Implications of Jewish divorces that became causes célèbres:
The reform of Jewish status and juridical centralization

by

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ABSTRACT

IMPLICATIONS OF JEWISH DIVORCES THAT BECAME CAUSES CÉLÈBRES:
THE REFORM OF JEWISH STATUS AND JURIDICAL CENTRALIZATION

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This dissertation examines the reform of Jewish status in France in the eighteenth century in connection with the monarchy's impetus to centralize juridical authority. In particular it focuses on how litigating divorces in sovereign courts affected Jewish civil status. This study suggests a new perspective on events leading up to the decrees of 1790 and 1791 that granted the Jews active citizenship and the legalization of divorce in 1792. It examines the extent of the role that making Jewish divorce subject to secular national courts played in the acceptance of Jews as citizens. It concludes that Jewish divorces which attracted public attention as causes célèbres enhanced the role of the Jews in the larger process of juridical centralization and added a new dimension to the construction of a French identity. It further concludes that the reform of Jewish status was part of the erosion of traditional religious values and the growth of ideals of individualism. The principal manifestation of this process was the attempt to develop a uniform legal code for both the public and private spheres. This change included calls for the dissolution of marriage which was prohibited in France for all groups other than Jews as a result of the influence of the Church.

This analysis relies on published mémoires judicaires for Jewish divorces that became causes célèbres. These mémoires reflected the changing attitudes towards the patriarchal concept
of authority symbolized by indissoluble marriage, the erosion of corporate autonomy for the Jews and the reform of Jewish status. This analysis also relies on the correspondence and memoires of sovereign administrators, reformers and Jewish leaders which reflected the divisiveness of political and social opinion regarding the restructuring of authority. Little study has been done on the litigation of Jewish divorce in sovereign courts as an aspect of juridical centralization. Yet the mémoires judiciaire of the Peixotto and Levy cases provide excellent case studies of the evolution in attitudes toward divorce and the acceptance of Jews as French subjects. Although there has been considerable scholarship to support the idea that the events of the French Revolution were grounded on the developments and reforms of previous decades, this analysis demonstrates that juridical centralization played a more critical role than has previously been considered.
Aknowlegements

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Introduction: Consideration of legal centrism, the historiography of the reform of Jewish status and the changing paradigm of the dissolution of marriage in eighteenth-century France
Chapter One

The emancipation decrees of 1790 and 1791 which gave the Jews the same eligibility as other Frenchmen to become active citizens are usually considered the watershed for the reform of Jewish status in France. They are characterized this way because they were not only a juridical anomaly for the Jews after centuries of persecution, restriction and alienation, but were also unusually and unexpectedly enduring. Despite the vagaries of social and political sentiment, and, unlike changes to the status of the slaves in the colonies or women, the change in status granted to the Jews by the emancipation decrees was not revoked until the Vichy regime disenfranchised the Jews in 1940. The reform of Jewish status in France which culminated in the emancipation decrees, therefore, reflected a profound change to social perceptions which cannot be explained simply as a side effect of revolutionary zeal.

The enduring nature of this change suggests that the metamorphosis of the Jews from a "nation within a nation" into French citizens was neither as abrupt nor as dramatic as it appeared. It began decades before the general political upheaval which led to the outbreak of revolution in 1789, and it was only because this movement was already underway that Jewish emancipation became part of the French Revolution. The eighteenth century Jewish divorce cases which became causes célèbres were manifestations of an evolution in attitudes toward inclusiveness in French society. This change in attitudes generated a perception that Jews should be considered French subjects by advocating that they should come before the courts as Frenchmen subject to the same law that governed other subjects even on issues as intimate and culturally charged as divorce. This process was in part the result of an impetus or objective of legal centrism held by theorists, members of the legal community, and royal administrators which, although not always successful, had consequences for socio-political changes especially in the area of Jewish status.
Given the central role ascribed them in Western Jewish history, the emancipation decrees have been the subject of considerable scholarly debate. Scholarly attitudes toward the emancipation decrees range from Gary Kates' assertion that the emancipation decrees were the pinnacle of a trajectory of progress for the Jews to the view most famously articulated by Arthur Hertzberg that the emancipation decrees were based on liberal concepts inherent in the Enlightenment which were an incubator for a form of racial anti-Semitism.¹ These positions are not delineated by chronology, with recent contributions on both sides of the debate.² One aspect of the debate was that Jewish reform in France was part of a larger process of European modernization. Kenneth Stow, describing the Jews in the Papal states, and Solomon Poesner describing the Jews of Alsace-Lorraine have argued that the consolidation and secularization of the modern state led inexorably to the inclusion of the Jews in civil society.³ According to Stow's theory, called "legal centrism," the locus of legal authority became concentrated in the state as opposed to fractured in a diffuse distribution of authority in different corporate bodies such as the autonomous Jewish community. This change to the locus of authority was manifested by the rule of the state directly over its citizens through a uniform legal code for both public and private spheres. This accords with Michael Mann's argument that the centralizing state's

enhanced jurisdiction increased its interference with the personal life of its subjects.\textsuperscript{4} It also accords with Marc Raef's theory that in early modern societies like Russia and Germany, the modernizing government was inherently activist, supervising and prescribing both the broad outlines and the specific mechanisms for changing society in light of the goals of a new administrative class composed of jurists and lawyers. This reflected a change for the role of government from ensuring the continuity of an hierarchical social order composed of multiple corporate bodies, and preserving orthodoxy in religion, to a centralized secular state for which the legal system was a tool to remold the locus of authority.\textsuperscript{5}

Jurdical centralization was not, however, purely structural or political. It encompassed social and cultural changes as well, including concepts of membership and identity. Utilizing this paradigm broadens the perspective on the reform of Jewish status in eighteenth-century France beyond the events of the revolution to the decades that preceded it. Noel D. Johnson and Mark Koyama have argued that, rather than enlightened ideology, increases in religious toleration were driven by centralizing legal reforms which accompanied the rise of the early modern state and that the process began much earlier than the events of the late eighteenth century.\textsuperscript{6} Jay Berkovitz has argued that a logical corollary of Stow's argument is that conformity by the Jews to broader social norms before the revolution demonstrated an increasing connection to the broader French society and a context "out of which emerged rules of engagement between the Jewish minority

and the surrounding society and culture." These arguments should be seen in light of James. C. Scott's argument that the process of centralization can also have a negative impact and that centrally managed social plans do not usually succeed where they do not recognize the importance of local customs. 

The application of this analytical framework of juridical centralization to eighteenth-century France owes much to Alexis de Tocqueville whose work François Furet revived. De Tocqueville asserted that, by presiding over local institutions and crushing structures of decentralized aristocratic rule, the centralizing state levelled and atomized society, making it seem as if all individuals were equal in their relationship to the royal administration. De Tocqueville's broad assessment of the centralizing process has come under significant challenge, particularly by William Beik, Gail Bossenga and Roger Mettam. These scholars argue that the state was not an active agent of centralization. Far from abolishing corporate privilege, constant fiscal pressure generally forced the crown to strengthen it. William Beik has argued that bureaucrats were pragmatic and either cooperated with or co-opted established elites. Administration was performed by innumerable diverse bodies which did not act exclusively for the crown. Nor were their functions exclusive or discreet. Most administrative bodies acted as tribunals, and courts such as the parlements also had responsibilities which had nothing to do with litigation.

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These negative assessments of the idea of centralizing impetus of the state are countered by many scholars who assert a modified Tocquevillian approach in their perception of administrative centralization on the part of the state. Cumulatively, this scholarship is more diverse and takes a broader view of the centralization process. This has the effect of reconceptualizing the process as nuanced and multifaceted rather than purely political and bifurcated. They examine centralizing reforms ranged from substantive and broad to subtle and particular, from consensual to contentious. For example, William Doyle, in his analysis of the parlement of Bordeaux, concluded that the centralization process was nuanced and partially dependent on the lack of cohesion of local interests. Doyle has also asserted that the rebuilding of the judicial structure was unavoidable after the Maupeou coup in 1771 and that the key to administrative power lay at court, not with the parlements when they were recalled in


1774. He argued that under Louis XVI relative unity in the ministry meant that the *parlements* remained weak.¹⁴

Peter Jones pointed to the existence of a centralizing movement which often clashed with vested interests in the realm who believed their best hope for survival lay in diversity.¹⁵ He highlighted the existence of strong support for centralizing reforms from both the crown's own agents such as Chrétien-François Lamoignon II, who was the keeper of the Seals in 1787, and *parlementaires* such as the advocates Guy-Jean-Baptiste Target, and Louis-Simon Martineau, of whom more will be said below in connection with the Jewish divorce *causes célèbres* cases. Jones's assertion of the bilateral nature of reformers is supported by a catalogue of the men who took active positions on the issue of Jewish status. In addition to the advocates like Guy-Jean-Baptiste Target, Louis-Simon Martineau and Pierre-Louis Lacretelle they ranged from high level ministers such as Guillaume-Chrétien de Lamoignon de Malesherbes, Alexandre Léonor of Saint-Mauris, the Prince of Montarrey and Secretary of War, Armand Thomas Hue Miromesnil, the Keeper of the Seals to Intendants such as Dupré Saint Maur and to senior magistrates such as Bon Guy Doublet de Persan and the scientist Antoine Lavoisier. Jones asserted that those who supported reform from both groups generally agreed that French law should be united and rendered applicable to the whole of the national territory. They also believed that judicial and administrative authority should be disentangled, the court system reorganized, procedure streamlined and judicial redress made cheaper and quicker. Jones has also argued that reforms aimed at legal and civil uniformity were another aspect of an intention or objective of centralization. The gradual increase in status awarded to Protestants and Jews in the 1770s and

1780s such as the right of residence, the right to go before a magistrate, the registration of personal status and the freedom to practice a profession, in addition to eroding the power of the church and particular bodies such as the Jewish community, reinforced this objective of centralization of power in a secular monarchy. In the area of taxation, Michael Kwass has argued that in superimposing the *capitation* and *vingtième* on the *taille* the monarchy ate away at the fiscal immunities of elites and disturbed the state-sponsored system of privilege that pervaded the old Regime society. Charles Tilly asserted that a measurable increase in taxation reflected the growth of a centralized state. Anne Conchon asserted that the effort to suppress private tolls for private profit was an act of centralizing state apparatus. In the area of administrative centralization Michel Antoine, expanding a concept originally expressed by Roland Mousnier, has argued that the administrative system composed of king and councils steadily lost ground to a growing administrative bureaucracy.

The type of administrative reform analyzed by the these scholars was only one aspect of an intention or impetus toward a goal of centralization. A more subtle if equally significant aspect of the impetus toward juridical centralization was the change in social values and perceptions of membership in the polity. This involved the imposition of a common set of secular legal standards on a religiously diverse population. The most important agent of this process was the judicial system. Keith Michael Baker pointed to the importance of juridical

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tradition in what he called the "invention of public opinion." David Bell posited that, "the corporate system allowed otherwise powerless individuals to articulate their claims in suits by collective bodies, while the monarchy's intolerance of a free press or representative institutions, combined with its inability to extend full control over the unruly parlements, drove nearly all licit political activity into judicial channels."21

Applied to the Jews these theories, despite specific differences, support the position that the state's increasing attempts to assume power eroded the autonomy of Jewish communities, thereby raising issues about moral and legal boundaries. This had implications for both the Jews and for European society in general as members of the Jewish community began to identify with the state as the authentic community as opposed to identifying themselves solely as Jews. Susan Gay Drummond, in discussing the same phenomena in Spanish law, described these relations "...as though a volatile mercuric fluid had been poured back and forth between two different containers, each displacement changing the shape of both of the receptacles as much as the shape of the fluid."22 This approach contrasts with Simon Dubnow who claimed that external political pressure and the interference of the state in the wake of the French Revolution destroyed the traditional autonomous Jewish communities.23 This also contrasts with the Jacob Katz's linear narrative of Jewish emancipation which underscores the Jewish enlightenment, or Haskalah, as the trigger for a new age in Jewish history.24

21 David A. Bell, "The 'Public Sphere,' the State, and the World of Law in Eighteenth-Century France," French Historical Studies, Vol. 17, no. 4 (Fall 1992), 913-934.
Although there has been considerable scholarly attention to the reordering of spheres of authority between the various levels of administration in pre-revolutionary France, and to the change to the individual's relationship to the state, very little scholarly attention has been paid to the more intimate level of personal status and private life. This lacuna in the scholarship has also had an impact on the study of Jewish history in eighteenth-century France. Specifically, little attention has been paid to how the private lives of individual Jews were affected by the Royal administration's efforts to centralize authority and to the conflict it engendered with the autonomous Jewish community. Moreover, little attention has been paid to how tension over authority in the private sphere impacted the Jews' sense of their own particularistic identity or the broader society's ideas of who was entitled to membership. Yet this specific issue is precisely where the dimensions of social, political and cultural centralization converge. Jewish divorces which attracted public attention as *causes célèbres* provide a unique and unexplored avenue to examine the link between Jewish reform in pre-revolutionary France, concepts of private life and the centralization of authority. These cases present a microcosm of the struggle of the central government with vested interests and regional authorities, the secularization of ideology and a basic change to social structure.

Two distinctive bodies of historiographical literature interact to form the context for this analysis: the historiography of Jews and the historiography of divorce in eighteenth-century France. Juxtaposing one area of analysis with the other reveals a link between Jewish reform and the intention of and impetus toward juridical centralization of the governance of private life, particularly of marriage and divorce. Specifically, examining Jewish reform conjointly with the change to the juridical consideration of divorce raises specific questions such as why Jews chose to pursue intimate matters such as divorce, which had previously been the purview of the
autonomous community, before sovereign courts and why sovereign courts chose to seize jurisdiction, and rule on matters that had heretofore been repugnant to them, for a group which had dubious legal standing as subjects of the French sovereign.

With respect to the historiography of the Jews in eighteenth-century France there are three specific debates which are relevant to these questions: the first is the debate over the historical value of the emancipation decrees; the second debate is whether the Jewish question played a central role in pre-revolutionary social reform; the third debate is the extent of isolation and the level of cultural integration among the various groups of Jews in pre-revolutionary France.

Most historical analysis of the Jews in eighteenth-century France begins with consideration of the 1790 and 1791 edicts which gave the Jews the same eligibility as other subjects to become active citizens. Although scholarly analysis of the impact of the emancipation decrees antedates the work of François Furet and the revisionist paradigm of democratic absolutism, discussion of the scholarly approaches to the reform of Jewish status would be incomplete without it. Furet's analysis is influential both because of its impact on theories of juridical centralization discussed above, and because it validates those Jewish historians who view the emancipation decrees in the context of the aversion to difference which left the emancipation decrees with, at the very least, an equivocal legacy. The revisionist approach, initiated by Alfred Cobban and successfully developed by François Furet, focused on the "revolution as process," recalling Alexis de Tocqueville by locating the source of both French radicalism and egalitarianism in the absolutist regime that preceded the revolution. As mentioned above the overwhelming focus on the political origins of the revolution and on

political philosophy, most evident in Furet’s celebrated *Critical dictionary of the French Revolution*, demphasized socio-economic history in favour of the evolution of the vocabulary of politics.  

This marked the transition from an old regime political discourse to a discourse of the general will in the new regime. Therefore, a pre-existing "conflict of interests" was replaced by a "competition of discourses for the appropriation of legitimacy." Furet asserted that the mechanics of power vested absolute authority in those who claimed to speak for the people, as the "interpreters of action," and deprived individuals of the ability to speak for themselves. According to Furet the revolutionaries claimed that sovereignty resided in the people or the nation which was seen as a unified, undifferentiated mass. In contradistinction to the hierarchical differentiation of the *Ancien régime*, sovereignty in the revolutionary regime resided in a collective of individuals who were stripped of their particularities. This framework laid the foundations for a parliamentary absolutism that was "one and indivisible." Accordingly, Furet argued that the discourse of popular sovereignty, embraced in 1789, was incompatible with that of individual rights to which the revolutionaries simultaneously committed themselves. In his words the 1789 *Declaration of the Rights of Man*, was "less a charter of liberty than a blueprint for oppression." Political sovereignty vested in the constituent assembly, "owed its characteristics to absolutism" and "pure democracy was substituted for absolute monarchy." Furet’s interpretation of democratic absolutism was central to the interpretations developed by other historians including Keith Baker and Patrice Gueniffey. It was also critical to Shanti

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28 Ibid., 73, 75.
29 Ibid.
30 Ibid.
31 Ibid.
Singham’s conclusion that "intolerance to difference proved to be the revolution’s major shortcoming," and that becoming a citizen meant shedding corporate identities and assuming a national one.\(^33\)

The revisionist concept of democratic absolutism and the exclusion of difference supported interpretations of Jewish emancipation in the revolution which perceived the emancipation decrees as a challenge to the corporate autonomy and the distinctive particularism which was integral to Jewish identity. Those who hold this view maintain that the revolutionaries persistently regarded the Jews as a particular and specific collective, which was not acceptable in the ideological or constitutional framework of the republic which emphasized universalism.\(^34\) This perception has not only supported the revisionist scholarship, but has also had the effect of causing the historiography of Jewish emancipation to become intertwined with the more general historical approach to the revolution. It has also caused the scholarship to bifurcate on the issue of the Jews' "right to be different."\(^35\)

Some scholars condemn the dissolution of the Jewish corporate identity and perceive it to be a forced assimilation which, in its most extreme form, is the root of modern anti-Semitism. This school of thought emerged with Robert Anchel’s 1928 re-characterisation of Napoleon’s relationship with the Jews as repressive rather than liberating,\(^36\) a characterisation which was reiterated by Simon Schwarzfuchs\(^37\) and fit with Arthur Hertzberg’s position on the


\(^{35}\) Phyllis Cohen Albert, "The right to be different: interpretations of the French revolution’s promises to the Jews", Modern Judaism, Vol.12, no.3 (October 1992), 243-57.


enlightenment.38 This ambivalence to universalism and the delineating of the droit à la différence, emanates from a post-holocaust position and has informed the work of scholars such as Shmuel Trigano, who called the Jews of post-revolutionary France "hostages of the universal,"39 and Patrick Girard, who purportedly was inspired to write a book about the French revolution by a visit to Auschwitz.40

Conversely, historians of French Jewish history who reject Furet’s premise take a more progressive view of the revolution. These historians do not view assimilation for the majority of French Jews as a reality. Historians like Robert Badinter, who see the revolution as progressive, are critical of a position which uses a twentieth-century lens.41 While acknowledging the many obstacles faced by Jews wishing to enter public life, he argued that assimilation, in the sense of no longer identifying as a Jew, was not necessary. Historians who support this view see the relegation of religion to the private sphere by the liberal revolution as exempting Jews from having to assimilate and shed their Jewish identity in order "to buy their ticket to admission to society," unlike Germany and Austria where the price of admission was conversion.42

Historians like Badinter and, to a lesser degree Jay Berkovitz, Ronald Schecter and Esther Ben Bassa, see the erosion of communal authority as a more gradual process beginning in the middle of the eighteenth century, exemplified by appeals to secular courts and the lack of religious observance among Bordelais Jews. In direct contrast to the condemnation of the Jewish elite’s internalisation of the ideal of Jewish regeneration,43 these historians see the desire to

privilege secular Western culture over traditional Jewish learning as a method of seeking social integration rather than separateness. In addition, they view emancipation as the reconstruction of Jewish identity and as a parallel to the revolutionary construction of secular society. These more positive assessments are divided, however, over whether the revolution had incidental and unintended benefits for Jewish corporate identity or, as the progenitor of the age of pluralism and tolerance, purposively created the ideological base for progress.

The position taken by Badinter, Berkovitz and Ben Bassa account for several fundamental considerations which those which concur with the Furet model do not, specifically the problem of periodisation. The history of French Jews, or for that matter Jews globally, is not simply a chronology of "expulsions, catastrophes and pogroms," but part of the larger context of the history of France. The use of a twentieth-century lens, shaped by the Holocaust, distorts and inaccurately simplifies the relationship between events which may have no intrinsic connection. Thus the examination of other potentially relevant factors, where the history of the Jews in France is intertwined with French national history, is restricted. As Esther Ben Bassa has noted, the Jews in France had at various periods led a peaceful existence and developed a flourishing cultural life.

This approach also acknowledges the impact of regional and periodic disparities and differences on the Jewish communities, on the emancipation process and on Jewish identity. Moreover, this model accounts for the anomalous status of Jews both in the ancien régime and

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Ibid.

Ibid.
under the republic. As Paula Hyman put it, Jews were "long resident but foreign subjects of the king - the favors to a few potentially subverted the legal status of all Jews by invalidating the hegemony of existing legislation." The inevitability of a transformation of Jewish identity, however, in light of the seismic structural changes overtaking the pre-revolutionary world from which the Jews could not exempt themselves, has been relatively unexplored.

The debate regarding the emancipation decrees has also informed the historiography of pre-revolutionary reform of Jewish status. In light of the scholarly approaches to the emancipation decrees, Jewish historians have traditionally placed the "Jewish question" as the centre-piece in their analysis of pre-revolutionary social reform. These historians assert that prerevolutionary reformers who were influenced by legal centrism were in some ways advancing ideas that were precursors to democratic absolutism. In this regard historians like Simon Schwarzfuchs and David Feurwerker have maintained that the Jews' position as a particular and specific collective was not acceptable to those pre-revolutionary reformers who supported ideals of legal centrism. Other scholars assert that the Jewish particularism made the Jews pivotal to reformers because in some ways the Jews were a "litmus test" of enlightened ideals of toleration and emerging concepts of national citizenship. Ronald Schecter has asserted that the Jews held

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a symbolic position to evaluate the possibilities of emancipation.\(^5^1\) Schecter, loosely following Claude Lévi-Strauss, postulated that the Jews were "good to think." By describing the Jews in this fashion Schecter implied that they were a test case of sorts with regard to the conceptualization and articulation of ideas regarding the meaning of citizenship.\(^5^2\) This implication is partially based on the observation that, given their miniscule numbers and relative economic insignificance, the Jews received a disproportionate amount of attention in the period leading up to the revolution.\(^5^3\)

The countervailing argument is that the emancipation decrees and the process of reform leading to them, although a large issue in Jewish history, should only be allowed a small space in the greater history of the revolution. Robert Badinter's rejection of the Furet paradigm is also relevant in this regard. Since in Badinter's view the Jews were not forced to assimilate, they were not a test case for a new type of citizenship stripped of any form of particularism.\(^5^4\) The reform of their status was not central to the reforms leading to the revolution. Rather, Badinter did not view the Jewish question as unique. He saw the process of reform as including other marginal elements of society like Protestants, actors and blacks, and to a lesser degree women, who sought to be included in the reformed order.

The third historiographical debate which pertains to the reform of Jewish status before the revolution concerns the varying extent of isolation and the level of cultural integration among the various groups of Jews in pre-revolutionary France. Scholars such as Salo Baron,


Zosa Szjakowski, Raphael Mahler, and Arthur Hertzberg have traditionally taken the view that reformers in the eighteenth century were confronted with Jewish communities that were socially and culturally diverse and lacked uniformity with respect to jurisdiction or status. They argue that the Sephardics were far more assimilated, influential and sophisticated than their Ashkenazi co-religionists. The main features of ghetto life, such as segregation, legal disabilities, the threat of expulsion, the primacy of the Halakah, were regarded as besetting the Ashkenazics rather than the Sephardics which made the Ashkenazics resistant to the forces that had begun to transform European society and culture at large. Those scholars who assert this approach maintain that the small, centrally organized, prosperous and culturally assimilated Sephardics of the southwest resisted affiliation with the larger, administratively diffuse, impoverished, culturally insular Ashkenazic communities of the northeast. Scholars who hold this view echo eighteenth-century reformers in their belief that the insular and repressed condition of the Ashkenazi community was exacerbated by the control exerted by the autonomous community government called the kehillah or syndic. These scholars also argue that these critical differences were ultimately reflected in the Jews’ emancipation as two distinct political groups, by two different decrees, almost two years apart.

Other scholars such as Solomon Poesner, Azriel Shohat and Frances Malino, and more recently, Jay Berkovitz, Ronald Schechter and Claudia Ulbrich have challenged this view, presenting evidence that the boundaries separating the Ashkenazic Jewish communities from the non-Jewish milieu were far more porous and that the Sephardics were less privileged than

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Initially believed, Frances Malino in her examination of the Sephardic community has revealed that they opposed reform and change as harmful to their position in French society. Their actions were structured around a policy of fitting in and maintaining a low profile. They deliberately cultivated an image of cultural assimilation and integration. They sought to distinguish themselves from their Ashkenazi co-religionists and closed ranks in order to preserve their perceived privileged status. Despite this view of their status, however, it is undisputed that the Sephardics did not face the overt and extreme anti-Semitism which made itself felt in Alsace.

These scholars have also advanced the position that for the Ashkenazics, multiple political, economic and social links breached boundaries between the Jewish and non-Jewish communities which created a path for change in tandem with the surrounding society. Although restrictions continued to be enforced both by the surrounding French society and by the community itself, eighteenth-century sources provide a wealth of evidence of increased contact and cultural proximity between Ashkenazi Jews and non-Jews which began with economic interdependence. Scholars who hold this position assert that a subtle but profound process of acculturation created concrete social, juridical and political opportunities that had been previously unavailable. This process was manifested in public, private, general and specific ways. Solomon Posener has suggested that participation in economic life, in the form of

60 Ibid.
61 For examples of changes in traditional private practices see Marion Kaplan, The Making of the Jewish Middle Class; Women, Family and Identity in Imperial Germany (New York: Oxford University Press, 1991); Paula
attending fairs and markets weekly in large cities as well as small towns, spurred the development of dialects in languages spoken by the Jews in both the north and south. He also suggested that Jews incorporated local custom into both their individual and communal living habits. In support of these assertions, Jay Berkovitz has suggested that although Alsatian Jews did not become embedded in the fabric of French society, the Ashkenazi community was engaged in a gradual process of acculturation. One of the most significant ways this was manifested was in a "process of conforming to prevailing systems of justice" which in the early modern state constituted a significant form of attachment to the larger society. This included the appeals to sovereign courts by members of the the Ashkenazi Jewish communities, despite rabbinic prohibition against this practice. Although litigation was often aimed at eliminating commercial and residential restrictions, issues of personal status litigated by Jews in French courts suggest a more profound type of change. These areas of research have opened the possibility of new perspectives on the subtle acculturation of the Ashkenazic community and the erosion of Jewish religious tradition as the source of communal authority which allowed for the intersection of cultures. As Francesca Bregoli and Fredirica Francesconi point out, the fact that

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Hyman, Gender and Assimilation in Modern Jewish History: Roles and Representation of Women (Seattle: University of Washington Press, 1995); Chae Ran Freeze, Jewish Marriage and Divorce in Imperial Russia (Hanover, N.H. Brandeis, University Press, 2002); Iris Parush, Reading Jewish Women: Marginality and Modernization in Nineteenth Century Eastern European Jewish Society; Saadya Sternberg, trans. (Hanover, N.H. Brandeis University Press, 2004).

62 Poesner discusses the Jewish communities' involvement in borrowing and lending for the purposes of annuities and how mutual economic interest bound the Jewish communities to the societies in which they were embedded. Solomon Poesner, "The Social Life of the Jewish Communities in France in the Eighteenth Century" Jewish Social Studies Vol.7, no.3 (July, 1945), 195-232.

the Ashkenazi Jews found ways to accommodate these tensions despite their apparent lack of social integration lends valuable insight into the mechanisms of Jewish cultural adaptation.64

The historiography of divorce offers a parallel and equally important analysis of the dynamic of social transformation before the revolution. Although polarized over the extent of the agency of women, historians are agreed on the essential paradigm of the gendered nature of the structure of authority. Two aspects of the historiography of divorce in eighteenth-century France are relevant to this analysis. The first aspect is the role of the construct of the family in the political structure of the old regime. The second aspect is how juridical changes to the regulation of marital breakdown reflected the changing social and political landscape. Most historians, particularly those working in the area of gender history, accept the paradigm of the family as the basis for structure of authority and as the "principal basis of the social order."65 Lynn Hunt asserted that most Frenchmen in the eighteenth century thought of their rulers as fathers and their nations “as families writ large.”66 In the hierarchal society of prerevolutionary France, the patriarchal family model was also the political model with the King as the head of the national "family."67 The French king, according to apologists of absolutism, resembled the head in the body, the husband-father-master in the household, and the sun in the cosmos, all of which united subordinate parts into regulated wholes based on hierarchy rather than contractual relations.68 In theory, the system functioned on the principle that the ruler at its pinnacle was a reflection of,

64 Francesca Bregoli and Fredirica Francesconi, "Tradition and Transformation in Eighteenth Century Europe: Jewish Integration in Comparative Perspective," 235.
and responsible for, the integrity of the order it provided. In the private sphere this model was paralleled by the family through the institution of indissoluble marriage. Class, regional customs, property structures and urban-rural differences often influenced the crucial components of marriage and created vast differences in its regulation. As James Traer has argued, the institution of marriage knit together the fabric of old regime society in a complex weave of family, property and mutual obligation.\(^69\)

Scholars concur that in early modern Europe, marriage and divorce were regulated according to Christian religious norms. Divorce was not widely available. Catholics were permitted separation but not divorce and Protestants, although theoretically allowed to divorce, were not regularly granted it. Conversely, the Jews were in the unique position of having the crown's permission to divorce according to their own laws.\(^70\) The Jews' unique position in this regard was remarkable considering the profound belief in French society that marriage held tremendous importance as an indissoluble bond. It was a sacrament of the Church, a crucial contract uniting the King and various groups, which determined the method of passing down goods, a source of progeny, a tie of affection and property, and a gendered space for negotiating power and intimacy. Dorinda Outram has argued that gendered roles assigned in this paradigm


\(^70\) Laws affecting marriage, such as French civil law in the late sixteenth century did not include the Jews. This state of affairs was similar in Protestant states. However, Holland and Hamburg had addressed Jewish marriage and divorce to some degree; as of 1580, Holland required civil registration of all marriages, including Jewish ones; as of 1650 Hamburg stipulated governmental oversight of Jewish divorce. Both places applied Protestant norms of consanguinity to prohibit some Jewish practices. Yet subsequent reiteration made it clear that in practice these ordinances were often ignored by the Jews. In Prussia, civil courts began adjudicating certain aspects of Jewish marriages, though still according to Jewish law. In England, civil courts recognized the validity of Jewish marriage law and ceremonies but decided some Jewish separation divorce cases on the grounds that Jews were entitled to the protection of English law if their marriages were violated. On Prussia see Mordecai Breuer and Michael Graetz, *Traditions and Enlightenment 1600-1780*, trans. William Templer (New York: Columbia University Press, 1996), 254. On England see Israel Finestein, "An Aspect of the Jews and English Marriage Law during the Emancipation: the Prohibited Degrees", *Jewish Journal of Sociology*, 7 no.1 (1965), 3-21; Deborah Hertz, *Jewish high society in old regime Berlin*, (New Haven, Conn.: Yale University Press, 1988).
were the means of establishing identity and placement on the social hierarchy.\textsuperscript{71} Sarah Hanley has used the phrase the "family-state compact" in which paternalistic and patriarchal models of monarchical and familial authority merged to reinforce gradation in gender and social status through marriage law.\textsuperscript{72} James Traer argued that the ideal of marriage as a sacrament characterized by indissolubility as decreed by the pope was essential to the integrity of this paradigm.\textsuperscript{73} Joanna Alexandra Norland posited that the monarchy relied on the indissolubility of marriage to leverage power.\textsuperscript{74} The absolute power of the husband and father within the domestic sphere mirrored the authority of the absolute monarch over the state.\textsuperscript{75} Jeffery Merrick has suggested that the conventional connections between kingdom and family naturalized the monarchy and politicized the household.\textsuperscript{76} These scholars concur that this model formed the scaffolding on which the stability and security of society rested. The absolute monarch reinforced the power of the domestic sovereign to the extent that the \textit{pére de famille} could appeal to the king to punish and even to incarcerate errant sons or daughters for running away or for marrying without paternal consent.\textsuperscript{77}

The conception that the social experience of marital breakdown reflected the political landscape, which has been expressed by scholars like Traer, Outram and Norland, is supported by the eighteenth-century movement to permit divorce, of which the most important aspect was the divorçaire movement between 1768-1774. By the eve of the revolution this movement,

\textsuperscript{71} Dorinda Outram, \textit{The Body and the French Revolution} (New Haven, Conn.: Yale University Press, 1989), 33.
\textsuperscript{73} Traer, \textit{Marriage and the Family in Eighteenth Century France}, 22.
\textsuperscript{74} Joanna Alexandra Norland, "When the Vow Breaks: Why the History of French Divorce Law Sounds a Warning about the Implications for Women of the Contemporary American Marriage Movement" \textit{Wisconsin Women's Law Journal} 17 (Fall, 2002), 321-345.
\textsuperscript{75} Traer, 41.
\textsuperscript{77} James Traer, \textit{Marriage and the Family in Eighteenth Century France}, 139-140.
which originated with the idea that allowing divorce would be a solution to the problem of low birth rate in France, conflated ideas of gender equality and the abolition of privilege.

Scholars have commented on different aspects of this process. Diverging from the political and legalistic focus of Traer, Outram and Norland, Roderick Phillips focused on the growth of divorce as a social practice by disassociating political events from the social phenomenon of marriage breakdown. He also argued that turning divorce into a juridical procedure was part of the process of the secularization of marriage. Desanctifying marriage diminished the authority of the Catholic church. Moreover, Phillips argued that attitudes toward divorce, sexuality, marriage and family were all interconnected with social, economic and demographic changes. Sarah Hanley has argued that aristocratic wives and their lawyers, by challenging fixed juridical norms regarding the dissolution of marriages, challenged and indeed discredited, male authority throughout the seventeenth and eighteenth centuries. Julie Hardwick asserted that although the experience of the poorer classes was not as expressly political, their practical experience of ending marriages by informal definitive dissolutions sheds light on a large scale change in attitude. It also reflects the infusion of politics into the most intimate family relationships.

Jeffrey Merrick and Suzanne Desan have argued that although formal litigation still proved to be

beyond the means of many couples, conflicts and informal resolutions abounded and challenged the ideal of indissolubility, and with it the social structure, in a practical way. Moreover, as Sarah Maza has argued, in the aftermath of the Maupeou "coup" lawyers often transformed private conflicts into public affairs in ways that both reflected and influenced collective attitudes.\(^8^3\) Analyzing *mémoires judiciaires* that were published and distributed to the public, Maza has asserted that the "appeal to 'public opinion' was undoubtedly a rhetorical convention shaped by political struggles over the course of the century; increasingly, however, the convention overlapped with the growing social reality of the *mémoire* readers."\(^8^5\) The *mémoire* served as an increasingly effective vehicle for highlighting contemporary political concerns and it is no accident, Maza asserts, that recourse to public trial briefs coincided with important political crises.\(^8^6\) Sarah Maza has argued that the *mémoires judiciaires* were a particularly important tool as lawyers used them to turn trials into *causes célèbres* which drew public attention to political causes.\(^8^7\) Roger Chartier has suggested that "people became accustomed to seeing individual affairs transformed into general causes." He saw an imposition of private values on political life and interpreted it as a harbinger of Revolutionary political culture.\(^8^8\) The language of the *causes célèbres* became an aspect of pre-revolutionary political writing which expanded and politicized the intimate domain of the family in these public and sensational cases. Similarly, Giacomo Francini argued that the discussion of marriage as well as divorce by jurists

\(^8^3\) Complaints were less common than conflicts and more common than lawsuits, which required sufficient evidence and involved significant expense. The papers of the commissioners from 1775 contain reasonably complete and remarkably extensive documentation in one and only one law suit, which contemporaries discussed and deplored in a variety of sources. Suzanne Desan and Jeffery Merrick eds., *Family, Gender and Law in Early Modern France* 140.

\(^8^4\) Ibid., 129.

\(^8^5\) Ibid.


\(^8^7\) Ibid., 129.


belonged to a universal way of perceiving not only family relations, but even social attitudes, especially if conceived through their civic representations, transmitting these issues into public debate. The family, being the basic unit of society, reflected the organization of the state.\footnote{Giacomo Francini, “Divorce and Separations in Eighteenth-Century France: An Outline for a Social History of Law,” The History of the Family, 2 (1997), 1, 99-113.} Contemporaneous examples of the politicization of the private sphere outside of France, such as Joseph II's Marriage Patent (\textit{Ehepatent}) of January 16, 1783 and the 1787 \textit{Josephinisches Gesetzbuch} which defined marriage in the Austrian Empire as a "civil contract" and asserted the exclusive jurisdiction of state courts over marriage and divorce, further supports these arguments.

Considering approaches to the reform of Jewish status in pre-revolutionary France jointly with the juridical treatment of divorce during the same period provides a broader contextualization and a new perspective on the efforts involved in an impetus legal centrism in pre-revolutionary France in the last half of the eighteenth century. Focusing on legal and conceptual analysis, this thesis will examine the link between juridical approaches to divorce and the reform of Jewish status during the second half of the eighteenth century. Specifically, this thesis will argue that juridical approaches to Jewish divorces, which attracted attention as \textit{causes célèbres}, were manifestations of an efforts toward achieving legal centrism which simultaneously, if subtly, altered the hierarchy of corporate privilege in French society by attempting to centralize juridical authority in the sovereign administration. The \textit{causes célèbres} Jewish divorces also reflected the erosion of the autonomy and distinctiveness of the Jewish community inherent in the process of legal centrism. This thesis will also argue that any progressive impact of this transformation on the Jews was nuanced by the divisiveness among the Jews themselves and among the various elements of French society towards them. As
Malesherbes would discover in his research on the Jews, these tensions remained unresolved on the eve of the revolution.

Following the framework dictated by these issues, the thesis is divided into six parts. The second chapter will deal with the status and attitudes of the two principal Jewish communities in eighteenth-century France and how these attitudes affected the impetus toward reform. This chapter will examine mémoires of administrators and of members of the community, as well as the laws affecting the largest Jewish communities. Using the publications of writers who engaged in the debate over divorce, the third chapter will examine the challenges to the religious and patriarchal structure of authority in pre-revolutionary France posed by the growth of the divorce movement prior to 1789. It will also examine how Jewish communities regulated marriage and divorce, and how Jewish divorces appealed to courts outside the Jewish community intersected with the growth of the divorce movement. The fourth chapter will deal with the Borach Levy case of 1754 and its significance both from the perspective of the movement toward legal centrism and the challenge to the Jewish community's autonomy. The analysis will analyze the mémoires judiciaires published by the advocates in the Borach Levy case. The fifth chapter will deal with the Peixotto case of 1775 which became a template for the debate on Jewish status and a bell weather on the general attitude toward secular divorce and Jewish status through the considerable publicity it attracted. The analysis of this case will also rely on the mémoires judiciaires published in connection with the case. The sixth chapter will deal with the abolition of the péage corporel and the lettres patentes of 1784 which reflected the complexity of the impetus toward reform and the importance of issues of personal status as they related to the integration of the Jews. This chapter will rely on the mémoires and letters of Royal administrators, local authorities and leading members of the Jewish community of the
1784 *lettres patentes*. The seventh chapter will deal with the work of the Malesherbes commission of 1788 which reflected the elevation of the Jewish issue to the attention of the highest circles of government and the inherent difficulties it faced in effecting reform. The sources for this section are letters, *mémoires* and publications collected and consulted by Malesherbes during his research on the Jews. By examining the reform of Jewish status from the perspective of *causes célèbres* divorce cases the thesis will add to the scholarship on both the efforts toward establishing legal centrist in pre-revolutionary France and to a comprehension of the complexity of the reformulation of Jewish identity in the modern world.
"They do not wear beards and are not different from other men in their clothing, the rich among them are devoted to learning, elegance and manners to the same degree as other peoples of Europe, from whom they differ only in religion."

Ashkenazics and Sephardics; the disparate natures of the Jewish communities in France in the eighteenth century
Chapter Two

Jewish status in eighteenth-century France was shaped by the social, political and cultural differences between the various Jewish communities. These communities were not considered by non-Jewish society, nor did they consider themselves, as one organic whole. They were divided by region and ethnicity with a distinct vernacular and set of customs that underscored their differences. The Jewish communities were concentrated in four widely separated areas; Alsace-Lorraine in the East, the district of Avignon in the South-East, the ancient province of Guienne in the vicinity of Bordeaux in the South-West and a small community of roughly 500 Jews in Paris. The two dominant groups were the Sephardics whose origins were Spanish-Portuguese and the Ashkenazics whose origins were German and East European. The Sephardics (called the "Portuguese Jewish Nation") were divided into six communities: Bordeaux, Bayonne, Biarritz, St-Jean de Luz, Bidache and Peyrehorade. The Ashkenazi Jews of Alsace-Lorraine were spread over more than 200 communities in Alsace and 168 in Lorraine including the large centres of Metz and Nancy.

