simple. In seventeenth- and eighteenth-century France, consultation had become a well-established facet of legal culture, a service provided by *avocats consultants* who did not plead cases but offered professional counsel outside the courtroom.[48] It is significant to note, at least on the basis of the explanation of a ruling offered in one case, that the Beit Din was apparently able to read legal opinions produced by French *avocats*.[49]

---

[44] See Ephraim E. Urbach, "Methods of Codification: The Tur of R. Yaacov b. Asher" [Hebrew], *Proceedings of the American Academy of Jewish Research* (1980): 1-14; and Yehuda Galinsky, "The Four Turim and the Halakhic Literature of Fourteenth-Century Spain: Historical, Literary, and Halakhic Aspects," (Ph.D. diss., Bar-Ilan University, 1999).

[45] See, for example, PMBD, Vol. 1, pt. 2, 52b-53a, no. 242.

[46] See, for example, PMBD, Vol. 2, 136a, no. 629.

[47] See PMBD, Vol. 1, pt. 2, 16a, no. 54. For the text of the Hebrew translation of the Roederer consultation, see Berkovitz, *Protocols of Justice*, vol. 2, Appendix 3.

[48] On the growth in the prestige and independence of *avocats* in the seventeenth and eighteenth centuries, see Hervé Leuwers *L'invention du barreau français, 1660-1830: la construction nationale d'un groupe professionnel* (Paris, 2006). The professed impartiality of *avocats consultants*, and their reputation for dedication to the public welfare, helped create a bond of trust with clients and judges alike, and their ability to disseminate their ideas in print enabled them to become an influential voice of public opinion. See David A. Bell, *Lawyers and Citizens: The Making of a Political Elite in Old Regime France* (Oxford, 1994).

[49] See PMBD, Vol. 1, pt. 2, 53a, no. 242. The assumption that the judges on the Beit Din were fully at ease with French legal documents may not be accurate in every instance. See the legal consultation provided by Pierre-Louis Roederer, translated from French into Hebrew, presumably to facilitate its review by the Beit Din, above n. 47.

By turning to *avocats* for legal assistance, the Metz Beit Din revealed its dependence on detailed knowledge of French law and judicial practice. French *avocats* were regularly engaged to clarify the law when disputes between Jews were entangled with litigation involving non-Jews. In a case that involved Berman Alsace, who owed money to the estate of Abraham Steinbiedersdorf, Alsace brought suit in the *cours souveraine de Nancy* against Brougham, a Frenchman who was in debt to Alsace. Having been issued an *arrêt* authorizing him to confiscate and sell lands that had belonged to Brougham, Alsace was now able to pay his debt to the Steinbiedersdorf estate.[50] Clearly, commercial entanglements involving Jews and non-Jews required complex maneuvering in order to navigate through what was, frequently, a legal maze. In one case, heirs urgently needed to block a land sale that would have depleted funds owed to the estate, and they therefore submitted a formal remonstrance at the *conservateur des hypothèques* (land registry).[51] These examples illustrate not only the complicated nature of Jewish-gentile financial dealings, but also how Jews depended on the general judicial system to attain justice.

The issue of compliance with French law was of paramount importance to the Beit Din, and when a question arose, it was not uncommon for the rabbinic court to turn to French lawyers for advice on the prevailing law of the land. Even when a case involved Jews only and no legal action was pending in the French courts, French *avocats* were occasionally invited to provide their expert opinion.[52] In a dispute concerning a claim of unpaid medical bills—there was uncertainty about the physician's trustworthiness and privileged status as a creditor—the Beit Din based its ruling on the standard of "trustworthiness" (Heb. *ne'emanut*) as understood in French law, following consultation with French *avocats*. It is striking that the rabbinic court was willing to accede to non-Jewish legal standards in a case that involved Jewish litigants exclusively, especially when there are clear halakhic guidelines as to the measure of trustworthiness, and especially insofar as *dina d'malkhuta dina* did not generally apply in such cases.[53]

Evident as well from the solicitation of French legal opinion is the Beit Din's awareness of the limits of its authority. On occasions when the legality of certain types of endorsements was uncertain, the Beit Din urged litigants to seek the opinion of experts in French law. In one instance, the Beit Din indicated that its ruling would depend on the legal risks attendant to the endorsement of a bill of exchange obtained from a third party and that it would be guided by the advice provided by French

[50] PMBD, Vol. 1, pt. 2, 28b.