Although both groups had complex social and economic relations with their Christian neighbours, they demonstrated the capacity to resolve conflicts that created an important precondition for living with differences and co-existence. This capacity manifested itself differently in different communities. The litigation of personal disputes in sovereign courts by Jewish individuals despite the efforts of the rabbinic and communal authorities to prevent them from doing so was a significant example. Their significance is enhanced because Jews did not share

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1 S. Poesner, "The Social Life of the Jewish Communities in France in the Eighteenth Century" Jewish Social Studies, vol. 7 no. 3 (July, 1945): 195-232
2 Poesner, 203. There are no accurate statistics for the communities. The Jews of Avignon, had four communities: Avignon, carpenters, Cavaillon and Isle sur Sorgue. They are outside the scope of this paper because these communities were under papal jurisdiction and not under French jurisdiction until 1790.
the legal culture of their Christian neighbours who relied on notaries, sworn documents and registered oaths. For example, Christian notaries registered their acts according to formulas that included Jesus Christ, the Holy spirit, the Virgin Mary etc. For observant Jews swearing an oath using the words "in the name of God" was prohibited and bordered on blasphemy.³ Litigation in sovereign courts by individual Jews regardless of which community they were members of demonstrated a fundamental similarity shared by all the different Jewish communities to overcome fundamental obstacles like the swearing of oaths in order to juggle competing legal systems and to adapt to non-Jewish juridical practices within the framework of Halakah or Jewish law.⁴

This pattern became more prevalent by the middle of the eighteenth century as both Jews and the sovereign courts adapted their practises to enable individual Jews to reach beyond the juridical authority of the Jewish community to resolve disputes on matters that had traditionally been solely within the purview of the Jewish community. This appeal to sovereign courts on issues traditionally dealt with by the community enhanced the erosion of Jewish religious tradition and communal autonomy as the source of authority over the individual, and demonstrated that not all members of the Jewish community accepted the autonomy or the power of the Jewish community government as absolute. This gradual willingness on the part of the sovereign courts to adjudicate issues that had previously been contrary to the Catholic traditions on which the juridical system was based, and therefore the exclusive purview of the Jewish community, reflected a change in the perceptions of both the Jews and the sovereign

³ An extensive body of Christian law and legal custom evolved over the centuries regarding the issue of sworn testimony in the Jewish manner. This took bizarre forms in Germany and eastern Europe. For e.g., a Jew might be required to stand on a bloody cow’s skin with his bared breast and his hand on the five books of Moses calling down every imaginable old testament curse on himself. Edward Goldberg, Jews and magic in Medici Florence: The Secret World of Bendetto Blanis (Toronto: University of Toronto Press, 2011) 53.
administration. This change reflected a mutual movement toward the centralization of authority. These changes to the juridical landscape impacted Jewish status in both negative and positive ways. On the positive side it increased advocacy for the reform of Jewish status from both Jewish and non-Jewish advocates. On the negative side it enhanced the perception of the differences and the divisiveness between the major Jewish communities which defined the process of reform.

The fundamental difference between the Ashkenazis and Sephardics, which would play such a crucial role in reform, was not only the result of political and economic conditions in the regions in which they resided. It was also profoundly cultural. The Sephardics adhered to French norms and habits eliminating distinctions between themselves and other French subjects far more than the Ashkenazis did. This cultural adaptation, to be explained in greater detail below, was motivated in part by the desire to secure their privileged status rather than to assimilate in the sense of having erased their identity as Jews. Their desire not to attract attention to themselves and to "stay under the radar" was likely connected to their perceived insecurity concerning their status which resulted from their historical experience. Although the Sephardics resembled the Ashkenazis in their desire to preserve the authority of the communal organization that they believed protected them, they were more resistant to change. Despite their social assimilation the Sephardics demonstrated a degree of rigidity in their approach to social issues. Similarly, although they were less traditional or orthodox in their religious practice or their social lives, they were less willing than their Ashkenazi co-religionists to challenge sovereign authorities and to disrupt the status quo. They took steps to distance themselves not only from the Ashkenazim but from anyone, including other Sephardics who were impoverished or vagrants, who might threaten their privileged status.
The traditional view of the Ashkenazim as insular and mired in orthodoxy has been challenged by new research into the multiple levels of penetration of French secular culture into the lived experience of Ashkenazi Jews.\(^5\) This penetration was not consistent however, among the various Ashkenazi communities. This nuanced acculturation provides perspective on the lack of cohesiveness and multiple differences among the Ashkenazim themselves. Among the factors that present themselves in this context is the rapid demographic growth of the more rural Alsatian communities compared to urban centers in Lorraine. This growth made Jews in smaller communities more visible and, therefore the subject of both greater negative and positive attention from French society and authorities. Moreover, in the Alsatian communities the community government (*kehilla*) and the rabbi played significant roles in the structure of communal authority. Conversely, in the face of declining demographics and increasing acculturation, the role of the rabbi and the power of the *kehilla* over the individual declined in the large urban communities of Metz and other urban centers in Lorraine.

This more nuanced view of both Jewish communities has to be juxtaposed to the common structural aspects of both Ashkenazi and Sephardic groups. The *kehilla* was the principal organ of government in all Jewish communities regardless of their regional and cultural identification. The *kehilla* received the support of French sovereign authorities because they collected taxes. They were not always a benevolent force for their membership. They often disregarded the

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interests of the individual (and often impoverished) members in favour of the elite oligarchy that controlled the community's administration. Although they did not entirely deserve the negative image reformers like Malesherbes had of them, their efforts to secure their own authority were more successful in creating obstacles to internal reform than in preventing the penetration of outside influence. In the past this had been because of the kehillah's role as the de facto liaison with the surrounding society from which the Jews were ostensibly segregated legally and socially. Both the Sephardics and the Ashkenazics viewed the kehillah as a protective buffer for its members in a hostile environment. Individual Jews relied on them to organize essential community functions such as the distribution of charity. The communities also protected the individual Jew by using part of their communal funds to ensure Jewish rights and, occasionally, to extend them. The functions of the kehillah covered all aspects of Jewish life, from education to the provision of kosher meat.\(^6\)

The principal organ of the kehillah was the plenary session of its members called the syndic or parnas. This usually consisted only of heads of families. The communal structure was inherently patriarchal and marriage was a key factor in defining the roles of the communities' members. Moreover, marriage was used by the governing elite to preserve their status. Younger unmarried members could not establish their own independent households and remained under the control of senior members of their families. Single women, even widows, although participating in communal burdens, were excluded from public affairs. Although Jewish law made special provision to protect unattached women if they were not under the purview of a

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male head of the household, they had little or no voice in community matters such as the collection of taxes which may have directly affected them.  

The elders, syndics or *parnassim*, of each community were those members elected or chosen to service its major offices. Often the wealthiest members of the community, who could by virtue of their wealth command the most respect from the authorities, filled this office and leadership tended to become oligarchical in nature. The syndics were elected under the auspices of the rabbi and community leaders. In Alsace this structure was held in place by a firm commitment to religious authority and tradition while other communities, such as the Sephardics in the south and the larger communities of Metz and Nancy, had a more secular outlook.  

Despite the importance of their role, there was no centralization or amalgamation of Jewish *kehilot* until the 1770s when certain regional syndics, most notably Cerf Berr, claimed the title of *préposé* general of the Jewish nation. Both local and sovereign authorities were ambivalent to this unification and the council of syndics for the Ashkenazi communities did not receive formal recognition or sanction until the granting of the January 1784 *lettres patentes*.  

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8 Cerf Berr used the title to lobby for a formal recognition for “native Jews,” total freedom of commerce and settlement, and official recognition of syndics. Benbassa, 66.  

9 In 1784, when the Jews right to elect syndics was formally affirmed in *lettres patentes* the new leaders came to be viewed by government officials and by members of the communities as official representatives of the nation. They also reaffirmed seigniorial authority in external affairs and introduced uniform statutes intended to govern the internal life of the communities of Alsace in the following areas: election of communal parnassim (*les syndics des Juifs*); relative authority of local and general parnassim; internal policing; civil jurisdiction; rabbinic authority; taxation; higher Talmudic education; record keeping; religious and social controls; social welfare; and regulation of inheritance. The assembly set its own policy in each of these areas and served as a central authority empowered to enforce its ruling over the communities of the province. Especially noteworthy among the *takkanot* is the hierarchical leadership structure that the assembly formalized with respect to general (i.e. regional) and local *parnassim* and was later established as law by the 1784 *lettres patentes*. Local *parnassim* were responsible for
Even after the January *lettres patentes* sovereign authorities occasionally challenged those who claimed to speak for the entire Jewish community.\(^{11}\) For example, when M. de Mirbeck, the attorney acting on behalf of the Jews, lodged with the Council of Dispatches their "most humble and most respectful representations" regarding the *lettres patentes* of 1784, the Minister of Justice de Miromesnil, rejected them as unacceptable precisely because de Mirbeck had represented himself as speaking in the name of all the Alsatian Jews.\(^{12}\)

The *kehilla*’s most important function was the collection of funds and levying taxes for the enormous tax burdens which Jewish communities faced.\(^{13}\) They also assisted the local authorities maintain surveillance of the Jewish population. Their responsibility for efficient tax collection required the assessment of each individual’s net worth which reinforced their power over the community’s members. For the Ashkenazim this power structure was reinforced by the complex multiple levels of tax that they were required to pay. All Jews, Ashkenazim and Sephardim alike, had to pay the capitation, related taxes and certain special gifts. However, in Alsace Jews were also required to pay the an additional Royal tax “*droit de protection*” and the local noble tax “*droit d’habitation*” which served to reinforce the identification of the Jews with the interests of the nobility and to increase peasant animosity toward them. These amounts were levied by the *kehilla* on individual families and they did not vary according to income. In all localities there were also gratuities paid to communal officers and extra funds required for internal functions which were assessed on a sliding scale. The Jewish community also levied other taxes to cover expenses which included taxes on meat, wines, and liqueurs, on the sale of internal matters. The general *parnassim* were responsible for the collection of communal and royal taxes, and were given extensive administrative power. Berkovitz, *Rites and Passages*, 42.

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\(^{12}\) Poesner, 216.

\(^{13}\) Ibid. This was accomplished through various self-imposed taxes such as a meat tax.
horses and on successions. Nonetheless, receipts often did not cover the expenditures, which drove the communities to a policy of borrowing that often proved ruinous.  

The community was also required to raise funds for social and charitable purposes, the most important of which was to aid the numerous vagrant Jews who were subject to the most severe regulations. Some estimates have placed the number of indigent immigrants as high as one quarter of the population which made them a constant concern for all the Jewish communities both in the North-East and the South-West. Established Jewish communities took in indigent immigrants as required by Jewish tradition, but communities were always anxious for them to leave and did all they could to expel them as soon as possible. As late as 1782 an anonymous mémoire on behalf of the Jews stated, “The Jews should not be punished as aliens because they nourish their brothers who are reduced to penury. This charity is not unknown to Christians. The Jews should be at liberty to do the duty that nature and religion prescribe.”

The groups of vagrants and foreigners who often formed roving bands could be violent and there was always concern that the behaviour of these vagrants would reflect badly on the community and increase tensions with the surrounding French society. As one pamphleteer stated; "It is observed that of this number 500 vagabonds and mendicants circulate without cease in the province." Another writer stated, “The restrictions have fallen on poor foreign Jews in the

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15 This was not only a problem for the Jews as a significant portion of the French population were also vagrants. Poesner estimates 3 million of 18 million Frenchmen were vagrants. Poesner, 22; see also Françoise Job, Les Juifs de Luneville aux XVIIIe et XIXe Siècles (Nancy: Presses Universitaires de Nancy), 3.  
16 Poesner, 22.  
17 Anonymous memoire, August 1782, A.N H3105; Coup-d’oeil sur la situation actuelle de l’Alsace, relativement aux Juifs, A.N. H1647.  
18 Coup-d’oeil sur la situation actuelle de l’Alsace, relativement aux Juifs, A.N. H1647.
province who have never had any domicile otherwise it would be necessary to expel the majority of the Jews who have just won certain privileges.\textsuperscript{19}

Severe restrictions in Alsace reflected the extent of the problem. For example, on September 23, 1720 foreign Jews were refused permission to remain in Alsace for a period exceeding three days and, in any event, only after producing proof that they had come on matters of business. Jews were also forbidden to entertain foreign Jews without special permission.\textsuperscript{20} Even the \textit{lettres patentes} of 1784 threatened an expulsion of the foreign Jews from Alsace.\textsuperscript{21} As will be discussed in greater detail below, the Jews of Bordeaux had similar concerns despite the community's relative wealth.

Beyond these basic similarities the Jewish communities in France differed in most other social, cultural and political aspects. Differentiation between the communities was partially the result of governing legislation which varied between region to region and locality to locality.\textsuperscript{22} These differences were influenced both by politics and economics. The Royal administration was guided by its chief representatives, the intendants, and their assistants, the controllers-general. This system led to enormous diversity because, except for the years when directed by Turgot, these officials had no consistent Jewish policy.\textsuperscript{23} Generally, the refugees from the Iberian peninsula found a more welcoming administrative and political climate than the Jews of German origin in the North-East. In those places where freedom of commerce was seen as the route to material prosperity the intendants protected the Jews against assault by their Christian competitors. For example, the intendant of Languedoc wrote to the controller-general Orly in

\begin{itemize}
\item \textsuperscript{19} Ibid.
\item \textsuperscript{20} Ibid.
\item \textsuperscript{21} Ibid.
\item \textsuperscript{23} Ibid.
\end{itemize}
1740," the competition of the Jews can do no harm either to commerce generally or to our factories" to which Orly replied: "should the Jews be excluded from the fairs, it would cause, I am convinced, a void that would bring damage to the factories." By contrast, in Alsace and Lorraine merchant groups who saw Jews as competitors demanded that local authority restrict the growth of the Jewish population. This was exacerbated by the variety of legal authorities who were often rivals of one another, zealous of their own jurisdiction and interests. Specifically, of the 1150 towns and villages in Alsace approximately 900 were held by nobles who had independent jurisdiction to admit Jews. Other jurisdictions fell under the purview of the crown while still others were subject to city councils.

The complex nature of Jewish status was exacerbated by subdivisions among the Ashkenazim as a group. Traditionally, the perception of all of the Ashkenazi communities has been that they were religiously conservative and insular. Conversely, the perception of the Sephardic communities has been that they were socially and culturally assimilated. Scholars such as Zosa Szajkowski and Arthur Hertzberg have asserted that religious insularity was continually offered as the rational for treating the Ashkenazi Jews as étrangers even up to the time of the National Assembly debates on the emancipation decrees. These arguments are supported by the segregating patterns of language and educational practices among the Ashkenazim. The major language spoken by the Ashkenazim was Yiddish, and education in the yeshivot and cheders emphasized the study of the Talmud and other religious subjects such as Gemara.

Recent research has asserted a more nuanced view of the insularity which appeared to define the

24 Ibid.
27 Ibid., 168.
Ashkenazi community. This reassessment has resulted from a new perspective on the matrix of overlapping and competing forces of authority and local and regional community structures. This research suggests that the experiences of the Ashkenazi communities was not uniform and that, even when Ashkenazis were formally excluded from public space, social and cultural interaction between Jews and non-Jews occurred.\textsuperscript{28}

The communities of the North-East were of Ashkenazi (German) origin and professed a common regional cultural identification. They viewed themselves as belonging to the Ashkenazi or German Jewish community that spread over Central and Eastern Europe as far as Prague. Leading Jewish rabbis saw themselves as "b’nei Rhinus" (sons of the Rhine).\textsuperscript{29} Superficially there was a measure of uniformity with respect to practice and customs for Jewish communities throughout the region. Language, modes of Talmudic study, rabbinic appointments, religious customs, marriage patterns and liturgical rites from Metz to Prague were part of a unified religio-cultural entity.\textsuperscript{30} Most Ashkenazis spoke Judeo-Alsatian, a branch of Yiddish which was written in Hebraic characters and reflected the origin of the community from Alemannic (Ashkenaz) area. Hebrew remained the language of prayer, study and law. Until well into the eighteenth century very few Ashkenazi Jews spoke French and fewer read and wrote it. No Jewish publications in French appeared before the end of the eighteenth century despite the existence of a small elite of Askenazi Jews who spoke French.\textsuperscript{31} However, by the eighteenth century there was a marked presence of French terminology in economic life and in judicial procedure.

\textsuperscript{28} see note 5 above.
\textsuperscript{30}Ibid.
Hebrew transliteration appeared frequently in terms referring to court procedures.\textsuperscript{32} The presence of French terms in common transactions indicates a familiarity with French terminology which may not have been confined to a small literate elite and belies what appears to be a general attitude of cultural insularity among the Ashkenazis.\textsuperscript{33}

Cultural insularity was one of the differences which defined the categorization of the various Ashkenazi communities. Three principle groups are discernable: the small rural communities of Alsace-Lorraine, the urban community of Metz, and other communities in Lorraine, the most important in Nancy. While in theory the same customs prevailed for all communal and personal matters regardless of where in the Rhineland a particular ceremony or dispute had taken place, in practice there were wide variations which accorded with these groupings.\textsuperscript{34} These variations were linked to different demographic and residential patterns. While larger communities like Metz tolerated some variation in ritual, the communities in smaller towns and villages in Alsace were inclined to tolerate less diversity in ritual matters.\textsuperscript{35}

One reason for this rigidity in the smaller communities was the residence pattern in Alsace. Unlike the Ashkenazi community in larger centres and beyond the French borders, and the Sephardim to the south, individual Ashkenazi communities in Alsace tended to be small and scattered throughout hundreds of small settlements under multiple jurisdictions. On the eve of the revolution more than 80% of the towns and villages in Alsace had no Jewish residents. The

\textsuperscript{32} Jay Berkovitz, "Acculturation and Integration in Eighteenth Century Metz," 273.
\textsuperscript{33} Ibid. examples include Zalkind Hourwitz, Cerf Berr, Berr Issac Bing
\textsuperscript{34} After the French conquest of Alsace there was a small degree of centralization in the general organization of the Jewish communities. Prior to the French conquest each lord of the manor, where the Jews were sufficiently numerous to warrant it, appointed a chief over the community, a rabbi who was entrusted with the administration of all religious functions of the community, and who acted also as common judge in all the civil suits between Jews, with a privilege of appeal from the rabbinical tribunal to the superior courts. Over these rabbis the government of Louis XIV appointed a superior; and May 21, 1681, nominated Aaron Wormser chief rabbi of the Jews of upper and lower Alsace. This met with considerable challenge from local Jewish authorities. http://www.Jewishencyclopedia.com/articles/1313/-Alsace accessed May 12, 2012; Jay R. Berkovitz," The French revolution and the Jews: Assessing the Cultural Impact," 36.
\textsuperscript{35} Berkovitz, \textit{The French revolution and the Jews}, 35.
cities of Strasbourg, Colmar and Mulhouse banned all Jewish residents, with Jewish merchants and peddlers permitted in the city only during the day light hours.\textsuperscript{36} Living in smaller centers made the Jews more visible because, while still numerically a minority, they were far more apparent among a smaller general population. Despite the small size of each community of about one hundred to three hundred Jews, they generally formed sizable minorities of between 5-25% of the population in the individual rural communities in Alsace where they were permitted to live.\textsuperscript{37}

At the beginning of the eighteenth century, there were between 1,269 and 1,348 families, or 6,500-6,800 Jews, in Alsace. By 1780 estimates placed the number of Jews at 3,600 families (18,330 individuals in a population of 140,636 Christians).\textsuperscript{38} Other other more modern estimates place the Jewish population of Alsace, legal and illegal, at about 22,500, with the highest proportion of families (74 percent) and of localities where Jews were resident (129 of 179) in Lower Alsace.\textsuperscript{39} The remaining families (26%) resided in Upper Alsace spread out over 50 villages.\textsuperscript{40} Despite severe restrictions overall population size expanded with amazing rapidity during the second half of the eighteenth century.\textsuperscript{41} The statistics for 1750 show the number of families to have been 2,585; in 1760 it had increased to 3,045 and in 1785 to 3,942 families for a

\textsuperscript{36}A decision against the Jews by the Sovereign Council of Alsace dated September 2, 1755 was justified in the words of members of the council by saying: Le Juif, n’a aucun domicile fixe, il est condamné a erreur perpetuellement. Cette peine le suit partout et lui dit sans cesse qu’il ne peut se permettre aucune stabilité nulle part. Le retour meme dans les terres de ses peres lui est interdit a jamais. M.J. Krugbasse, L’Alsace avant 1789, (Paris: Sandoz et Fischbacker, 1876) 221.
\textsuperscript{37} Benbassa, 65; Hyman, 12.
\textsuperscript{38} Memoire particuliere du Baron de Segur, premiere du conseil souverain de Colmar, sur le reglement dont le gouvernement et occupée, concernant les Juifs d’Alsace. A. N. H3105
\textsuperscript{40} Memoire particulier du Barron de Spon, premier president au Conseil Souverain de Colmar, sur le Règlement dont le gouvernement est occupé, concernant les Juifs d’Alsace, A.N. H3105, F131.
\textsuperscript{41} For example, Jews were usually required to live in certain prescribed locations and in some small towns Jews were only permitted to reside in isolated houses chosen for them by the authorities. In other communities Jews were allowed to live intermingled with the Christian population.
total of 19,624 individuals. This dramatic increase in the Alsatian rural Jewish population remained steady until the revolution while a relative decline in the population of Jews in the same period was discerned elsewhere on the continent. The rapid increase in the Alsatian Jewish community's population, although the Jews were only a small percentage of the overall population, was a factor in the prominence of the Jewish issue in the second half of the eighteenth century. As the Barron de Spon wrote “M. De la Galaziere is persuaded that the Jews' increase in Alsace is incredible. There did not exist 587 families at the beginning of the century now there are 3,600...” Another contemporary writer also noted, with some alarm, the rising number of Jews in Alsace: “Despite expulsion the Jewish population by reason of their dogma, rites and morals has had a prodigious increase from 2,000 individuals to 18,000.” This rapid demographic growth may have been a factor in why the presence of both Protestants and Catholics in Alsace did nothing to create a climate of tolerance or to ease the restrictions on the Jews.

This difficult situation was exacerbated by severe economic restrictions which confined the Jews of this region to a limited and narrow range of economic pursuits. Although much resented by the non-Jewish population, these economic pursuits, such as money lending, were essential to the local economy. Jews were barred from agricultural endeavours, and could not own land. Even if land fell into their hands as the result of a default on a loan, they were required to sell it within one year. Settlement in tiny rural villages had the paradoxical effect of creating

42 Unnamed population chart, A.N. H3105, F131.
44 Memoire particulier du Barron de Spon, premier président au Conseil Souverain de Colmar, sur le Règlement dont le gouvernement est occupée, concernant les Juifs d'Alsace, A.N. H3105, F131; Mémoire by M. de la Galaisière Strasbourg August 28, 1783 A.N. H3105. For a contrary theory see Ronald Schecter, Obstinate Hebrews: Representations of the Jews in France, (1715-1815) (Berkeley, Los Angeles, London: University of California Press, 2003). Schecter asserted that the Jewish issue was "good to think" - that the Jews were a test case of reform, rather than any concerns regarding the threat from their fertility.
45 Coup-d'oeil sur la situation acutelle de l'Alsace, relativement aux Juifs, A.N. H1647.
rural communities which were not permitted any agricultural pursuits. They could neither manage retail businesses without special permit, nor could they run public shops or inns. In the entire province of Alsace there was only one Jew who had a permit for a store.\footnote{Szakowski, \textit{The Economic Status of the Jews of, Alsace, Metz and Lorraine}, 29.}

Jews were also excluded from the artisan guilds and were permitted to engage in business activities exclusively in localities where almost no business opportunities existed.\footnote{Ibid.} Specifically, they were not permitted to live in the cities where the most important fairs took place or in cities lying alongside good Alsatian roads. They could only attend fairs for a special payment (for example, in Strasbourg).\footnote{Ibid.} Moreover, Jews were forbidden to travel on Sundays and other Christian holidays through towns and villages in order to do business with Christians. As a result of the restrictions on most methods of earning a livelihood, the majority of Alsatian Jews supported themselves through peddling and dealing in second-hand clothing or merchandise and money lending.\footnote{Ibid.} These restrictions left most of the population impoverished and, although necessary to the Alsatian peasant economy, the Jew was the target of the peasant’s animosity.\footnote{\textit{Coup-d'oeil sur la situation actuelle de l'Alsace, relativement aux Juifs}, A.N. H1647.; Hyman,13.}

A small number of Jews were able to attain prominence and wealth, however, as contractors for the king's armies. This type of purveying was largely an urban phenomenon based close to Royal army bases where such services were most required.\footnote{The map of the principal Jewish communities in Lorraine and Alsace (Thionville, Sarrelouis, Phalsbourg) was in large measure parallel to the garrisons because of the service the Jews rendered to the troops.}

In addition to economic restrictions Alsatian Jews' daily activities were also subject to restrictions and regulation. Alsatian Jews were required to wear the yellow patch or other distinguishing mark reserved for Jews. In 1733 the king forbade the Jews to bake their bread on Sundays. In 1740 they were forbidden to dwell in the same houses with Christians, even if the
Christians consented. All illicit intercourse between a Jew and a Christian woman was punishable by the gallows, or at the least the galleys for life, for the man; the woman being condemned to seclusion and a flogging.\textsuperscript{52}

Conversion was not a guarantee that restrictions could be lifted. Cases of forced conversion, voluntary conversion and marriage between a Christian and a Jew raised a host of legal issues including whether such conversions were legitimate.\textsuperscript{53} In some cases both Catholic and Jewish authorities would oppose conversion, despite the Church's professed desire to proselytize. The church's opposition was often political and related to jurisdictional complications which challenged its authority. Members of the first estate were also more likely to object when there was some reason to be sceptical about the potential convert's motives. For some Jews conversion was less a sincere change of faith than a route to escape restriction, persecution and onerous tax burdens. The Jewish community opposed conversion not only on the basis of faith, but because of the very real financial aspect of having to assume a lost member's tax burden. The inclusion of the ruling in the Borach Levy prohibiting the remarriage of a convert during the lifetime of his or her Jewish spouse as a term of the 1784 lettres patentes, thirty years after the judgement was rendered, reflected the importance and persistence of the issue.\textsuperscript{54}

Another distinctive characteristic of Alsatian communities was the role of the rabbi. The importance of the role of the rabbi varied among the different Ashkenazi communities. Although the rabbi might have great personal status and authority, he was not necessarily the designated

\textsuperscript{52}Zosa Szajkowski, \textit{Jews and the French Revolutions of 1789,1830,1848, 230.}
\textsuperscript{53} Unknown author, "Bapteme des Enfants," A.N. H3105
\textsuperscript{54} Lettres patents of 1784 A. N. 177mi 186; Résumé et réflexion ajouté par les Juifs d’Alsace au Mémoire qu’il ont mis sous les yeux de Messieur les commissaires nommés par sa majesté , touchant leur etat civil en Alsace, A. N. H3105; For an anonymous complaint regarding the ruling see A.N. H3105,81-89; Anchel,"Les Lettres patentes du Julliet 1784," \textit{Revue des Etudes Juives} Vol, 93 (1932): 113-15, 135.
prayer leader or a salaried officer of the synagogue. This was because for Jews the hallowing or consecrating force was inherent in the act of observance, which meant that a community could function without a rabbi as long as it had ten men over the age of thirteen (minion) to perform the prayers in full ceremony.55 Similarly, their presence was not necessary under Jewish law for important functions like marriage because they were not dispensing sacraments like a Catholic priest. For example, the formalities of a typical wedding might involve the rabbi, or a cantor, or else the closest relative pronouncing the benediction to God. The groom would then put the ring on the bride's finger and, in the presence of two witnesses, pronounce "You are my wife, according to the rite of Moses and of Israel." No further sanctification was necessary to validate the union. Similarly a rabbi was not necessary for the process of divorce. Traditionally divorce was accomplished by writing a bill of divorce (sefer kitrut or book of cutting off, more commonly known as a get), handing it to the wife and sending her away. To prevent the husband from divorcing the wife recklessly, or without proper financial consideration, rabbinical law created complex rules regarding the writing and delivery of the document. For these matters a bet din or Jewish court would be convened which usually had, but did not necessarily include, a rabbi.56

Nevertheless, in Alsatian communities the position of rabbi was a powerful one and therefore coveted by many. In the daily life of any Jewish community, the rabbis were the acknowledged authority on matters of interpretation and observance. More importantly they were the acknowledged moral authorities of the community. They could impose the punishment of

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55 In places where they were permitted to exist a rabbi was not necessarily one of the paid employees of synagogues. They usually had two paid employees: the cantor (chazan) and the caretaker (shamas).
excommunication (or herem). Excommunication had a different connotation for Jews than for Catholics. For Jews excommunication was akin to exile. Once an individual was excommunicated from the community, no member of the community could have personal or commercial commerce with the excommunicant. This had dire consequences for the excommunicated individual. As legal status was granted to the community, as opposed to the individual, an excommunicant had no legal standing and could be expelled. Without the protective connections to the community an excommunicant had few options in terms of livelihood or residence. Given the weight of such a sentence the position of rabbi, although without political authority, had political consequences. In the smaller communities the rabbis strictly controlled any new measures which might have afforded some degree of integration. For example, an anonymous mémoire by a Jewish peddler that appeared in 1841, ostensibly on his hundredth birthday, describes the attitude of members of his community towards the rabbi's ordinances regarding daily life with the statement, "We all wore the same clothes, and the beard appeared to all of us to be a commandment."57

The process by which rabbis were chosen was fraught with difficulty. Men of wealth and learning contrived to have themselves appointed to this powerful office thus introducing politics and finances into religious appointments.58 Quarrels over the position of rabbi led to such ordinances as the one in the communal constitution of Metz which decreed that any called to its leadership must have no relatives resident in the city.59 In many cases in Alsace the rabbis were official appointees of such local authorities as the bishop of Strasbourg or the directory of the nobility of lower Alsace.

59 Ibid., 166.
The communities of the Jews of Lorraine offered a sharp contrast to the insular and rigid communities of Alsace. With some fluctuations the Jewish population of Lorraine increased from 73 families in 1721 to 500 families, or 2,500 people, on the eve of the revolution. The Jewish population in Lorraine was distributed in a number of different localities and some larger centers such as Nancy with 90 families, 50 of which had settled there without permission, and Luneville with 30 families or 150-200 people. Just as in Alsace, the Jews comprised only a small percentage of Lorraine's total population. For example, in Luneville the Jews made up only two percent of a population (150-200 of 12,378) while in Metz they were only about 6% of the 585 households (2,223 people of 33,595). Unlike in the small Alsatian communities however, the population in the larger centers in Lorraine, except in Luneville, showed a marked decline through the eighteenth century. For example, the growth rate of the Jewish population in Metz declined from 7% to 6% between 1717 and 1790.

Economic factors were largely responsible for this demographic shift and contributed to the fluctuating levels of animosity against the Jewish population and, paradoxically, to nascent trends regarding reform of their circumstances. As economic conditions in the cities worsened, the Jewish population left the larger centers for the surrounding countryside. Troubles in the Lorraine region, reflected in diminishing revenues and decreases in salaries in the second half of the eighteenth century, undeniably contributed to Metz’s Jewish population's decline and its progressive impoverishment in the same period. The Metz community records (or pinkas)

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60 In 1721 a list of was published of seventy-three families authorized to stay in the duchy; the others were expelled. Their number rose to one hundred and eighty in 1733. By 1748 the population had increased to almost 3000 persons. In 1766 Louis XV issued lettres patentes renewing the privileges of the Jews in ducal Lorraine; Francoise Job, Les Juifs en Lorraine ducale a l'époque moderne, in Les Juifs et la Lorraine: Un millénaire d'histoire partagée, Commissariat général, Eric Moinet, Mireille-Bénédicte Bouvet (Paris :Somogy: Nancy: Musée Lorraine, 2009).
61 Benbassa, 59
62 Ibid.
63 Benbassa, 60.
contain ample evidence of financial difficulties in the Jewish community which had grown more burdensome since the introduction of the Brancas tax.\textsuperscript{64} Complaints that income did not keep pace with expenses were reflected in limitations on the number of foreign students admitted to the yeshiva and in the av beit din's approval of a request that money collected for the yishuv in Erezez Israel be used for local needs instead.\textsuperscript{65} This lack of economic resources weakened the kehillot in Lorraine as it did in Alsace.

Despite this relative economic deterioration the community in Metz, with its urban character, showed an earlier and larger penetration of outside cultural influences than the neighbouring Alsatian communities which were poorer, rural and isolated.\textsuperscript{66} Although not completely discarding its traditional way of life, Metz became increasingly secular with an emphasis on the hierarchal control of the elite. The community in Metz, although not to the same degree as the community of Bordeaux, was relatively privileged. From the beginning of the seventeenth century the community owned a cemetery, a synagogue, and a poorhouse. In 1689 free and compulsory elementary schooling was introduced and in 1764 a Hebrew press began publishing. Over the next century and a half the community benefitted from a series of lettres patentes which gradually increased its privileges.\textsuperscript{67} Privileges did not mean equality. Metz's Jews were still subject to many restrictions such as being confined to a special Jewish district which they were forbidden to enlarge. This circumstance persisted even after the start of the revolution. The prefect of the Département of the Moselle described it, in the year X, as follows; “it is very low, the streets are narrow, the houses very tall. Formerly they (the Jews) could not

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\textsuperscript{64} (1715) This tax had originated as gifts given by the community mainly to the duke of Brancas. The debts of the community became enormous, reaching 500,000 livres by the time of the revolution.
\textsuperscript{66}Berkovitz, Beginnings of Modernity, 27
\textsuperscript{67} Henri IV granted lettres patentes dated March 24, 1603 and October 18,1605; Louis XIII January 24, 1632, Louis XIV, July 9,1718, Louis XVI, May 7, 1777.
\end{flushleft}
move out beyond the boundaries that were assigned to them, and when their population increased in numbers they were as it were forced to pack together. In a letter addressed to the Minister of the Interior the same prefect, Colchen, described the Jewish district as being "low, humid, narrow and unhealthy."

In Metz and other large centres in Lorraine laymen elected by communal tax payers, managed the affairs of the Jewish community. This election process typically excluded the largest majority of the community who were too impoverished to pay the tax. Also in Metz, like other large Jewish Ashkenazi communities under French jurisdiction, the offices of the Syndics were dominated by a small number of families whose wealth was acquired in money lending, commerce and cattle dealing.

Despite the efforts of community leaders to promote strict allegiance and conformity to traditional Jewish observance through the range of social and religious controls at their disposal, indications of erosion in the religious lifestyle of Metz's Jewry are evident at least a half-century before the revolution. In larger centers rabbis struggled to maintain their control. The sermons of Jonathon Eibeschutz, chief rabbi of Metz in the 1740s, repeatedly attacked those who shaved, opened mail on the Sabbath, and who wore their talit (prayer shawl) only as an inconspicuous

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68 Colchen, Mémoire statistique du département de la Moselle (Paris, Year X) 54; Archives Nationales, F19-11009, Lettre du préfet de la Moselle du 6 decembre 1810; Poesner, 205.
69 Ibid.
70 Poesner, 217.
71 Hertzberg, 233; Meyer, La Communauté juive de Metz, 69; Berkovitz, Beginnings of Modernity, 25.
undergarment in an effort to admonish the laxity of Metz's community. Jonathon Eibeschutz also complained of legislation issued by the Metz kehillah that permitted litigants to go to non-Jewish courts if both parties were in agreement. He conceded that he could not stop the practice because it had become so widespread. Although community leaders persisted in their efforts to restore governmental support for Jewish civil jurisdiction (in 1777 rabbinic jurisdictions in civil affairs was reconfirmed by Louis XVI), it was subsequently limited by the parlement to those cases where participants voluntarily submitted to the authority of the beit din. This process accelerated in later decades with rabbinical authority relegated to minor religious issues. The increasing secularity and acculturation of the Metz community supports Jay Berkovtiz's assertion that there is a correlation between economic conditions and religious and ideological change. While the Alsatian community remained firm in its religious traditionalism, allowing the rabbi a pivotal, although non-political, role until the last years of the eighteenth century, the large urbanized communities of Metz and Nancy in Lorraine did not. In 1789 Abbé Grégoire wrote, "at Metz they (the Jews) have got along without them (rabbis) for several years."

The community in Metz also had particular significance because of the secularity of its administration. Beginning in the seventeenth century the syndics increased their power vis a vis the rabbinical authorities and began to regulate behaviour that was beyond the boundaries of Jewish law and custom, basing their authority on a "response to new social, political and

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74 see Berkovtz, Rites and Passages, 281; S. Poesner, 215-217.
75 Hertzberg, 237-244; Berkovtz, Rites and Passages, 82-83.
76 Berkovtz, Rites and passages, 27.
77 The last rabbi to play an important role in the community of Metz was rabbi Jonathon Eibeshutz.
78 Abbé Grégoire, Motion en faveur des Juifs (Paris, 1789), 32; Poesner, 215.
economic, rather than religious traditions. Berkovitz, in his study of the Jewish community of Metz, asserts that the diminished fear of expulsion was an attribute of this new environment. This permitted greater focus on internal affairs as opposed to mediating between the Jews and the society that surrounded them. The principle focus of the Metz kehillah was internal regulation such as the sumptuary laws on ostentatious displays of wealth. Although these sumptuary laws were originally intended to prevent Jews from attracting the envy of the non-Jewish community which would increase the possibility of attacks against the Jews, eventually the aim of these laws was to reinforce the existing social hierarchy of the Jewish community, and especially to exclude the young. Controlling the formation and dissolution of marriage was accordingly a powerful device to maintain the kehillah's power. The 1769 takkanot (regulations issued by the syndics) of the Metz community showed an increased emphasis on protection of married householders against competition posed by unmarried individuals who were not yet established in the community. Marriage was treated as a marker of status in the community which accordingly increased the stigma attached to the unmarried.

Despite measures aimed at strengthening its authority, the Metz kehillah encountered repeated challenges over the course of the eighteenth century in maintaining control over civil affairs. One such challenge was the royal decree of January 11, 1701 which ordered Jews to marry before a notary and deposit their marriage contracts within fifteen days after the wedding ceremony. Royal administrators saw these types of notarized contracts as necessary to certify

79 Berkovitz, Rites and Passages, 26.
80 Ibid.
81 Ibid.
82 Ibid., 281; Frances Malino, "Competition and Confrontation: the Jews and the Parlement of Metz," 327-332.
that transfers of property conformed to civil law. They were also officially recorded by Royal administrators. Despite the general prohibition in Jewish law against the swearing of oaths, these contracts played a large role in these private transactions and many members of the Jewish community regarded them as an assurance that these transactions were legally binding. Local and sovereign authorities regarded these notarized marriage contracts, which were similar to the contracts studied by Julie Hardwick and distinct from Ketubot (Jewish marriage contracts), as valid in French courts. The formal recognition of these contracts challenged the Jewish communities' authority by providing sovereign courts with grounds to hear appeals on issues as fundamental as marriage and divorce. Moreover, these juridical practises reflected the level of acculturation which was transforming the Jewish community into a more integral part of French society.

Recourse to the civil courts in North-East France was a politically charged issue that reflected the complex relations between the monarchy, the local civil authorities, and the Jewish communal leadership. It was within this context of competing jurisdictions that the Jews of Metz encountered the challenges of juridical pluralism on a daily basis. On a number of occasions the community council appealed to the parlement to endorse the exclusive authority of beit din in the civil sphere. In the first decade of the eighteenth century, threats by individual Jews to take disputes to the Metz civil court were successfully quashed by the community while the authority

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84 Berkovitz, Rites and Passages, 277; Jean Fleury, Contrats de mariage juif en Moselle avant 1792 (Metz: Cercle de genealogie juive,1999).
87 Berkovitz, Rites and Passages, 281.
of rabbis and communal leaders to judge civil cases was generally upheld by the royal government. However, in 1734 the Metz parlement limited the civil jurisdiction to the Jewish community to cases where the parties agreed to voluntarily submit to rabbinic arbitration.

The community authorities met these challenges by adapting to the prevailing system of law in French society. The administration of Talmudic law in eighteenth-century Metz entailed familiarity with French civil law, including royal legislation and local ordinances. These skills were widely in evidence in cases involving marriage, divorce and inheritance which was governed by civil law. Such cases reveal how closely the procedures of the bet din depended on the protocols of the civil court and the extent of the cooperation between them. There was a strong acknowledgment of the interdependence of cases brought before the bet din and the French civil court system. The appointment of women as guardians of the estates of orphans despite Rabbinic courts disinclination to do so is an example of this process.

In this regard the Metz records show the large extent to which Jewish legal discourse conformed to French technical legal language, the bet din's awareness of the prevailing French judicial system, its collaboration with French civil courts and the legal awareness of Metz Jews in navigating Jewish and French jurisdiction. The bet din regularly consulted the opinion of skilled professionals from outside the community and expressed the belief that their decisions would be validated by the sovereign court. As mentioned above, even when a private transaction

88 Berkovitz, Rites and passages, 281.
89 Ibid. The parlement ordered the prominent rabbi Jonathon Eibeschutz and the Metz parnassim to furnish an abridged translation of Hoshen Mishpat to the French court so it could competently adjudicate cases involving Jewish litigants. The work was entitled receuil des lois, coutumes et usages obervés par les juifs de Metz, m. s. 11 March 1743, A.N. H 1641; Hertzberg, 240-241.
90 Ibid., 276. Cases involving widows who sought to obtain the assets recorded in the ketubot (Jewish marriage contracts) were among the most common before the bet dein. Francesca Bregoli and Frederica Francesconi " Traditions and transformation in Eighteenth-century Europe: Jewish integration in comparative perspective Jewish history (2010) 24:235-246.
91 Berkovitz, Rites and passages, 278; for a parallel phenomenon pertaining to marriage in the Hapsburg empire Lois C. Dubin " Jewish Women, Marriage Law, and Emancipation; A Civil Divorce in Late -Eighteenth-Century Trieste" Jewish Social Studies, n.s. 13, no. 2 ( 2007): 65-92.
92 Ibid.
involved Jews only, the parties typically availed themselves of legal instruments that were deemed to be valid in French civil law.\textsuperscript{93}

This subtle process of acculturation also had the effect of changing the Jews' image in both their own eyes and French society. Despite characterizations of the Jews, particularly the Ashkenazic Jews, as a "nation within a nation," they often participated in civic festivals and used symbols of royalty which suggests that the Jews belonged to the French kingdom and that they were subjects who had a right to share in state protection.\textsuperscript{94} The Jews of Metz also used large displays of corporate, as opposed to individual, wealth on occasions of state festivals to combat Jewish stereotypes. These magnificent displays on festive occasions were also combined with acts of generosity.\textsuperscript{95} They also published texts of patriotic worship which were translated into French and occasionally published in such journals as the Mercure. Jews represented themselves as patriotic and loyal to the crown and "underscored their rights in the kingdom."\textsuperscript{96} They conveyed a message of devotion to the monarchy.

The Jews of in other centres of Lorraine followed a similar pattern to those in Metz. The 90 Jewish families in Nancy in 1789, 50 of whom were without authorization, included such wealthy merchants and manufacturers as the Alcan, Goudchaux and Berr families from whom the syndics of the Duchy's Jewish community were chosen. There was a house of prayer in 1745, but it was not until 1788 that a synagogue was officially built, eight years after the chief rabbi of Lorraine established himself in Nancy.\textsuperscript{97} The Jews of Nancy were treated with relative leniency. They had the right to live where they wanted. Those among them who could afford it had houses of their own "with carriage and stable, in the main streets, but the majority of those

\textsuperscript{93}Berkovitz, \textit{Rites and Passages}, 277.
\textsuperscript{94}Ibid.
\textsuperscript{95}Schechter, 144.
\textsuperscript{96}Schechter, 110-149.
were concentrated in the old rue Saint-Francoise.”

Until the late eighteenth century, however, in certain small towns of the province the Jews were permitted to reside only in isolated houses chosen for them by the authorities. If a Jew took the liberty of moving into another house, his belongings were immediately thrown out into the street and he himself was sentenced by the judge to an arbitrary fine. Restrictions on Jewish livelihood were similar to those in Alsace. Jews were excluded from all corporations. The exercise of arts and handicrafts was forbidden to them and they were forbidden to own real-property. The wealthy and prominent exceptions such as Berr Isaac Berr were obliged to obtain lettres patentes to authorize special privileges.

Inconsistency among the various jurisdictions in Alsace-Lorraine became the subject of reform efforts over the eighteenth century. As will be described in a chapter six the lettres patentes of July 1784 were an effort to assemble and coordinate all the previous legislation and regulations concerning the Jews of Alsace by recognizing the entire Jewish population of Alsace as a juridical entity and creating one office of Jewish syndics, whose function it was to look after the general interests of all the Jews of the province and to take care of the assessment and collection of the royal taxes among the Jews. The lettres patentes of January 1784 and July 1784 contained provisions that made their impact both simultaneously progressive and regressive, which had the effect of exacerbating the already conflicted status of the Ashkenazis while ironically increasing the impetus for reform.

The most favourable social and political conditions were those of the Sephardics in the South-West who were also known as the "Portuguese nation." Of the Sephardic communities

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98 Poesner, 225.
100 S. Poesner, 201.
Bordeaux was the wealthiest and largest comprising some 2,000 people.\textsuperscript{101} St.Esprit-de Bayonne was the second largest in size. Smaller communities existed in Biarritz and Peyrehorade. There were also groups of Sephardic Jews in Nantes, Marseilles and other Southern towns. On average the Sephardim were more affluent, more skilled and better educated, at least in the secular sense, than the Ashkenazim. However, the alleged wealth, integration and secularization of the Sephardic Jewish community was more apparent than actual. The status of the Jews of the Bordeaux region was nearly as precarious as the Ashkenazim. They were viewed with almost equal suspicion by their gentile neighbours, faced similar restrictions on their economic activities, and experienced much the same legal limbo when trying to exercise their rights as citizens. Even more significantly, more than half the Sephardim lived in poverty, and their secularization was not as advanced as it appeared.\textsuperscript{102} In short, though they suffered from the same anxieties created by the insecurity of their status, they were fundamentally different from the Ashkenazis in the way they chose to deal with this problem. The image of the assimilated Sephardic community was carefully cultivated and explains their insistence on differentiating themselves from the Ashkenazis at all costs.

The Sephardics' cultural outlook, even more than the Ashkenazis, was shaped by the historical circumstances under which they had come to exist within French borders. Jews began to appear in Bordeaux in 1454. The French had just conquered the city from the English and the local population was depleted by war and plague. Under these circumstances, Louis VI issued a decree in 1474 inviting all foreigners with the exception of the English to settle freely in Bordeaux.\textsuperscript{103} At the same time the rigors of the inquisition caused many Jews and marranos (crypto-Jews who had converted to save their lives) to flee the Iberian peninsula. Some "new

\textsuperscript{102} Schecter, 27, 28-30, 113-114.
Christians" or recently converted Jews settled in Bordeaux. From the start the Sephardim understood their residence in France to be connected to appearance of utility, and, since they entered France under the tenuous disguise of New Christians, they wished to draw as little attention to themselves as possible. They viewed blending with the local population as imperative to the privilege of continued residence. These new Christians obtained *lettres-patentes* granting them rights of domicile and trade.\(^{104}\) There was some local resistance to registering these decrees, but that was overcome. The privileges obtained by these new Christians were reaffirmed in *lettres-patentes* over the years.\(^{105}\) The resistance by the local *parlements* to registering the decrees underlined for the new Christians that their permission to remain in France rested on maintaining Royal favour through an image of utility. To overcome local resistance they sought to blend with the local populace.

This attitude also increased their insularity with respect to other Jews. They were even more stringent in their efforts to limit impoverished or itinerant Jews from entering their community than the Ashkenazis. The establishment of the Jewish community in St Esprit was an example. A decree of the *parlement* in 1597 ordered that those who had resided in Bordeaux for more than ten years were to be moved in from the walls to the centre of town, and all the more recent inhabitants were to be expelled to Peyrehorade, Bidache and especially Bayonne.\(^{106}\) The fact that these newer immigrants were treated with disdain by the local populace was evident to the settled community of new Christians. Notably, even at this early stage in their history, the new Christians of Bordeaux sought to fortify their own position by joining the local populace in their efforts to limit more Portuguese immigrants.

\(^{104}\) Ibid.
\(^{105}\) Ibid.
\(^{106}\) Ibid.
Despite their insecurity over the legal standing, these marranoes who had come to settle in France began to gradually discard their Christian disguise. Legal recognition followed later as the Sephardim gradually made their Judaism more evident. The *lettres patentes* which had been issued in 1550 and renewed successively in 1574 and 1656 permitted the "new Christians" to reside in France but did not acknowledge them as Jews. This situation was altered by the decree of 1686-1687, issued under the auspices of Colbert de Croissy, which invited all foreigners "of whatever quality, condition, or religion that they might be" to trade in France. 107 The decree was not intended to apply to Jews, but the Sephardim used it as a legal precedent for gaining recognition as Jews. After this decree Sephardic Jews ceased presenting their children for baptism and priests' benedictions were no longer requested at marriages. There was also a series of public conversions to Judaism which took place in 1695. References by authorities in Bayonne changed from " *marchands Portugais*" to " *Juifs Portugais.*" 108 The fact of the religious affiliation of the " *marchands Portugais*" was sealed when they loaned the city of Bordeaux 18,000 livres needed to free itself from a royal tax. In return the Portuguese were freed from accepting the office of treasurer of the local poorhouse which made them responsible for that institution. Simultaneously the *nation* became responsible for its own poor in the same manner as the Ashkenazim did.

This marked the open establishment of the Sephardim as Jews. This was reinforced in 1706 when the Jews of Bordeaux held a patriotic service for the king and received permission from the authorities to publish this in French. 109 Concurrently open Judaism manifested itself in St Esprit. A letter by a dignitary in Bayonne complained of " *l'exercice presque publique de leur..."
At this time statements appeared which admonished the Jews not to do business on Christian holidays and to open their shops on Saturday in a further affirmation of the fact that Sephardim had begun to openly practice Jewish customs. The *lettres-patentes* of 1723 referred to the Sephardim as Jews for the first time in a Royal document. Although their civil status was not identical to other residents of the region they did have extensive privileges which included the right to transfer their residence to any other district, territory and seigneuries subject to the permission of the king. These privileges were ostensibly to be extended to Jews "who might desire to move there in the course of time." It was not until 1776, however, when Louis XVI supplemented these rights by allowing the Jews of Bordeaux to settle and conduct their commercial activities anywhere in France, that they again achieved the status they held as New Christians.

Their 'coming out' as Jews drove the Sephardim's desire to consolidate, organize and ultimately legitimize their community. Organization enabled concerted effort to be made toward protecting themselves from further encroachments on their rights. Organization also enabled them to minimize the negative features of identifying themselves with the universally despised Ashkeanzim by presenting an image opposed to their North-Eastern counterparts. The *nation* supervised the behaviour of the members of its community in order to prevent any difficulty or inconvenience to the Bordelaise population. It realized that its security depended not only upon its role as reliable source of revenue, but also upon its acceptability as a model bourgeois community. The *nation* could never afford to ignore the problems arising from an excess of poorer members, illegal business activities, competition and possible disgrace from Italian and Avignonais Jews.

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110 Léon, 46-47.
111 Ibid.
In order to maintain its image as a model community, the Sephardic nation at first attempted to regulate its poor by providing for their maintenance and medical care with a fund established so that pensions could be given to each indigent family. However the influx of poor Jews soon made this type of comprehensive charity impossible and instead the nation began to restrict its responsibility by providing for only a limited number of families and finally by seeking the help of the Royal intendants in expelling vagabond Jews. The nation was assisted in policing itself by the sanction for this power implied in the decrees of 1760 and 1763.

Despite these measures throughout the eighteenth century the Sephardic nation was faced with the dilemma of protecting and regulating the poor without increasing its tax burden and thus creating a discipline problem among its members. The Sephardim were aware of the role of their assimilated image in the stable maintenance of their privileges. Their fears were reinforced by scattered threats. For example, as a result of quarrel between the Jewish community and the Bordeaux civic authorities, the Jews were forced to pay 21,000 livres as part of a tax on foreigners. Similarly, in 1710 the governor of Bayonne was willing to permit the Jews to maintain a synagogue on the grounds that cultivating the Jews’ goodwill would enable him to obtain credit from them.

An integral part of the image the Sephardim created for themselves was their estrangement from other less cultured and less privileged Jewish communities. To this end they assumed a cultural and social superiority that served as a defence against having the same restrictions applied to them as the Ashkenazim and Avignnonais. This attitude was best reflected in the work of Issac de Pinto. De Pinto wrote a famous reply to Voltaire's invective against the Jews which emphasized the differences between the two communities and the

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112 Malvezin, 177-179.
113 Léon, 40.
114 Jews in the papal provinces were not formally under French jurisdiction until 1791.
Sephardim's acculturation; “they do not wear beards and are not different from other men in their clothing, the rich among them are devoted to learning, elegance and manners to the same degree as other peoples of Europe, from whom they differ only in religion.” He was careful to distinguish the Portuguese as honest businessmen, rather than usurers, and to emphasize the utility they offered to the economy. They also had the vices that go with such virtues: "a taste for luxury, prodigality, laziness and womanizing," vices which he added were common to other bourgeois.

Some members of the local administration accepted this image. For example on May 6, 1731 the councillor of state, in a letter to the intendant of Bordeaux, M. de Boucher, wrote that the Jews ought to be made to pay the same amount of protection taxes as the Ashkenazi Jews. M.de Boucher replied by defending the Sephardim as completely integrated members of the community who were unlike their Ashkenazi counterparts. In a subsequent letter M. De Boucher defended the Sephardim as having no relations, commercial or otherwise, with the Ashkenazim.

The Sephardim's insecurity made the functions of the kehillah critically important. It often appeared to exercise excessive and oppressive control over its members. The lay leaders of the nation were not only more powerful than their rabbis, as was the case in many Ashkenazi communities, but, unlike the Ashkenazic communities, they also superseded the rabbi in theological matters. For example, the syndic had to confirm any marriage for it to be legal. The rabbi had to obey the dictates of the syndic for which he was compensated with a salary.

Similarly the rabbis had little control over the Talmud Torah which the nation re-established in

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115 Hertzberg, 181.
116 Ibid.
117 Malvezin, 135.
1760. Administered by a committee responsible to the leaders of the nation, the Talmud Torah was funded by an annual allotment raised through a surcharge on the meat tax. The curriculum of December 25, 1760 was revealing of the Sephardim’s attitudes. Emphasis on the bible as the fundamental source of Jewish practise ignored rabbinical tradition as expressed through the Talmud. The Sephardic curriculum was designed to teach Hebrew grammar to the young as well as foster an appreciation of psalms, prophets and a knowledge of the prayer book. In contradistinction to the Ashkenazi’s study of rabbinical law, the Talmud was conscientiously excluded. Most significantly they introduced French and arithmetic into the revised curriculum of March 20, 1771.\textsuperscript{119}

The spiritual and traditional aspects of religion were largely underplayed by the Sephardics. In this manner they developed a Judaism that was compatible with the integrated image required of them. Moreover the acculturation of values from an increasingly secular non-Jewish community allowed the Sephardim to transform their brand of Judaism into a philosophy akin to eighteenth-century rationalism. This rationalism however, both in inspiration and philosophy, was completely distinct from the Haskallah (Jewish Enlightenment) of Mendelssohn and the Ashkenazi intellectual elite. The principle difference was that the Sephardic religious practice was a practical outgrowth of insecurity rather than desire to reform. Its intention was to blend rather than change and it was far from assertive. In many ways it characterized the overall distinction between the two communities.

In maintaining their image of utility, the Sephardim were aided by residence in a region which afforded greater economic opportunities than the region in which the Ashkenazim resided. The commerce and industries of Alsace-Lorraine were much less developed than those in the territory under the jurisdiction of the Bordeaux parlement. Bordeaux achieved a state of relative

\textsuperscript{119} Ibid.
wealth by being the chief colonial port for the French empire; this in turn contributed to the Jews' position. Like the Ashkenazim, the Sephardim were able to provide banking and credit services at a time when these services were at premium. Also, their international connections played a role in enabling them to obtain gold and silver by relying on Sephardic wealth in Amsterdam and England and marrano wealth in the Iberian peninsula. They also engaged in wholesale trade. They were great bankers, exporters and importers, merchants of silk and other cloths and they were suppliers to the French royal navy. Like their Ashkenazi counterparts, the wealthier Sephardim were successful in their attempts to impress the local and central government with their economic utility.

They differed from the Ashkenazim however, in making this the general impression of the entire community. M. de Gourson, Intendant for Bordeaux, remarked that the Jews were the only ones who understood anything about banking. Further the vineyard owners found among the Sephardic Jews the sums they needed for their agriculture and the wholesale shipping, the bills of exchange they need to fill their orders and to pay the king's revenues. It was impossible for the authorities not to recognize the contributions of men such as David Gradis who, in 1760, had been the contractor for the provisioning of the French troops in the West Indies and had been the major supplier of Canada during the Seven Years War.

The image of integration and utility enabled the Sephardim to obtain privileges far exceeding those enjoyed by the Ashkenazim. It appeared that, other than enfranchisement and eligibility for membership in the municipal council and chamber of commerce, the Sephardim enjoyed a semblance of equality with Christians in their community. The image however, was flawed. Discrimination existed even for the highly privileged Jews of Bordeaux. In his memoirs

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120 Ibid.
121 Malvezin, 175.
Salomon Lopes Dubec (1743-1837) related that he studied arithmetic and banking methods since only Christians were permitted to engage in crafts.\textsuperscript{122} As well the privileged status enjoyed by the Jews of Bordeaux was not uniform for all Sephardic Jews. The Jews of Bayonne occupied a lower position on the social and economic hierarchy than those of Bordeaux. They were forbidden by municipal law to reside within the city precincts which forced them to reside in the suburb of St Esprit, to engage in retail trade, or to own real-estate. Similarly, although the production of chocolate had been introduced into the region by Jews, attempts were made to prohibit them from engaging in that enterprise.\textsuperscript{123}

The combination of prodigious wealth of a few families, emphasis on economic utility, a more cosmopolitan and tolerant climate, and an image of integration and low-profile Judaism contributed to the Sephardim's apparent state of privilege. In order to maintain this image the Sephardim remained committed to the compromises they had made with traditional Judaism and to their separation from other Jewish communities. This attitude coloured their approach to reform. For example, the \textit{mémoire} they presented to the Malesherbes commission laid out a program for maintaining their historic privileges which reinforced their separation from the Ashkenazim and their autonomy. At the same time they endeavoured to increase the options of social, cultural and economic assimilation.\textsuperscript{124}

The profound differences between the two groups of Jews was exemplified by the small Paris community of 500. Despite the small size of the community and their residence in the same city there were separate communities for the Portuguese Jews and the Ashkenazi Jews. The forced cohabitation of the two groups who had differing traditions, ways of life and even

\textsuperscript{123} Ibid.
\textsuperscript{124} Archives de Tocqueville A. N. 177mi 186; Hertzberg, 326; Zosa Szajkowski, "The delegation of the Jews of Bordeaux to the Malesherbes commission" \textit{Zion}, XVIII: 56, 57, 59.
religious rites, brought about "resentment, hostility, collisions and fights which tore communal life apart." By the second half of the eighteenth century the process of juridical centralization had begun to impact both communities despite the critical differences between them. Their polarity led them to respond to the juridical transformation engulfing them in contrasting ways. Appeals of Jewish divorces beyond the community to sovereign courts reflected the profound difference in attitudes of the two communities toward the changes that were engulfing them. This would become more acute with the acceleration of the pro-divorce movement and its impetus toward juridical centralization to be discussed in the following chapter.

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125 Bordeaux also had a separate community for a small number of Ashkenazis. Posener, 225.
"Man had enjoyed the right to correct a mistake"; the problem of divorce in eighteenth-century France
Chapter 3

Historians have traditionally approached Jewish status as a distinct area of juridical reform and given little attention to possible links Jewish reform may have to other reform movements. The analysis of other areas of reform, however, is essential to the broader context of the transformation of Jewish status. The link between the movement to secularize and reform the regulation of divorce, which challenged the religious and patriarchal structure of authority in pre-revolutionary France, on the one hand and on the other, the reform of Jewish status, has received little scholarly attention. Yet the two movements intersected with and impacted each other in significant ways. The divorce movement challenged both the church as a primary influence over juridical policy and patriarchal privilege as a guiding principle of the structure of authority. This made social and political exclusion of the Jews less acceptable. In addition, internal challenges to the Jewish community's jurisdiction over the issue of divorce among its own members reinforced the link between the two areas of reform.

Historians such as Suzanne Desan and Lynn Hunt have examined the development of family law on the eve of the revolution under the rubric of gender studies. They assert that in early modern France the family was the "elemental building block" and the "principal basis of the social order." As Lynn Hunt has stated, most French subjects in the eighteenth century thought of their rulers as fathers and their nations “as families writ large.” Suzanne Desan has postulated that the French king resembled the head of the body, the husband-father-master of the

1 Suzanne Desan, The family on Trial in Revolutionary France, (Berkeley and Los Angeles, California: University of California Press, 2006), 3.
household, and the sun in the cosmos, all of which united subordinate parts into regulated wholes based on hierarchy rather than contractual relations.\(^4\) According to this paradigm the system functioned on the principle that the ruler at its pinnacle was a reflection of, and responsible for, the integrity of the order it provided. This model formed the scaffolding on which the stability and security of society rested. Sarah Hanley has used the term the ‘family-state compact,’ in which paternalistic and patriarchal models of monarchical and familial authority merged to reinforce gradation in gender and social status through marriage law.\(^5\) Jeffery Merrick has asserted that these conventional connections between kingdom and family naturalized the monarchy and politicized the household.\(^6\) As the Paris parlement's advocate general Gaspard Quarré wrote in 1685: "French civil law... and natural law contribute equally to the establishment of the family and founded the particular empire of this private Monarchy on their laws."\(^7\)

The institution of indissoluble marriage was a critical aspect of this paradigm. Although class, regional customs, property structures and urban-rural differences often influenced the crucial components of marriage and created vast differences in its regulation, the institution of marriage knit together the fabric of old regime society in a complex weave of family, property and mutual obligation.\(^8\) Marriage held tremendous importance as an indissoluble bond, a sacrament of the Church, a crucial contract uniting the king and various groups. It determined a method of passing down goods, a source of progeny, a tie of affection and property, and a

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gendered space for negotiating power and intimacy.\textsuperscript{9} The monarchy relied on the practical and symbolic meaning of the indissolubility of marriage to leverage power.\textsuperscript{10} As Giacomo Francini has argued, the discussion of marriage as well as divorce belonged to a universal way of perceiving not only family relations but even social attitudes, especially if conceived through their civic representations. The family, being the basic unit of society, reflected the organization of the state.\textsuperscript{11} The public and private aspects were mutually reinforcing. The absolute power of the husband and father within the domestic sphere mirrored the authority of the absolute monarch over the state and the absolute monarch reinforced the power of the domestic sovereign.\textsuperscript{12} As Roderick Phillips asserted, "the family of the Ancien Régime had bestowed upon the 'paterfamilias' the status of a monarch in a domestic realm."\textsuperscript{13} For example, the père de famille could appeal to the king to punish and even to incarcerate errant sons or daughters for running away or for marrying without paternal consent.\textsuperscript{14} Although writing after the tumult of the revolution and the Napoleonic era the patriarchal nature of this paradigm was reflected in the words of Louis Gabriel Amboise de Bonald, the apologist of Catholic political and social doctrine, "Just as 'political democracy' allows the people, the weak part of political society, to rise against the established power, so divorce, 'veritable democracy,' allows the wife, the weak part, to rebel against marital authority."\textsuperscript{15}

\textsuperscript{9} Traer, \textit{Marriage and the Family in Eighteenth Century France}, 22.
\textsuperscript{12} Traer, 41.
\textsuperscript{13} Roderick Phillips, \textit{Family Breakdown in Late Eighteenth-Century France: divorces in Rouen 1792-1803}, 15.
\textsuperscript{14} Traer, 139-140.
This framework was challenged by a lack of consistency in the Crown's exercise of authority and exacerbated by underlying political tensions. Scholarly analyses of this phenomena, particularly among many British historians, recognize the reaction to the suppression of the parlements by chancellor Maupeou in what became known as the Maupeou coup in 1771, as a paradigm shift.\textsuperscript{16} Paul Friedland has described this change to public opinion as, "... the stark realization that the nation stood unrepresented before a King possessed of unrestricted powers."\textsuperscript{17} Keith Baker has concluded that, "... the debate over 'despotism' that opened in 1771 found its eventual resolution seventeen years later in 1789."\textsuperscript{18} The Maupeou coup brought the paradigm of a monarch unfettered by restrictions into acute focus. When the parlements were reinstated in 1774 political tensions that had caused the coup were more deeply entrenched rather than diminished. The perception that Louis XV challenged the traditional privileges of regional authorities in order to increase his revenues and permitted the rule of women by allowing his mistresses' access to power, contributed to destabilizing the image of authority required of the father/monarch. Some historians, such as Robert D. Harris, have asserted that ministers rose and fell not according to the whims of the King but of his mistresses.\textsuperscript{19} Others, such as Jeffrey Merrick and Kenneth N. Jassie, have argued that the monarchy was shaken by the King's scandalous behaviour in his private life. They argue that


\textsuperscript{17} Paul Friedland, \textit{Politicial Actors: representative Bodies and Theatricality in the Age of the French Revolution}, (Ithaca, New York: Cornell University Press, 2002), 64.


\textsuperscript{19} Robert D. Harris, Review, \textit{American Historical Review}, 92 no.2(1987):426.
contemporary popular songs, poems and public declarations ridiculed the King’s debauchery in the “face of desire for a King who was an absolute master, unblemished Christian and benevolent provider.”\(^{20}\) This had real political consequences when the remonstrances produced as a result of the contestation between the crown, the clergy and *parlements* filtered to the public.\(^{21}\) The debate about the use and abuse of royal authority continued after Louis XV’s death in May 1774 and Louis XVI's recall of the *parlements* in November 1774. As Suzanne Desan has asserted, it appeared at first that the young king who had restored the rule of law had eliminated what appeared to be the worst abuses of the previous reign. He embraced family values by encouraging females to fulfill their "natural" roles as wives and mothers, and by renouncing the double standard in his own life by remaining a faithful and devoted husband.\(^{22}\) The optimism generated by the new king’s attitudes proved unfounded.

Although the events of the final decades of the eighteenth century and the old regime are much more complex than the experience of marital breakdown writ large, it is also true that the social experience of marital breakdown reflected the political landscape. Sarah Hanley has argued that aristocratic wives and their lawyers challenged and indeed discredited male authority throughout the seventeenth and eighteenth centuries.\(^{23}\) Although the experience of the poorer classes was not as expressly political, their practical experience sheds light on a large scale change in attitude.\(^{24}\) Although formal litigation still proved to be beyond the means of many couples, separations and informal resolutions abounded and challenged the ideal of


\(^{22}\) Ibid.


indissolubility (and with it the social structure) in a practical way.\textsuperscript{25} Litigation also reflected the infusion of politics into the most intimate family relationships. As Sarah Maza has argued, in the aftermath of the Maupeou ‘revolution’ lawyers often transformed private conflicts into public affairs in ways that both reflected and influenced collective attitudes.\textsuperscript{26}

This lack of hegemony and the fracturing of the structure of authority was particularly true in the area of family law. There was diversity from region to region, locality to locality and group to group.\textsuperscript{27} Although the dominance of the Church ensured that under the \textit{ancien régime} divorce was not available in France judicial separation was permitted.\textsuperscript{28} Judicial separation did not permit the dissolution of the marriage which would have entitled the parties to remarry but it did permit the parties to live separately and it permitted the wife to administer and use property and revenues she may have contributed at the time of marriage.\textsuperscript{29} Both canon and civil law governed these judicial separations although in general actions were heard by lay courts applying civil law because they also involved temporal questions of the division of property.\textsuperscript{30} Canon and civil law had different grounds for separation and, although they were both inherently patriarchal canon was less discriminatory towards women.\textsuperscript{31}

\begin{footnotes}
\item[\textsuperscript{25}] Complaints were less common than conflicts and more common than lawsuits, which required sufficient evidence and involved significant expense. The papers of the commissioners from 1775 contain reasonably complete and remarkably extensive documentation in one and only one lawsuit, which contemporaries discussed and deplored in a variety of sources. Suzanne Desan and Jeffery Merrick eds., \textit{Family, Gender and Law in Early Modern France}, 140; Divorce and marriage breakdown were not synchronous, see Phillips, \textit{Putting Asunder: A History of Divorce in Western Society},
\item[\textsuperscript{28}] Roderick Phillips, \textit{Women and Family Breakdown in Eighteenth-Century France: Rouen 1780-1800}, 199.
\item[\textsuperscript{29}] Ibid.
\item[\textsuperscript{30}] Ibid.
\item[\textsuperscript{31}] Ibid.
\end{footnotes}
The monarchy failed to unify the various law codes that governed the family or to simplify the many jurisdictions that complicated the legal map of France. Lawyers and judges constructed and construed precedents, while jurists reinterpreted the differences between north and south and among the provincial customs. Legal structures and processes allowed central and regional authorities to exercise control from the top down, while simultaneously allowing individuals, families and communities to influence outcomes at the local level. These inconsistent results demonstrated that juridical diversity hindered administrative efficiency and challenged the monarchy's power.

This lack of juridical consistency generated an impetus toward a concept called legal centrism, which as been defined as;

…the idea that the state is the sole source of what can be properly be called law. Legal diversity is fully incorporated into a larger legal order by having its boundaries delimited, modifications anticipated and imaginative manipulations contained by an all-encompassing statute system whenever situations of repugnance or conflict among legal norms arise, the state has overriding rules to resolve these conflicts.

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Royal administrators such as Malesherbes, as part of the regime’s more comprehensive efforts to create a rational and uniform administration,34 adopted legal centrism as the basis of juridical reform. Specifically, legal centrism was pivotal to the debate about the permissibility of divorce and the regulation of personal status. A juridical administration governed by a centrist state implied the consistent application of a law by a secular authority on personal status issues like divorce. Hierarchy and privileged exemption would be eliminated. This implied that a paradigm based on indissoluble marriage was no longer acceptable.

The growth of ideas of legal centrism contributed to the polarization between forces such as the Roman Catholic church, which held that marriage was an indissoluble union and thus reinforced the existing structure of authority based on privilege and hierarchy, and reformers, who believed in allowing unhappy partners to divorce and focussed on the individual in the context of a secular model based on consistency in application of the law.35 The traditional value of the indissolubility of marriage was principally supported by the church which adhered to the patriarchal model of authority.36 The church maintained the idea of marriage as a sacrament, required the indissolubility of marriage, opposed divorce, and asserted that individual autonomy should be limited to ensure social stability. To members of the clergy restricting or prohibiting divorce was necessary to cement hierarchical relations as the ordering principle for the structure of authority in marriage and in society in general.


36 For example see, Louis De Bonald, Du Divorce, considéré au XIXe, discours Préliminaire.
The opposing view was championed by the pamphleteers called *divorciare* who supported the ideal of dissolubility of the marital contract and whose campaign represented re-examination of the family as a social and a political paradigm. The pro-divorce movement had a number of different and sometimes opposing influences. The primary influence was the work of natural law theorists. Hugo Grotius, a founder of modern natural law theory, described the law of nature as "a dictate of right reason." In his view an act should be evaluated according to whether it is or is not in conformity with rational nature and, "has in it a quality of moral baseness or moral necessity." Even if an act were forbidden or enjoined by God, the law of nature might permit it because the law of nature is not contingent on God. According to Grotius, it would be the same if God did not exist. Grotius and other natural law theorists stressed the principle of contract which provided for dissolution of the contract if the conditions on which it was founded were not fulfilled. This could be applied to marriage. Samuel Pufendorf, another natural law theorist, left his readers to decide what grounds should justify divorce, but he suggested they might include violation of the marriage contract, sterility, crimes against nature, incompatibility of temperament and even mutual consent. Like Grotius, Pufendorf considered procreation the main purpose of marriage which was both divinely mandated and also the subject of a contract between husband and wife. A marriage could then be dissolved if the conduct of one of the spouses made the goal of procreation unattainable. Therefore he argued that if "one party does not abide by the agreements, the other is no longer bound by them." The pro-divorce movement was also influenced by the work of the philosophes who were themselves indebted to natural law theorists. The philosophes advocated a model of marriage

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38 Ibid.

which provided for increased social malleability in accordance with enlightened ideals of
toleration. They also used the idea of dissolubility of marriage as part of their critique of the
church. This more tolerant view was considered by many philosophes to be the only alternative
to the evil generated by intolerant religions. Similar to the need for the secularization of
marriage, the exercise of tolerance, which implied the granting of civil rights to all religious
groups, created a framework for the separation of church and state. The general concept of a
super-ethnic state from which no group would be barred was common in the works of the
philosophes. Implicit in this emerging liberal political philosophy was the belief that the powers
of the state should be limited to the protection of the individual’s rights. Its unity was the
product of mutual interests and needs. In this framework the state’s apparent right to impose any
uniform dogma on its citizens dissolved. In Locke’s words “The core of every man’s soul
belongs unto himself and is to be left unto himself.” Challenges to existing social institutions
accorded with this view of toleration. Ignorance, stupidity and fear went into the making of the
“cake of custom.” In this way the ultimate goal of social progress might be accomplished.

The philosphes combined the juridical reasoning of the natural law theorists’ support for
divorce with ideas of toleration. They made a claim for the reduction of both parental and
ecclesiastical authority over marriage as part of natural right. In 1721 in the Lettres persanes
Montesquieu suggested that the higher birthrate among non-Christians was a result of their
permitting divorce. In 1772 Diderot also echoed this argument. In 1764 Voltaire referred

41 Ibid., 38.
42 Suzanne Desan, The family on Trial in Revolutionary France, 27, fnut 44; Roderick Phillips Untying the Knot; A
Short History of Divorce, (Cambridge; Cambridge University Press, 1991), 54.
44 Denis Diderot, Supplément du voyage de Bougainville (Geneva, 1955), cited in Desan, The Family on Trial in
Revolutionary France, 27, footnote 44.
indirectly to divorce as an aspect of the liberty needed for social stability. Other Enlightenment thinkers such as Morelly and Helvétius in the 1750s, and d'Holbach and Condorcet in the 1770s, expressed similar views based on the idea that marriage was a civil contract governed by droit naturel which could be dissolved and would be governed by secular law, rather than an indissoluble sacrament governed by the church. In 1755 Morelly provided his idealized society with divorce, even though he strictly limited the number of times one could divorce. He asserted that marriages could be dissolved after 10 years either unilaterally or by mutual consent. He suggested that people who had divorced not be permitted to remarry for a year. These writers supported less of a power imbalance between men and women. They advocated the legalization of divorce both because it constituted a fundamental liberty in itself and because it would facilitate more egalitarian, and by extension, more virtuous relations, between men and women.

For many of the philosophes bad marriages were artificial situations which did not accord with natural law. Philosophers like Condorcet and Helvétius venerated marriage as a powerful agent of virtue, but rued the moral degeneration of the institution in their day. They argued that lack of divorce was the main cause of adultery and illegitimacy. Others like D'Holbach sought to use divorce as a means to releverage the balance of power between the sexes. In the view of these authors the imposition of the Catholic doctrine of indissolubility had corrupted the

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48 Ibid.


50 Roderick Phillips, *Untying the Knot; A Short History of Divorce*, 58.
institution of marriage. Once marriage was recognized as dissoluble it would play an essential role in the regeneration of the nation's morality. To these writers, the perfectibility of man would be facilitated by allowing divorce and the release of spouses from bad marriages.

Jurists and civil law specialists, such as Pierre le Ridant, Francois Bourjon and Robert Joseph Pothier, superimposed these enlightened views on to the ideas of the seventeenth-century natural law theorists Samuel von Pufendorf and Hugo Grotius to emphasize the contractual nature of marriage. They used this interpretation to challenge the church's control and to assert secular control over conjugal matters by emphasizing legal centrism. Although these jurists supported a model of marriage based on natural law, they did not explicitly articulate a position that supported the ideal of marriage as a dissoluble contract and therefore maintained an essential conservatism regarding the possibility of divorce. In the words of Robert Joseph Pothier, the premier late-eighteenth-century jurist of civil law, "there are two components in marriage, the civil contract between the man and the woman, and the sacrament that is added to the civil contract." A notable exception was the theologian Charles-Louis Richard who supported divorce as "... not strictly forbidden by natural law." Nicolas Lemoyne Desessarts took a different perspective by advocating divorce for Jews and Protestants in his entry "Divorce" in Joseph Nicolas Guyot's Répertoire Universel et Raisonné de Jurisprudence, 2 ed.

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51 Ibid.
53 Francois Bourjon, Le Droit Commun de France et la coutume de Paris (Paris; Chez Grangé Cellot, 1747).
54 Ibid.
55 Suzanne Desan, The family on Trial in Revolutionary France, 26, ftnt. 42.
Desessart's work linked the reform of Jewish status to divorce by suggesting that a principle of toleration should permit the acceptance of divorce of Jews and Protestants. Others, including such non-jurists as the great general the Maréchal de Saxe, were influenced by a desire to increase the growth rate of the French population to modify religious precepts regarding the indissolubility of marriage.

The divorciares were contemporaries of some of these jurists and public figures and, while influenced by them, they articulated a more radical position in support of divorce. The movement in the 1770s by pamphleteers to legalize divorce emphasized material and emotional hardships for the individual trapped in a bad marriage. The pamphleteers highlighted the difficulty of acquiring a separation, enforced celibacy, public scandal, female imprisonment, loss of property, endless court cases or the bitter alternative of remaining trapped within a loveless or abusive marriage. They focussed on unhappiness and injustice to the individual rather than corporate and family responsibility as a means to strengthen the state.

The position of the divorciares differed from earlier jurists like Pothier in their use of divorce as part of a larger attack on the church. The divorciares, who emerged as the most important pro-divorce movement prior to the French Revolution, referred to historical and international comparisons on the issue of indissolubility to diminish the universal claims of the church. Figures such as Cerfvol and Jacques Le Scène Desmaisons, as well as numerous anonymous pamphleteers, questioned the utility and humanity of marital indissolubility. They

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57 Traer, Marriage and the Family in Eighteenth Century France, 39; Suzanne Desan, The family on Trial in Revolutionary France, 27.ftnt 43.
59 Ibid.
60 Cerfvol, de (pseudonym), Cri d’une honnette femme qui reclame le divorce conformement aux lois de la primitive eglise. (London, 1770, reprinted Kessenger Publishing, London, 2009); Idem, de Legislation du divorce, precede du cri d’un honnette home qui se croit fonde en droit naturel et divin a repudier sa femme; pour representer a la legislation francaise les motifs de justice tant ecclesiatiqve qui civile, les vues d'utilite tant morale que politique qui
fused natural law with arguments based on utility, population control and personal happiness along with historical and religious arguments to support divorce.  

Like the earlier work of the France's most distinguished soldier, Maréchal de Saxe, a primary goal for these writers was increasing the population. They believed that failed marriages produced few if any children and held that divorce would enable people in failed marriages to enter into successful and therefore fertile marriages. Cerfvol (a pseudonym) published five works on divorce between 1768 and 1770. The most important was Mémoire sur la population (1768) in which he claimed that the best way to increase France’s population and thus restore its prominence, was to legalize divorce: "Let us seek the true cause of depopulation nowhere else than in the indissolubility of marriage. All the other causes are derived from this." He believed that if men were able to divorce they would no longer fear marriage. Paradoxically, divorce would encourage marriage, cure all immorality and give France the large and robust population it needed to become the economically, politically and militarily strong state it had been in the past. Although marriage had been said to increase the number of children, he argued that, “constraining people who have difficulty not only living together but also continuing to love each other only because there was a time when they lusted for each other, is like requiring an athlete to always be restarting his career.” Cerfvol was also the author of a piece of writing

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63 Ibid.

called *Legislation du divorce précède du cri d'un honnete homme*. This drew heavily on a pamphlet of the same name by Philbert. In 1771 Cerfvol published *Le Parloir de ’abbé de*** ou entretiens sur le divorce* which not only promoted divorce, but sought to emancipate women from their historical marital oppression. The extent of popular support that pamphleteers like Cerfvol received cannot be definitely ascertained, however Giacomo Francini has suggested that these tracts reveal a radical transformation in the social attitudes of French people towards marriage in the semantic gaps between the word divorce and the word repudiation as attested to in Demeunier’s *Encyclopedie methodique*: “Divorce is done by mutual consent whenever a mutual incompatibility, instead of renunciation made by wish and to the advantage of one of the two parties, independently of the wish and of the advantage of the other.”

The pro-divorce position was articulated most conspicuously by the most famous *divorciare*, Albert-Joseph Hennet (1758-1828), who produced a variety of pro-divorce publications of which the most important was *Du Divorce* (1789), which was not published until the start of the revolution. He claimed that "man had enjoyed the right to correct a mistake; in all times and in all countries; it has only been for a few centuries that it has been taken away from a small portion of Europe”. Hennet articulated a view held by many Enlightenment thinkers that love rather than blood was the essence of family bonds. Like the philosophers who inspired him, Hennet believed that liberal, egalitarian systems of law promoted civic virtue,

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70 Ibid.
while "despot" systems (by which Enlightened thinkers meant the Catholic church) spawned depravity and social discord.\textsuperscript{71} He believed that indissolubility of the patriarchal family structure was the root cause of rampant infidelity and martial discord. This situation bred corruption in the way of infidelity which transmitted down generational lines as embittered parents thwarted the moral development of their children and, by extension, of the nation.\textsuperscript{72} Only divorce could deliver spouses from their misery and afford an opportunity for redemption by forging happier unions elsewhere.\textsuperscript{73} By denouncing the prohibition on divorce as both the product of a despotic regime and the chief contributor to domestic despotism, Hennet was presaging a new order of individualism unconstrained by obligatory roles.

Hennet's support of divorce went further than many divorciaries before 1782 by challenging the principle of the indissolubility of marriage and the existing political order. Like other revolutionary commentators Hennet saw the abolition of the divorce prohibition inevitably linked to the end of privilege. He stated: "when the national assembly, during the memorable night of August 4, wielded the hatchet in the forest of antique abuses that covered France, I no longer doubted that the abuse of indissolubility would fall."\textsuperscript{74} Hennet asserted that liberal divorce laws complemented by egalitarian spousal relations would ensure marital stability and, by extension, social stability. Once divorce was legalized the family would at last embody the revolutionary ideals of liberty, equality and fraternity.


\textsuperscript{72} Ibid., 92, 114.


\textsuperscript{74} Ibid. This translation also quoted in Carol Blum \textit{Strength in Numbers: Population, Reproductivity and power in eighteenth Century France}, 167.
Hennet’s ideas synthesized the beliefs of writers, advocates and philosophers who challenged the exclusivity inherent in a system based on privilege by linking it to the indissolubility of marriage in the context of ideas of natural law. According to Hennet human beings followed natural law when they pursued happiness. Freedom was a prerequisite for happiness, which was in turn a prerequisite for social virtue and stability. Hennet therefore enjoined a new generation of legislators to develop laws that would enable his fellow citizens simultaneously to pursue happiness and to act in the interests of society. Echoing enlightened ideals of the perfectibility of man, he maintained that under such laws human nature itself would be redeemed. Hennet’s ideas exemplified the importance of the connection between the freedom to pursue individual happiness in the context of divorce and the erosion of exclusivity in a system based on privilege. Hennet received an honorary mention from the National Assembly in 1789 for his work.