[51] PMBD, Vol. 2, 122b, no. 581.

[52] In a dispute concerning the terms of a contract to pay the communal tax on behalf of a family member, the Beit Din recommended that the parties consult French legal experts though the issue was entirely internal. See PMBD. Vol. 1, pt. 1, 21a, no. 65.

[53] PMBD, Vol. 2, 85b, no. 445 and PMBD, Vol. 1, pt. 1, 35a, no. 103. In this case, the Beit Din differentiated between the part of the case it would handle itself and the part that required the advice of *avocats*. See Vol. 2, 37a, no. 193.

lawyers. At issue was the halakhic status of the endorsement, the requirement to provide security, and the ultimate satisfaction of a debt.[54]

In a dispute concerning a purported legal hindrance to the removal of funds from the estate of an individual who had failed to pay a debt, the Beit Din authorized the creditor, the son-in-law of the deceased, to approach the French civil court in order to collect the debt and his share of the inheritance. Effectively, the Beit Din looked to the civil court to decide as a matter of law whether the debt could be satisfied while the matter of the estate remained unresolved.[55]

Respect for the legal procedures of the civil court system was a consistent theme in the Beit Din rulings, as illustrated by a dispute between Itẓig Friedberg's widow and David Terquem, a wealthy *gabbai* of the Metz Kehillah. Hoping to recover what was owed to him by the deceased, Terquem formally seized the outstanding debts owed to the estate. Itẓig's widow requested that she be granted first priority in the collection of the debts, based on rights guaranteed by her *ketubah*, which predated Terquem's claim. Since he was a later creditor, she demanded that he remove the seizure. Terquem, for his part, insisted that he had priority because, although he was a later creditor, his seizure of moveable property and loan notes was recognized within Jewish law as a fact: so the law is set forth in B.T. Ketubot 90a, as explicated by the Tosafot, and as codified in *Ḥoshen Mishpat* §104:3. Nevertheless, the Beit Din declared that it would follow the ruling of the French civil court. If the French court were to recognize Terquem as a first creditor, then he would be obliged according to the Beit Din to cede half the collected funds to Itẓig's widow; if the widow were given priority by the French court, then she would be authorized by the Beit Din to collect all the debts and would not be obligated to give Terquem anything.[56] Ultimately, then, the Beit Din's ruling depended on the decision of the civil court; the civil court would determine who had priority, and the rabbinic court would make its ruling contingent on that. Here, however, there was only the appearance of shared authority. The judgment of the Beit Din artfully melded talmudic and French law into a single ruling, but this was done only after it had received word of the French civil court decision. Since the Beit Din was hardly in a position to challenge French law, it accommodated itself to this reality as best it could.

Coordination with French law may also be discerned in the extent of liability assumed by guardians entrusted with responsibility for the estate of minors. In one instance, the Beit Din called for a consultation with an *avocat* to determine whether the assumption of joint and several liability—which it referred to using the talmudic phrase '*arevut kablanut*—by the wives of the guardians was functionally equivalent to

[54] PMBD, Vol. 1, pt. 1, 21b, no. 67.
[55] PMBD, Vol. 1, pt. 1, 27a, no. 78.
[56] PMBD, vol. 1, pt. 1, 10b, no. 19.

a legal *contrat*.[57] Regardless of which procedure was recommended by the *avocat*, the Beit Din drew the conclusion that the guardians were responsible for the assets with which they were entrusted, and their liability ought to extend to their wives.[58] The presumption of liability echoed the local customary law as recorded in the *Coûtumes générales de la ville de Metz*, where it was stipulated that guardians were obligated to place their personal property as security, referred to as *hypothèque solidaire*.[59] Faced with various options in Jewish law, the Metz Beit Din followed the one that accorded most closely to Metz law. The Frankfurt Beit Din went the other way.