This approach toward dissolubility of marriage was also supported by numerous novelists and playwrights who attacked arranged marriages and simultaneously cultivated the ideal of romantic attachment within marriage. Feminist authors and lawyers arguing domestic cases exposed the harsh uses of authority by husbands and fathers. The author of the pamphlet *grièfes et plaints des femmes mal mariées* wondered how long women had to be crushed by the arrogance of some priests and by the greed of those families which still considered the husband...
to be the absolute master of his wife’s property and person.\textsuperscript{80} The same belief can be found in the writings of Juges de Brives which were dedicated to female victims: “It is you, o women, interesting by your virtues and by your misfortunes, that I owe the homage of this work.”\textsuperscript{81}

Simultaneous with the \textit{divorciare} movement, the royal administration became the prime player in the reordering of the family unit. It did so by providing relief in some form of separation even if it could not authorize divorce. Complaints, lawsuits and \textit{mémoires} requesting divorces multiplied in the last decade of the old regime.\textsuperscript{82} Superficially, challenges to the principle of indissolubility seemed egregious and unthinkable. In practice, however, many marriages broke down and made the lives of the participants unbearable. The proliferation of cases before civil courts seeking marital breakdown represented an unofficial challenge to the indissolubility of marriage which reflected this inexorable social change. Couples, and particularly women, sought relief in some form of legally sanctioned separation. More women filed complaints against their husbands in 1775 than in 1725 or 1750.\textsuperscript{83} Although indissolubility remained the rule, which meant that royal magistrates could not dissolve marriages to permit remarriage of the parties, magistrates did not hesitate to authorize separation of property (known as civil separation) to prevent a husband from squandering his wife's assets. Separation of property allowed a couple to divide their material possessions legally. A wife could seek separation of property to protect her dowry from her husband's mismanagement and his creditors which did not necessarily even imply trouble between the spouses. Another legal device known

\textsuperscript{82} Suzanne Desan. \textit{The family on Trial in Revolutionary France}, 27.
\textsuperscript{83} Ibid.
as separation of persons was granted in cases of deep personal animosity between the spouses which allowed them to live separately as well as to separate their property.  

Paradoxically, the protection of women played a significant role for all sides of the divorce debate. The female victim appears in texts of advocates of divorce, advocates of indissolubility and the Jewish community, to incite the reader's empathy and to vivify the need for legislative change. Advocates of legalizing divorce depicted her trapped in a bad marriage while their opponents portrayed her abandoned by her husband. Defenders of indissolubility compounded this image by making women intractable actors in the guise of wanton perpetrators, jeopardizing the social order in their selfish spirit of an independence to which they had no rightful claim. While the courts paid lip service to the idea of indissolubility through their reluctance to grant separation of persons, they did grant it where merited to rescue a wife from serious mistreatment by her husband.

The issue of Jewish divorce and its challenge to the authority and autonomy of the Jewish community proved to be very similar to the divorciare movement's challenge to royal authority. The Jews, despite their ambiguous legal status and the many restrictions imposed on them, exercised a large degree of control over personal status. Questions of personal status belonged exclusively to rabbinic tribunals and were enforced by the community leadership as part of its

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84 Ibid.
85 Ibid.
86 Lawsuits for separation of property, which the courts handled as relatively routine business, were much more numerous than lawsuits for separation of persons, which raised more sensitive questions and appeared closer to the prohibited dissolution of marriage. In adjudicating these cases, the magistrates assumed that mistreatment meant different things, ranging from simple verbal cruelty to outright physical brutality, for women of different classes. They were not always sure what type and how much verbal or physical abuse justified separation but they suspended cohabitation reluctantly. In Rouen for example, they ruled in favour of wives in only four of thirty-three cases during the 1780s; Jeffrey Merrick, "Marital conflict in Political Context: Langeac vs. Chambonas, 1775" in Suzanne Desan and Jeffery Merrick eds., Family, Gender and Law in Early Modern France, 137-182 at page139.
control over its membership and its efforts to guard the integrity of the community. Their autonomy in this regard was supported by the crown as a parallel of its own patriarchal authority. Nonetheless, Jews who appealed to sovereign courts looked to the crown to protect the rights of the individual in their battle against the Jewish community's authority. By doing so they challenged the authority of the community and its integrity by redefining themselves as subjects of the king rather than foreigners who were under the sole jurisdiction of the Jewish community. The importance of these appeals was demonstrated by the efforts of the community authorities to stop them. For example, despite an oath taken in 1710 by all the members of the Metz community not to appeal to non-Jewish tribunals under threat of excommunication, many cases found their way to the Parlement for Metz, Toul and Verdun. Similarly, in Paris, the parlementaires reviewed and decided such cases based on complaints originally reported to the district police commissioners and appealed from the Chatelet, the royal court with jurisdiction over the capital.

Jewish marriage contracts were a specific area which invited litigation. Jewish marriage contracts, which were intended to shield Jewish women from harm, became weapons when used by Jewish women litigating in sovereign courts as devices to prove their case. Jean Fleury, in his survey of 8500 items in the Metz archive, compiled 2021 marriage contracts from the seventeenth to the eighteenth centuries that were signed before rabbinical authorities and deposited with a royal notary. Several of these cases provide examples of the pattern of litigation over domestic issues by Jewish women in sovereign courts. One of the more notorious

87 Gabrielle Atlan, Les Juifs et le divorce: Droit, histoire et Sociologie du divorce Religieux (Bern: Peter Lang, 2003). There are examples of French authorities recognizing leverite marriages which reflect the high degree of autonomy exercised by the community.

88 Jean Fleury, Contrats de mariage juifs en Moselle avant 1792 (Paris: CGJ, 1999). Following a decree by Louis XIV in 1701 Jewish marriage contracts had to be deposited with notaries within 15 days of marriage. Jews frequently registered these documents to provide them with a guarantee of enforceability.
examples is the case of the marriage between Abraham Jacob and Sara Kassel in the German part of Lorraine which involved the use of a marriage contract to frustrate the claims of her first (deceased) husband's creditors. She was ultimately successful in defeating the creditors and having her claims to her husband's estate recognized. Three other significant examples of these types of cases were: Merle, daughter of Isaac Spire Levy and the wife of the unsuccessful Joseph Worms, whose husband Joseph left a will depriving her of their property as well as guardianship of her children; Madeleine, recently betrothed daughter of the late Bernard Cahen, who demanded that her guardians, important lay leaders of the community, give her the substantial dowry to which she was entitled; and Rosette, widow of the banker Bernard Spire Levy, whose wealthy husband had named her his legal heir despite prohibitions against doing so. Significantly, Rosette’s case subsequently elicited a decree from the Parlement in 1759 denying the Rabbi of Metz the right to excommunicate those who sought adjudication in the royal courts.

The issue of Jewish divorce posed a significant challenge to the authority of the community. Unlike Catholic doctrine which held that marriage was indissoluble, Jewish law allowed divorce. Jewish divorce, while accepted in France, however, was a juridical anomaly. It placed the King in the conflicted position of permitting a practice which challenged the patriarchal paradigm on which the monarchy's authority was based. Appeals to sovereign courts

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89 Claudia Ulbrich, Shulamit und Margarete; Power, Gender and Religion in a rural Society in Eighteenth-Century Europe Thomas Dunlap, Trans (Boston: Leiden, 2004).
on divorce issues exacerbated the complexity of the issue by also challenging the exclusion of the Jews as French subjects and by asking the courts to rule on divorce which was both alien and repugnant to French law.

The issue of Jewish divorce as a juridical problem was further complicated by inconsistencies in the interpretation of the law by Jewish authorities. As in the divorciare debate the role of women was particularly significant. The traditionally weaker role of women contrasted with their ability to litigate for their rights. Jewish law provided that women held a weaker position than men. There was, however, a presumption in Jewish law to protect them as the weaker party. For example, although only the husband could initiate divorce proceedings, a husband could not force a wife to accept the divorce once the process had been initiated. Jewish authorities, who were concerned that these appeals would invite Royal or church intervention, treated the claims of women with great sensitivity even where it contravened Jewish law, creating inconsistencies in enforcement of the law. Ironically, these inconsistencies spurred appeals to sovereign courts. 91

In addition to inconsistency in the application of the law, appeals to sovereign courts were also generated because of inherent ambiguities in Jewish law. There were several particular examples related to Jewish divorce law, particularly in the area of the divorce of an apostate. While the general goal of the law was to protect the integrity of the community, Jewish theologians were conflicted over whether apostasy terminated a marriage. Communal authorities tended to favour resolutions that supported continued membership in the community for the Jewish spouse of the convert. For example, in the case of remarriage where one of the parties (usually the husband) chose or was forced to convert, and the other (usually the wife) chose to

remain in the Jewish community, the convert was considered to have retained his membership in
the Jewish community despite his conversion. This meant that the parties would be required to
obtain a divorce according to Jewish rights in order to be free to remarry in the community
which usually entailed the return of the wife's dowry.92

The converse was true in the case of a levirate marriage. Under those circumstances
membership was construed narrowly in order to provide a result which honoured the integrity of
the community. This custom required the remarriage of a widow to her brother-in-law when
there was no issue from the first marriage. Rabbis and community authorities tended to construe
membership narrowly and would not force such a marriage in order to avoid forcing a woman
who was a member of the community to marry outside of it.93 The lack of clarity as to which of
these circumstances required a divorce and under which circumstances the divorcing party
remained a member of the Jewish community attracted the attention of both the Jewish
communities and French authorities. The Borach Levy case in the 1750s was an important
example where the ambiguity in Jewish law resulted in an appeal to sovereign courts which
challenged Jewish communal autonomy.

Some measure of the frequency of these appeals to sovereign courts can be ascertained by
the substance of the memoranda. Both the act of appeal and the content of the memoranda
demonstrate that Jews were not as publicly isolated or segregated as has been traditionally

92 Ibid.
93 In such a case, if the rule were strictly complied with, the leverite bride would be required to obtain a formal
release (halica) to be excused from completing the marriage to her brother-in-law regardless of his apostasy. See the
case of Daniel Tellès Dacosta and his sister-in-law Blanch Silva, widow of Jacob Tellès Ducosta, Minutes of the
Bordeaux Nation, No. 367, fol. 91, April 17, 1768 (departmental archives of the Gironde); L.F.B. [Beaufleury],
Histoire de l'établissement des Juifs à Bordeaux et à Bayonne depuis 1550 (Paris, an 8 [1799], 138-140; T.
Malzevin, Histoire des Juifs à Bordeaux (Bordeaux,1875) 280; Cardozo de Bethencourt, "Le Tresore des Juifs
Sephardim," REJ XXVI (1893), 242.; Zosa Szajkowski "Marriages, Mixed Marriages and Conversions among
French Jews during the Revolution of 1789" in Zosa Sjakowski, The Jews and the French Revolutions of 1789,
Rabbinic efforts to harmonize Jewish and French law in nineteenth century France" Jewish Social Studies 13, no.3
(summer 2007 new series), 59-72.
assumed by historians. The pleadings and memoranda of Jewish litigants adopted the same format and values, especially as they related to intimate aspects of their lives as French subjects. Jewish women adopted the same form of narratives used by women litigants and complainants. They began by lamenting their misfortune in marriage and professing their innocence since marriage, continued by cataloguing the financial hardships and abuse they had endured, and concluded by describing the recent circumstances that had finally forced them to reveal their domestic problems to outsiders inspite of their reluctance to do so. Selecting details and choosing words not only to convey information but also to make an impression, they claimed typical female virtues for themselves and attributed typical male vices to their husbands. This type of narrative adopted by women of all ranks from nobles to peasants who lodged complaints against their husbands was also adopted by the Jewish wives in the causes célèbres cases, although it had nothing to do with Jewish practice. The use of this form is significant because it was designed to illicit sympathy and justice from a royal court rather than a Jewish one.

The poignant letter from Mendel Cerf, Borach Levy's Jewish wife, begging Levy not to abandon her despite her refusal to convert is an example. It follows a similar form of narrative that typical litigants outside of the Jewish community adopted with a catalogue of the misfortune that her husband's abandonment has caused in the face of her devotion to him. Most telling is the use of the formal vous form although it is written as an intimate letter from one spouse to the

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other. She begins her letter by begging him to reflect on his decision to convert and asks what cause she has given him for complaint: “...dites-moi, mon cher Borach, les biens de ce monde n'étant que passagères, méritent-ils qu'à leur égard vous sacrifiez votre ame, celle de votre épouse et de vos enfants? Helas! que-pensez-vous, vous ai-je jamais donné le moindre sujet de vous plaindre moi?...”96 She tells him that, should he return to his senses and return to her: “Je fais qu'on est pret á faire tout pour vous, venez donc je vous en conjure. Un chagrin des plus cruel me dèvore.....” She promises to forgive him with all her heart and not to reproach him should he return home: “Que le procés a Paris aille comme il pourra, revenez au Pays, je vous pardonne de tout mon coeur.”97 She then begins a catalogue of events intended to place a mantle of guilt on his shoulders for abandoning not only her, but his family and community. His young nephew who is close to dying asks for news of him. She asks: "Borach, est-il possible que vous puissiez m'oublier totalement aussi bien que votre mere, qui nà plus que deux jours à vivre...”98 She then catalogues her misfortunes: “...En quoi vous ai-je offensè, Seigneur pour avoir mèrtè de si horribles chatiments! Ce qui augmente mes douleurs, c'est de voir mes pere et mere sàrracher les cheveux de cetter avanture, Jamais jeune femme nà eu tant de malheur que moi;” 99 She ends her letter with the pitiable plea: “Borach, mon cher Borach, ayez pitiè moi, ne manquez, pas de mècririe out plutot de revenir. L'èxces de douleur me fait finir ma lettre et peut-être ma vie.”100 Ironically, Mendel Cerf's use of this format and its purposeful appeal to a royal court rather than a Jewish one was unaffected by the principal issue in the case: her refusal to convert to Catholicism.

96 Letter from Mendel Cerf to Borach Levi (ci-devant Levy) Actes et pièces servant de mémoire à consulter Pour le Juif Borach Levy BNF, 4-FM-3569.
97 Ibid.
98 Ibid.
99 Ibid.
100 Ibid.
In addition to the erosion of communal authority, Jewish divorce cases reflected two critical aspects of the reform process. First, they conflated Jewish status with the issue of divorce as a test of whether Jewish particularism prevented integration into French society. Second, as Evelyne Oliel-Grausz has argued, they contributed to the wider debate on the question of divorce and to reshaping French law on personal status. In regard to the first aspect some reformers asserted that if Jews were considered to be French subjects, then divorce as a particularistic practice of the Jews should be condoned. Others believed that Jews could only be considered French subjects if they desisted from practices such as divorce that were repugnant to French Catholic values. As the Jews were resistant to changing these practices, those who opposed divorce also opposed changes to Jewish status. For example, in 1771 the avocat général of the parlement of Paris, Antoine Louis Seguier, took the position that the law as transmitted through Moses and Jesus was clear concerning the indissolubility of marriage. In support of this argument he referenced the case of Borach Levy on which he had delivered a judgment, refusing Levy's request to divorce his Jewish wife to marry a Catholic. In that case Borach Levy’s claim to divorce his Jewish wife after his conversion in order to marry a Christian woman was refused despite the fact that Jews permitted divorce.

Second, divorce was not simply a problem of public administration, but a challenge to the prerogatives of the Catholic church over civil acts. These challenges began to create space for reform of civil status by creating a new secular model of authority which was not based on an intimate connection to Catholicism. Because marriage played such a critical role in underpinning the social and political fabric of France, these critiques of "domestic despotism" had strong

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political overtones well beyond the threshold of the household by undermining the existing patriarchal paradigm of authority. Divorce eroded the premise of exclusivity inherent in the hierarchical society of ancien régime France and created a basis for a more inclusive context of relationships. Cases of Jewish divorce, epitomized by the causes célèbres of Peixotto and Levy, supported both the politicizing of divorce and increased toleration of difference. This support for divorce gave added emphasis to the arguments of jurists like Dessesart for civil recognition of Protestant marriages and legal acceptance of Protestant and Jewish marital practices, including divorce. This also opened the door for civil recognition of other religious groups like Protestants and Jews.

As will be discussed in chapters four and five, a comparison of the Levy case and the Peixotto case demonstrates not only how the issue of divorce was intertwined with Jewish status but how attitudes evolved in the twenty years between the two cases. In the Levy case the inability to dissolve his Jewish marriage put Borach Levy's conversion and his entrance into French society in doubt. As an individual his identity outside the Jewish community was definitely tied to his marital bond, and the inability to dissolve it blocked his integration into non-Jewish society. Religious uniformity necessary for status in the polity was exemplified by the issue of indissolubility of marriage. In Levy's case no advocate suggested raising the status of the Jews to a level where they could integrate into French society. Conversely the Peixotto case, argued twenty years later, reflected the impact of the changes in attitudes supported by the divorcières. Lawyers arguing the Peixotto case used the context of the divorce between two

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Jews to call for the elevation of the status of the group to membership in French society. Juridical uniformity implied the application of natural law to the issue of divorce and to the Jews' civil status. This process was not, however, a simple trajectory of progress. The provision in the 1784 *lettres patentes* based on the Borach Levy case, which barred the remarriage of converts during the life-time of their Jewish spouses, reflected continued doubts about the admission of Jews into French society. In both cases the Jew needed to shed the framework of Judaism to seek French Justice and French Justice needed to find a method to respond to the Jews. The arguments later put forward in the National Assembly in support of emancipation decrees, especially the 1791 decree granting the Ashkenazi active citizenship, however, echoed the arguments put forward in the Peixotto case. The connection between divorce and the reform of Jewish status is more than a "patchwork quilt of historical change." Divorces appealed outside the confines of the Jewish community provided a platform for a mutually transforming process in which the Jew strove to be part of a national identity and the nation strove to absorb the Jew.

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The Borach Levy case; the Church and the dilemma of a convert's divorce
Chapter 4

In 1754 the seemingly innocuous request to Church authorities by the converted Jew Borach Levy to dissolve his marriage to his Jewish wife and marry a Christian initiated one of the most notorious divorce cases in pre-revolutionary France.¹ Its importance was captured in the words of Levy’s defender Loyseau de Mauléon, “This is a matter that touches equally on the rights that accord between the new convert, religion and the state.”² Levy’s supporters included such members of the elite as the M. Duc de Chatillon, Mme. la Marquise de Rosen and no less a personage than the Duc d’Orléans, while his opponents included the Archbishop of Soissons and other authorities in the Catholic Church. Levy’s case was an example of cases publicized as judicial mémoires in eighteenth-century France which, as Sara Maza has suggested, were published to influence emerging public opinion.³ The focus on the juridical challenge to Levy’s ability as a convert to divorce his Jewish wife provided a new perspective on Jewish civil status. By highlighting the debate over the validity of a Jewish divorce by a convert who chose to leave the jurisdiction of the Jewish community, the Borach Levy case became a prism into the juridical chasm between the autonomous Jewish community and the sovereign administration and the impetus toward legal centrism that characterized the integration of the Jews into French society.

As mentioned in previous chapters the issue of conversion was particularly complex. Both the Church and the Jewish community had difficulty grappling with the legitimacy and

impact of conversions. Both bodies would occasionally contest the legitimacy of conversions based on the sincerity of the convert. The Jewish community tended not to recognize forced conversion. Voluntary conversion was also challenged frequently, however, by both the Jewish community and the Church. The Jewish community, the Church and local authorities were more likely to object when there was some reason to be skeptical about the potential convert's motives such as the alleviation of his tax burden or restrictions. The Jewish community opposed conversion not only on the basis of faith, but because of the very real financial hardship of having to assume a lost member's tax burden. The loss of tax revenue and extra fees also played a role in jurisdictional challenges to conversion between local authorities and the Church. For this reason conversion was not necessarily a path to greater privileges or status.

Even more critical to the Jewish community was the challenge that conversion posed to its jurisdiction over the community's integrity. Jewish communities exercised a large degree of control over the personal status of their members which allowed them to control the composition of the community. As previously mentioned, Jews had the right to be judged by their own separate courts on issues such as marriage and divorce, a right not permitted any other group in France. This autonomy accorded with Jewish custom and theology which placed a high value on marriage. Marriage and reproduction for Jews was considered a sacred duty:

Every Jewish man is obligated to take a wife, and the rabbis have determined that the appropriate time for doing so is at the age of eighteen, certainly not going beyond the age of twenty. He who passes this limit without a wife is said to be living in sin for

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4 Unknown author, "Bapteme des Enfants" Archives Nationale, H3105.
5 Gabrielle Atlan, Les Juifs et le divorce: Droit, histoire et Sociologie du divorce Religieux (Bern: Peter Lang, 2003). There are examples of French authorities recognizing leverite marriages thereby supporting the high degree of autonomy exercised by the community.
various reasons. First, because he is required to generate offspring, as God said to Adam in the first Book of Genesis, 'Increase and multiply, and fill the earth, etc.' by having at least one male and one female child, he is understood to have fulfilled this precept. Second, he must marry in any case in order to avoid the sin of fornication.\(^6\)

Moreover, marriage was not only religiously mandated, it was an important social marker of status and a matter of economic and spiritual survival, giving the community resilience and stability.\(^7\) In this regard marriage was critically important to the Jewish community as a bulwark against extinction which had often seemed a real possibility in the face of historical expulsions and persecution.

Conversion impacted the structure of the community not only through the loss of a member, but through its impact on his or her family and their ability to form new marital bonds within the community. The choice to convert was not always shared by all members of a family. Jewish spouses, typically Jewish women, often chose not to follow their spouses into Christianity. This left the non-converted spouse without the status that marriage conferred. This was a particularly difficult state for women. Because women did not participate in the governance of the community, being left without a husband meant they were left without formal representation or protection. The tendency in Jewish law to protect the weaker party, who was also usually the woman, may have mitigated these consequences to some degree but they also served to create ambiguity and confusion.


\(^7\) Ibid.
Jewish theologians were conflicted over whether apostasy terminated a marriage and what impact the conversion of one spouse had on the other spouse if they chose to remain in the Jewish community after the conversion of their husband or wife. In some cases apostasy was considered to have terminated a marriage.\(^8\) In other cases the Jewish courts held that a divorce was necessary to allow the non-converted spouse to remarry. Since, according to Jewish law, only the husband can initiate a divorce, in cases where the husband was the convert, he would be required to initiate a divorce in accordance with Jewish rites in order to free his Jewish wife to remarry.\(^9\) The Jewish community often proved unable to resolve these cases as the convert considered himself beyond the jurisdiction of the community.\(^10\) In addition, because each community was autonomous, interpretations and rulings by the Jewish courts were inconsistent.\(^11\) Despite the anomaly that Jewish personal status issues such as divorce posed for members of the Jewish community, they were driven in part by the lack of consistency among Jewish courts to appeal beyond the community to French sovereign courts.

There were several consequences to these appeals for the Jewish communities, the Church and the sovereign administration. The impact on the Jewish community was the most direct. By submitting these disputes to French courts, Jewish litigants challenged the autonomy of the Jewish communities. They also highlighted the paradox inherent in Jewish status in France, where on the one hand they were considered *étranger* and subject to their own courts and yet, on the other hand, could appeal to the sovereign courts to resolve the most intimate of


\(^10\) Zosa Szajkowski, "Marriages, mixed marriages and conversions among the French Jews during the revolution of 1789," 827.

disputes. This was particularly true of appeals involving divorce, an issue that was inimical to French courts because of the Catholic doctrine of the indissolubility of marriage. These appeals not only challenged the communities' traditional right to determine its membership, they also had an added dimension which would become more apparent in the second half of the eighteenth century. These litigants were engaging in a subtle act of integration which redefined the Jews' identity as subjects of the King, and this form of litigation reflected a move toward secular juridical values for both Jews and French authorities.

These cases attracted the attention of reformers who were not only motivated to improve the Jews' status, but also to rationalize the juridical and jurisdictional dilemmas they presented. Influenced by enlightenment ideals of egalitarianism and individualism, juridical reformers saw the social exclusion of groups such as Protestants and Jews as anachronistic. Even to the reformers, however, the Jews were distinguished by more than their religious beliefs. Reformers perceived that the Jews’ particularism, of which one of its principal manifestations was the autonomy of the Jewish community, isolated them from French society. Reformers perceived many of the Jews' distinctive practices, of which divorce was a specific example, as repugnant to French values. Despite the appeals to sovereign courts, reformers believed that the Jews could not easily integrate into French society without the elimination of these practices and the dissolution of the community's autonomy.¹²

The Borach Levy case reflected the dilemma inherent in the erosion of the Jewish community's autonomy through the loss of control over the personal status of its members without providing a path for integration for those who wished to leave the community. Borach Levy's case appeared to reflect that loss of the particularism that defined the Jews' exacerbated marginalization rather than assimilation. Seen in the context of later cases and events, however, Levy's quest for a divorce from his Jewish wife initiated a multifaceted debate regarding the influence of the Church on the individual's relationship with the state. Inherent within this debate was the issue of whether particularism and distinctive identity were compatible with juridical reform whose goal was a form of legal centrism. In 1751, the time of the initiation of Levy's appeals, the influence of the Catholic church on juridical status for all elements of French society was still pervasive. There was little support for the possibility of a secular law of divorce or ideas for integrating the Jews in the French polity as anything other than converts. Rather, Levy's case seemed to reaffirm the Jews' distinctiveness and the Church's influence on civil law. The final judgment in Levy’s case, which refused him permission to remarry during the lifetime of his Jewish wife, was eventually incorporated into the July 1784 *lettres patentes* almost thirty years after the judgment on the appeal was originally rendered, demonstrating the sustained importance of the issue, even after the advent of the divorciare movement. The inclusion of Levy’s case in the *lettres patentes* was part of a series of restrictive regulations intended to exert demographic control over the Jews and was intended to reduce particularism by diminishing the autonomy of the Jewish community. Yet, by attracting debate to these issues, Levy's case also challenged the hegemony of the Church and supported ideas of a secularly based legal centrism. To a small but growing number of Jews who rebelled against the discipline.

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13 Levy changed the spelling of his name to Levi after his conversion.

of the Jewish community by struggling to reach sovereign courts, this was a welcome
development.\textsuperscript{15} To leaders of the Jewish community and Church authorities, however, it posed a
dangerous challenge. To reformers it provided new opportunities. It would have unintended
consequences for all concerned.

The focus of Levy's case on the issue of the convert's divorce, and therefore the ability of
the convert and his Jewish spouse to remarry and reestablish themselves in their respective
communities, was complicated by the lack of clarity concerning the convert's social
identification and civil standing. From the Jewish community's perspective the convert severed
his ties to the Jewish community, the consequences of which were that the convert suffered the
punishment of excommunication (*herem*).\textsuperscript{16} Excommunication had a different connotation for
Jews than for Catholics. For Jews excommunication was akin to exile. Once an individual was
excommunicated from the community no member of the community could have personal or
commercial commerce with the excommunicant. This had dire consequences for the
excommunicated individual. As legal status was granted to the community, as opposed to the
individual, an excommunicant whose conversion was not accepted by the Church had no legal
standing. The inability of the convert, who was no longer considered by his former co-
religionists to be a member of the Jewish community, to divorce according to Jewish law also
had a broader effect on the Jewish community. By placing the convert in limbo it eliminated his
ability to join Catholic society while it also undermined the power of the Jewish community to
determine the private life of its members. The Jewish community was not only unable to provide
a divorce to the convert, it could not provide a divorce to wives of converts so that they could

\textsuperscript{15} Berkovitz, *Rites and Passages*, 281; S.Poesner, 251-217; Frances Malino,"Competition and Confrontation," 327-341.

remarry within the community. This problem eroded the exclusivity of the group’s identity and the community’s power to act as a protective buffer between its members and the surrounding society.  

The issue of the divorce of a convert was equally complicated from the perspective of French society. The doctrine of indissolubility was an obstacle to the ability of the convert to acquire a new identity as a Catholic and integrate into society outside of the Jewish community. This added a dimension to Levy’s case beyond the nuances in Jewish status. Beginning in the sixteenth century the French state sought to assert its authority over marriage, treating it as a judicial contract only subsequently sanctified by the Church. This development accompanied the process of state building by the French monarchy and placed the business of defining and controlling marriage in the hands of Royal officials, especially parlementaires. Despite secular authority over marriage, as late as the middle of the eighteenth century marriage was still regarded by prominent jurists such as Pierre le Ridant as indissoluble. Nonetheless, the remarriage of converts during the lifetime of their non-converted spouse was frequently, if inconsistently, permitted by the Church in order to promote conversion. Jewish divorce, while accepted in France, was a juridical anomaly given the Church's position on indissolubility. Appeals regarding Jewish divorces, even by converts, placed the sovereign in a conflicted position for two reasons: it permitted a practice which challenged the patriarchal paradigm on which the monarchy's authority was based, and these appeals also highlighted the paradox of asking the courts to rule on divorce which was both alien and repugnant to Catholic doctrine.

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These complications were exacerbated by the challenge to the sovereign courts' exclusion of the Jews from their jurisdiction, a privilege associated with French subjects.

From the converts' perspective these factors combined to create a particular form of limbo. As mentioned above, according to Jewish law only the man could initiate the divorce and the wife of a converted Jew remained legally married as long as her husband did not divorce her according to the formalities of Jewish law. On the other hand, converts were discouraged from initiating divorce by the Catholic doctrine of indissolubility of marriage. A Catholic convert who initiated a divorce according to Jewish law was abiding by a tradition that, by conversion, he had rejected. By barring the convert's ability to divorce his Jewish wife and remarry within the Catholic Church, the Church refused the convert a new identity. The inability to divorce a recalcitrant spouse meant that conversion had not expurgated the ties to the Jewish community or eliminated one’s Jewish identity. This exacerbated the precarious and uncertain nature of the convert's status. Because of the ambiguity of his juridical status, a convert was simultaneously doomed to a life of celibacy which compromised his ability to assimilate into Catholic society and was also without the protective connections to the Jewish community, leaving him with few options in terms of livelihood or residence. The Borach Levy case exemplified this dilemma. In the Levy case the inability to dissolve his Jewish marriage put Borach Levy's conversion and his entrance into French society in doubt. As an individual his identity outside the Jewish community was tied to his marital bond, and the inability to dissolve it blocked his integration into non-Jewish society. Adherence to the sacrament of indissolubility of marriage became both a requirement and an obstacle to status in the French polity.

The Borach Levy case inspired fervent political and theological debate, as well as threats, assassination attempts and bribery. From the time Levy moved from his original residence of
Haguenau to Paris in 1751, and began the process of conversion, he was plagued by resistance and intrigue. Levy had many debtors within the Jewish community who feared that his conversion would leave them with no recourse. When his reputation became known it also destroyed his support from Church authorities. This opposition contrasted with the support of members of the political elite, who chose to support Levy and make his case an example of enlightened reform despite his reputation. Although originally having the support of the archbishop of Paris, he was obliged to leave Paris when the priest charged with his instruction was bribed, ostensibly by some members of the Jewish community, to stop the process. Despite the support of powerful patrons, including M. le duc de Chatillon and Mme. la Marquise de Rosen, who had agreed to act as his godparents, all efforts to set the date for the baptism were refused. Even Levy’s attendance before the archbishop on April 6, 1752 with a certificate from the magistrate of Haguenau to prove that he had the protection of the Duc d’Orléans did not help.\textsuperscript{19} The archbishop of Paris refused the baptism on the grounds that Levy’s reputation and character made him a poor subject for baptism: the archbishop stated that he would never permit him to be baptized in Paris. This position was supported by his view that, as Levy was not domiciled in Paris, the archbishop did not have authority to baptize him in any event.\textsuperscript{20}

In the face of this refusal Levy sought the advice of three advocates of the \textit{parlement} of Paris. Relying on their legal opinion, Levy made a formal request to the priest of Saint-Sulpice to fix a date for the baptism with the demand that he be given an explanation should his request be refused again.\textsuperscript{21} This bold step deepened the intrigue. The translator assisting Levy, who spoke German, was threatened and refused to continue to act as his interpreter, eventually disappearing.

\textsuperscript{21} Isidore Loeb, 1-15.
altogether. After further consultation with his advocates,\textsuperscript{22} Levy published a memorandum which recorded the intimidation he and his original sponsor, Father Lamblat, suffered. The intent of the memorandum was to garner support among the members of *parlement*, the priests in the city and *faubourgs* of Paris, and members of the Church including the cardinal of Soubise and bishop of Strasbourg.\textsuperscript{23} Levy finally found a willing priest in the parish of Montmagny (close to Enghien) named Pierre le Soudier (not insignificantly a licensee of the Sorbonne) to assist. The baptism was administered in the Church of Montmagny on 10 August 1752. On his conversion Borach Levy took the name Jean-Joseph-François-Elie Levi.\textsuperscript{24} However, neither the opposition to his baptism nor the intrigue ended. The archbishop of Paris obtained a *lettre de cachet* dated 29 September 1752 against Pierre le Soudier who was exiled to Haguenau for having performed the baptism.\textsuperscript{25}

The second component of this famous case, Levi’s efforts to dissolve his marriage to his Jewish wife Mendel Cerf, was no less intriguing. In October of 1752 Levi demanded the conversion of his wife and two children with the reasonable expectation that this would instigate a dissolution of their marriage. Advocates of the sovereign council of Alsace, where Levi resided before his baptism and where Mendel Cerf continued to reside, had advised him that his baptism would be endangered if he continued to cohabit with a wife who refused to follow him into Christianity. As well, in Alsace it was customary for Alsatian authorities to recognize a wife’s refusal to convert as a dissolution of the marriage.\textsuperscript{26} Mendel did not acknowledge Levi’s request. Nonetheless, after Levi delivered his request to Mendel, he placed his two children in Catholic religious communities. They were eventually baptized on 29 March 1755 at Villeneuve-sur-

\textsuperscript{22} Messieurs Gaicerand and Langlard, advocates and Messieur Pouthoiun d’Huillot and Travers.  
\textsuperscript{23} Isidore Loeb, 1-15.  
\textsuperscript{24} Ibid.  
\textsuperscript{25} Ibid.  
\textsuperscript{26} Ibid, 27.
Bellot with Levi’s own godmother, Madame de Mauroi, acting as godmother for his children. Satisfied with the result, Levi returned to Paris where he stayed for eighteen months without further concerning himself with his wife. During this period he passed the greatest part of his time at Villeneuve-sur-Bellot in the diocese of Soissons in the home of Madame de Mauroi, his baptismal godmother. It was in Madame de Mauroi’s home that Levi met a Christian domestic named Anne Thevart, the daughter of Nicolas Thevart, and decided to marry her. He obtained Anne Thevart’s consent to their marriage which was subsequently witnessed on 1 June 1755 before a notary at Villeneuve. Mendel Cerf however, posed an unexpected obstacle to his plans.

Not having a satisfactory response from his wife to his original summons, he presented a second summons to her on 13 May 1754. This time Mendel’s response was exactly what Levi desired and expected. In spite of the baptism of her children, she refused to swerve from her religion. She responded that she had been born in Judaism and she would remain resolute in her faith until she died. She wrote a poignant reply to Levi where she begged her husband not to abandon her. She also asked him to send her papers for divorce according to Jewish law, should he choose not to return, so she could remarry a Jew. This Levi was reluctant to do because it would run afoul of the Christian doctrine of indissolubility and compromise his standing as a

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27 Ibid.
28 Ibid, 22.
30 Lettre de Mendel Cerf à Borach Levy, Actes et Pieces servant de Memoire à consulter (pour le Juif Borach Levy, demandant à etre baptisé sous le nom de Joseph-Jean-François Levy [Levi], contre le curé de Saint-Sulpice (Paris; imp. de Paulus-du-Mesnil, 1752), p. 16-17, Bibliotheque Nationale de France, 4-FM-3569.
convert. Not, however, anticipating any further obstacles, on 22 May 1754, the date he was to obtain a response from Mendel to his summons, he was in Paris with Nicholas Thevart obtaining the notarized consent to marry Thevart’s daughter Anne.

Despite two further summons Mendel Cerf remained constant in her Judaism.\(^{32}\) Claiming that it was established practice to allow converts to dissolve their marriages to recalcitrant spouses, on 4 October 1754 Levi wrote to the bishop of Strasbourg requesting the dissolution of his marriage. He relied on a number of decrees by the sovereign council of Alsace and consultation with three advocates of the sovereign council of Alsace dated 18 March 1754.\(^{33}\) He also submitted a request to the bishop of Uranopole and the official general of Strasbourg to permit him to marry in the Catholic Church. The sovereign council’s ordinance dated 23 October 1754 gave him permission to make a final request to Mendel Cerf in person on 7 November 1754. Mendel did not appear in court and a default judgment was rendered against her stating that Levi was “free to enter into marriage, in the holy Catholic Church, apostolic and Roman, with a person of the same religion.”\(^{34}\) Once this judgment was obtained, Levi left Alsace and requested the priest of Villeneuve publish the bans.

The real point of departure for the Levi case came when the priest of Villeneuve, with the backing of Archbishop Christophe de Beaumont, refused to publish the bans for Levi’s marriage to Anne Thevart. Levi filed an appeal of the decision on 13 June 1755 and a request on 30 June to the Officialité of Soissons to permit him to marry. He also gathered the support of his godmother Madame De Mauroi and others who corresponded with the bishop of Uranopole to assist and to obtain a dispensation from Rome if needed.\(^{35}\) On 6 August 1755 the priest of Villeneuve published the bans.

\(^{32}\) Dated August 18, 1754 and October 2, 1754.
\(^{33}\) Loeb, 23.
\(^{34}\) Loeb, 28.
\(^{35}\) ibid.
Villeneuve responded to Levi by declaring his concurrence with the judgment of his superiors refusing Levi permission to marry.\textsuperscript{36} Although Levi had compromised the success of his appeal by failing to notify his wife of the judgment of the \textit{Officialité} of Strasbourg (rendered 7 November 1754), the crux of the decision was the challenge to Levi’s assertion of domicile at Villeneuve, an issue which was linked to Jewish status.

According to French jurisprudence, as a Jew Levi did not have any fixed domicile, did not belong to any diocese and had lesser status than a vagabond.\textsuperscript{37} In the words of the jurist Denisart, “It is certain that a Jew has no rightful domicile, he has no status in the realm. Moreover, all the members of his nation are wanderers. He is not a citizen of anywhere. When he resides in France he is a stranger in every city.”\textsuperscript{38} This left Levi without standing regarding the right to celebrate his marriage because: “…during his residence in Haguenau in the diocese of Strasbourg there was no archbishop, no bishop, no priest, no domicile to effect a marriage celebrated according to the rights of the Catholic church. During the time he lived in Judaism he could not apply the ordinances of our king until he became a Catholic.”\textsuperscript{39}

In the baptismal proceeding Levi argued unsuccessfully that he had established domicile in Paris, regardless of his status as a Jew, and that the diocese of Paris had authority and was under an obligation to baptize him particularly because of the eight-month delay in granting the baptism during which time he had resided in Paris. Ironically, this argument left Levi in the untenable position of acknowledging the bishop’s authority which also required him to acknowledge the bishop’s refusal to allow him to remarry. This would prevent him from

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\textsuperscript{36} Ibid.
\textsuperscript{37} Ibid.
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severing his ties to his Jewish wife thereby binding him to the Jewish community, compromising his baptism and placing him in a worse position than lapsed converts who were shunned by both the Church and the Jewish community.\textsuperscript{40} Levi’s situation was a precarious limbo because his conversion had severed his connection to the Jewish community.\textsuperscript{41} His family had abandoned him and his coreligionists were forbidden to have any commerce with him, leaving him with no way to recover considerable sums due to him.\textsuperscript{42} He could not return to the Jewish community without risk to his life. Similarly, although he had powerful Catholic patrons, if he appeared to lapse in his Catholicism their protection would be lifted and the doors of the Catholic community to which he sought entry so urgently would close against him.\textsuperscript{43} He would be left without legal status either as a Catholic or a Jew.

The positions taken by Levi’s advocates in the ensuing legal challenges to the \textit{Officialité} of Soissons and subsequently by the \textit{parlement} of Paris were remarkable for their exposition of enlightened thought. They claimed that refusing Levi permission to marry would undermine his baptism which was the basis of citizenship and which should be open to all because of the universal nature of Jesus’ sacrifice. In the words of Levi’s advocate Loyseau d’Mauléon: “Finally, it is the same maxim from which the status of persons and the public certainty of this state is forcefully derived; baptism renders us citizens and capable of all the effects of citizenship. To refuse baptism is to exclude one from the state and the privileges of citizenship.”\textsuperscript{44} Levi’s advocates maintained that there was no precedent for refusing a sincere request for baptism in the history of the Church.\textsuperscript{45} The scriptures, canon law and secular law all

\begin{itemize}
\item \textsuperscript{40} Ibid, 68.
\item \textsuperscript{41} Ibid.
\item \textsuperscript{42} Ibid, 71.
\item \textsuperscript{43} Ibid, 72.
\item \textsuperscript{44} Ibid, 30.
\item \textsuperscript{45} Ibid, 53.
\end{itemize}
stipulated that if an adult who sincerely desired baptism had received sufficient instruction, he must be baptized.\textsuperscript{46} It was not dependent on moral character or race and applied to Jews like Levi who could not even speak French.\textsuperscript{47} Any concerns raised over Levi’s moral character were therefore irrelevant and there was no reason to refuse the baptism.\textsuperscript{48} Accordingly, Levi should also be permitted to remarry as a Catholic to establish his life in the Catholic community.

Levi’s opponents argued that consistency in the law was critical to governance. The law must be “without any complaint or division,” a claim that ultimately challenged the toleration of particularism.\textsuperscript{49} This required the appropriate delineation of authority. In this regard they claimed that while the \textit{parlement} did not have the authority to make exceptions regarding dogma,\textsuperscript{50} it could judge facts and enforce established doctrines. The Church’s role was to use persuasion and determine issues of dogma and resolve conflicting opinions on canon law.\textsuperscript{51} The King, as the protector of canon law, guarded against the danger of inconsistency and offence to divine law which resulted from the sanctioning of rituals based on secular opinion and practice.\textsuperscript{52} Moreover, the Crown’s role was to protect the precepts of the scriptures and the canons of the Church.\textsuperscript{53} The authority of the King in these matters could not be contested by either the Church or the \textit{parlement}, and those who challenged this authority must be “reprimanded by the rigor of the sovereign.”\textsuperscript{54}

\textsuperscript{46} Ibid, 46, 47, 55.
\textsuperscript{47} Ibid, 50, 52. Levi required assistance to translate his request for baptism because he spoke German, which was the common language of Alsace, rather than French.
\textsuperscript{48} Ibid, 63.
\textsuperscript{49} Ibid.
\textsuperscript{50} Ibid, 85.
\textsuperscript{51} Ibid, 84.
\textsuperscript{52} Ibid, 80.
\textsuperscript{53} \textit{Consultation, sur le mariage du Juif Borach Levi}, 40, 42, 44, 45, 80. 55, Bibliothèque Nationale de France, 4-LD184-10. This has been recognized by the civil powers starting with the ordinance of Francis I in 1539 and by the ordinance of Henry III in 1579, Louis XIII in 1629, Louis XIV in 1667 and by the declaration of the King in 1736.
\textsuperscript{54} Ibid, 76.
The bishop’s court of Soissons pronounced on and denied Levi’s appeals on 5 February 1756. Levi appealed this decision to the parlement of Paris and in November 1757 the case was heard before an audience of the grand chamber of parlement. The parlement was confronted by a plethora of inconsistent practices regarding the remarriage of converts. In some cases ecclesiastic tribunals, hoping to encourage conversion, particularly in Alsace, considered marriages contracted before baptism as null. In other cases they refused to recognize dissolution of the Jewish marriage to permit remarriage to a Catholic. Appeals to the civil authorities such as the local parlement or community councils were equally inconsistent. This confusing legal landscape reflected the opposing trends in regard to assimilation of the Jews.

On the one hand Levi’s advocates asserted that not all marriages were “sacro-sainte.” They claimed that marriage between two Catholics undertaken within the Church was entirely distinct from marriage between infidels or from mixed marriages. Although marriages between infidels, or between a Catholic and an infidel, were legitimate bonds as “an ordinary contract,” they were not of the same sacramental nature as Christian marriage and the principle of indissolubility was not applicable to them. Non-Catholic marriage should not be considered “…like a type of mystical union of the sort that was absolutely forbidden to touch.” Therefore, while Jewish marriages could be recognized as valid bonds, they were not made in the same light as the marriage of Jesus with his Church and thus the principle of indissolubility should not apply to them. Moreover, they argued that the Church recognized that a marriage that preceded conversion was not concluded in the Church and could be dissolved according to the rites in

56 Zosa Szajkowski, “Marriages, mixed marriages and conversions among the French Jews during the revolution of 1789,” 827.
57 Loeb, 39.
59 Ibid.
which it was formed.\textsuperscript{60} This argument was therefore a plea for recognition of Jewish divorce. The question remained, however, that Levi was not seeking to dissolve his marriage to Mendel Cerf according to the law “that was given in the synagogue” as a Jew, but according to the maxims of the Church to which he had converted.\textsuperscript{61} He was seeking a new identity as a Christian. To resolve this dilemma, Levi’s defenders relied on the codes of Theodosius and Justinian which asserted that the Church had always permitted exceptions to the rule of indissolubility, even for Christian marriages, the most significant of which was adultery. Moreover, Levi’s defenders also asserted that if the hope of converting a non-believing spouse proved futile, then remarriage should be permitted so as not to “place the faith of the convert in danger.”\textsuperscript{62} De Mauléon relied on authorities such as St. Augustine and St. Thomas in the ecclesiastical law to support his position.

This argument provided a practical solution for converts by treating them as having established entirely new identities by becoming Catholics. Just as in Jewish doctrine, the creation of this new identity rescinded all former obligations. The dissolubility of Jewish marriage was secondary to the idea of the convert’s essential rebirth as a Catholic and his ability to integrate into French society. A convert should be permitted to change his social identity and to eliminate any ties he had with the Jewish community. Ultimately Levi’s defenders saw conversion and total assimilation as preferable to elevating the Jews’ civil status in France. Levi’s principal advocate, De Mauléon, expressed the concern that in the cities where Jews had acquired more privileges conversions were rarer.\textsuperscript{63} On a practical level, De Mauléon argued that the application of the principle of indissolubility to converts would disturb the baptized Jews of Metz and

\textsuperscript{60} Ibid, 85.
\textsuperscript{61} Ibid, 7.
\textsuperscript{62} Ibid, 39.
\textsuperscript{63} Consultation sur le mariage du Juif Borach Levi, 69-70, Bibliothèque Nationale de France, 4-FM-19430.
Strasbourg who had married Catholics after their baptism. De Mauléon cited examples in Verdun, Metz, Strasbourg and Toul attesting to the practice of permitting remarriage of Jewish converts.\(^{64}\) In Metz both the Jewish community and the Church regarded the refusal of a summons by the wife of a converted Jew as a repudiation which would permit Jewish wives to remarry. The most famous of these cases is the case of Salomon Lambert, a Jew who remarried without divorcing his first wife after she refused his summons to convert.\(^{65}\) Ironically there were also similar cases in Soissons.\(^{66}\)

In contrast, Levi’s detractors totally rejected the idea of tolerating customs which did not conform to Catholic practice, and did not accept that conversion meant a new fully assimilated identity. In support of their position they argued that all marriages were indissoluble regardless of race or faith.\(^{67}\) There were no exceptions to the rule, even for adultery.\(^{68}\) This prevented women from the possibility of having more than one husband, a practice that was “... an abuse, a corruption and depraved.”\(^{69}\) It also prevented two formerly married converts from remarrying and establishing two new, but invalid unions. Moreover, it prevented the frivolous use of baptism to dissolve marriages for two spouses who had grown tired of each other. In their view

\(^{64}\) Ibid. Edel was originally the wife of Aron Levi, a Jew originally from Zillisheim in Alsace. She became involved with a Jew named Wolf Bacher, originally from Prague. Edel and Wolf were both baptized in Strasbourg on November 25, 1747. On February 28, 1748 Edel addressed a summons to her husband to come and rejoin her in their conjugal life by converting to Christianity. Despite making this offer to her husband, Edel married Wolf Bacher on August 14, 1748 in the parish of Saint-Pierre le Jeune at Strasbourg. On March 29, 1749 an order of the sovereign council of Alsace declared that the marriage was valid and condemned Aron Levi to repay Edel her dowry. Other examples include the case of an unnamed baptized Jew at Haguenau who, in 1731 after his baptism, married a Christian when his Jewish wife refused to convert and the case of Bernard Hirtz, also remarried in Strasbourg. Zosa Szajkowski, "Marriages, mixed marriages and conversions among the French Jews during the revolution of 1789," 827.


\(^{66}\) Ibid., 10, 73. The decree in Soissons, published in 1753, stated that "que les mariages des infidèles sont légitimes; qu’un infidèle qui convertit peut et doit mémé demeurer avec sa femme qui persévère dans l’infidélité et qui consent d’habiter avec lui, et de meme la femme avec son mari; mais si l’infidèle se sépare, le fidèle a droit de se séparer aussi...On permet mène à un fidèle, ainsi abandonné par la partie infidelle de se remarier à un autre."\(^{66}\)

\(^{67}\) Consultation sur le mariage du juif Borach Levi, 8, Bibliothèque Nationale de France, 4-FM-19430.

\(^{68}\) Ibid, 2.

\(^{69}\) Ibid, 53.
Levi’s marriage remained valid at the moment of his baptism. His conversion neither freed him from a marriage contracted by Jewish law while he was a Jew, nor allowed him to rely on Jewish law to divorce.\textsuperscript{70} Baptism “purified sins but did not sever marriages,”\textsuperscript{71} nor did it change one’s social identity from a Jewish alien to French citizen.\textsuperscript{72}

On 2 January 1758 the parlement of Paris ruled against Levi’s request, stating definitively that it was “...forbidden for Loyseau's client to remarry during the lifetime of his first spouse.”\textsuperscript{73} The judgment failed to accomplish the goals of the advocates who defended Levi. It recognized, however, the legitimacy of Jewish marriages and extended the protection of French law to Jewish wives.\textsuperscript{74} Implicitly Jewish practices, where they did not conflict with French practices, were recognized by French law. Conversely, French courts would not legitimize practices which differed from the principles of French law, limiting the toleration of distinctive customs. Ironically, this process created an obstacle to the assimilation it was intended to promote by preventing converts from remarrying during the life of their recalcitrant spouses.

Inclusion of this rule in the letters patentes of 1784 with other regulations over Jewish personal status weakened Jewish autonomy by reducing Jews’ ability to control the remarriage of the community's members without providing an alternative. This lack of an alternative left those who wished to leave the community rudderless. Paradoxically, while pursuing reforms intended to assimilate the Jews, the judgment on Borach Levi’s appeal and the letters patentes of 1787 had the opposite effect by enforcing exclusion of Jews who had converted from Catholic society regardless of religious allegiance. These events created a category of converted Jews who could

\textsuperscript{70} Ibid, 46.
\textsuperscript{71} Ibid, 59.
\textsuperscript{72} Ibid, 39.
\textsuperscript{73} Loeb, 62.
\textsuperscript{74} Plaidoyer pour M. l’Éveque de Soissons, initime contre Joseph-Jean Elie Levy (Levi) ci-devant Borach Levy, juif de nation, appellant comme d’abus, 1758, Bibliothèque Nationale de France, 4-FM-30290(1).
only exist on the legal fringes of society and whose social and legal identity was in limbo. It also made it impossible to dissolve the barriers which had kept the Jews as a separate entity from the rest of French society.

Levi's case heralded the problem of assimilation into French society which would prove an enduring one, which as Michael Marrus has asserted, has not yet been resolved: "The Jews of France were highly assimilated into French life and at the same time their assimilation was never complete and was a continuing problem." By linking the reform of Jewish status to the indissolubility of marriage, Levi's case bridged the space between the private sphere of individual life and the public sphere in the reform and reordering of society. Yet the same link also made it impossible for the Jew to shed his particularism to become part of the public sphere. By highlighting this dilemma Levi's case was a harbinger of a debate regarding juridical reform, personal status and the Jews' civil standing that would continue to evolve throughout the eighteenth century. While Borach Levi was consigned to oblivion after the parlement's judgment, the record of his legal battle would have enduring implications as much for what it did not resolve as for what it did.

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"Il est Juif mais, il est Français." The Peixotto case; the effect of Jewish divorce litigation in French courts on Jewish status
Chapter Five

In 1775, over twenty years after Borach Levy’s appeal was denied, a Jewish bordelais banker named Samuel Peixotto brought his request for a divorce from his wife, Sarah Mendes D’Acosta, before the Châtelet of Paris. Like the Levy case, the Peixotto case attained almost unprecedented notoriety and attracted the advocacy of some of the most prestigious lawyers in pre-revolutionary France. Guy-Jean-Baptiste Target, Louis-Simon Martineau and Pierre-Louis Lacretelle all contributed to this famous litigation. The Parisian gazettes and journals, the Bordelais and foreign press were all fascinated by the case.1 Superficially, the Levy case and the Peixotto case shared a number of similarities. Like the Borach Levy case, the Peixotto case was more than a cause célèbre divorce, in part because it drew attention to the extent of the sovereign courts’ jurisdiction over distinctive groups, particularly the Jews. The Peixotto case, however, was not just a re-visitation of the Borach Levy case. It provided a lens into a remarkable transformation in attitudes towards divorce and towards Jewish status in the two decades since the Borach Levy case, which was based on an entirely different paradigm of juridical structure.

The timing of the Peixotto case coincided with the most important pro-divorce movement prior to the French Revolution which supported the concept of divorce as an element of natural law that should be available not only to the Jews, but to all French subjects despite the Church’s prohibitions against it. The concept of the indissolubility of marriage, which had prevented the converted Jew Borach Levy from obtaining a divorce from his Jewish wife twenty years before, had come under attack by an intellectual elite as part of an attack on the pervasive influence of

1 Guyot mentioned the great interest the legal world had in the case: “les grandes questions de droit public sur lesquelles roule cette affaire on vivement intéressé les jurisconsultes; on s’est procure les Mémoires avec empressement et surtout la consultation sur le divorce de la loi Judaïque qui a été réimprimée et se trouve chez le Clerc, libraire.” Répertoire Universel de Jurisprudence de Guyot v Divorce (1784 T.V.), 742 and 750; see also Denisart who reported the Peixotto case and Pisdant de Mariobert who dedicated a full chapter to Peixotto.
the Church. This movement, called the divociare movement,\textsuperscript{2} not only eroded the Church’s influence over divorce, it created a climate for a reconsideration of the existing social structure in different ways. Among the immediate consequences was a deconstruction of the traditional isolation of the Jews by their inclusion in a broader juridical system which eliminated Jewish autonomy.

Unlike the Levy case which had treated the Jews as inassimilable and separate from the rest of French society, arguments in the Peixotto case articulated the possibility of integrating the Jews as a group into the French polity by recognizing the jurisdiction of sovereign courts over issues pertaining to Jewish law. By addressing the possibility of reconciling Jewish law on personal status issues such as divorce with French civil law, the arguments put forward by advocates in the Peixotto case heralded the possibility that Jews should be treated as French subjects under French law. This debate changed the approach toward the Jews from one of bare toleration of a marginal group, generally excluded from French society, to the more inclusive concept of national identity which did not bar participation in the polity as a result of distinctiveness and particular practices.\textsuperscript{3}

The two decades between the two cases witnessed a broad attitudinal change. At the time of the Borach Levy case in 1754, although Jews had begun to appeal to French courts even on personal status issues such as marriage and divorce, their status was ambiguous and they were considered as \textit{étrangers} at best. Significantly, although there was evidence of Jewish appeals to sovereign courts, there was no acknowledgment that the Jews had civil or juridical standing, particularly on matters related to personal status such as marriage and divorce. Even converts who had ostensibly left the Jewish community did not have clear standing before sovereign

\textsuperscript{2} Described in more detail in chapter 3.
\textsuperscript{3} Under the \textit{ancien régime} the idea of a minority was anachronistic. See Ethel Groffier, \textit{Le statut juridique des minorités dans l’ancien régime} (Laval: Les presses de l’université Laval, 2007), 7.
courts on issues related to personal status. As the Levy case had demonstrated, appeals on these issues seemed futile in light of the pervasive influence of the Catholic church which doomed any effort to reconcile Catholic doctrine with some aspects of Jewish law such as divorce to failure. Nonetheless, there were subtle elements of integration between the Jews and the French juridical system. Some Jews, despite their lack of formal status, appealed to authorities outside the Jewish community even on personal status issues despite the repugnance of Catholic theology. The impetus toward juridical integration was also apparent in the voluntary registration of Jewish marriage contracts with French notaries to ensure their enforceability as well as the adoption by Jews litigating in sovereign courts of some of the forms and formulas used for pleadings.4

By the 1770s however, assertions that Jews should have a consistent formal status within the polity in keeping with ideas of juridical centralization had become a public debate. While there was consensus among many reformers that the Jews should be integrated into French society, reformers were divided on the level and form that integration should take. Integrating the Jews on a juridical level was a critical aspect of this debate. In this context some reformers asserted that if Jews were considered to be French subjects, elimination of Jewish customs and particularistic practices was required to fully integrate the Jews into French society. The issue of divorce was a particular example of a Jewish practice which did not conform with existing French law and which some reformers believed would have to be eliminated. Other reformers asserted the converse however, and desired to protect and preserve the Jews' particularistic practices regardless of whether or not they conflicted with French values. Again divorce played a role as a particular example. There was also a third group of reformers who believed that French

4 See Szkajkowski, Alsatian Jewish Inventories in the Hebrew Union College Library, 96-97; Gildas Bernard, Les familles juives en France; Berkovitz, Rites and passages, 277; André Aaron Fraenckel, mémoire juive en Alsace: Contrats de mariage au XVIII siècle; Rosanne and Daniel Leeson, Index du livre Mémoire juive en Alsace, contrats mariage au XVIIIe siècle; Letter from Mendel Cerf to Borach Levi (ci-devant Levy) Actes et pies servant de mémoire à consulter pour le juif Borach Levy BNF, 4-FM-3569.
law could be reconciled with Jewish law. Divorce also played an important role for this group. These reformers championed the concept of a secular and centrally administered judiciary where divorce would lose its characterization as an abhorrent and illegitimate practice of a marginal group and would be permitted to all subjects. This debate linked juridical structure to both the rights of a particular group and to the most fundamental aspect of the individual’s relationship to the state through the issue of divorce.

Initially, the publicity around the Peixotto case overwhelmingly portrayed the Jews and the custom of divorce as barbarous. Examples include the work of the irreverent novelist Pidanzat de Mairobert, who dedicated a whole chapter to Peixotto in Volume IX of the *Espion Anglois, Correspondence secrète entre Milord All eye et Milord All ear*, originally published anonymously in 1777 under the title *L'observateur anglois*. In this chapter de Mairobert took license with the person of Peixotto through an exposé on the divorce which was printed verbatim in the city pamphlets.⁵ Despite the negative publicity, the Peixotto case rapidly became central to the development of the divorciaire movement. These pro-divorce arguments, which initially addressed the concern over a low birth rate, commenced with an anonymous work called *Cri d’un honnête homme qui croit fondé en droit naturel à répudier sa femme* (1768), which argued that husbands should have the right to divorce adulterous wives and remarry so that they could have heirs of whose paternity they were certain.⁶ This was followed by the *Cri d’une honnête femme qui réclame le divorce* (1770) which, in contrast, promoted the idea that women should have the same right to divorce as men and that all people should have the liberty to leave a failed

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marriage and remarry happily. The demographic theme was also apparent in *Législation du Divorce* by the demographer de Cerfvol (an anonymous pseudonym) which proposed legalizing divorce to encourage more marriages and increase population growth. This was followed in 1771 with a scathing critique of the works of de Cerfvol by the *avocat général* of the *parlement* of Paris, Antoine Louis Seguier. Seguier took the position that divine law, as transmitted through Moses and Jesus, was clear concerning the indissolubility of marriage. In support of his argument he referred to the case of Borach Levy on which he had delivered a judgment. The timing of these debates made the Peixotto affair, as a non-Christian divorce, a space for neutral reflection with little risk for both the adversaries and partisans of divorce. This same characteristic, however, also made it a forum for conflicting opinions on Jewish status.

Despite its complex judicial history, the facts of the Peixotto case are straightforward. Samuel Peixotto was the son of a banker from a wealthy family of the Portuguese *nation* in Bordeaux. The family’s business frequently took him to London and Amsterdam. In London he was introduced to Sarah Mendes d’Acosta, the sister and daughter of bankers well known throughout Europe. The two families rapidly agreed to what appeared to be an advantageous match. On March 3, 1762 Samuel, represented by an agent of his parents, married Sara Mendes d’Acosta. The respective age of the spouses was mutually contested by the defenders of both

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10 Evelyne Oliel-Grausz, 76.
parties: for Samuel, between the age of 17 to 21 years,\textsuperscript{11} and for Sarah, between 26 and 34 years.\textsuperscript{12} Whatever the exact ages it seemed that a great difference in age separated the parties and that Samuel may not have attained his majority of 21 years, a fact which would become significant in the litigation. The nuptial benediction was celebrated according to Jewish rights in the Portuguese synagogue in London after which the couple left for Bordeaux where they began to live. After five years of a union that was never happy, despite three children, they separated. Samuel fixed his domicile in Paris and Sarah lived with her mother-in-law in Bordeaux. In 1775 Samuel took the unusual step of by-passing the rabbinical court and requested an annulment of the marriage before the Châtelet of Paris. Thus began a long judicial battle that never found a solution and ended only in 1783 with Sarah’s death.\textsuperscript{13}

The litigation was divided into three phases which roughly paralleled the chronology and development of the larger pro-divorce movement. The first was concerned with the demand for the annulment. Peixotto invoked the application of the French law respecting the invalidity of his marriage and proclaimed himself as a French subject who was required to comply with French law regarding personal status. Samuel argued that, according to the law of the realm, the union formed in London should be considered as null for four reasons. First, that the law prohibited marriages by minors and seduction of a minor would invalidate the marriage. As a minor of less than 21 years Samuel did not enjoy the capacity to marry according to French law. Ancillary to this was the disparity in age with his spouse which presumed seduction, which was another ground that could invalidate the marriage. Second, failure to obtain maternal consent would also invalidate a marriage. In this case Samuel’s mother, in the absence of his deceased father, did not

\textsuperscript{11}Memoire a consulter et consultation pour dame Sara Mendes d’Acosta... contre sieur Samuel Peixotto, sur une demande en nullite de marriage et sur le divorce Judaïque, M.S. Joly de Fleury 508, fol. 92. Bibliotheque Nationale de France (hereinafter BNF) Richelieu, Paris. Piece 1 and 3.
\textsuperscript{12}Ibid, Piece 3.
\textsuperscript{13}Ibid.
give her explicit consent to this marriage. Third, the failure to abide by the forms to publicize the marriage as required by an edict of 1697 to priests and all ministers of the sacrament regarding nuptial benedictions was also required and failure to do so would invalidate the marriage. In this case the proscribed procedure to publicize the marriage had not been followed. Fourth, the absence of the authorization of the French King for a marriage of one of his subjects to a foreigner would also invalidate a marriage.\textsuperscript{14} In this case Samuel, who claimed the status of a subject of the French king, had not obtained Royal consent to the marriage.

The Châtelet, by a default sentence of December 30, 1775, found in favour of Peixotto. Sarah refused to accept the decision and appealed to the \textit{parlement} of Bordeaux, which affirmed the decision of the Châtelet of Paris.\textsuperscript{15} Sarah alleged that the Chatelet of Paris lacked jurisdiction based on the domicile of the spouses in Bordeaux. She also claimed the benefit of Jewish law which supported her contention that the marriage was valid. This initiated the second phase regarding the problem of the domicile of the spouses (Paris or Bordeaux), as well as a challenge of the competency of the tribunal. Sarah appealed this decision to the \textit{parlement} of Paris and invoked, to her benefit, Jewish law which provided that the union was technically valid. It was at this stage that a number of celebrated advocates became involved in the proceeding. Louis-Simon Martineau and the prosecutor Joseph-Francois Foullon appeared for Peixotto, Duvergier (and later Guy-Jean-Baptiste Target) for Sarah and Pierre–Louis Lacretelle for the children of the marriage. Seguier, as advocate-general for the \textit{parlement} of Paris, would also comment on the case as he had almost twenty years before in the Borach Levy case.

\textsuperscript{14} Ibid.
At this stage in the proceedings Samuel changed his strategy. In an abrupt about face, he expressed his reliance on Jewish law in order to request a divorce as opposed to an annulment. This change from a claim for annulment to divorce initiated the third phase of the litigation. On April 9, 1778 the advocate general Seguier delivered the judgment for the Grand Chamber of the parlement of Paris which granted Samuel his right to pursue his claim for divorce. The two parties then found themselves back before the Châtelet with Samuel seeking to obtain a divorce and Sarah seeking to introduce a demand for the separation of body and goods while maintaining the marriage intact. After the exchange of pleadings at this stage, and with the very active participation of Target on Sarah’s behalf, the Châtelet decided on May 10, 1779 that the two parties must attend in person before two rabbis of the Portuguese Jewish nation, “who would draw up the acts that they were believed to require according to the customs of the Portuguese Jews.”\textsuperscript{16} After this they were to obtain a "certicat de coutume" on which the Châtelet would reserve judgment. The elders of the nation established at Bordeaux, whose opinion the royal tribunal accepted, were Raphael Mendoza, Abraham Raba, Salomon Lopes-Dubec and Jacob Pissaro.\textsuperscript{17}

The cycle of proceedings was nothing short of remarkable for its legal contortions. In the first phase Samuel claimed to rely on the law of the realm for a declaration of nullity for his marriage which had been conducted according to Jewish rites. Conversely, Sarah invoked the same law to defend its validity. In the following phases the parties totally reversed their positions. Samuel invoked Jewish law, which he had previously repudiated, to obtain a divorce while Sarah relied on the law of the realm to preserve the matrimonial bond and to grant a separation at bed and board which Jewish law did not recognize. Concerned that the proceedings

\textsuperscript{16} Théophile Malvezin, \textit{Histoire des Juifs a Bordeaux} (Marseille: Lafitte, 1976), 230.

\textsuperscript{17} Ibid.
were not going to his advantage, and in the belief that conversion would annul his marriage, Samuel left France and went to Spain where he was baptized by the bishop of Siguenza in 1781.  

Even Sarah’s death in 1783 did not definitively end the affair. Samuel attempted to make a claim against Sarah’s estate by opposing the crown’s droit d’aubaine as Sarah had remained his wife despite all his efforts to the contrary.

What began as a juridical battle regarding the validity of a marriage and the right of the husband to dissolve it, generated a much broader debate regarding Jewish civil status. The proceedings and the parties’ alternating positions highlighted the ambiguity and lack of consistency in Jewish juridical status and reflected the need for juridical reform. In the first phase of the proceeding, the claim for an annulment according to French law relied on Samuel’s standing as a French subject, subject to French laws, particularly concerning his lack of competence to consent to the marriage and the failure to obtain his parents’ consent to claim the marriage was invalid. This claim set the stage for opposing arguments which centered on Samuel’s status as a Jew.

The arguments presented by the parties fell into three general categories. The first category was that presented by the advocate Duvergier and was the most traditional in its opposition to Jewish law and its place in the French system. He, like Seguier, asserted that the Jews’ particular laws should neither be respected nor should Jews be permitted to integrate into French society. He saw Jewish customs as abhorrent and odious. He characterized the Jews as an indigestible foreign element and as barbaric aliens whose customs, when they conflicted with the

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19 Duvergier's first names are unrecorded.
law of the land, should not be permitted.\textsuperscript{20} Louis-Simon Martineau and Joseph-François Foullon, in defence of Samuel Peixotto, also defined Jews as foreigners. In contrast, however, they argued that the \textit{lettres patent} which permitted the Jews to reside in France granted them the right to their specific practices no matter how odious. This second category of argument thus proclaimed respect for the autonomy of the Jews and supported toleration of their practices, but at the price of isolation. These arguments regarded the Jews’ particularism as fatal to integration.\textsuperscript{21} The third category of argument was advanced by Target and Lacretelle which asserted that the Jews are French and should be treated as French subjects regardless of their particularistic practices, provided they were subject to French courts.\textsuperscript{22}

As the most traditional of the arguments against Samuel’s claims, Duvergier’s assertions were not novel. Duvergier asserted two grounds against Samuel’s claims to invalidate his marriage. Samuel relied on French law to apply the principle of \textit{locus regit actum} (the place governs the act) to establish his claim that his minority made him legally unable to consent to the marriage. The policy behind this rule was to prevent clandestine marriages, a policy which the Jewish authorities concurred with. For example, responding to questions put to him by Dupré de Saint-Maur, the intendant of Bordeaux, Abraham Gradis, a prominent leader of the Sephardic community, stated that three witnesses and the consent of the father, mother or guardian were necessary for a valid marriage. Gradis insisted that “It is essential that this is a strict law,”

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\textsuperscript{20} Memoire pour la Dame Sara Mendes d’Acosta... contre sieur Samuel Peixotto, sur une demande en nullite de mariage et sur le divorce de la loi Judaïque, par Duvergier, avocat, 1778, M.S. Joly de Fleury 508, Fol. 92. BNF Richelieu, Paris.
\textsuperscript{21} Consultation sur le divorce de la loi Judaïque, signée Martineau, Clement, Blondell, Jolly, Courtin, 30 Juin 1778, Paris; Observations sur la separation et le divorce judaiques, pour S. Peixotto contre Sarah P. signe de M. de Saint-Frageau, avocat du roi, et de Foullon, procureur au Chatelet, 1779 M.S. Joly de Fleury 508, Fol. 92, BNF Richelieu, Paris.
\textsuperscript{22} Plaidoyer pour la demoiselle Sara Mendes d’Acosta par Target, 1779, M.S. Joly de Fleury 508, Fol. 92. BNF Richelieu, Paris.
reflecting his concern that abuses were not an unusual occurrence. While Duvergier was satisfied that the conditions Samuel presented were in fact necessary for a valid marriage according to French law, he was not satisfied that Samuel, as a Jew, should be considered to be a French subject. Accordingly, Duvergier’s argument on behalf of Sarah asserted that the marriage would not have been declared null according to French law in any event because Samuel was not a French subject. Rather, like all Jews the world over, he was stateless:

Moreover, the sieur Peixotto is not French although naturalized, but Jewish... Portuguese Jews are a nation. A Portuguese Jew born in Bordeaux in France is the same as a Portuguese Jew born in Amsterdam, London and Lisbon. When P. married in London, it was not the marriage of a French man to an English woman, but the marriage of a Portuguese Jew born in Bordeaux to a Portuguese Jewess born in London... Spread over the entire surface of the earth, there is no country foreign to them. They are subjects of the sovereign only for as long as they live in the land of their dominion or own property. So they cannot claim the enforcement of French law and pretend that he was a minor, no, because according to Jewish law the age of majority is thirteen years plus one day.  

Given the Jews’ status as foreigners, on Sarah’s behalf Duvergier argued that it was ‘absurd to render a Christian court, especially the parlement of France, a minister of the

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23 Malvezin, 245-246.
24 Memoire pour la Dame Sara Mendes d’Acosta... contre sieur Samuel Peixotto, sur une demande en nullite de mariage et sur le divorce de la loi Judaique, par Duvergier, avocat, 1778, M.S. Joly de Fleury 508, Fol. 92. BNF Richelieu, Paris.
Jews."

He claimed that instead of addressing his request to Christian tribunals, such as the Châtelet or the parlement, Peixotto should address his request to “the rabbis and the elders of the community of Jews from Bordeaux.” Duvergier reinforced this argument with the absurdity that would result if “A Christian court admits a divorce in a case where the Jewish Sanhedrin will not admit it. This should be an estoppel.” He argued that the Châtelet and the parlement should declare themselves incompetent to decide the issue. According to Duvergier there was an inherent paradox in granting an order that was not enforceable according to French law because of the doctrine of indissolubility of marriage. To Duvergier the recognition of a Jewish divorce by a sovereign court would have undermined the Catholic doctrine on which the authority of the court was based. It would also tacitly acknowledge that the Jews were something more than étranger, a position which was untenable in a juridical system which defined membership through the hegemony of Catholicism.

Duvergier’s argument, however, went even further than the mere lack of sovereign recognition of the Jewish custom of divorce. He also claimed that the Jews’ particularism exemplified by divorce not only lacked legitimacy under sovereign law, it could not be tolerated at all. He claimed particularistic practices such as the practice of divorce, even by foreigners, offended French values and could not be permitted in France. Duvergier claimed an absolute prohibition of divorce based on the universal hegemony of the Catholic doctrine of the indissolubility of marriage regardless of the Jews' ignorance of French law. Duvergier’s asserted that Jewish customs, which might have had validity in another time and in another part of the world, were inconsistent with French values and that Jews living in France must conform their practices to them: “It is clear that under a sky of fire, blood is burning, continence harder and

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26 Ibid.
27 Ibid.
indulgence of the legislator necessary. But the Jews who live among us, who are born under the same sky as we are do not need the laxity in the application of the law that commands us to remain with our companions...”

His assertion of Catholic universalism extended beyond theological and social prohibitions and bordered on a racial characterization. His description of the practice of divorce as a custom originating in blood heated by a foreign sun resembles Aristotelian ideas of gender and the heated blood and constellation of humors which were thought to make women irrational beings. This characterization therefore identifies the Jews, like women, as irrational and barbaric, to be considered inherently unsuitable to participate in the polity. He interpreted the prohibition of divorce in the gospel of Matthew to claim that the law of Moses did not condone divorce. He also made the alternative argument that in the event that divorce had been permissible under Mosaic laws in biblical times, it was still prohibited in France because the Jews of France no longer lived under the "ciel de feu" that promoted the sexual incontinence of which divorce was a manifestation. His argument, however, stops short of a more modern and racial conception by focusing on the practice of divorce rather than the Jews themselves. By focusing on the Jews' practices, rather than on the inherent nature of the Jews themselves, Duvergier hinted that changing the Jews' practices would change their character. The Jews' barbarism was not immutable. Residing in France instead of under the "ciel de feu" created the opportunity to improve the Jews with the possibility of integrating them, even if this ultimately meant the elimination of the distinctiveness that gave them their Jewish identity.

In contrast, Martineau argued that some limited diversity was acceptable despite the hegemony of Catholic doctrine. He asserted that although the Jews were foreigners, they should be tolerated and their laws should be respected even if they conflicted with French law: "The

28 Ibid.
Jews are among us as travellers, we must protect these foreigners during their sojourn.”

He assigned the Jews to the category of foreign residents or étranger that, while less than French subjects, were more than marginal vagabonds. This categorization entitled them to minimal privileges including the right to have their customs respected:

They are not members of the political society in the midst of which they live. Jews who live among us are not our citizens, France is not their homeland, as they live in a place of exile, as strangers, as members of this Republic that once had its center in Jerusalem, and is now nowhere. They have the freedom to validly marry according to their laws and customs in this kingdom or outside the kingdom.

He called for a halt to the persecution of the Jews who were the object of “envy, greed, false politics, covered with the mantle of religion,” and for their protection from the harsher consequences of a more marginal status such as being subject to the crown’s exercise of the droit d’aubaine which permitted the crown to seize the goods of deceased foreigners and prevented the transfer of property by inheritance. He claimed there should be no interference with the practices of the Jews because “they are not members of the political society of the milieu in which they live.” As étrangers they had a clear right to maintain their own laws.

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30 Ibid.
31 Ibid.
32 Martineau was also the author of the consultation “Memoire pour les héitiers d’Abraham Vidal, juif portugais, négociant à Paris, contre m. Le procureur general, Paris, 1784.
33 Consultation sur le divorce de la loi judaïque (30 Juin 1778) Sur la question de savoir si le libelle de divorce donne par le sieur Peixotto a la dame da Costa, a rompu les liens qui les unissaient, BN 4 FM 25362; Observations
He asserted that they were entitled to continue their particularistic practices including divorce. Their status as étrangers included the right to maintain a separate judiciary. French judges could not rule on Jewish law and Jewish rabbis could not make rulings on French law. Ironically, this did not prevent Martineau, an outsider, from analyzing the issue of Samuel’s divorce in the context of Jewish law. Using the critique of rabbinical comments on the divorce by a rabbi Azulai, Martineau concluded that Samuel’s actions did not remove him from the scope of Duetoronomy 24,1 which made divorce permissible.34

Similarly, Foullon also saw the Jews as étrangers who should be permitted to practice their distinctive customs without interference no matter how repugnant they were to French law. He believed that although divorce was "…la loi des juifs," it should still be respected. He stated that French judges should "... not accuse him (the Jew) of injustice under a different law than yours."36 The Jew should "live according to his customs, he must be judged according to the same customs."37 In contrast to Martineau’s assertion, however, Foullon argued that French judges could make rulings on matters of Jewish law, according to the principles of Jewish law.38 In further support of his position Foullon argued that the Jews had been granted the right by the lettres patentes of Henri II (1550) and Louis XVI (1777) to turn to Royal tribunals for the enforcement of their law. He referred to a celebrated case of the childless widow Blanche Silva, the sister-in-law of Jacob Telles da Costa, against Daniel Telles da Costa as an example of the

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34 If a man takes a wife and she finds no favour in his eyes because of some indecency, he may write a certificate of divorce and send her out of his house.
36 Ibid.
37 Ibid.
38 Ibid, BN4-FM-25362; observations sur la separation et le divorce judaique: pour le sieur Samuel Peixotto contre la dame Sara Mendes d’Acosta.
enforcement of Jewish law by a sovereign court.\textsuperscript{39} Blanche Silva sought to enforce the Leverite law of marriage which would have required her, as a childless widow, to marry her brother-in-law. The \textit{parlement} of Bordeaux ordered the defendant to pay damages to the widow. Although it did not reject the custom of Leverite marriage outright, the \textit{parlement} did not condemn the defendant to submit although it did order him to pay damages to the widow.\textsuperscript{40} Foullon's reliance on this case to support his position was, however, misplaced. This was not a clear case of sovereign enforcement of Jewish law. Aside from the issue of the validity of the law, there were facts which militated against its enforcement even for a Jewish court. Apparently Blanche expressed her opposition to the Leverite marriage by scorning her brother-in-law at the gate to the city, throwing her shoe at him and spitting in his face. Moreover, the brother-in-law was already married and his marriage to the widow would amount to bigamy, which was not permitted either by sovereign law or Jewish custom which had barred the practice of polygamy among European Jews since the middle ages. Regardless of Foullon’s misplaced reliance on the Blanche Silva case, his position was a remarkable affirmation of the right of Jews to live according to their own law which could be enforced by sovereign authority.

Because of his lack of success in the first two rounds of litigation, in the third phase of the litigation Peixotto turned to Jewish law to dissolve the marriage. He argued that the prohibition on indissolubility could have no application to a marriage which was valid according to Jewish law. He asserted:

\begin{quote}
…we are Jews, my wife and I, our marriage was solemnized under the mandate of the Jewish religion and the Jewish laws, according to rules for marriage and these are the laws under which my
\end{quote}

\textsuperscript{39} Malvezin, 280.
\textsuperscript{40} Ibid.
marriage is regulated. If my marriage radically contravenes the laws of the kingdom, but is valid according to Jewish law the applicable law will be the law of the marriage itself... It would be absurd if the law of indissolubility which is the law of the kingdom imprinted its character on a marriage it did not recognize.  

Samuel's argument was based on the relative ease of repudiation available to husbands in Jewish law. Samuel, through his counsel, asserted that the parlement had the jurisdiction to make findings and pronounce on the effect of the particular law of aliens, in this case the Jews. Samuel asserted that, as the formalities of Jewish divorce had been complied with, the parlement had jurisdiction to pronounce on the civil effect of the divorce which included matters such as restitution of the dowry and the prohibition against the former spouse’s continued use of the family name.

At this stage Target and Lacretelle made the bold argument "Il est Juif, mais il est Francais." Although this argument would resonate with the National Assembly ten years later, the basis of their position was much different. Target and Lacretelle articulated the position based on the principle of juridical centralization. They argued that the Jews should be entitled to retain the particularistic practices that defined them provided sovereign courts had authority over all matters including issues which would require the interpretation of Jewish law. They asserted that the lettres patentes which permitted the Jews to reside in France gave them the full protection of sovereign law: “they (the Jews) live according to their customs, without being troubled by the authorities because of their manner of living.” Nonetheless, they asserted that "The nation that gives them asylum cannot grant this relief incompatible with the laws of their

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42 Plaidoyer pur la demoiselle Sara, Target, M.S. Joly de Fleury 508, Fol. 92, BNF Richelieu, Paris  
43 Ibid.
By focusing on the jurisdiction of the French courts over Jewish divorce they provided a basis for a redefinition of Jewish status as French subjects. Influenced by theories of natural law, they argued against the prohibition of practices such as divorce, which contravened Catholic doctrine. Since divorce “is part of the customs of the Jews it must be authorized and it should be permitted to them in the kingdom.” Their argument was distinct from Martineau and Foullon’s arguments, however, because their argument was founded on the claim that divorce, like other aspects of Jewish law, accorded with natural law even if it contravened Catholic doctrine: “The right to divorce does not contravene natural reason, nor the laws of justice or harmony, but it scandalizes the Catholics.” Natural law also provided that sovereign courts had jurisdiction over the Jews who were required to abide by the law of the realm. Expanding this principle, Target also argued that the Jews’ religion did not separate them from being subject to the same government as other French subjects. In making this argument Target distinguished the Jews from the situation of the Protestants who had been prohibited from obtaining divorces before the revocation of the edict of Nantes. Rationalizing French jurisprudence, Target found that, because the Jews had always been permitted to practice divorce, Jewish divorces were subject to sovereign authority. In this context Target also claimed that the consideration of divorce should no longer be an issue of doctrine, but rather should be considered on the individual merits of each case. Abusive circumstances would still prohibit a divorce. Unfortunately the Peixotto divorce was a divorce that was “the most arbitrary of

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44 Ibid. Piece 9, 47.
45 Ibid.
46 Ibid.
47 Ibid.
48 He cited an order of the council Souverain d’Alsace (1772) that prohibited the consistory of Lutherans from granting divorce in the case of adultery. Ibid.
persecutions," which scandalized the conscience of even the Jewish community. As a result there was a genuine question as to whether or not the divorce could be granted.

Although Lacretelle, acting on behalf of the children of the marriage, defended the validity of the marriage, he echoed Target’s approach to divorce as an element of natural law and pressed for a centralization of juridical authority which would include jurisdiction over the Jews in matters of divorce. In this regard he confirmed that Target’s argument regarding the acceptability of divorce based on mutual consent accorded with the principles of natural law. Natural law was a law *ius gentium* (law common to all people). Natural law was to be applied to foreign nations as much as it was to French subjects and natural law condoned divorce by mutual consent, divorce for incompatibility based on irreconcilable differences and repudiation in the case of fault of one of the parties. Unfortunately, the claim for divorce in the Peixotto case was not based on any of these criteria. The claim for a divorce under Jewish law was a different matter in Lacretelle's view. He refused to engage in an interpretation of Jewish law by admonishing the sovereign magistrates: "you are not the judges of the Jewish discipline." Moreover, he asserted that tribunals did not have the right to interpret or police “… decrees given by Moses.”

His use of the case as a platform regarding reform of Jewish status, however, would have resonance. Similar to the position later taken by the Abbé Grégoire in his defence of the Jews of Alsace in his treatise for the Metz academy contest, Lacretelle did not question Samuel Peixotto’s status as a Frenchman. Lacretelle echoed Target’s logic in the claim that the Jew “is a man who lives among us and that lives under the protection of our laws.” He acknowledged the

49 Ibid.
50 Ibid., Tome premier, Paris, 1823, 292.
51 Ibid.
distinctions between the Ashkenazic Jewish communities in France and the more privileged position of the Sephardic Jews of the South-West. The Sephardic Jews, to which community Samuel Peixotto belonged, were considered by sovereign authorities and by themselves to have the same status as other French subjects: “Portuguese Jews have had the good fortune to obtain a kind of naturalization in France. French magistrates, this has made you the judges of their contracts, and guardians of their morals, you must not disturb the exercise of their religion... and you must not permit them what is neither just nor honest.”