From the details of procedures employed in the proceedings of the Beit Din, one may conclude that the accommodation to French law represented the unmistakable acknowledgement by the Metz Beit Din of the institutional and juridical power of the French absolutist state. Equally important is the underlying notion that law is a bottom-up, is a bottom-up, decentralized process that is responsive to social and political realities while also mirroring the creative impulses of the wider population. Particularly impressive is the degree to which the proceedings of the Metz Beit Din evince the culture of the consumers of law as prominently as they reveal juristic culture.

The relationship between the Metz Beit Din and the French civil courts was the product of complex social, cultural, political, and legal forces. Indeed, the Beit Din's collaborative interaction with French legal officials and institutions confirms the integration of the rabbinic court within the legal structure of the state while also pointing to the somewhat blurred boundaries between the two systems. French jurists designed a system of jurisprudence that was distinct from other systems in Europe in the manner in which it contributed to the rising prestige of civil law and to greater unity in legal matters. Especially important in this regard was the modern state, which

---

[57] PMBD, Vol. 2, 110a-b, no. 538.

[58] Concerning the expectation that *apotroposim* would assume liability in Jewish and general law, see PMBD, Vol. 1, pt. 2, 53b, no. 249. Also see PMBD, Vol. 1, pt. 1, no. 77, where the Beit Din stated explicitly that the entire liability rested on the two guardians "based on their having been appointed in the French civil court." Cf. PMBD, Vol. 2, 5a, no. 22.

[59] See PMBD, Vol. 2, 110a-b, no. 538. It seems to have been customary in the Metz *kehillah* to demand joint liability of guardians and their wives, and this echoed a provision of Metz customary law, where the property of guardians was mortgaged *solidairement*. In one case, in Vol. 1, pt. 2, 11b, no. 36, the Metz Beit Din demanded that the guardians of the estate of a minor assume '*arevut kablanut* (full responsibility) with their wives so that if assets of the minor were ever depleted, the guardians would be responsible to pay the minor from their own funds without the need to pay their wives' *ketubot* first. Compare *Coûtumes de la ville de Metz*, 1769, Titre IX, art. 5, p. 282, and art. 11, pp. 294-5. In Frankfurt, by contrast, guardians were not personally responsible for the loss of assets in the estate. See Edward Fram, *A Window on Their World: The Court Diaries of Rabbi Hayyim Gundersheim. Frankfurt am Main, 1773-1794* (Cincinnati, 2012), no. 61. Cf. PMBD, Vol. 1, pt. 2, 18b, no. 68. The Beit Din did not follow the advice of French legal experts in every instance, however. On occasion, it ruled against French law on the basis of moral considerations expressed within the Jewish legal tradition and proceeded to nullify the second transaction. PMBD, Vol. 1, pt. 2, 52b-53a. See Berkovitz, *Protocols of Justice*, vol. 1, 130.

was an utterly new arena where the normative consensus was expressed. The distinction between two forms of state power—despotic power and infrastructural power—is pertinent to this discussion. Infrastructural power refers to the state's capacity to penetrate civil society and to implement political decisions throughout the realm, and it this category of power that developed most vigorously in the eighteenth century. The infrastructure of the modern state was manifest in its bureaucracy, which embodied its capacity for organization and its ability to enforce its decisions. Wider jurisdiction extended the long tentacles of the encroaching bureaucracy of the state and assured its legitimacy through the medium of law.[60]

Looking closely at details of procedures employed in the proceedings of the Beit Din, it is apparent that the accommodation to French law and its terminology not only represented the unmistakable acknowledgement by the Metz Beit Din of the institutional and juridical power of the French absolutist state. No less important is the notion that law is a bottom-up, decentralized process that is responsive to social and political realities while also mirroring the creative impulses of the wider population. Particularly impressive is the degree to which the proceedings of the Metz Beit Din evince the culture of the consumers of law as prominently as they reveal juristic culture.