Disregarding the Sephardics’ efforts to disassociate themselves with their Ashkenazi co-religionists, Lacretelle used the example of the Sephardics to demonstrate the need for judicial centralization and conformity. He asserted that if French courts had jurisdiction over the Sephardic community they should also have jurisdiction over the Ashkenazis. There should be no juridical distinction between the two groups. Both groups should be treated as French subjects. Although this argument superficially heralded the arguments put forward ten years later in support of the National Assembly's emancipation decrees, in the context of the Peixotto case the intent of the argument was more limited; juridical reform rather than civil emancipation. Lacretelle wanted to rationalize the existing system rather than create a new one.

On the specific merits of the case he applied French law to Samuel’s claim to invalidate the marriage. He found that the elements necessary to establish minority and seduction according to French law were not present. Samuel was 21 before the celebration of the marriage and, according to Lacretelle, his mother had given her consent. Lacretelle argued that the rule regarding publication of the bans as prescribed by the edict of 1697, was a mere formality. Accordingly, he asserted that the marriage was valid according to French law although it had

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been formed according to Jewish rites in a foreign country. These arguments were effective in defeating Samuel’s pursuit for an annulment according to French law.

The divorce was brought before the *parlement* of Paris which, by its order of April 9, 1778, granted Peixotto a stay in his demand for the annulment and granted his right to pursue his demand for a divorce. The two parties again found themselves in front of the Chatelet. Samuel requested the execution of divorce from Sarah. Sarah, on her side, introduced a claim for a separation of bed and board. After this Peixotto, who without doubt was aware that the proceedings were not going in his favor, went to Spain where he was baptized in 1781 with the intent of having the conversion annul his marriage. The death of Sarah in Paris in 1783 terminated this long affair without giving Peixotto the result he desired. In the ultimate irony, after her death he tried to affirm his right to the possessions of his wife on the basis that she had remained his wife despite his efforts to sever the relationship.

Despite the lack of a judicial resolution for the parties, the Peixotto case had critical significance through its impact on two important areas of reform. It provided a basis for conceiving divorce on a secular level as an aspect of juridical centralization without adherence to conflicting religious practice. The divorce law of September 1792 would reflect the arguments in the Peixotto case. Moreover, the arguments put forward by the various advocates used ideas of juridical centralization to construct a new paradigm of membership in the polity. In that regard the arguments of the *Portugais nation* of Bordeaux, Sephardics, echoed the arguments of Target and Lacretelle: “It was always our principle to assimilate with other citizens, in this all may depend upon us.”

The Peixotto affair would also have an important role in the work of the Malesherbes commission in 1787 which Malesherbes formed as a result of the King’s order to study the

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54 Malzevin, 20.
question of the Jews. The advocates Target and Lacretelle, whose arguments were so critical to the Peixotto case, were important collaborators in this effort. The Peixotto case would also play a role in the responses of the members of the Sephardic community to Malesherbes' requests for their input, especially on the issue of divorce. Specifically, feeling victimized by the notoriety of the Peixotto case and concerned with the image of the nation, the Sephardic deputies asserted that divorce was a relative rarity and that the repudiation of women without their consent was very remote in their customs and in the laws of the Jews.\textsuperscript{55} Despite these reservations however, they did not renounce the practice of divorce or their communal religious autonomy. They framed their comments as a matter of moral justice and they proposed that divorce would not be authorized except in grave cases, and even in those cases the assembly of the nation (and, significantly, not solely a religious tribunal) "would decide definitively and without appeal, with a three quarter majority on the divorce." They did concede, however, in keeping with Lacretelle's emphasis on juridical centralization and their desire to maintain the perception that they were to be considered French subjects, that should the nation reject such a demand the person could appeal to the sovereign courts of law.\textsuperscript{56}

This position contrasted with the attitudes of both the Ashkenazi Jews of the North-East, who wanted to elevate their circumstances without assimilating, and with many administrators toward the Ashkenazics in their battle for the elimination of the \textit{péage corporel} which culminated in the \textit{lettres patentes} of 1784, to be described in greater detail in the next chapter. The regulations in these \textit{lettres patentes}, while eliminating the worst of the conditions against the Ashkenazi Jews, such as the \textit{péage corporel}, appeared to solidify the hegemony of the Church

\textsuperscript{55} Evelyne Oliel-Grausz, 73.
\textsuperscript{56} Sajkowski, \textit{Mixed marriages and conversions among French Jews during the revolution of 1789}, p. 829.
over issues of divorce and continued to isolate and restrict the Jews. In gathering the data for his commission Malesherbes would be left to reconcile policy between these two positions.
"The Jews are men. If we consider them such, why leave them any longer in slavery and humiliation." The *lettres patentes* of 1784: Jewish status as an aspect of juridical reform
Chapter 6

Almost 30 years after the Borach Levy case was decided and ten years after the Peixotto case ground to a halt, two *lettres patentes* were registered which dramatically impacted the Jews’ civil status by making the principal arguments presented in those cases into law. On the surface these two pieces of Royal legislation were diametrically opposed. On the one hand the January 1784 *lettres patentes*, which eliminated the body tax (or *péage corporel*), appeared to elevate the Jews civil status by eliminating a demeaning medieval body tax. On the other hand the July 1784 *lettres patentes*, also known as "the Alsatian Jewish General Regulations of July 10, 1784," imposed greater restrictions on the Jews and reduced their autonomy. Confirmed only six months apart, these two pieces of legislation appeared to represent a conflict in the administration's attitude toward the Jews. The apparent conflict between the two edicts of 1784, however, should be seen in the context of juridical centralization which encompassed the reform of Jewish status in France in the eighteenth century.

The *lettres patentes* of January 1784 were perceived by the Ashkenazic Jewish community as the first step on the road to civil emancipation of the Jews. In a letter dated January 28, 1784 to Bon Guy Doublet de Persan, the Crown's master of Requests and Procurator General of the Bureau of tolls, Cerf Berr, the Alsatian Jewish leader, wrote "the first step in the emancipation of the Jews had become a reality."\(^1\) Although most scholars consider Cerf Berr's pronouncement to be something of an exaggeration, they recognize that the 1784 edict was pivotal to Jewish reform both because of the elimination of the distasteful and anachronistic *péage corporel* which affiliated the Jews with livestock, and because it was the first legislation

affecting Jewish status throughout the kingdom. Conversely the July 1784 *lettres patentes* enacted only six months later, which contained numerous new restrictions, and reduced the autonomy of the Ashkenazic Jewish communities, have been viewed by some scholars as a "retrograde act." This negative historiographical assessment fails to account for the pattern of juridical centralization evident in the Levi and Peixotto cases and in both *lettres patentes* of 1784. This pattern reflected the desire of Royal administrators and enlightened reformers to rationalize the Jews' status regardless of regional variation, conflicts between various levels of authority or the separation created by the autonomy of the Jewish community. This pattern of events also places Jewish status in the context of a broad impetus toward the centralization of authority on the part of the Royal administration.

The *lettres patentes* of 1784 were the successors of over a century of ad hoc administration concerning the Jews of Alsace. More than one hundred years before the *lettres patentes* were registered the peace of Westphalia in 1648 added a large part of Alsace, including the possessions of the Hapsburgs and the bailiwick of Haguenau, to France. Louis XIV confirmed the rights of the Jews living in the area which originally had been granted by the Holy Roman Emperor under *lettres patentes* dated September 25, 1657. He also granted them the same privileges as the Jews of Metz who had been under French dominion before the treaty of Westphalia. Conversely, when, after the Treaties of Nijmegan in 1679, the rest of Alsace passed under French domination French authorities recognized a distinction between the Jews who had resided in the territory that had been under French dominion before 1679 and those who resided

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2 Ibid.
3 Hertzberg, 319-322.
in territory formerly ruled by the Hapsburgs which was subsequently ceded to France.\(^5\) Regulations, penalties and taxes over all aspects of life from the sale of kosher meat to acquiring property and residence rights varied enormously between jurisdictions.\(^6\) The province's Intendant De la Galasiere listed five kinds of taxes to which the Jews of Alsace were subject:

1. Entry tolls owed to the lords who admitted Jews into their lands. Although this was initially arbitrary it was eventually fixed at 36 livres.

2. Residence tax paid annually to the lords at 36 livres in upper Alsace and 10 florins in lower Alsace.

3. Protection tax paid to the king by the Jews of upper Alsace set at 17 livres 10 sous.

4. Body tax paid to the king by the Jews of lower Alsace to be paid by all Jews who entered or left the province.

5. Body tax on all Jews without exception entering or leaving Strasbourg set at 3 livres 4 sous.

6. Levies on Jews who merely passed outside the city in the amount of 32 sous.\(^7\)

The most severe restrictions were in Strasbourg which restricted Jews from residing in the city or acquiring any real property. Jews were specifically prohibited from granting mortgages on

\(^5\) Ibid.


\(^7\) Memorandum of Galaisiere Archives Nationale (Hereinafter A.N.) H3105 feuillet 174; Feurwerker, 865.
land. This restriction included land acquired by virtue of realizing collateral for default on a loan. Any land acquired in this way had to be sold within one year.

The imposition of an additional body tax was one of the more significant differences between Jews who had been under French rule prior to the treaty of Westphalia and those who had been under the Hapsburgs' dominion. The body tax was originally one of the many tolls and seigniorial fees under the ancien régime that were levied on cattle and merchandise travelling through lands belonging to seigneurs and lords. The sums collected were intended to offset the cost of maintenance of roads and bridges. All Jews had to pay the body tax, related taxes and certain special gifts. In Alsace Jews were also required to pay the king’s tax “droit de protection” and the local noble tax “droit d’habitation.” As mentioned in chapter 2, the droit d’habitation served to reinforce the identification of the Jews with the interests of the nobility and thus to increase peasant animosity toward them. After the treaty of Westphalia Jews who lived in the newly annexed territory also had to pay another tax or péage corporel which confirmed their status as aliens whenever they moved to a new territory and entered the jurisdiction of another lord. Only elderly people over the age of 70, rabbis and other officials who were required to change residences frequently were exempt. The péage corporel on the Jews became a particular source of tension between agents of central authority and local authorities who were often rivals and zealous of their own jurisdiction and interests. This tension was exacerbated by municipal governments, which viewed the Jews as a source of competition for their merchant classes in

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conflict with local nobles, and the sovereign who regarded the taxes the Jews paid as a source of profit.

By the eighteenth century the multiplicity of taxes was the object of debate and anticipated reform. Although the government had attempted to reform the administration of tolls since the fifteenth century, it was not until August 29, 1724 that Louis XV established a commission composed of three councilors of state and seven maîtres de requêtes to audit all titles to bridge tolls and other similar fees throughout the kingdom.\textsuperscript{11} Between 1724 and 1774 the commission suppressed 3634 of 5688 tolls in existence at the commission’s foundation.\textsuperscript{12} The commission paid special attention to the tolls it considered degrading to humanity.\textsuperscript{13} The imposition of body taxes on the Jews, which had been common in some jurisdictions since the middle ages, was gradually eliminated. By the middle of the eighteenth century the péage corporel, or Juden-leibzoll, in Strasbourg was the last of its kind formally in existence in France.\textsuperscript{14} The Juden-leibzoll of Strasbourg was viewed with particular distaste by both Jewish and non-Jewish reformers and was perceived as symptomatic of the need for administrative and economic reform.

Enlightened reformers were offended by the toll, which included increasing the toll for pregnant women, as particularly denigrating and appeared to place Jews in the same category as livestock. A palatable denigration was evident in the toll's conflation of Jews with pigs, the very animals Jews regarded as unclean and were forbidden to eat.\textsuperscript{15} Even those reformers with less

\begin{flushleft}
\textsuperscript{11}Ibid.\textsuperscript{12} Ibid.\textsuperscript{13} These tolls included the fee on what a man carried on his back and the body tax on the Jews to enter and exit the city of Strasbourg. Ibid.\textsuperscript{14} Despite the gradual elimination of tolls generally, the body tax of Strasbourg was one of the 5688 tolls still in existence at the beginning of the eighteenth century. Baron de Spon, 
\end{flushleft}
enlightened sensibility were offended by the scope of the *Juden-leibzoll*. For example, the application of the toll extended beyond Jews to any one affiliated with a Jew in any way. Christians who entered Strasbourg to render some service to a Jew were required to pay supplementary tax. Even pairs of horses belonging to Jews were taxed at a higher rate than horses belonging to Christians (8 sous if the horses belonged to a Jew as opposed to 4 sous for a Christian).

Tolls such as the *Juden-Leibzoll* accelerated interest in the Jews' status as part of a larger administrative reform. According to Baron de Spon, first president of the council of Alsace, the momentum for reform accelerated in 1776, the same time period as the Peixotto case was litigated, when Monsieur Armand Thomas Hue de Miromensil, keeper of the seals, requested that De Spon create new regulations for the court concerning the Jews. De Spon's memoir written in February 8, 1776 reflected this approach to the reform of the Jews' status. Acknowledging what he perceived as a demographic threat from a prodigious increase in the Jewish population, the magistrate nonetheless saw the need to ameliorate the condition of the Jews for the greater good:

> For the well being of the province of Alsace, it is important to affirm in one regulation all judgments made in the provisions of statutes issued in different times concerning the Jews adding the disposition that wisdom and experience will dictate. It is not possible to prevent the increase of the Jewish population. But it is reasonable to give the Jews themselves the means to exist as

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16 Ibid.
17 Ibid.
19 Ibid.
honest men. To speak out against the worse usurious tax and allow them entry to other professions and trades, the livelihoods that they are forbidden to practice. So far they are tolerated by the government, they are very useful especially in times of war. It is just to listen, and in their favor and in the voice of humanity to ensure that they should not be vexed. It is not necessary any longer for them to be vexed.\textsuperscript{20}

In 1778 the plot of the “false receipts” accelerated efforts to reform Jewish status. Alsace was flooded with forged receipts to Jewish moneylenders which was devastating for the Jewish community. The government regarded the ensuing situation as an “\textit{épidémie morale}” which made the need for reform of Jewish status critical. Alexandre Léonor of Saint-Mauris, the prince de Montarrey and Secretary of War from 1777-1780, called for an edict to regulate the Jews of Alsace. He wrote to Baron de Spon on July 19, 1780:

\begin{quote}
His majesty desires, in concert with Monsieur, the Cardinal of Rohaz, M. le marechal de Contader and M. l’Intendant, that you examine the essence of the actual status of the Jews in Alsace and the abuse that they possibly arouse, the manner to prevent a harmful increase of those that inhabit the province, and generally the inhabitants of the province to subsist in a way that does not prejudice the people, and to contribute in a just proportion, to charge publicly, and in a word to reconcile for the Jews’ legal...
\end{quote}

\textsuperscript{20} Ibid.
existence with the general interest and confirmation of the rights of
the seigneurs who have the right to grant reception to the Jews.21

This enlightened language clearly reflected the royal administration's desire to rationalize the Jews' status through some form of juridical reform. This movement was matched by a growing elite among the Ashkenazic Jews, who were influenced by the Jewish enlightenment (haskalah) and who followed the lead of certain prominent Jewish figures, such as the enlightened Jewish philosopher Moses Mendelssohn and the wealthy purveyor Cerf Berr, to reshape their place in French society.22

The intensity of anti-Semitism, however, militated against any dramatic or abrupt change to Jewish status despite the desire for juridical reform and the influence of the enlightenment among both Jews and non-Jews. There was a general perception in Alsace-Lorraine of the Jews as a closed caste. If not always restricted to the Jewish quarter, they were nonetheless set apart by distinctive clothing and subject to restriction of social and commercial intercourse with the rest of the population.23 The Jews were still considered by much of the population in the North-East to be dangerous and abhorrent despite their small numbers and their relative poverty.24 The religious and historical concept of the Jew as the outsider stained by blood libel fed this rabid anti-Semitism. Moreover, anti-Semitism often acted as an economic safety valve needed to redirect popular frustration over economic and social concerns against a hapless Jewish

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21 Ibid.; for a full description of the affair see O'Leary, 143-144.
22 Ibid., 150.
population rather than against political authority.\textsuperscript{25} In the near collapse of the Alsatian economy of 1770s and 1780s the Jewish peddler and money lender was an easy target for an overstretched populace.\textsuperscript{26}

It was in this generally anti-Semitic atmosphere that the influential Jewish leader Cerf Berr led a critical campaign to abolish the \textit{péage corporel} which culminated in the \textit{lettres patentes} of January 1784. Cerf Berr was born in 1726 in Mendel Scheim, a village of 500 inhabitants in the Palatinate which from 1682 to 1814 belonged to France. He rose to prominence when war broke out in 1756 between France and England. With the duc de Choiseul acting as his protector, he was entrusted with supplying the cavalry regiment of Strasbourg in 1763. Throughout the late 1760s and early 1770s the aftermath of the war and the famine that Alsace experienced in 1770 and 1771 gave Cerf Berr opportunity to demonstrate his utility to the crown.\textsuperscript{27} In 1765 he became a “trustee General” (\textit{préposé}) of Alsatian Ashkenazi leaders known as the council of Alsatian Jewish communities (\textit{nation juive}) of Alsace.\textsuperscript{28} Given the unrest and violence, particularly against Jews, in the countryside surrounding the city of Strasbourg,\textsuperscript{29} Cerf Berr petitioned the city of Strasbourg for the right to maintain a permanent residence within the city walls in 1767.\textsuperscript{30} Because of the strict prohibition on Jews living within the city, his petition

\begin{enumerate}
\item Coup-d'oeil sur la situation actuelle de l'Alsace, relativement aux Juifs, A.N H1647; Hyman, 13.; See also Françoise Joseph Antoine de Hell, \textit{Observations d'un Alsacien sur l' affaire presente des Juifs d'Alsace} (Frankfurt, 1779) as a justification for the Affair of the False receipts. O'Leary, 143-144.
\item Feurwerker, 859.
\item for a full description of the violence see O'Leary, 120.
\end{enumerate}
was flatly refused despite his services and character. With the assistance of the powerful duc de Choiseul, who, as minister of foreign affairs, was well aware of Cerf Berr’s contribution to the war effort, in 1768 Cerf Berr was able to move his household of approximately 60 persons into Strasbourg for the winter. This established an important precedent of a Jew living within the city walls. Cerf Berr had no rights beyond mere residence, however, and he remained subject to numerous restrictions such as a prohibition on the sale of meat to individuals, absolute restriction on taking property as a pledge for credit from Christians and a prohibition on building a synagogue. Nonetheless, with the assistance of the Secretary of war Louis Francois, Marquis de Monteynard who succeeded the Duc de Choiseul as minister of foreign affairs, his residence rights were gradually expanded to allow him to reside within the city walls all year round as long as he remained in the king’s service and submitted to the rules of the city and the police.

This gradual increase in his privileges encouraged him to seek formal recognition as a French subject. After Louis XVI ascended to the throne Cerf Berr petitioned the king for the right to acquire immovable property in France and, more significantly, to be freed from the rule of mortmain (droit d’aubaine) which prohibited Jews as foreigners from leaving immovable property to their heirs. On March 15, 1775 he obtained lettres patentes from the king that accorded him and his children all the "same rights, faculties, exemptions, advantages and privileges enjoyed by the natural subjects of the Kingdom." The grant of lettres patentes by the

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32 The duc de Choiseul wrote two letters to the Strasbourg authorities on behalf of Cerf berr, see de la Lettre de Monseigneur, le duc de Choiseul à mess. les Prêtres, Consuls & Magistrats de Strasbourg, Versailles le 22 Janvier, 1768, in M. Ginsburger, 3; M. Ginsburger, Cerf Berr et son Époque, Société d'histoire des Juifs Alsace-Lorraine (Guebiweller, Alsace, France: J. Dreyfus, 1908) 7-8.
33 letter to Strasbourg’s royal proctor, maréchal of Contades dated November 5 and November 20, 1771, Ibid.
35 A.N. O 598, pièce 140; Feurwerker, 860.
king challenged the authority of the city of Strasbourg to exclude all Jews from residing within the city walls without exception. Emboldened by this success, Cerf Berr increased his activism on behalf of his co-religionists in Alsace-Lorraine. This was a gargantuan task. Not only was the region steeped in a long tradition of anti-Semitism which permitted Jews a marginal existence at best, the Jewish communities throughout the country were divided by privilege, dissension and discord. Moreover, since the Seven Years' War the country was traversed by bands of indigent foreign Jews who had joined the ranks of the desperate by begging, theft and fraud which only exacerbated the animosity against the community as a whole.\(^{36}\)

In his self-appointed role as Grand préposé of the Ashkenazim in Alsace\(^{37}\) Cerf Berr tried to address these concerns, attracting both criticism and applause. He used his considerable resources to contribute to the intellectual and material well being of the community. This did not prevent him, however, from dealing harshly with improprieties in the community where he felt it was merited and with opposition from Jews and non-Jews alike.\(^{38}\) In his vigorous advocacy for an improvement in Jewish status he highlighted the unequal treatment of the Ashkenazics in comparison to the Sephardic communities. He wrote to the keeper of seals, Armand Thomas Hue de Miromnesil, with a plan to integrate the Ashkenazim, requesting that the Jews of Alsace be granted the same privileges as the Jews of Bordeaux:

> The Jews of Bordeaux are like other subjects of the king. Their conduct is in no way objectionable; in a word they are happy: and those of Alsace can assure your Majesty that things will be the same for them, if they receive from the king’s bounty and the

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\(^{36}\) Ibid.

\(^{37}\) but not Lorraine and the three bishoprics.

\(^{38}\) He bought lands and factories for the sole purpose of engaging Jewish labour, built schools and published the work of Jewish scholars. He also jailed a Jewish importer despite protests. M.Ginsburger, "Cerf Berr et son Époque."
beneficence of your majesty an honest and assured establishment.

They have the means to assist in the good of the state and will have
even more in order to encourage the precious memory of a benefit
for which they will never cease to be grateful.\textsuperscript{39}

He had the Austrian edicts of Joseph II translated into French and sent to Miromesnil in order to support his claim that more tolerant circumstances led to an improvement in the Jews' character.\textsuperscript{40} He claimed that in countries ranging from Holland to Bohemia more tolerant circumstance had improved the Jews’ ability to contribute to society. Austria in particular was singled out as the location where the Jews as well as the rest of society had benefited from the prohibition on the \textit{péage} and other proscriptions. He asserted that Jews were accorded many of the privileges of other subjects of the Hapsburg empire and occupied powerful roles to the benefit of the public. The Ashkenazic Jews, Cerf Berr boldly declared, wanted to be “tolerated citizens of the state.”\textsuperscript{41} He wanted a change in status which was no longer marked by the unjustified treatment and injustice that emanated from the "\textit{fureurs du fanatisme}.”\textsuperscript{42} Remarkably, given the history of Jewish status in the region, he asserted that not only did the Jews want to be accorded the same rights as other sects and religions in France, “if their beliefs differ from that of the state in general why would we be less forgiving towards them as to the other tolerated sects whose opinions are therefore dependent on less direct relationship with the dominant religion.”\textsuperscript{43}

The Jews wanted to be an integral part of French society, "reunited with other subjects of the state in all matters that form a society.”\textsuperscript{44} Although Cerf Berr’s comments articulated the

\textsuperscript{39} Cerf Berr, letter to Armand Thomas Hue de Miromesnil 1781, A.N. H1641, pieces 4, 6 and 8; Feurwerker, "L'abolition du péage corporel en France," 862; Feurwerker, \textit{L'Emancipation des Juifs en France}, 12-15.
\textsuperscript{40} Feurwerker, "L'abolition du péage corporel en France," 862.
\textsuperscript{41} Cerf Berr, letter to Armand Thomas Hue de Miromesnil 1781, A.N. H1641.
\textsuperscript{42} Ibid.
\textsuperscript{43} Ibid.
\textsuperscript{44} Ibid.
arguments of many enlightened advocates, he did not anticipate or recognize that for many reformers and administrators, dismantling Jewish autonomy was the natural corollary of the kind of elevation in status that he advocated.

Cerf Berr’s activism found a specific focus after the affair of the false receipts. Instigated by a notorious anti-Semite, Judge Françoise Hell of Landau, in 1777 Alsace was flooded with false receipts showing repayment of indebtedness to Jewish moneylenders which ruined a huge portion of the Jewish population whose sole livelihood was money lending. The peasants, exhausted by the royal and seigneurial tolls and the collapse of the Alsatian economy in the 1770s and early 1780s, grasped at the false receipts as a method of avoiding ruin. Cerf Berr's request in 1781 to the sovereign council of Alsace to replace seigniorial judges with royal judges in cases of alleged usury identified the Jews with the interests of the central authority of the sovereign. Local seigniorial judges hired by noble landowners were, as Zosa Szajkowski noted, “ignorant at best and blatantly anti-Jewish at worst.” For example, Françoise Henri of Bourg stated that the Jews were permitted by their religion to practice usury at the expense of the Christians, that rabbis made an art of this practice and that Jews' right of residence should be influenced by the fact that they were condemned to remain wanderers without a country. The Catholic advocate H.P. Simon, who had been hired by the Ashkenazi préposé to plead for royally appointed judges, stated, “the seigniorial judges were brutal and incapable of objectivity in

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46 François Joseph Hell was a local judge who instigated the affair of the false receipts. In 1779 he published a pamphlet justifying the forgery he had instigated as a legitimate means of protecting the peasants against their Jewish oppressors, whom he excoriated as comprising an “unassimilable state within a state.” Françoise Joseph Antoine de Hell, Observations d’un Alsacien sur l’ affaire présente des Juifs d’Alsace (Frankfurt, 1779) attribution of the work is not identified.
passing sentences." 48 It should be noted that the Ashkenazi préposés approved of sentencing true Jewish usurers, but they begged the sovereign council of Alsace to permit only royally appointed judges to do so in accordance with French law. Certain local judges deliberately sought cases of usury to force Christian debtors to bring their Jewish creditors to justice. 49 In 1784 the sovereign council of Alsace refused for the third time the Ashkenazi General préposés' request for sovereign rather than seigniorial judges to try cases of alleged usury involving Alsatian Jews. 50

Taking account of the desperation of the populace, the president and the commissioner of the sovereign council of Alsace wanted to stave off popular anger by honoring the false receipts despite the potential this action had to ruin the Jewish population. The local authorities were outraged when the king ordered the arrest of Hell and the Royal government began to prosecute the counterfeiters. The climate of fierce anti-Semitism unleashed by the affair of the false receipts, the disastrous impact on the Jewish population who enjoyed limited protection from the crown, and the contrast to other jurisdictions which had abolished the toll exacerbated the contest of authority between the sovereign authorities and the local authority of the city of Strasbourg. These factors combined to force a confrontation over the abolition of the body tax in Strasbourg. 51

Ironically there appeared to have been a gradual but marked reduction in the profitability of the tax. The administration of the Juden-leibzoll was farmed out to members of the Jewish community who were required to pay a hefty fee for collecting it. Ostensibly the Jewish tax

49 Ibid.
50 Zosa Szajkowski, “The Jewish aspect of credit and usury” Franco Judaica, xiii, xv.
51 In contrast to Strasbourg's defiance similar tolls had been abolished without indemnification in Lyon, Languedoc, the Dauphiné and upper Alsace. see Doublet de Persan responding to Maréchal de Ségur, July 25, 1783, A. N. H3105 feuillet 174.
farmers were to use most of the profit from this enterprise to provide for the indigent in the community. The cost of the lease to Jewish tax farmers remained consistent from 1736 until 1769. In 1763 Cerf Berr purchased the lease for 4200 livres for a term of 6 years, renewing the lease in 1769 for an additional term of 6 years. After obtaining his letters of naturalization in 1775, Cerf Berr claimed that he had sustained a large loss on the tax and asked for a reduction in the price of the lease. Although his complaints were not seen as credible by some of the magistrates, he successfully obtained a reduction in the cost. Specifically, the cost was reduced to 3000 livres annually. In 1781, the final year Cerf Berr held the lease, it was reduced even further to 2400 livres less 1200 for horses sold in the city. Cerf Berr made no further bids to renew the lease after 1781.

In 1781, in order to resolve the issue without further debate, the King prorogued the issue of the toll indefinitely by not renewing it after the expiration of Cerf Berr's lease. Maréchal de Ségur, the minister of war responsible for the Jews of Alsace, suggested this course of action: “The king wishes that, instead of proceeding to a new adjudication, the magistrate order that the lease agreed upon with Cerf Berr, and which was going to expire, be prorogued indefinitely.” In 1783, as the prorogation ordered by the king came to an end, it became apparent that the battle over the body tax was not over. While authorities in Paris reviewed the issue of the body tax, Strasbourg took steps to act on its own behalf. The case was renewed after pressure from the magistrate and Gerard, preteur royal of the city of Strasbourg, who argued that the city need not

52 Feurwerker, L’Abolition du péage corporel en France, 867. For the years 1736-1745 the cost was 4000 livres annually.
53 Ibid.
54 According to a census conducted by the Strasbourg authorities Jews entering Strasbourg was actually increasing not decreasing. Feurwerker, L’Emancipation des Juifs en France, 8-11.
55 Almanach Royal, 1783 et 1784, 214; Feurwerker, L’Abolition du péage corporel en France, 867.
lose money while waiting for a final resolution of the issue which had been announced in 1781 and still had not been dealt with two years later.\footnote{Ibid.}

On June 3, 1783 de Segur in a letter addressed to Gerard, préteur royal, advised that the king ordered that the body tax should be allowed provisionally, although he did require the insertion of a clause which would permit the suppression of the péage without compensation at the king's pleasure.\footnote{Ibid.} The decree was to take effect August 1783.\footnote{A.N. H3105 letter addressed to the intendants de la Galasiere for Alsace and de Bertier for Paris dated September 1783 specifies that decrees were to be retroactive to August, 1783.} Despite this temporary victory for the city of Strasbourg, administrators, Jewish advocates and reformers alike, aware that similar tolls had been abolished in other regions without indemnity, pressed for the abolition of the toll. Specifically, on July 22, 1783 de Segur wrote to Bon Guy Doublet de Persan, maitre de requêtes for the council of state, and procurator general of the bureau of tolls: “to know if it is true that the tolls in the regions of Lyon, Languedoc and the Dauphiné were abolished without the substitution of other tolls, and if so then Alsace is currently the only province in which the body tax on Jews persists.”\footnote{Feurwerke, L'Abolition du péage corporel en France, 867.} On July 25, 1783 Doublet de Persan confirmed that:

After careful audit in its offices the commission examined whether the jurisprudence of the bureau of tolls had always been consistent.

In noting where toll levies had been audited, the commission took care to revise the articles having to do with the persons of the Jews, considering these fees contrary to humanity. This rule was adopted in the regions of Lyon, Languedoc, the Dauphiné and the rest of
France. These tolls were suppressed everywhere without substitution of other fees and without indemnification.\textsuperscript{60}

Despite the favor in which the abolition of the body tax was held, and the challenge to sovereign authority that its continued existence posed, the king left it to the commission on the tolls to resolve the issue. The commission found it so controversial that it could “... not be dealt with by general regulation.”\textsuperscript{61}

This setback did not deter Cerf Berr. In a letter dated August 13, 1783 to the comptroller general of finances he wrote, “the very name of the body tax shows just how odious this act is in itself, as well as contrary to human rights and nature. But in its levying it is both harsh and humiliating.”\textsuperscript{62} He amplified this argument in the “Memorandum for the Jewish nation established in Alsace on its current state and the need to remedy it.”\textsuperscript{63} Drawing on earlier arguments such as those made by Target and Lacretelle in the Peixotto case, and the arguments for natural justice in the Borach Levy case, Cerf Berr claimed that the \textit{péage} was “a fee as humiliating as it is contrary to nature’s wishes.”\textsuperscript{64} He called attention to the inhumane nature of the toll which was contrary to the ideals of an enlightened age. He also reflected the general impetus to juridical centralization with the claim that to maintain this toll would single out Alsace as a barbaric region which was contrary to the spirit of the age. In the context of a query as to where the Jews would go if they were ruined, he asserted that this was the age which destroyed the reasons for the Christians' hatred of the Jews. He believed that "... the bounty of the sovereign has at last prepared a much happier circumstance...". It was in these circumstances that the king "...should fear the confirmation of a humiliating law that is proscribed everywhere

\textsuperscript{60} A.N. H 3105.
\textsuperscript{61} Feurwerker, \textit{L'Abolition du péage corporel en France}, 861.
\textsuperscript{62} Memoire de Cerf Berr of August, 1783, A.N. H3105.
\textsuperscript{63} A.N. H1641, piece 9 et 24.
\textsuperscript{64} A.N. H1641, piece 10.
but in Alsace. Influenced by ideas of natural justice, he reiterated the arguments made by Target and Lacretelle in the Piexotto case that the Jews were French subjects and should therefore be treated to at least the minimum protections accorded to other subjects. The morass of restrictions placed on them and exemplified by the péage distinguished them from other subjects unnecessarily and in a manner which offended natural justice:

It is easy to understand how exorbitant and unjust this toll is, since this city, being the capital of the province is the centre of commerce; and it is unheard of to make subjects pay so high a tax who must go there to purchase the most necessary of things, like comestibles, cloth for garments or to consult doctors, even if all commerce with the burgher is forbidden by the particular status of this city.

He also highlighted the inequitable situation faced by the Jews of upper Alsace as an example of the need to rationalize administration. He argued that the toll created an inequitable situation between Jews resident in the same province. Specifically, he stated that the Jews of upper Alsace were subject to unfair treatment because they were required to pay additional and higher taxes than the Jews of lower Alsace. He claimed that in addition to the toll on reception and habitation paid to the seigneurs, there was an additional tax of 25 livres on every 300 livres owned. There was also a tax of 35 livres to seigneurs for yearly habitation independent of the capitation, industry, vingtièmes, imposition and other tolls to Christian authorities as well as Jewish authorities for maintenance of the poor and other community obligations. The Jews of upper Alsace paid, “to the king half for the right of protection and the other half to the seigneur

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65 Ibid.
66 A.N. H1641, pieces 4 et 6.
as a means in lieu of an allocation equally humiliating and onerous." He claimed that those who live within the city, "... believe and have observed that it is not possible to impose another charge of this nature without wanting to destroy them entirely." The exorbitant amount of the toll was far beyond the needs of the municipality and amounted to unfair gouging of the Jews who were driven to "go there to meet basic needs, to purchase clothing and to consult on their affairs and health; a few only and these the poorest, sell scrap metal and old clothing, the only business not forbidden to them, but it should not be thought that the profit from this commerce is sufficient to offset so onerous a levy."

Cerf Berr also asserted that there were very practical reasons for eliminating the toll because it impeded the general economy by prohibiting residents of Strasbourg from engaging in commerce with the Jews. It is significant that Cerf Berr's criticism was limited to the tolls rendered by Strasbourg and not the myriad other tolls rendered by other levels of authority which singled out the Jews. He did not contest the right of the king to charge the droit de protection for the protection of the Jewish community, a form of body tax, although he maintained that the compounding of the tolls of both the city of Strasbourg and the royal toll was too onerous. He went so far as to justify the charge by the seigneurs for the right of reception and annual habitation in lower Alsace fixed at 36 livres because few ever incurred the charge by entering or leaving the province. Moreover, his argument that the abolition of the body tax did not equate with a right of residence demonstrated that he recognized the practical and strategic need to stop short of claiming the general citizenship for Jews that he covertly desired. Clearly, he could not risk offending those levels of authority from which he hoped to garner support against Strasbourg.

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67 Cerf Berr, memoire de, A.N. H3105.
68 Ibid.
69 Ibid.
70 Ibid.
Cerf Berr found support in the central administration. Doublet de Persan, *procurator général*, was assigned to respond to the request and prepared a memorandum on the need to abolish the toll, “The reason for the decree,” and a draft decree in August 1783. Echoing the argument that "the real question of this cause is to know if the Jews are men," 71 put forward by the advocate Lacretelle in his case on behalf of the Jews against the authorities of Thionville, Doublet de Persan wrote: “the Jews are men if we consider them such; why leave them any longer in slavery and humiliation, why not tear out this final root of persecution, this final offshoot of error, fruit of centuries of ignorance and barbarism.” 72 Copies of de Persan's draft decree and the accompanying letters went to the Intendant de la Galaisière for signature in August 1783. 73 De Persan's position was echoed by all the senior magistrates in the province who commented on the anachronistic nature of the toll and the general perception that it should be abolished without indemnification. The consensus of d’Ormesson, the comptroller general of finances, Baron de Spon, first president of the sovereign council of Alsace, de la Galasiere, intendant of the province and Gerard, *préteur* royal in Strasbourg, was that the toll was “a levy that serves only to debase them (the Jews), degrade them and render them odious.” 74

The city of Strasbourg still effected formidable opposition to the abolition of the toll. The intent was to maximize the revenue before it was abolished. In the face of the imminent elimination of the tax the magistrate of Strasbourg, wanting to maximize revenue from the toll before it was too late, put the toll out for lease on June 3, 1783 albeit with the restrictive clause dictated by Maréchal de Ségur which would prevent the city having to reimburse the tax farmer.

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72 Doublet de Persan, Procureur de la commission des péages, August 1783 *Reflexions de M. le procureur general sur le péage corporel des juifs, adressee au controleur general des finances* A. N. H3105.


74 Galaisière, Travail de M. le Procureur General, pour le minister des finances, *sur la necessite de supprimer les droits de péage corporel sur les Juifs*, July 29, 1781 A.N. H3105.
in the event of the abolition of the toll.\textsuperscript{75} Despite Cerf Berr’s vociferous protests and the apparent declining profitability of the toll, the magistrate auctioned off the farming of the toll to a Catholic named Piquet for the exorbitant sum of 9800 livres to be effective Saint Michael's day, March 11, 1783.\textsuperscript{76} Cerf Berr asserted that there were two possible reasons why Piquet paid such an enormous amount for the lease: Piquet may have expressed an “error of appreciation,” or the authorities of the city of Strasbourg may have used him as a dupe to drive up the amount of the indemnification they were demanding from the Jewish community for the abolition of the body tax.\textsuperscript{77}

It was unequivocal, however, that the political tide was turning. On the same day that Piquet’s lease went into effect, Gerrard, \textit{préteur royal} of Strasbourg, wrote: “Your opinion confirmed His Majesty in the project of the rendering a law bearing the general abolition of any body tax on the Jews in Strasbourg, as well as the rest of the kingdom.”\textsuperscript{78} In September the \textit{lettres patentes} abolishing the \textit{péage} was transformed into an edict. The edict stipulated that:

\begin{quote}
… in the future, the Jews shall be exempted throughout the extent of our kingdom and particularly upon entering and leaving the province of Alsace and the city of Strasbourg, from the body tax-as well as passage and customary toll.” Moreover, “it is repugnant to the sentiments that we extend to \textit{all our subjects} to allow there to remain in regard to certain among them an imposition that
\end{quote}

\textsuperscript{
\begin{itemize}
  \item \textsuperscript{75} Feurwerker, \textit{L'Abolition du péage corporel en France}, 864.
  \item \textsuperscript{78} Galaisière, \textit{Travail de M. le Procureur General pour le minister des finances, sur la necessite de supprimer les droits de peage corporel sur les Juifs}, July 29, 1781 A.N. H3105.
\end{itemize}}
debases humanity, and we have believed it necessary to abolish it.\textsuperscript{79}

The edict specified that the abolition of the tolls was necessary for the freeing of commerce from hindrances and that it would be “perpetual and irrevocable.”\textsuperscript{80} Significantly, the edict included the Jews as French subjects. Moreover, the intention of the edict was clearly to be broad in scope and perpetual. The edict was signed by Louis XVI, countersigned by the Maréchal de Ségur, minister of war and minister responsible for Alsace, the keeper of seals Hue de Miromesnil and Calonne, comptroller general of finances. The registration of the edict by the various *parlements* occurred over the next 12 months from January 11, 1784 to December 23, 1784. Nine of sixteen sovereign councils registered the edict: Aix, Besancon, Dijon, Dobai, Grenoble, Metz, Nancy, Pau, Perpignan and Rennes. Bastia had declared there was no point in registration as there was no toll on the island. On January 24, 1784 the edict in its bilingual translation was transcribed in the register for the sovereign council of Alsace. On the same day Cerf Berr proudly wrote to Doublet de Persan that Strasbourg had suppressed the tax on the Jews entering and leaving the city, and that the body tax no longer existed in France.\textsuperscript{81}

This apparently glorious first step was, however, marred by a number of considerations. First, the issue of indemnification persisted. Cerf Berr cautioned against framing any subsequent payment to the city of Strasbourg as indemnification. Similarly the *procurator* Doublet de Persan, in his memorandum entitled “reason for the decree,” asserted that Strasbourg must be presented with abolition of the *péage* as a *fait accompli* with the issues of indemnification to be

\textsuperscript{79} *Edit du Roi portant exemption des droits de peage corporel des Juifs*, 1, Motif de l’Edit; Feurwerker, *L’Abolition du péage corporel en France*, 867.
\textsuperscript{80} Ibid.
\textsuperscript{81} Ibid., 868.
treated separately. He also maintained that to indemnify Strasbourg for the loss of the toll would be humiliating for the Jews. Notwithstanding these sentiments, and the support of the Royal authority the Jewish community agreed to pay the city of Strasbourg to indemnify it for the loss of revenue, albeit based on an amount much less than Piquet had paid for it. By a decree of council dated June 24, 1785 the indemnification of the city of Strasbourg for the suppression of the body tax was fixed at an annual annuity of 2400 livres. This decree was confirmed by the lettres patentes on January 25, 1786 and subsequently registered in Metz on March 30, 1786. De Crolbois, agent of the city of Strasbourg in Paris, wrote to his principals “the affair is finalized.”

A second consideration undermining the long term effect of the edict abolishing the péage corporel was the delay in the registration of the edict by Paris, Rouen and Bordeaux. In each case the reasons for the delay are significant and reflect the importance of the issue of Jewish status to the highest levels of government. The Jews’ status as aliens rather than subjects of the French king was paramount in the parlement of Paris’s delay. In a letter from Joly de Fleury, Procurator général of the parlement of Paris, to the baron de Breteuil, Joly de Fleury wrote that he and the first president, Etienne Françoise d’Aligre de Damecourt, agreed that “this edict was infinitely dangerous in its consequences, because it would include the public recognition that the Jews have a right to reside in the kingdom.” Since the parlement of Paris had never recognized this right to residence, “this edict would make the parlement feel the greatest of inconveniences if it were presented for registration.” Joly de Fleury expressed regret that the law was promulgated and suggested to the sovereign council of Alsace that the

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82 A.N. H3105 feuillet 91; Feurwerker, L’Abolition du péage corporel en France, 869; Hertzberg, 319.
83 A.N. O351, piece 196; Ibid., 870.
84 Ibid.
“disposition of the law seems to have as a special object the Jews who inhabit that province.”\textsuperscript{85} Joly de Fleury returned the edict and the king’s order to the baron Breteuil, secretary of state, adding in a marginal note that a copy of the letter was sent on April 4, 1784 to M. de Calonne, comptroller general of finances.\textsuperscript{86} This left Bordeaux, Rouen and Toulouse. In Bordeaux the edict was considered unnecessary as the Jews already had the same privileges as other subjects. The edict was finally registered in Toulouse on December 23, 1784. In the region of Clermont, Antoine Lavoisier, the farmer general and scientist, had the edict registered in 1786. His comment, “this toll we are sorry to say was analogous to the fees paid by unclean animals,” reflected his belief that the toll was contrary to enlightened principles although there was no explanation for the delay in registration of the edict.\textsuperscript{87}

The elimination of the \textit{péage corporel} by the terms of the January 1784 \textit{lettres patentes} was, despite the difficulties with its registration and the contest over the indemnification, celebrated by reformers and Jews alike. This euphoria was to be short-lived. On July 10, 1784 Louis XVI issued the “General Regulations for the Ashkenazim in Alsace,” which Armand Thomas Hue of Mlromesnil, keeper of the seals and other ministers had been working on since the affair of the false receipts in the 1770s. Louis’s intention was to “protect his Catholic subjects and improve the deplorable situation of the Alsatian Jewry.”\textsuperscript{88} Baron de Spon, the first president of the sovereign council of Colmar, in his \textit{mémoire} “Regulations concerning the Jews of Alsace which the government is concerned with,” provided a narrative of the negotiations among various levels of government regarding this edict. De Spon argued that it was critical that Jewish

\textsuperscript{85} Ibid.
\textsuperscript{86} Ibid.
\textsuperscript{87} Feurwerker, \textit{L'Abolition du péage corporel en France}, 871.
existence be uniformly regulated throughout all of Alsace.\textsuperscript{89} He prepared a proposed list of regulations that he addressed to M. le Maréchal de Ségur dated May 1, 1781. This gave him a mandate to discuss this work with the sovereign council of Alsace. Other figures including M. le cardinal de Rohaz, Mm. le Marechal de Contader and M. de la Galasière drafted memoranda on the issue which were given to the \textit{commissaire-conseiller} of state. The magistrates requested precise instructions and were mandated to: “… verify that they have 3600 Jewish families in Alsace and in total about 18330 individuals. It is important to know particularly this nation, to enumerate the name, age, origin, domicile, quality, profession of the Jews of Alsace, the value and quality of their homes, synagogues schools and cemeteries that they possess.”\textsuperscript{90} This included not only the population numbers in absolute terms, but also the ratio found between the number of Christians and Jews in every village in Alsace and how many of the Jews of Alsace were obliged to wear a distinctive mark.\textsuperscript{91} This data would be used to expel foreign Jews, control existing residents and create a uniform policy concerning the Jews.

In March 1781 the intendant de la Galaisière communicated to Cardinal de Rohaz that 3600 families or 18,330 individuals did indeed comprise the Jewish population in Alsace.\textsuperscript{92} Reflecting the crown's desire to centralize authority, he regarded the growth in the Jewish population as dangerous and believed that it was essential to French society and the Jews themselves that Jewish population growth be controlled.\textsuperscript{93} Control of the Jewish population by the crown would reduce the authority of local lords and administrators over the Jews in their region while increasing the authority of the central administration. He proposed to permit only

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\textsuperscript{89} Baron de Spon, A.N. H3105.
\textsuperscript{90} Ibid.
\textsuperscript{91} De Spon as premier president responded to M. le Marechal Segur July 29, 1781 in a very ample letter to comment on whether it was possible to make a general rule for all the Jews of Alsace. Referred to in Galasière \textit{Travail de M. le Procureur General, pour le minister des finances, sur la necessite de supprimer les droit de péage corporel sure les Juifs}, A.N. H3105.
\textsuperscript{92} Ibid.
\textsuperscript{93} Ibid. They went from 587 families in 1348 to 1348 in 1716, 2104 in 1744, 2565 in 1764 and 3600 in 1783.
72 Jewish marriages for a year, 30 in the territory of where Jews were subject to administration by local nobles, and 42 represented proportionally in the rest of the province. Galasière also proposed reducing the number of Jews in each endroit where they were established by one tenth of the inhabitants and not permitting any marriages of Jews that would exceed this dixième until the desired reduction in the population was effected. Simultaneously de la Galaisière wanted to ensure that Jews who had been expelled as “foreign” or for other reasons would not be permitted to establish in other villages and regions of Alsace where they were not currently present.

In response le Marechal de Ségur examined the population numbers asserted by Galaisière which ranged from 18,027 to 18,465 Jewish individuals in Alsace. Analyzing the data available he asserted that more than half of the Jewish families did not have more than two children, or at most three. A realistic picture did not present a disproportionate or extraordinary increase in the Jewish population. Although he expressed the opinion that the Jews were not more naturally fecund than any other group, he did accept the need to control their numbers as a result of the admission of foreign Jews which he believed was the sole and certifiable cause of the increase in the Jews’ numbers. He disagreed, however, with the device of requiring them to obtain royal permission to marry because it would require constant enumeration of their particular status. He believed the Jews themselves should continue to police these restrictions as “…Jews according to their law can only be married by the rabbis, of whom there are only a fixed number for all of Alsace, who decide who is permitted to marry. They along with the wealthy will only select suitable candidates.”

94 Ibid.
95 Ibid.
96 Séur, letter dated August 21, 1781 referred to in Galaisière A.N. H3105.
97 Ibid.
98 Ibid.
The Baron de Spon also asserted a contrasting view to Ségur. He claimed that allowing the Jews to police their own demographic increase accorded with historical tradition, permitted them to retain a degree of autonomy, and would provide the desired demographic control. He claimed this right,

...is one the Jews themselves have not claimed because they are merely tolerated in Alsace, and have no right to claim an increase in their population, and the voice of strict justice is to leave as a status quo. The law only gives one child of each family the right to marry. Of their own will the marriages that will be permitted are of the families that would be extinguished by these measures. The families at risk of being extinguished are at liberty to contract marriages. This precious liberty for them cannot be contested by them if it accords with the disposition that the population increase is prohibited.  

De Spon also asserted that permitting the Jews better ways to subsist would benefit not only the Jews but the society around them. In order to accelerate this process Jews should not be required to wear distinctive marks which only encourage hatred against them. He wrote, “It is not right to maintain hatred and enmity of the people against the Jews; it would be wiser to be tolerant and to permit them to wear ordinary clothing as all the other inhabitants.” Moreover he proposed, despite the disapproval of the various professions and trades who feared competition from the Jews, that the Jews be permitted to participate in commerce, art, trades and enterprises; their participation would only benefit the economy. The Jews’ skill at commerce and

99 Ibid.  
100 Baron de Spon’s letter to Galaisiere undated, A.N. H3105.  
101 Ibid.
manufacture, which was their "rightful lot," should be permitted without restriction. He stated that there are many Jews who are:

butchers, livestock traders, merchants, peddlers of gold silver, textiles, leather, feather, salt and iron. They are strong in the trade of wheat, wine, tobacco, oil, cheese, butter, etc. Some Jews keep a boutique ouverte. They are also medical doctors, bankers, courtiers, jewelers, spice merchants, bakers, musicians and merchants of fashion, etc. All of these professions are beneficial to the inhabitants and should continue without complaint from any one. This fact is ignored by MM. le commissioner who is however required to prove the information but cuts and edits what we see.

De Spon opposed Jewish participation in the professions however, except in cases of exceptional merit. He proposed a system resembling extraordinary licensing fees which would entail individual assessment on a case by case basis. He believed that such a system would provide the maximum benefit both to the Jews and society at large:

It is still not possible to incorporate the Jews in the merchant or trade guilds. They cannot all be integrated together but it is practical to force them to a new rule that inhibits all abuses. It cannot be mandatory for Jews to pursue commerce. They can exercise art or a profession by obtaining written permission of the intendant who knows their cause is necessary. This permission would post the specification of the object on an individual basis of

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102 Ibid.
103 Ibid.
professional integration, or craft that each Jew was authorized to conduct, together with his condition and the rules imposed on him and the tolls he would have to pay the community or the guilds. Each permission would be registered with the clerk’s office of each community with its due date. For the Jew he would escape arbitrariness and could earn a living like all other citizens subject to the law and the police. A public advantage would accrue from this that the Jewish merchants, manufacturers, artisans would by their industry generate and emulate….104

De Spon also asserted that Jews should be prohibited from owning real property, even though the Intendant de la Galaisière had proposed allowing them to cultivate land, because of their “law and their manner of living,” which prevented them from performing manual labor. He asserted that if Jews were permitted to own land, “Christians would become their valets.” 105

The ambiguous attitudes of these administrators was evident in the final content of the lettres patentes of July, 1784. In some ways the edict provided an elevation of status and increased opportunities for Jews, particularly those in Alsace, while in other ways it increased restrictions. Economically it provided new opportunities which permitted Jews to own factories and cultivate land provided they did not employ Christian farm laborers. Jews could purchase houses for their own use, but all other real estate transactions were forbidden. Jews with capital could establish factories, work mines, engage in wholesale and retail trade and become bankers. Conversely, there were two categories of increased restrictions; demographic control and strict commercial regulation. All foreign Jews who had not paid the various taxes to the lords or the

104 Ibid.
105 Ibid.
cities, and who did not contribute to the costs of the communities in which they resided, were to be expelled within three months. Local lords, cities and communities were prohibited from admitting any foreign Jews without previous permission of the king. Foreign Jews travelling to Alsace for business or other reasons required passports or certificates which were valid only for three months with a possible extension of 6 weeks with special permission. Those who aided or sheltered foreign Jews in the province illegally would also be punished. All Jews and Jewesses currently resident in Alsace required permission of the sovereign to marry. Formally adopting the rule in the Borach Levy case, converted Jews were forbidden to remarry during the lifetime of their Jewish spouses. Jews, like other French subjects, were required to register their births, deaths and marriages with local authorities. The authority of the rabbis was restricted to disputes regarding observation of Jewish law or disputes which did not involve Christians. In the second category of strict commercial regulation Jews' collective rights as a community to bring court challenges were forbidden and they could only litigate in sovereign courts as individuals. Contracts between Jews and Christians had to be witnessed by two officials, with the exception of contracts with bankers. Interest on loans was to be paid by Christian debtors in cash rather than in kind to prevent Jews from acquiring ownership of peasants' property. Jews were allowed to give testimony in sovereign courts, but were required to swear the more judaico, a demeaning medieval oath, in any court proceeding they participated in. Receipts and contracts had to be in French or German. Participation in the professions was prohibited.  

Scholarly assessments of the impact of the July lettres patentes has been generally negative. Arthur Hertzberg considered the July edict a “retrograde act” which increased

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opportunities only for the rich and reduced opportunities for the poor.\textsuperscript{107} He asserted that, despite the generally strained relations between the local nobility and the Jews, the edict’s strengthening of the central authority at the cost of the rights of local authorities negatively impacted the Jews who had occasionally benefitted from the local lord’s protection. Moreover, restrictions regarding formalizing contracts affected both poorer Jews and non-Jews alike because the increased cost of attending before two officials to formalize a debt or contract and ensuring the document was in French or German would be prohibitive for peasants and the impoverished Jewish money lenders who did business with them. Payment of debts by the Alsatian peasantry to Jewish money lenders was also far from realistic for a population which had limited access to capital. Moreover, the increased privileges to start factories, work in mines or become bankers, only benefitted the very small segment of the Jewish population that had sufficient capital to engage in these opportunities. Hertzberg also contended that the restrictions and demographic controls that the edict put in place challenged Jewish cohesiveness and the very fabric of Jewish existence.\textsuperscript{108} Robert Badinter, although less critical of the edict, interpreted the terms of the edict as the manifestation of the Royal administration's interest in ending tensions in Alsace over usury rather than the reform of Jewish status. He argued that, as a result, the edict’s impact was particularly nuanced. The edict provided Jews with alternate ways to earn a living and lifted economic restrictions on the Jews in order to stimulate economic activity, but it limited their numbers to control competition.\textsuperscript{109}

These two historiographical interpretations do not address the larger pattern of juridical centralization in the July 1784 \textit{lettres patentes}. Specifically, the royal census of the Jews to

\textsuperscript{107} Hertzberg, 319, 322.

\textsuperscript{108} Ibid.

identify foreign Jews that the regime intended to expel, the regulations regarding the formation of commercial contracts, the prohibition against litigating as a collective on the part of the Jews, the requirement to register all births, deaths and marriages, and the requirement to obtain royal permission before marrying are all aspects of a process intended to strengthen the central administration. Expelling all foreign Jews and giving the crown authority regarding the right to admit Jews limited the power of the local nobility. Similarly, creating conditions concerning the formation of contracts ensured a uniform standard that could be juridically enforced by the central authority rather than local administrators who were notorious for applying varying standards and subjective interpretation, which was frequently not in the Jews’ interests. Similarly, Royal authority was strengthened by eroding the cohesiveness and autonomy of the Jewish community through the prohibition of litigating collectively and requiring the crown’s consent to marry. The Jews were not singled out for the requirement to register all births, deaths and marriages. This obligation was also imposed on non-Jewish subjects as part of an effort to strengthen the central administration and was not only intended to monitor and control the Jewish population. Requiring the Jews to register these personal status events actually reflected that, in some ways, the administration considered them French subjects.

These aspects made the edict unsatisfactory to both Jewish and non-Jewish local authorities. In August 1786, a Royal commissioner in Strasbourg wrote, “The city’s magistry views, as does all of the middle class, the legal entry of the Jews as a plague destroying commerce, industry and good order.” At the same time the Jewish communities sent a memorandum to King Louis XVI’s council of state protesting that the cruel restrictions and unjust conditions imposed on them were not imposed on other Jewish communities, notably those of Metz, Nancy and especially Bordeaux. Cerf Berr’s comments are noteworthy not only

110 Badinter, 47-48.
because they exemplified the reaction of the Jewish community, but also because they reflected the community's appropriation of a new juridical status: French subject. He found the restrictions as offensive and as impractical as the péage corporel had been. Cerf Berr categorically claimed that these new restrictions could have no purpose but to humiliate. Specifically, the need to constantly renew permission to enter the city made the conduct of commerce so cumbersome that it was almost impossible: “It is not to be believed, when they have dispensed with this formality, that they abuse those who are established in France without permission; is not the public minister that watches over everything in the citizen's state a sufficient barrier to stop those who presume.” He claimed the new restrictions imposed on the Jews were contrary to the greater good. He stated that historically the Jews of Alsace had been, “considered like aliens that solicit anew the right to fix their domicile,” but that “Their great industriousness would only be of service to the state. The Jews share with the Christians the means to be useful to the state and not to break the laws with which it is charged.” Moreover, “their industriousness should be emulated because of their usefulness to the state.” Restrictions upon the Jews reduced their ability to contribute “...to the responsibilities of the state and to replenish in a word the work of the citizen.” His use of the word “citoyen” is particularly significant.

He claimed that the exclusion of foreign Jews and the prohibition on allowing established Alsatian communities to provide for them were particularly unjust. The Jews of Alsace sheltered foreign Jews as a matter of charity. Exasperated, he exclaimed, “This charity counts for nothing to Christians.” He argued that the provision of charity to these indigents was a natural and

111 Cerf Berr, mémoire de, August 1782, A.N. H3105.
112 Ibid.
113 Ibid.
114 Ibid.
115 Ibid.
116 Ibid.
humane requirement of the Jewish religion. This charity was necessary because Jews generally could not be employed by Christians and those without means were reduced to extremes of hunger and misery. Most of this class is “elderly, too young, or infirm.” He asserted that plunging these indigents into further misery but failing to provide charity, “would be contrary to the principles of charity and humanity that has always characterized the French nation and honors the religion.”

He bristled at the allegation that the influx of foreign Jews was a demographic threat. He claimed that the distribution of the Jewish population in many small communities where the population of both Jews and non-Jews was small made their numbers more conspicuous and was partly responsible for this misperception. This situation contrasted with the cities where Jewish numbers did not appear as disproportionate despite similar numbers.

Cerf Berr reserved his strongest critique for the requirement to obtain royal consent to marriage. This method of controlling the Jews’ numbers was also too simple and did not account for the impact it would have on their ability to marry and reproduce:

If they judge it necessary to oblige the Jews to obtain permission to marry, it is easy to sense what abuses and lengthy waiting periods they would be subjected to in order to make the various degrees of authority administer this permission. Prevosts of villages, procureurs, greffiers, bailiffs, subelgues, seigneurs are the various gradations before arriving at last at the minister! Moreover, Cerf Berr asserted that the need to request the permission of the crown to marry distinguished Jews as something other than French subjects, which he did not believe was the

\[117\] Ibid.
\[118\] Ibid.
Crown's intention. Cerf Berr also saw the enforcement of the prohibition against the remarriage of converts during the lifetime of their Jewish spouse as not only contrary to the national policy, but an irreconcilable paradox which imposed “...a law of celibacy on a population while at the same time seeking to grant them liberty.”

Significantly, Cerf Berr understood the profound ramifications for Jewish self-government that would result from the proposed changes to authority over personal status and how pivotal this issue was to the structure of the Jewish community as he knew it. He argued that Jewish self-government was in keeping with the general practice of the ancien régime which was based on a structure of semi-autonomous corporate structures. He asked, "What city corporation, what community, what body of merchants or citizens does not have its own chiefs?" He argued that to prohibit the Jews from some measure of self-government and autonomy, particularly as it related to personal status, would prejudicially distinguish them from the rest of the population. Rather than dismantling the autonomy of the Jewish communities, he claimed that it was critical to maintain a system in which Jewish authorities would continue to play a pivotal role. He asserted that it was totally inefficient for local authorities to administer the finances of small Jewish communities composed of 1, 2 or 3 families which would prohibit adequate provision for the poor and indigent. He claimed it would also be difficult for local authorities to collect taxes to be submitted to the intendant without the assistance of Jewish self-government. Regardless of these autonomous aspects Jews would remain subject to the officers of the justice of the peace and to the police of the state.

Ironically, this argument was contrasted with the initial position taken by Samuel Peixotto one decade before in his claim to divorce his wife, Sarah Mendes D'Acosta. Samuel, as a Sephardic Jew and member of the Portuguese nation of Bordeaux who considered themselves French subjects, required the crown's permission to marry a foreigner, Observations sur la separation et le divorce judaïque: pour le sieur Samuel Peixotto contre la dame Sara Mendes d'Acosta., BNF4-FM-25361. Piece 4.

Cerf Berr, memoire de, August 1782, A.N. H3105.

Ibid.
Cerf Berr’s proposal supported juridical centralization by removing authority from the hands of the rabbis who often held the most power in small Alsatian Jewish communities. He believed they were not appropriate persons to exercise this power because of their exclusive devotion to the study of Jewish law and ritual and because they were ignorant of the not only the French language but the practice of French law. Given the known biases of local judges, he legitimately viewed local Catholic authorities with equal disdain. His criticism of local judges and their approach to the Jews was entirely credible. He believed that local authorities would be unable to reconcile the religious practices of the Jews with the interests of the French nation. He stated that the ignorance of these individuals would result in disastrous decisions made in error. Accordingly, “the entire (Jewish) nation will suffer, first in its interests, then in its religion.”

He asserted that history was rife with examples of violence and disruption where local authorities have been permitted to prevail in these circumstances. His aversion to the power of local authorities did not however, support the complete centralization of authority. He recommended that Jewish leaders should be chosen among the prominent members of the community who read and wrote French and who also had facility in German. He relied on the example of Jews in Bordeaux, Bayonne, Metz and Nancy where the Jewish syndics, the equivalent of the préposés, were charged with representing the Jewish nation vis-a-vis the central government. Although he proposed Jewish authorities retain a degree of autonomy, their decisions would be subject to appeal to a sovereign court and would protect the Jews from local authorities who were subject to popular anti-Semitic influences:

the Jews of Alsace have great respect for the law of the state and they keep the peace and observe the law; but they hope the king

122 Ibid.
will give them a particular mark of protection by allowing them to maintain their rabbis, in all their functions and prerogatives that they have exercised until the present with the exception in some cases to appeal their judgments to the sovereign council of Alsace but not before the bailiff and other local judges.  

Cerf Berr did not believe that his opposition to the apparent removal of Jewish autonomy in the lettres patentes precluded integrating the Jews into the French legal and administrative community. To Cerf Berr juridical submission to the king's ultimate authority did not contradict his claim, “and pray the king allows them to maintain their own interior police of religion and rites and to approve the requests as set out in previous memoires.”  

The apparently irreconcilable gulf between the two edicts impacted both Jews and non-Jewish local authority. It represented a loss of autonomy for the Jews, and for the local authorities it represented an unwanted increase in privileges for the Jews. Not surprisingly the edicts did not satisfy anyone. Neither controlling Jewish numbers nor lifting some restrictions did much to integrate the Jews into the larger community. Taken together, however, the edicts confirmed a pattern of juridical centralization which removed authority from local bodies, eroded autonomy for the Jewish community and invested it in the central authority. This shifting of the gears of authority, however, was far more than a mere realignment. Rather it provided a different basis for the consideration of membership in the national community. Therefore, while the issue of Jewish status remained unresolved, the Jews, along with the rest of French society, were inexorably on a path of change.

123 Ibid.
124 Ibid.
“Monsieur de Malesherbes, vous vous etes fait Protestant; moi maintenant je vous fais Juif; occupez-vous d’eux.” The Malesherbes Commission on the Jews; rationalizing the Jews' status
Chapter 7

On November 17, 1787 Louis XVI told his minister Malesherbes, “Monsieur de Malesherbes, vous vous etes fait Protestant; moi maintenant je vous fais Juif; occupez-vous d’eux.”¹ Guillaume-Chrétien de Lamoignon de Malesherbes already had a reputation as a reformer when he received this command. As a young lawyer he had been appointed president of the cour des aides in the parlement of Paris in 1750 and the chief censor of published material. He held the position of directeur de la libraire until 1763 and was instrumental in the publication of Encyclopédie. When Maupeou disbanded the parlements, Malesherbes was banished to his estates. He was recalled on the ascension of Louis XVI and was again made president of the Cour des Aides and Louis XVI's secretary of state in 1775. As minister of state he instituted prison reforms, reformed the use of the lettres de cachet, and supported Turgot's economic policies. The protest of the Cour des aides (Les Remontrances) in 1775 presented the king with a complete survey of the inefficiencies of the administration.² Malesherbes's work on the Protestants in 1787 was the key to granting Protestants' civil recognition in France.³

As a result of his work on the Protestants, and his work on other reforms, the command to busy himself with the Jews was hardly a surprise to the minister. Malesherbes anticipated the King’s command in light of the King's decision that the edict of 1787 elevating the civil status of non-Catholics did not apply to the Jews. In the spring of 1788 Malesherbes set up a committee to study the question of the Jews' status. Historians label this committee as the Malesherbes "commission" despite the fact that it was not a formally constituted committee. There has been

³ Guillaume-Chrétien de Lamoignon de Malesherbes, mémoire sur le mariage des Protestants (London: text imprimé par Malesherbes, 1787).
little scholarly analysis of the Malesherbes commission because it did not result in official recommendations or legislation. The Malesherbes commission, however, merits greater analysis and attention as part of a larger pattern of reform. The very wording of the king’s command to Malesherbes to undertake the commission on the Jews, only the second undertaking of this type on a distinctive group under the *ancien régime*, manifests the impetus to rationalize membership in the French polity through juridical centralization and to effect administrative reform. Ironically Malesherbes, as the author of *Les Remonstances* written between 1756 and 1775, had been an outspoken critic of what was perceived as the Royal government’s tendency to over-centralization over the first half of the eighteenth century. During this period the monarch acquired vast jurisdiction over administrative litigation involving taxation, customs, duties, expropriations, public works and infractions of police regulations in a whole range of areas. The *Conseil du Roi* maintained appellate jurisdiction over these disputes, as it did over actions against ordinances of the lieutenant-general of police of Paris and those made against press and book trade regulations. After the first half of the eighteenth century the monarchy’s increasing insistence on its exclusive juridical powers in the administrative domain would generate a "fairly continuous and often too intense war between two powers, the *juridictionnel* and the *ministeriel.*" Malesherbes, in *Les Remonstrances*, challenged the execution of administrative justice rather than the principle of control by the central administration. He claimed that administrative justice was a fiction utterly dominated by the administration of the Controller-

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General of Finances and the intendants, lacking both publicity and procedural protections for individual claimants. Malesherbes's work under Louis XVI however, accords with Louis XVI's government's recognition that, in order to sustain the centrality of its power, it needed to reform itself. Malesherbes was part of a group of jurists and judges that Julian Swann has described as men who were "capable of writing a remonstrance one day and a progressive government pamphlet, official royal reply or edict the next," and who should not be put into an "ideological straight jacket." Malesherbes's efforts to, as Roger Chartier described convert, "the congeries of particular opinions" into a "collective and anonymous conceptual entity that is both abstract and homogenous," reflect support for the monarchy's centralized authority, albeit one that is accountable to its subjects.

The resolution of the "war between the juridictionnel and the ministeriel" could only be accomplished by the rationalization of the civic status of all elements of the population resident in France. This included distinct elements such as the Jews and Protestants. In the case of the Jews, Malesherbes's method reflected his belief that the collection of many diverse voices would somehow "result in coherent public opinion." As the author of the first comprehensive study of the Jews in France, Malesherbes solicited information and opinions from a wide range of contributors including the Jews themselves and provided a forum to define the 'Jewish question'. He gathered information on philosophy, economics, litigation, juridical status and administrative practice in relation to the Jews. This methodology provided a context for a better understanding of the interplay of the multiple factors which contributed to the polarization of

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7 Ibid.
attitudes toward the Jews and among the Jewish communities. It identified the arguments and the hurdles related to integrating the Jews and reforming their status. The effort to rationalize the Jews' status reflected the larger process of juridical centralization by the Royal administration. The authority of Royal courts over the specific issue of Jewish divorce, which posed a juridical dilemma both because it was an important aspect of the Jewish community's autonomy and because it was prohibited by the church, was one of the elements on which the larger process of juridical centralization was to be constructed. Ultimately, the Malesherbes commission was both a manifestation of a general process of reform and a bell weather of the reform of a Jewish status which had been accelerating over the course of the last half of the eighteenth century. Although it failed to resolve the conflict between different interest groups, or to implement new policy regarding the reform of Jewish status, it identified the obstacles inherent in reforming Jewish status and suggested a structure for future reforms.

Malesherbes's work demonstrated a significant interest in the condition of the Jews among the broader strata of elite public opinion and was remarkable as a threshing ground for the competing interests in the reform of Jewish status. While all groups were united in the belief that change was needed, they were divided on the role the Jews would play in a transformed polity where religion was no longer the major criterion of membership or identification. Anti-Semitic administrators, who were a potent political and social force in the North-East, wanted Jews excluded from public life and their presence minimized in French society. They continued to see the Jews as completely distinct from other groups like the Protestants and could not envision their incorporation into French society. In contrast to those administrators who opposed any form of incorporation of the Jews into society, Malesherbes's principal collaborators were liberal reformers influenced by the enlightenment who envisioned a new order based on natural law
which diminished the role of religion. They asserted that the Jews could and should be integrated into French society. However, this group was internally divided by whether or not the Jews could remain a distinctive group entitled to continue particularistic practices, while simultaneously participating in French society on all other levels, or whether complete conformity was required. Other reformers who played significant roles in the Malesherbes commission, such as the reforming clergyman Abbé Gregoire and the enlightened Jew Zalkind Hourwitz, were also at odds over the integrity of not only the religious practice of Judaism but the need for the moral regeneration of the Jews. Finally, the Jewish communities themselves were divided over the exclusion of the Ashkenazis from the Sephardim's existing privileged status, although neither group was prepared to give up its autonomy.

Scholarly opinion is similarly divided over the Malesherbes commission's broader implications. Several aspects relating to the 'commission' are not contentious. Different historians concur that Malesherbes, even before the King's command, and in accord with important authorities such as the Baron de Breteuil, garde des sceaux, did not believe that the edict of November 1787 extending civil status to non-Catholics applied to the Jews. Moreover, there is no debate that Malesherbes intended to force the public registration of the Jews' personal status or that he believed the transformation of the Jews from a "nation within a nation" to state citizens could only be effected by a dissolution of the protective corporatism of the autonomous Jewish community. There is also consensus among scholars that Malesherbes was convinced that, unlike the Protestants, the Jews' exclusion could not simply be erased by removing religion as a bar to the grant of civil status. Significantly, all branches of the scholarly debate on the impact of the Malesherbes commission concur that Malesherbes's recommendations to control personal status

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through the public registration of marriage are pivotal to the interpretation of the impact of the commission.

Historians differ however, over Malesherbes’s general intention toward the Jews and over whether control over personal status was intended to erase the defining elements of Jewish identity or whether it was simply an aspect of the impetus toward juridical reform in France. One group of historians have credited Malesherbes and Louis XVI with being critical precursors to the revolutionary emancipation decrees. In the words of the historian Paula Hyman, the revolution changed the institutional framework but not the ideological framework for discussion of the Jewish question set by the Malesherbes commission. 12 This approach is best represented by Malesherbes's biographer Grosclaude who holds that Malesherbes was the progenitor of the emancipation decrees granted by the National Assembly. 13 Grosclaude asserts that the foundation for reform of Jewish status was laid by Louis XVI's regime under the enlightened auspices of Malesherbes. His study of the Jewish question reflected the recognition by highest circles of government of the evolution of the concept of the Jew from the societal "other" to a human being with natural rights. In this regard, the Jews' faults were considered to be the product of the restrictions under which they were forced to live and were not considered to be inherent. Grosclaude asserted that Malesherbes, in keeping with enlightened ideals expressed by the Jews' advocates such as the Abbé Gregoire, believed that, "if you consider the Jews from the perspective of politics, they are men, and these men are no doubt capable of becoming useful citizens." 14 Grosclaude asserted that Malesherbes believed the key to changing the Jews was to improve their conditions. Once the Jews’ moral fiber improved as a result of improving the

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12 Hyman, 23.
13 Grosclaude, 648-649.
circumstances under which they lived, there would be no further obstacles to their full participation in French society.\textsuperscript{15} Elevating their civil status by allowing them to undertake occupations such as agriculture was key to improving their moral condition, decreasing their marginalization, and allowing them to participate more fully in the society around them. This belief was, however, coupled with the intention that improved circumstances would lessen their attachment to particular customs which set them apart from the rest of French society.

This view contrasts with the view of some Jewish historians, most notably Arthur Hertzberg, David Feuerwerker and Simon Schwarzwuchs, who have characterized Malesherbes as "conversionist." The use of this term implies that Malesherbes believed that the Jews could only be integrated by converting them to Christianity and therefore eliminating them as a distinctive group.\textsuperscript{16} The "conversionist" view was articulated with particular force by Arthur Hertzberg in \textit{The French Enlightenment and the Jews}.\textsuperscript{17} Hertzberg asserted that Malesherbes understood the potential connection between the edict on the Protestants and the status of the Jews, and that he expressly stated his desire to reform the Jews as a means of converting them.\textsuperscript{18} Hertzberg contended that Malesherbes's characterization of the autonomous Jewish community as "... a powerful body which often uses its power in a way that is prejudicial to society,"\textsuperscript{19} emanated from his desire to convert the Jews. Hertzberg further asserted that Malesherbes accused the Jewish community of making the individual Jew's life miserable in order to maintain their corporate separateness.\textsuperscript{20} For example, Hertzberg pointed to Malesherbes's insistence that "The leaders of this nation come to the rescue of individuals as much as necessary with the hope

\textsuperscript{15} Grosclaude, 644.
\textsuperscript{17} Ibid.
\textsuperscript{18} Hertzberg, 323, see also Malesherbes, \textit{Second memoire sur le mariage des Protestans}, 71.
\textsuperscript{19} Ibid.
\textsuperscript{20} Ibid.
that they do not leave the religion, but never beyond what is necessary for this purpose,\textsuperscript{21} as an example of Malesherbes's negative view of the autonomous Jewish communities or \textit{Kehillot}. Hertzberg interpreted Malesherbes’s recommendation that the Jews use public legal registers for their personal status as a means of loosening the ties to the Jewish community which would ultimately achieve the goal of converting the Jews to Christianity.

Neither historiographical approach addresses the impetus to juridical centralization which formed the context for the king’s commission to Malesherbes and the underlying need for conformity to address this goal. There was a growing perception among royal administrators that the existing juridical system was ambiguous and inefficient in its treatment of non-Catholic subjects. Although there was a general idea of what constituted membership in the French polity, there was a confusing lack of clarity in juridical classification. The inefficiency inherent in the lack of consistency and clarity in how these different groups of Jews were treated by the regime led to litigation and conflicting legal decisions by the various levels of courts. The term \textit{citoyen}, which implied the right to participate in public affairs, really only applied at the municipal level. The terms of \textit{regnicole} and \textit{naturel} were used interchangeably with \textit{citoyen} to designate those who enjoyed the minimal privileges which defined them as French subjects. The concept of domicile was fundamental to this classification. The Jews as a group were not considered to be domiciled in France and were therefore effectively barred from membership in the polity. As the jurist Jean Baptiste Denisart wrote, "A Jew has, properly speaking, no domicile, he has no status in the kingdom, he is thus like all the members of his nation, wandering: he is a citizen nowhere, and even if French, he is a foreigner in every city."\textsuperscript{22} The terms \textit{étranger} and \textit{aubain} were applied to Jews, including them in the category of people who "were not born in the kingdom, country, 

\textsuperscript{21} Ibid.
lands, and seigneuries of the obedience of the French king.\textsuperscript{23} This designation generally meant that they could not hold any kind of public office and were subject to other civil disabilities. In practice, however, these categories were far from rigid or well defined. There were many exceptions both on the basis of negotiated privileges for whole groups, such as the Sephardics, or for individuals such as the prominent Alsatian purveyor Cerf Berr for any number of reasons. In the words of Peter Sahlins, "the category of foreigner (and thus of citizen) was exploded and fragmented in practice." Litigation by these "...foreigners to partake in these exemptions and the decisions by various levels of courts were the basis of the impulse to define citizenship."\textsuperscript{24}

This lack of juridical clarity was exacerbated by political contestation over the Jews' status between various levels of authority. The monarchy and local authorities were often in conflict over taxation and protection of the Jews. The King frequently upheld particular statutes which protected the Jews against prosecution by feudal and ecclesiastical lords, merchant guilds, and members of the popular classes. In many cases, however, municipal councils and guilds excluded or restricted the Jews, and seigneurs sold privileges to the Jews for exorbitant prices. For example, in Strasbourg the Jews were subject to the demeaning \textit{péage corporel} and prohibited from residing in the city until 1784. Conversely, in Metz, the Jewish community was privileged by \textit{lettres patentes} of 1632, reaffirmed in 1657, and by an \textit{arrêt de conseil} in 1687. Their juridical autonomy, protected by the Metz parlement, nonetheless came at a high price, since the two thousand or so Jews of the community paid an annual head tax to the duc de Brancas.\textsuperscript{25}

\textsuperscript{24} Ibid., 88.
\textsuperscript{25} Ibid.
The edict of 1787 which granted civil existence to French Protestants was initially regarded by both the Jews' advocates and by their detractors as a turning point in the reform of the Jews' status.\textsuperscript{26} It appeared at first that the edict diminished religion as a basis for the definition of membership in the polity. This initial optimism on the part of the Jews' advocates however, was marred by the realization that the Jewish situation was simultaneously more complex and more deeply rooted than the Protestant situation. For both Jews and Protestants exclusion was based, at least to a degree, on religious persuasion. Like the Protestants, the Jews were denied many privileges enjoyed by most French subjects, including the limited participation in public life that other subjects enjoyed. The shared status of Jews and Protestants was manifested in the preservation of the labels which continued to distinguish converts of both groups who were ostensibly integrated. After the revocation of the Edict of Nantes, Protestants who chose to assimilate into French society became known as 'nouveaux convertis', while Jews in the Southwest who came to France fleeing the inquisition were known as 'Nouveaux chrétiens'.\textsuperscript{27} Both Protestants and Jews were totally excluded from influential positions, or from certain professions and from integrating with the rest of the population especially through marriage; Catholics were prohibited from marrying Protestants, Christians from marrying Jews.\textsuperscript{28} On the surface elevation of civil status for both groups was incompatible with the ascendancy of the Catholic church.

Nonetheless, there were critical differences between the two groups. Despite significant restrictions the Protestants were generally regarded as French subjects. Although both

\textsuperscript{26} For example, see Antoine Court, \textit{Lettre d'un patriote sur la tolérance civile des protestants de France et sur les avantages qui en résulteraient pour le royaume}, in Ethel Groffier, \textit{le statut juridique des minorités}, (Quebec: Les Presses de l'Université Laval, 2007), 28.


\textsuperscript{28} Ibid.
Protestants and Jews suffered restrictions on what occupations they could participate in, restrictions for the Jews from participation in trades and professions were far more pervasive than for the Protestants and they were largely left to earn their livings on the margins of society. The guilds of Paris and Metz refused to allow the Jews permission to become members despite the opinion, expressed by the King's counselor Nicholas Dupré de Saint-Maur, that "... the last edict in favor of the non-Catholics appears to have decided the issue." The Protestants' restricted civil standing in France was incompatible with the approach taken by neighboring European communities toward their own Protestant citizens, and for many administrators it made France's policies toward the Protestants before 1787 inconvenient and anachronistic. In this context resistance to reform of Protestant status was waning. Conversely, Jews were neither subjects, tolerated foreigners (aubain) nor citizens and, despite the perpetuation of their autonomy, challenges to raising their civil status were far more deeply embedded and tenacious than raising the civil status of the Protestants. The problematic nature of reforming the Jews' juridical status on the same basis as the Protestants was exemplified by the state assuming control over aspects of personal status such as marriage. The edict of 1787 established a link between a civil form of marriage and a civil status that did not depend on religion. This link was pivotal to the development of reform based on a concept of secular citizenship. Specifically, by validating Protestant marriage, the edict of 1787 eliminated the exclusion of Protestants from public life in French society. Although the royal administration accepted Jewish marriages as valid, public registries of personal status were used to restrict Jewish marriages, decreasing the

30 Specifically, in addition to being restricted from working in most professions the Jews could generally not own land and, even as late as the middle of the eighteenth century were still subject to claims of droit d'aubain which permitted the crown to seize the estates of foreigners. Peter Sahlins, "Fictions of a Catholic France: the naturalization of Foreigners, 1685-1787," Representations (Summer, 1994): 85-110.
control of the Jewish community over this important issue, without providing an equivalent elevation in status.

Resistance by local administrators and some members of the council of state to applying of the edict of 1787 to the Jews was undoubtedly behind the King's decision to exclude the Jews from the parameters of the edict and provided the impetus for the King's commission to Malesherbes to investigate the Jews' status. After months of investigation, and after collecting a library of over 70 volumes on the Jews, Malesherbes's position on the Jews remained equivocal.31 His position reflected the obstacle that polarized political attitudes toward the Jews posed to any resolution of the reform of Jewish status. Malesherbes recognized that the Jews and Protestants differed in important ways, and that the obstacles to integrating the Jews were much greater than those for the Protestants. Malesherbes believed the greatest obstacle to raising the civil status of the Jews was the deeply rooted hatred of the Jews in popular consciousness: "the state of this nation stirs an excessive and unjust hatred which they cannot defend themselves from because of a scandalous corruption."32 He also recognized that, unlike the Protestants, the traditionally negative image of the Jew propagated by the church was the rationale for exclusion and repression, especially in times of economic turmoil. He understood that, unlike the Protestants, the Jews' image in popular consciousness was the traditional "other" stained by

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31 Malesherbes's diverse collection included: Michaelis, Le droit mosaique . Pfeffel, l'Admission des juifs au rang de citoyens . Baron de Flachslanden, Mémoire du magistrat de Strasbourg, Réflexions sur l'état des Juif en Alsace, a detailed questionnaire to the lieutenant of police, De Crosné, a request by the Jews of the province of Alsace to the king concerning the July 1784 lettres patentes which included some comments by the Conseil des Dépeches , the magistrat and the Maréchal de Ségur, minister of state, Isaac Beer of Nancy Réflexions sur l'enregistrement de l'edit des non-catholiques au parlement de Metz and projet pour rendre les Juifs plus utiles et plus heurux en France , coup d'oeil sur la situation actuelle del'Alsace, relataivement aux Juifs , two untitled memoires by Cerf Berr to the Garde de Sceaux, Hue de Miromesnil dated April 5, 1781 and February 22, 1782 and an anonymous memoir dated Oct 1, 1783 on the abolition of the peage corporel. Malesherbes also wrote to Salles Deneuilly regarding his work La Reform Civile des Juifs and read his "Projet d'arret servant de reglement pour la nation juive." Archives de Tocquevilles A.N.177 mi 186.