Among the administrative duties of the Beit Din were various tasks that included the certification of debts and the provision of licenses authorizing the leasing of property in order to recover a delinquent debt, as in a case when the property was only partly owned by the creditor.[61] Along with these functions, the Beit Din was responsible for defining the duties required of guardians and for imposing legal constraints on them. Accordingly, the court oversaw the collection of outstanding debts by guardians and facilitated their contacts with translators and *avocats* in preparation for court appearances when the needs of the estate required legal representation. It also managed the legal relationship between pairs of guardians and therefore imposed restrictions on the ability of one guardian to bring lawsuits and grant discharges, compromises, and time extensions to debtors without the consent of the other guardian. Nor was either guardian authorized to sell anything belonging to orphans without the consent of the other guardian(s) and of the Beit Din. The rabbinic court also stipulated how and where the guardian could hold funds belonging to orphans.[62]

Exposure to French law and justice stemmed from routine bureaucratic demands imposed on residents of the region and also from frequent litigation between

[60] See Michael Mann, "The Autonomous Power of the State: Its Origins, Mechanisms and Results," *Archives européennes de sociologie* 25 (1984): 185-213.

[61] PMBD, Vol. 2, 89b, no. 456; Vol. 1, pt. 2, 39b, no. 162; Vol. 1, pt. 2, 40a, no. 166; Vol. 1, pt. 2, 41a, no. 173; Vol. 2, 113b, no. 551; Vol. 2, 127a, no. 592; Vol. 2, 71a, no. 382.

[62] PMBD, Vol. 1, pt. 2, 22a-b, no. 84. Cf. *Coûtumes générales de la ville de Metz* (1769), Titre IX.

Jews and non-Jews. At work, as Tocqueville argued, was a long process of administrative centralization in the absolutist state that unleashed powerful forces of cultural transformation prior to the Revolution.[63] Encounters with the institutions of Metz society exerted a formative influence on Jewish cultural identity and may well have shaped what Jews came to expect of their own court. Indeed, patterns of legal integration and acculturation exerted a profound impact on the judicial conduct of the Beit Din. While loyalty to the principles of Jewish law was the cornerstone of rabbinic jurisprudence, the Beit Din was also extremely sensitive to the changing cultural norms observed in the Metz Jewish community. Its responsiveness to the needs of the wider public is evident in its compliance with communal legislation in areas such as inheritance and litigation in gentile courts.

Conclusion

Irrespective of what may have been envisioned in theory as the acceptable or optimal degree of collaboration with the French courts, the economic and political realities of the day precluded detachment from the larger judicial environment. This new approach neither unfolded in a linear fashion, nor can it be correlated directly with the advance of secularization or cultural modernization that typified economic elites. While there is no question that the vigorous efforts of the state to impose legal centralism encouraged a more collaborative relationship between the Metz Beit Din and the French civil courts, the degree of interaction between Jewish and general law was, as in the medieval period as well, no less a product of social and economic forces that shaped behavior within Jewish communities and even within family life. To the extent that the Metz records permit, the present effort to explain the inner workings of the Beit Din aims to uncover, however imperfectly, the culture of the public sphere as understood by urban and rural Jews living at once in two worlds, Jewish and general. Even prior to their Emancipation, the realm of law offered Jews a framework from which new rules of engagement between the Jewish minority and the surrounding society and culture could emerge.

[63] Alexis de Tocqueville, *L'Ancien Regime et la Révolution* (Paris, 1967). See Roger Chartier, *The Cultural Origins of the French Revolution* (London, 1991), 10-18.