32 Grosclaude, 643.
biblical sin. As Malesherbes wrote, in a memoir to the controller general for the assembly of the province of Lorraine:

I believe the situation of the Jews is very different than that of other non-Catholics, just as I believe the Protestants are very different today than they were two years ago. The hatred between the Protestants and the Catholics is very violent and has made for large persecutions preventing them from congregating in the same assemblies; it is necessary to avoid this as much as it is to permit it....but there still exists in the heart of most Christians a strong hatred against all the nation of Jews, a hatred founded on the memory of the crime of their ancestors and corroborated by the occupation that all Jews take up in the countries where they reside which is a commerce that Christians regard as their ruin.....

Malesherbes's personal opinions on the Jews and his ideas of public policy as it related to them were conflicted. On a personal level Malesherbes retained an inherent dislike of the Jews. He believed those who controlled the Jewish communities, the rich and the religious, to be "deceitful and cunning." He noted that if oppressive circumstances had brought about unjust hatred of Jews, "scandalous behavior had become their defense." He also wrote, "I believe that those among the Jews who know well the secret of the state (agriculture) will have nothing to do with it unless one abandons them to a country in which they alone will be the proprietors and cultivators, and I believe that if they have such property and maintain themselves there in force,

33 Archives de Tocqueville A.N. 1.135 177 mi 186 , also cited in, Grosclaude 645, f.n. 37.
34 Malino, 44, f.n. 66.
35 Ibid.
this nation will become even more dangerous." He regarded the autonomous community as an obstacle to changing the Jews' habits and to their integration, and he blamed it for imposing many restrictions which prevented Jews from integrating with the general population. This ambivalence was articulated in an undelivered letter to his friend Mulinen, counselor of state and treasurer for the republic of Berne, on the status of Jewish merchants in Switzerland. Malesherbes outlined his belief that the Jews' insularity could only be ameliorated if they worked the land and began to have social commerce with the non-Jewish society in which they lived to reduce the spirit of intolerance.

In documents that he intended for official or public consumption Malesherbes's position on the Jews was far more tolerant. For example, in his response to Mulinen's description of the restrictions imposed on the Jews of Switzerland because of accusations of fraud, Malesherbes asserted that it was proper to expel the Jews where they were a small part of the population, but concluded that it was impossible to do so in countries where they were numerous and essential, such as Poland, and barbarous in countries like France where they were less numerous but had lived for equally long periods. He similarly criticized the expulsion of the Jews of Sweden, "for these unfortunates who cannot find refuge anywhere, expulsion would equal the barbary of expelling the Moors from Spain in 1610."

Moreover, Malesherbes's public stance that he was committed to improving the Jews' status was evident in his support to allow them to participate in municipal and provincial assemblies if they became proprietors of land. He believed that Jews who owned land, like Cerf Berr, should enjoy the same privileges as other landowners,

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36 Malino, 44, f.n.64.
37 Malino, 44, f.n. 63.
38 Archives de Tocqueville A.N 135 177mi 186.
39 Grosclaude, 641.
particularly with regard to local and provincial assemblies. Moreover, Malesherbes was confronted with the problem of the polarity between the liberal reformers, who believed Jews should be integrated into the French state, and the administrators of the North-East who believed they should be excluded from the polity and contained under restrictive circumstances. In the words of Ronald Schecter, those who opposed Jewish integration held an immutable belief in the binary opposition between the citizen and the Jew who was regarded as the quintessential foreigner. Administrators in Alsace-Lorraine vigorously opposed the edict's application to the Jews. The controller general of the provincial assembly of Lorraine, members of the parlement and guilds of Metz, and the Garde de sceaux all argued as Denisart had that the Jews, "ne sont ni ne peuvent devenir regnicoles et que, quoique domicile en France ils restent toujours etranger." The Garde de sceaux wrote to M.L Perriere in March 1788 to reinforce this position by asserting that the edict excluded the Jews: "The king wishes without reservation, to make the Jews the exception to the law of last November." The administrators in Alsace-Lorraine particularly opposed any efforts by the monarchy to impose a change which would permit the Jews to participate in public life or to obtain positions of authority over Catholics. For example, the controller general of the provincial assembly of Lorraine wrote to Malesherbes to obtain his support to bar the application of the edict to the Jews immediately after Malesherbes was commissioned by the King: “The right to preside over the municipal assembly affects the property of the nobles, all non-Catholics who posses ownership in the parish can become the

40 Malino, 44, f.n. 66.
41 Ronald Schecter, Obstinate Hebrews; Representations of Jews in France 1715-1815 (Berkeley; University of California Press, 2003), 88.
42 Requete au roi pour les Juifs de Sarrelous, 5; Archives de Tocquevilles A.N. 177mi 186.
43 Piece 31, copie of a lettre to M.Garde de Sceaux a M. Le Perriere, Presidente de la parlement du Metz, Mars, 1788; Archives de Tocquevilles, A. N. 177mi 186.
head of the municipal assembly and we cannot see that the disposition of the edict should allow
the Jews the same privileges that the wisdom and bounty of the King allows other sects."

Two virulently anti-Semitic pamphlets published in 1786 in Metz entitled “Le cri du
citoyen contre les Juifs de Metz par un capitaine d’infanterie,” written by an infantry captain
named Philippe-François de Latour-Foissac, and “le cri du citoyen contre les Juifs” by the
royal attorney Lefèvre de la Planche are specific examples of the groups who opposed Jewish
integration. De la Planche wrote, "If all the neighboring peoples of France, even though under
the law of Christianity, are subjected to the droit d’aubaine, it must be concluded that the
enemies of the Christian name, such as Turks and Jews, should by a stronger reason, be
subjected to the same rule." The parlement of Paris, including members of the Joly de Fleury
family of magistrates, as well as merchants and guilds beset by increasing numbers of Jews
coming to live in Paris echoed Lefèvre de La Planche's reasoning that the Jews were all
foreigners and should be subject to the conditions applied to foreigners including the droit
d’aubain. This attitude contrasted with that of Lefèvre's editor, the jurist Paul Charles Lorry,
who wanted to resolve the anomalous condition of the Jews in France on enlightened principles.
He wrote that they should be given a common statute or "else they must be put into one of the

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44 Memoire sur les Juifs, envoyé a M. le Controleur Général pour l’Assemblée Provinciale de Lorraine sur le quel M. de Controleur General a demand à m. Malesherbes son avis., undated; Archives de Tocquevilles, A.N. 177mi 186, Piece 29. The parlement of Metz expressed similar concerns see Memoire sur les Juifs des Metz , undated, Archives de Tocquevilles A.N. 177mi 186, Piece 30.
45 Philippe-François de Latour-Foissac, Le cri d’un citoyen contre les Juifs de Metz par un capitaine d’infanterie (Lausanne, Metz,1786). A.N. H1641.
46 Lefèvre de la Planche, Oeuvres, 3:174 in Sahlins, 98.
47 Ibid.
48 Ibid.
recognized classes, either as foreigners or as citizens." Lorry went on to discuss how "the same law rules a uniform status for all those born in the kingdom."\textsuperscript{49}

Malesherbes believed social insularity was largely responsible for the Jews' negative image. Jewish customs, such as the prohibition on drinking wine not made by Jews, eating special foods, and wearing peculiar clothing, were obstacles to social intercourse and integration. He reflected the influence of physiocrats like Turgot in his view that the Jews' concentration in commerce was a great evil and he insisted they should be employed in agriculture and the mechanical arts. He particularly supported the idea of giving special concession to Jews to work on Sundays to enhance their chance of succeeding as farmers. He believed such an arrangement would facilitate the removal of the rabbinical ban on drinking with Christians and thereby increase socialization and integration: "Those who leave speculation for agriculture near Baden are still faithful to the observance that prohibits them from drinking with Christians, the companions of their work."\textsuperscript{50} He even went so far as to investigate some arable land near Bordeaux suitable for Jewish colonization and inquired about Jewish farmers in certain areas of Sweden.\textsuperscript{51}

Malesherbes believed, however, that the greatest factor contributing to the Jews' negative image was their affiliation with the practice of usury; this was the principle factor that made the Jews targets, especially in times of economic turmoil. The affair of the false receipts certainly influenced Malesherbes's opinion in this regard. In 1777 an Alsatian judge, Françoise Joseph Antoine de Hell, orchestrated the forgery of hundreds of receipts which were then distributed to the Alsatian peasantry to prove that they had repaid their debts to Jewish money lenders. This


\textsuperscript{50}Grosclaude, 642.

\textsuperscript{51}Ibid.
threatened Alsatian Jewry with economic ruin. Two years later, Hell published a pamphlet titled, *Observations d’un Alsacien sur l’affaire présente des Juifs d’Alsace*.\(^{52}\) In this pamphlet he justified the forgery as a legitimate means of protecting the peasants against their Jewish oppressors whom he excoriated as an inassimilable “a nation within a nation… a small powerful state.”\(^{53}\) The Jewish community of Alsace appealed to Moses Mendelssohn, the great German philosopher and proponent of the Jewish enlightenment or Haskalah, to intervene in response to the virulence of the campaign instigated by the affair of the false receipts. Mendelssohn turned to his colleague Christian Wilhelm von Dohm, an enlightened Prussian civil servant, who published “On the Civic Improvement of the Jews” in 1781, which was an important milestone in the struggle for Jewish emancipation in both Germany and France.\(^{54}\)

This movement influenced Honoré Gabriel Riqueti, comté de Mirabeau who published *Sur Moses Mendelsohn et la réforme politique des Juifs* in 1787 which connected the Jews' restrictive and impoverished conditions to the prejudices they had suffered.\(^{55}\) This work had come to Malesherbes's attention and he requested it and the works on which it was based from Mirabeau. In reply to Malesherbes's request, Mirabeau expressed his belief in the need to expand the scope of the edict on the Protestants to include the Jews:

*Monseur,*

I have the honor of referring to you the work of M. Dohm that you desired and to the faithful analysis found in my volume on the political reform of the Jews. It is an honor that the author of this

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\(^{52}\) Françoise Joseph Antoine de Hell, *Observations d’un Alsacien sur l’affaire présente des Juifs d’Alsace* (Frankfurt, 1779).

\(^{53}\) Ibid.

\(^{54}\) Christian Wilhelm Dohm, *De la réforme politique des Juifs*, (Dessau, 1782).

good law breaks the chains that imprison the tolerance of this monarchy busy with this great work; it is necessary that your name balance the prejudice against the Jews that for all other sects claim an inequitable impartiality...

He further stated, "to be fair to them, for us they become the hope of humanity. All doors open to the belief that the government will receive them and will not delay to realize this goal." Mirabeau's support for altering the Jews' circumstances was qualified by his opinions on the necessity of improving the Jews' circumstances in order to perfect their character. He also shared Malesherbes's opinion on the need to dismantle the Jews' autonomy. Mirabeau set the Jewish problem into a political program for reform which made the amelioration of the Jews' conditions not only desirable but also practical within the realm of government action. His writing on the Jews is a refutation of Mendelssohn's greatest critic, Michaelis. Mirabeau's argument primarily stemmed from his belief in the universal and natural rights of man: "Freedom is the first human right. All men want to be governed by rules and not by the caprices that make all arbitrary punishment a crime against the law that is everything."

Mirabeau had a low opinion of the Jewish religion as dictated by the Talmud, but thought the essence of Judaism was not immoral. He felt that Jews should be integrated in order to be freed from the Talmud. This was entirely possible because, "The Jew is more of a man than he is a Jew." This argument was a direct reiteration of Dohm's. He referred to the British "Jew Bill"
of 1753 as one exercise at political emancipation which failed because of the desire "only to put them [the Jews] under the cover of ministerial interests compromised by a reelection which epoch has already come."  

His major argument was that the moral regeneration of the Jews must begin with political reform. Only equitable treatment which political reform by the government could provide "will recover the morals of a people lost to oppression." Given rights, the Jews would become upstanding members of the community. He felt that even if the vices of the Jews were so ingrained as not to disappear until the fourth or fifth generation, this was more reason to begin immediately and to herald the change: “you want to assert that the vices of the Hebrews are so entrenched as to last to the third and fourth generation. Very well, retreat from the great political reform of a corrigeable generation and all that you will not have the power to conquer is lost time.”

Mirabeau's views resonated with those of Malesherbes and his collaborators on the commission. There were fundamental differences, however, in their interpretations of both the role of the Jews in French society and their ability to integrate which proved to be an obstacle to a concerted program of reform. Advocates such as Pierre-Louis Lacretelle, Nicolas Dupré de Saint-Maur, Guy-Jean-Baptiste Target and Pierre-Louis Roederer, who became Malesherbes's collaborators on the commission, occupied a broad spectrum of approaches on how best to integrate the Jews. Nicholas Dupré de Saint-Maur's views, as heir to the most liberal royal administrators of the preceding century, were based mostly on the premise that free trade was good for the economy. He championed the integration of the Jews in the context of economic growth. In 1788 after the delegation from Bordeaux came to Paris, he wrote to Malesherbes that "things ought not to be done by halves," and that in order to increase the population of France

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61 Ibid.
62 Ibid.
63 Ibid.
with some thousands of rich and industrious citizens one "ought to tolerate the practice of the Jewish religion and allow the Jews to work on Sundays and holidays." Target had been one of the advocates in the Peixotto case and had promoted the idea of accepting the Jews as French subjects. Roederer, the central figure in organizing and carrying through the famous Metz essay contest on the Jewish question, had the strongest views about the need to reform Jewish status. Roederer had been instrumental in the Metz essay contest in 1785 which had offered a prize for essays on "Are there means to make the Jews more useful and happy in France?" He had initially suggested that the dissertations discuss the proposition that there was something worthwhile preserving in the Jew in his current state: "We charge the Jews with our prejudices as being the result of their vices and the one which revolts us most is usury. We reduce them so that it is impossible for them to be honest." This did not prevent him from believing that reform of Jewish education by the government would fundamentally improve Jewish character.

The lawyer and writer Lacretelle was another of these collaborators and became particularly significant to the work of the commission. Lacretelle had previously contributed to Malesherbes's work on the Protestants and was known as a vociferous advocate on behalf of the Jews. Like Mirabeau Lacretelle was influenced by the principles of natural law. This influence was clear in the positions Lacretelle took in litigation and in his submissions to Malesherbes. While he believed the Jews were French subjects who should be free to continue particularistic practices, he saw civil law as the ultimate authority on all matters, a critical characteristic of legal centrism. It was also Lacretelle who recommended Target and Roederer to Malesherbes as collaborators in the investigation of the Jewish question: "I refer you to M. Roederer, young

64 Grosclaude, 635-39.
65 Ibid.
67 Hertzberg, 324.
counsellor from the *parlement* of Metz who knows the local Jews and proposed the prize contest to the academy of this city on the question you are working on with great merit and talent..."\(^{68}\)

Lacretelle's connection with the Jews began in 1775 when he launched his career acting on behalf of the Jews against the authorities of Thionville by challenging their refusal to grant shop keeping licenses to Jewish merchants. He based his argument on the claim that, "the real question of this cause is to know if the Jews are men."\(^{69}\) Like Mirabeau he was influenced by Moses Mendelssohn, the leading light of the Jewish Enlightenment, of whom Lacretelle wrote: "A man of this nation is made immortal by the immortality of the soul."\(^{70}\) For Lacretelle the question of Jewish status was "... In effect a question that interests all of humanity, religion, natural law and civil law."\(^{71}\)

Lacretelle used the issue of Jewish divorce in the Peixotto case in 1779 to develop a rubric of citizenship. He argued that the Jew, "is a man who lives among us... he lives under the protection of our laws."\(^{72}\) This issue of law in regard to Jews contained a dilemma: "...It is by the law of the Jews that the Jews exist in France and should be judged or should they be judged by the law of the French?"\(^{73}\) This dilemma he believed, was as central to the amelioration of Jewish status. In the context of the Peixotto divorce, Lacretelle examined the issue of whether the Jews' particularism prevented their integration. The issue of divorce, valid under Jewish law but prohibited by French law, exemplified the dilemma of whether Jews could be treated as French subjects: "Separation in this law is not known, reproved or proscribed. Divorce in this

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\(^{68}\) Grosclaude, 636.  
\(^{70}\) Grosclaude, 635.  
\(^{71}\) Pierre-Louis Lacretelle, "CLXXIe cause. "Question d'état sur les mariages des Juifs. Le divorce est-il admis parmi eux?" *Causes célèbres*, vol. 65 (Paris, 1780), 16.  
\(^{73}\) Ibid.
law is known, practiced and permitted. That is the contention that M. Peixotto wants to be admitted, and that of his wife to be rejected, that is, is it according to the Hebrew law, or according to French law, that the Jews who exist in France should be judged?” Lacretelle believed that the practice of particular customs should not prevent the Jews from attaining the level of citizenship. To do otherwise would be tantamount to requiring religious conversion and citizenship under such conditions would therefore be only a chimera of liberty:

It is just, he says to us, to leave the Jews free to practice their law, according to their customs in all that is necessary in their precepts. Therefore, the observation of the Sabbath, the abstinence from the prohibited meat, and other religious matters should not be forbidden them. But is it not also just to acknowledge the privileges that the legislature accords them and require of them to build civil tolerance. Is not divorce of this nature?

Is it not sensible that because the Jews follow their law and have the liberty to follow their law that they should not be obliged to conform to ours?

In a word, is it necessary to force them not to be Jews. To have the liberty to be among us as Jews they must be free to follow the laws of the Jews. What shall be done in effect with this chimera of liberty that we accord members of a religion that we do not permit the liberty to follow its laws or its practices.

74 Ibid., 77-78.
75 Ibid., 94.
76 Ibid., 101.
77 Ibid., 84.
Lacretelle, did not condone particularistic autonomy however with respect to juridical status. He asserted that in order to enter the public sphere Jews must be judged by French courts, even on matters related to practices permitted only by Jewish law: "...that Jews therefore should be judged by our courts, because our courts alone can give the powerful sanction of public authority to any question."\textsuperscript{78} It was the parlement "... that by breaking them and confirming them afterward renders the obligations null, and it is the French authority that lends strength that is not given to their Jewish origin."\textsuperscript{79} Only by submitting to the French courts will the Jews come to "...accept the customs and constitution of the countries that accept them."\textsuperscript{80} Only then could the claim be made, "il est Juif, mais il est Français."\textsuperscript{81}

Lacretelle's arguments on issues raised by Jewish divorce and the jurisdiction of sovereign courts such as those raised in the Peixotto divorce case in the 1770s were of specific interest to Malesherbes who recognized the connection between the issue of Jewish divorce and citizenship. In a letter to Lacretelle of February 11, 1786, Malesherbes wrote:

To make everything better, Monsieur, I write to remind you of what we talked of quickly in our conversation, please find in this paper the requests I made of you yesterday.

1. you told me that you would send me your memoir in the case of the Jews of Metz argued in 1767 which you lost despite your work, you have treated the question with considerable attention and have promised to send me your work.

\textsuperscript{78} Ibid.
\textsuperscript{79} Ibid.
\textsuperscript{80} Ibid.
\textsuperscript{81} Ibid.
2. On the divorce requested by Peixotto, I have read the consultation made in favor of this Jews and those replicated by M. Target before I knew of your work in this cause. I have written in consequence to M. Target to ask him what the conclusion was and at the same time if he had the first memoir of the lady Sara Mendes d'Acosta responding to observations made by the husband.

...I have delayed sending my letter to ask you to send this letter to M. Target and to communicate to me and to each other the result of the Peixoto affair and by consequence the principles established in the tribunal on the subject of Jewish divorce and to also assist me to be enlightened on the state of the Jews in France. This matter is very important to clarify and I do not know a greater exercise for men such as you and M. Target. You know my sentiments.\textsuperscript{82}

Lacretelle responded favorably to Malesherbes's request, providing Malesherbes with his many articles including his submission, \textit{Réflexions sur les Juifs}, which appeared in the \textit{Mercure de France} in 1786.\textsuperscript{83}

Although not formally collaborators, Malesherbes was also influenced by the authors of the prize winning essays of the Metz contest which Roederer had sponsored. As referred to above in 1785 the Academy of Metz sponsored an essay contest on the question, "Are there means to make the Jews more useful and happy in France?" The fact that this question was chosen as the topic of one of the many provincial academy essay contests was an indication that

\textsuperscript{82} Archives de Tocqueville A.N. 1.135 177 mi 186, not signed but probably written at the end of 1787 also cited in Grosclaude ,635 f.n. 13.

\textsuperscript{83}Pierre-Louis Lacretelle ," Réflexions sur les Juifs", \textit{Mercure de France} no. 6, (February 11, 1786) ,71.
reformist attitudes toward Jewish status were beginning to receive some public attention. A letter
from Lacretelle to Malesherbes states that Roederer suggested the subject and that he knew the
Jews of Metz very well. 84 Roederer suggested that the dissertations address the question: “...The
primary cause of prejudices against the Jews is their vices and especially that which we find
most revolting, usury. We reduce them to the impossibility of being honest men. How would you
like them to be. It is the just work of all humanity and reasonable men.” 85 His initial proposition
was to discuss the possibility that there was something worthwhile preserving in the Jew, 
although this did not prevent him from believing that an essential reprogramming of Jewish
education on the part of the government would fundamentally improve Jewish character. In 1786
when the seven entries were not judged worthy of the prize, the contest was extended for another
year and the most worthy contestants were given criticisms with which to improve their work.

The varying character of entries that finally appeared range from a four-page letter from
a judicial official in Saint-Domingue to the masterful thesis of the Abbé Gregoire. 86 An entry by
a judicial official of parlement of Metz, Louis-Nicolas Harllecourt, proposed that all Jews be
exiled to Guiana because they are, ”...a people of cowardly and barbarous slaves.” 87 A curé from
eastern France, Dom Chaise, maintained the traditional view that the Jews were the enemies of
Christendom. Another essay by Connu-Demarias defended the character of the Jews, but did not
propose a useful program for reform. As for the Jews’ conditions he stated, ”...it is our fault. The
dictates of our reason are jaded by ignorance, conserved by habit and prejudice.” 88 The entry of
the Abbé de Lauze suggested that France could glorify her name by being the first in this

84 Grosclaude, 636.
86 For a more complete summary of the entries see Abraham Cahen, ”L’emancipation des Juifs devant la société
87 Feuerwerker, 72.
88 Ibid.
humanitarian project of emancipating the Jews. The secretary of the agricultural society of Laon, Valioud, proposed that, "their [the Jews'] utility and their good character can be found in France by the general conversion of the Jews." Upon conversion they were to be emancipated. The entry from Pri de Père declared the Jews were men and thus should be given citizenship.

The three prize winners were Claude Thiéry, a barrister from Lorraine, Zalkind Hourwitz, a Polish Jew who immigrated to France, and Henri-Baptiste Grégoire, a priest. All three had in common the theme that persecution and segregation were the roots of the Jews' malaise and all three pointed to equality and integration as the solution. They all also concurred on the need to limit Jewish communal authority. They differed markedly however, on the issue of the integrity of the practice of the Jewish religion and on whether it was the Jews' moral character or just their circumstances which needed improvement. They also differed on their goals for the Jews. Grégoire wanted religious conversion. Thiéry wanted cultural assimilation. Hourwitz was the only one to suggest emancipation while maintaining a distinctive Jewish identity.

Malesherbes entered into correspondence with Zalkind Hourwitz and the Abbé Grégoire. Hourwitz simultaneously defended the integrity of Judaism while demanding reforms. He believed that the Talmud and rabbinical law were responsible for the Jews' segregation and wanted to eliminate the right of the rabbis to discipline and to excommunicate members of the Jewish community. He believed that in an open society the Jews would give up their insularity. He felt that reform of the political condition would not alter their natural morals.

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89 Ibid., 78.
90 Ibid., 72.
93 for example, see the letter of September 6 1788 from Grégoire to Malesherbes, letters to Hourwitz dated may 20, August 25, September 2, October 15, And December 8,1788 Archives de Tocqueville A.N. 1.135 177 mi 186, also cited in Grosclaude, 636, 646.f.n. 380.
Education in public schools would help to achieve this purpose. On economic matters he asked for the removal of all restrictions on occupations. In view of the Jews' illicit practices, however, financial transactions with non-Jews should be limited. Hourwitz pointed to the edict of 1787 as the harbinger of reason in political action and the beginning of change in popular sentiment. In an ironical tone he expressed the idea that it was not the Jews who should be regenerated, rather that it was the attitude of the unjust critics which required change.\textsuperscript{95}

Gregoire's essay, \textit{Essai sur la régénération physique, morale et politique des Juifs}, espoused the same fundamental position as that of Malesherbes.\textsuperscript{96} He believed the Jews were tragic victims of centuries of persecution whose regrettable penchant for usury was nothing more than the consequence of their poor position: "The wrongs of the Jews and their woes should be blamed on our conduct toward them."\textsuperscript{97} If their civil status was elevated, and restrictions were removed on their ability to make a living, they would cease to be usurers and would assimilate.\textsuperscript{98} Further, he concurred with Malesherbes that integration of the Jews could only be accomplished by the erosion of the Jews' particularism. Relations between Christians and Jews had to be normalized.\textsuperscript{99} Jewish autonomy had to be eliminated, the rabbis had to be relieved of all authority except in religious matters. His assertion that all else should be ruled by the law of the land, reflects the same ideas of legal centrism that Malesherbes supported. Education should be left in the hands of the government, especially for language. Jewish customs, including marriage and divorce, had to be governed by French law. He counseled the state to gradually prepare Christians for this reform. He ended by saying 'The Jews are members of the universal family

\textsuperscript{95} Zalkind Hourwitz, 'Apologie des Juifs,' Vol. IV in \textit{La révolution Française et l’émancipation des Juifs} (Metz 1789), 20.
\textsuperscript{97} Ibid., 171.
\textsuperscript{98} Ibid., 164.
\textsuperscript{99} Ibid.
and we must establish a brotherhood among all of the people."\textsuperscript{100} Gregoire's universalism differed from that of Hourwitz and Malesherbes's collaborators in that his ultimate goal was to effect a conversion of the Jews. Gregoire's position was also restricted by his failure to understand the differences between the Ashkenazim and Sephardis. On a practical level however, this did not detract from the liberalism of his general concept of reform and his approach resonated with Malesherbes. Grégoire, without any change to his program for reform of Jewish status, would go on to advocate for Jewish emancipation in the National Assembly.

The generally enlightened platform of Malesherbes' collaborators and the Metz contest laureates conflicted with the Jewish communities themselves on a critical point: the dissolution of the autonomous community. Malesherbes invited representatives from the various Jewish communities to consult with him after sending them a number of questions to structure their comments.\textsuperscript{101} Cerf Berr represented the Jews of Alsace, Berr Isaac Berr represented the Jews of Lorraine, and Abraham Furtado and David Gradis represented the Jews of Bordeaux. They all provided their observations and opinions. It rapidly became apparent that rationalization of Jewish status would be very difficult given the divisions between the various communities. The two principal communities were irreconcilably divided by disparate conditions and conflicting approaches they favored to reform.

The Sephardics in their "mémoire pour la nation Juive Portugaise," sent to Malesherbes on June 15, 1788, responded to his questions and sought the continuation of their privileges and their traditional autonomy.\textsuperscript{102} They argued that the "Portuguese nation," meaning the Sephardic Jews who resided in the area of Bordeaux and Bayonne, had gradually increased their privileges

\textsuperscript{100} Ibid.
to the same level as that enjoyed by "natural subjects of the king." They saw themselves as "...true citizens who have an interest in the prosperity of the country that they regard as their homeland." Their perception of themselves was confirmed by the fairly extensive privileges and participation in public life they enjoyed. For example, the Jews of Bordeaux had applied and been granted the right to be textile merchants in Paris as well as Bordeaux and Bayonne without restriction. As their Ashkenazi coreligionists said of them, "...they had the complete freedom to work in commerce in Bordeaux where they were legally established by lettres patentes of the month of 1759, by which they were granted these privileges. By the granting of these privileges the Jews of Bordeaux had no reason to change places." Unlike the Ashkenazis, they shunned public attention and litigated only to preserve or confirm existing privileges. The Sephardics integrated socially with their Catholic and Protestant peers, already had a recognized registry for personal status, and felt they had more to lose than gain from Malesherbes's commission. The Jewish oligarchs in Bordeaux did not want a new consideration of the Jewish question. They feared that any new legislation would confuse or affiliate them with the Ashkenazim, and they feared jeopardizing their privileged status. The chasm that separated the two communities is reflected in the tract of the Sephardic Jew Issac de Pinto, *Apologie pour la nation Juive*, published in 1762. The author maintained that it was essential to distinguish the Portuguese Jews from their co-religionists, for "they do not wear beards and are not different from other men in their clothing: the rich among them are devoted to learning, elegance and manners to the same degree as the other peoples in Europe, from whom they differ only in religion."
Despite their high level of cultural integration however, the Sephardic community proved resistant to Malesherbes on the critical issue of autonomy. The Sephardim zealously guarded their autonomy, particularly as it related to issues of personal status. The Peixotto case, which had triggered an undesirable amount of adverse publicity and judicial attention, had threatened the community's autonomy on issues of personal status. David Gradis, a prominent member of the Jewish community of Bordeaux, after learning of Malesherbes's interest in the case, wrote to Malesherbes on March 29, 1788, to defend the Bordeaux community's position on divorce. Gradis sought to find a position that both conformed to French sensibilities regarding divorce while preserving autonomy Jewish over it:

...What it has in your place and in this case, the civil justice is to say the judges and courts of the country should apply your law? I believe that it is certain that during all the time that I was in Gienne, there was never a case like the Peixotto case, but I know of the annulments of others who were less notorious and were executed by the consent of the parties without the intervention of secular judges.¹⁰⁸

The Sephardim of Bordeaux sent a deputation to Paris to meet with Malesherbes in the spring of 1788. This included Solomon Lopes Dubec, who had been a leader in the affairs of the community, and Abraham Furtado who was later to be the central personality in Napoleon's Sanhedrin. In one encounter that Lopes and Furtado had directly with Malesherbes they spent three hours convincing him that certain legal and religious separatism should be allowed to the Sephardic Jews, even if the rights of the Askhkenzim were substantially increased. They had foreseen the possibility that all Jews might be given rights equal to those of other citizens and

¹⁰⁸ Archives de Tocqueville A.N. 177mi 186.
that the autonomous Jewish communities would be dissolved. In that case the Sephardim hoped to be able to get authorization to recreate their own communities in order to maintain their own separation from other Jews. In her study of the Sephardim, Frances Malino argues "that they hoped to achieve both an extension of their privileges consistent with the new rights granted Catholics and to retain their separate and unique status." In April of 1788 Malesherbes sought the opinion of Nicholas Dupré de Saint-Maur, intendant of Bordeaux, on the issue of Jewish autonomy as a counterbalance to Gradis's and Furtado's positions. Malesherbes asked Dupré de Saint-Maur to question the Sephardic syndics in Bayonne and Bordeaux on the situation of the Jews in the principal realms of Europe. He asked specifically about the observance of Jewish law as it pertained to property rights, their attitude toward remaining separate from general culture, agriculture, whether they would work on Jewish holidays and the differences between the Jewish communities. He referred specifically to the practice of divorce. He also asked Dupré de Saint-Maur to ask the Jews for what type of constitution they would desire in France.

Dupré Saint-Maur, as well as being one of Malesherbes' collaborators, was known as an advocate for the Jews as well as being a correspondent of the Sephardic Bordelaise leader David Gradis. Dupré's answer reflected the same concern over demographics and population increase that motivated some of the debates regarding the freedom to divorce. He believed that

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109 Hertzberg, 326, see also, Zosa, Szajkowski, "the Delegation of the Jews of Bordeaux to the Malesherbes commission " Zion, XVIII,56,57,59.
111 Dupré de Saint-maur was an ardent supporter of the Jewish cause and exchanged numerous letters with David Gradis in March 1788. See for example Archives de Tocqueville L.135, 177 mi 186.
112 Archives de Tocqueville, L.135, A.N. 177 mi 186; Grosclaude, 639.
113 Hertzberg, 324.
114 Archives de Tocqueville, L..135, A.N. 177 mi 186; Grosclaude, 639.
it was necessary to, "tolérer l'exercise de la religion judaïque.....," and to leave to the Jews the ability to work on Sunday and festival days, emulating an example of the Jews of Avignon. Further, in response to a query by the conseil d'État regarding the possibility of a new law code for the Jews of Alsace that would be similar to that pertaining to the Jews of Bordeaux, he replied that with regard to all Jews of his region, "there was nothing more to be said that did not apply as well to Catholics and Protestants of comparable estate." He also wrote "Although there is a great difference between these Jews and those of Alsace, both are equally human beings. Treat them in the same way and the characters and habit will be the same." Malesherbes recognized that, in contrast to the Sephardim, the Ashkenazi Jews of the North-East were engaged in a struggle to improve their civil status in an atmosphere of anti-Semitism that defined their existence. They rightly felt themselves to be barely tolerated on French soil. He recognized that they were excluded from most occupations and were largely forced to earn their living as money lenders. Their submission to Malesherbes, Réflexions sur l'enregistrement de l'état des non-Catholiques au parlement de Metz, et projet pour rendre les juifs plus utiles et plus heureux en France, depicted their poor circumstances and demanded better rights while maintaining their autonomy. The lettres patentes of July 1784, which imposed regulations on marriage and residence that were harshly restrictive on the Jewish communities of Alsace- Lorraine, threatened even the thin veneer of protection that previous grants had provided.

115 Ibid.; Grosclaude, 639 f.n. 20.
117 Benbassa, 79.
This position accorded with their efforts to improve their conditions through lobbying and litigation.\(^{118}\) The Ashkenazi Jews of Alsace-Lorraine had been engaged in an ad hoc campaign throughout the second half of the eighteenth century to change their status from tolerated foreigners to French subjects.\(^{119}\) They asserted that it was contrary to natural law for a Jew who was legally resident in the realm to be required to obtain permission for his children to live in France.\(^{120}\) Further, they argued that there should be no difference between the Jews and the Protestants. As an example, Cerf Berr, the wealthy Alsatian Jewish purveyor, had fought and won a legal battle with Strasbourough over his right to reside in the city.\(^{121}\) Similarly, the Jews of Thionville and Sarrelouis litigated for the right to join the guilds and be licensed as merchants. Represented by Malesherbes's collaborator Lacretelle, they had argued: "this law makes distinction between neither worship nor religion. It does not require anything in this regard. Its sole object is to encourage talent, industry, and favor commerce...".\(^{122}\) In their view the application of the law should not be restricted because, "la qualité de Juif ne peut donc pas être une cause d'exclusion."\(^{123}\) Moreover, they asserted they were entitled to domicile and legal residence and should be considered regnicoles subject to French law:

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\(^{118}\) For example, see the case of the Jews of Thionville and Sarrelouis litigating for licenses as merchants, Pierre-Louis- Lacretelle, Plaidoyer pour deux Juifs contre l'hôtel de ville et le corps des marchands de Thionville Paris; libre Lipschutz, 1823).

\(^{119}\) Elsewhere in France other smaller and more scattered communities, such as the Jews of Paris, existed on the margins of society without even the benefit of the designation of étranger. The Jews of Paris in particular were tolerated merely as persons "passing through" and had to carry certificates of good conduct and register with municipal authorities. They engaged in litigation similar to the litigation that the Ashkenazics engaged in over the seizure of property from the estates of Jews who died as part of the exercise of the droit d'aubain. Sahlins, 97-100.

\(^{120}\) For example, see the case of Hayam Levy, réponse pour les sieurs Worms frères Juifs, natifs et habitans de Sarrelouis, Lyon Alexandre, et Joseph Cahen Archives de Tocqueville A.N. 177mi 186.

\(^{121}\) Cerf Berr, mémoire pour les prêteurs, consuls et magistrats de la ville de Strasbourg contre le sieur Cerf Berr Juif, archive de Tocqueville, A.N. 1.135, 177 mi 186; Grosclaude f.n., 646.; See also requests of Cerf Berr dated March 12, 1788 and Jan 23, 1788 observations sur les Juifs relativement à la contestation pendante entre le magistrat de Strasbourg et le sieur Cerf Berr Archive de Tocqueville, An. 1.135, 177 mi 186.

\(^{122}\) Pierre-Louis- Lacretelle, Plaidoyer pour deux Juifs contre l'hôtel de ville et le corps des marchands de Thionville Paris; Libre Lipschutz, 1823).

\(^{123}\) Réponse pour les sieurs Worms frères Juifs, natifs et habitans de Sarrelouis, Lyon Alexandre, et Joseph Cahen Archives de Tocqueville A.N. 177mi186.
It is necessary to conclude for a contrary reason that the same expressions are not an objection that the Jews who are already established in the French empire and who already have permission to reside there evidently have the right to profit from the beneficence of the law.

... none of this opposes that the Jews be admitted to the favor of the law...\(^{124}\)

In their representations to Malesherbes the Ashkenazim argued for the broadest kind of economic equality; they believed, as Malesherbes did, that broad access to other means of livelihood would eliminate the practice of usury. Cerf Berr and his several associates who had come to Paris in the spring of 1788 wanted rights for the Ashkenazim as broad as those that Sephardim had already attained. They agreed with the position of the Sephardic Jews in one respect: they insisted that the communal autonomy of the Jews should be maintained and that the power of the *parnassim* within such a structure should even be strengthened.\(^{125}\) While the Jews concurred with Malesherbes's statement that, “If you change the position of the Jews you will change their character...”,\(^{126}\) they maintained their attachment to their religion which they believed was defined by particularistic practices. The Jews stressed that it was the repressive conditions under which they lived, rather than their religion, which made them so reprehensible. Their religion, rather than corrupting them, inspired moral fortitude and loyalty in them: “...They

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\(^{124}\) Ibid.

\(^{125}\) Mirbeck’s memoir for the Jews of Alsace, pleading against the *lettres patentes* of July 10, 1784 was the last important formal statement of the Jewish position. It was devoted mostly to asking for larger economic rights, and it was presumed almost without question that the autonomous Jewish community should be maintained. At the end of April, 1788, Cerf Berr was supposedly working on a new statement of the Ashkenazi position over Malesherbes but there is no record of such a memoire being completed. It is referenced as being contemplated in the diary of the Bordeaux delegation to Malesherbes. Hertzberg, 325, S. Poesner, ”The Social Life of the Jewish communities in France in the eighteenth century” *Jewish Social Studies*, vol. 7 no.3, July 1945, 195-232.

\(^{126}\) *Réponse pour les sieurs Worms frères Juifs, natifs et habitans de Sarrelouis*, Lyon Alexandre, et Joseph Cahen Archives de Tocqueville A.N. 177mi186.
do not have less fidelity to the sovereign than other subjects, they respect the rights and hospitality they are accorded. Their religion is a sacred source to their credit. It is not ambitious or intolerant and it inspires honor. .."127. This assertion was fundamental to their plea to retain their particular communal structures and distinctiveness, the very circumstances that Malesherbes sought to change.

Despite the vast effort, Malesherbes's commission on the Jews ended not with a bang but with a whimper. Malesherbes, his collaborators, and the representatives of the Jewish communities had several inconclusive meetings and then, overwhelmed by the large crisis of 1788-1789, the investigation ended with no immediate change. This lack of resolution obscured the commission's enduring significance. Scholarly assessments of the commission have failed to account for its nuances which reflect deeper and important trends regarding attitudes of pre-revolutionary reformers. They have also failed to recognize the tension between Jewish particularism and the impetus to juridical centralization. Previous scholarly assessments of the commission on the Jews have either dismissed or overstated its impact. Examining the commission through the lens of its methodology, however, provides a different perspective. Contrary to the assertions of scholars who have labeled him as a 'conversionist,' Malesherbes did not single out the Jews as a "nation within a nation," having leveled identical accusations at the Protestants and the Jesuits. To some degree the Jews were a countervailing influence to the Protestants' new, more privileged position after the edict of 1787.128 By gathering information from many, often irreconcilable, sources Malesherbes recognized that there were unique factors regarding the reform of Jewish status. Nonetheless, his focus on rationalizing the Jews' juridical status should be seen in the larger context of juridical centralization of which his earlier work on

127 Ibid.
the Protestants formed part. Contrary to the view of his biographer Grosclaude, the Malesherbes commission was not simply a preliminary step toward the emancipation decrees enacted by the National Assembly. The role of the commission was far more complex. Although Malesherbes examined many of the issues confronting the integration of the Jews, his requests to Dupré Saint-Maur regarding the issue of Jewish divorce and his interest in the Peixotto case reflect his view that the issue of divorce was an integral part of the juridical centralization that he believed was essential to the goal of reforming the Jews' status. To Malesherbes, Jewish divorce had the same significance as Protestant marriage had had in elevating the civil status of the Protestants. Jewish divorce, however, had an added dimension because of the problematic nature of divorce as an example of Jewish particularism. Unlike Protestant marriage it was not easily reconciled with French law. To Malesherbes and his collaborators Jewish particularism, of which divorce was an important example, did not have a place in the elimination of a system of privilege in favor of a consistently applied standard of law. Bringing divorce under sovereign jurisdiction would not only be a step in giving the Jews the same juridical standing as other subjects, just as recognizing Protestant marriage had for the Protestants, it was also a test of eroding the influence of the autonomous community which Malesherbes believed to be an obstacle to Jewish integration. For Malesherbes, and for many of the enlightened contributors to his commission, Jewish divorce was also linked to larger issues such as the inherent nature of Jewish character and whether it was possible to make the Jew into a moral person who could participate in French society without changing his identity as a Jew. In this regard, Malesherbes's work foreshadowed the difficult debate to come.
Conclusion: "We must refuse everything to the Jews as a nation and accord everything to Jews as individuals." Emancipation, Napoleon and Jewish divorce; the effect of juridical centralization on Jewish status
Chapter 8

The divisiveness and ambivalence which characterized the Malesherbes commission on the Jews was reflected in the cahiers to the Estates General and presaged the National Assembly's debates over the emancipation decrees of 1789 and 1791. The debates reflected the polarization of regional attitudes toward the Jews and the different approaches of the Ashkenazic and Sephardic communities to obtaining civil status. Although the Sephardim participated in the general elections of delegates to the Estates General, the Jews of Alsace, Metz and Lorraine were excluded. The Ashkenazics did, however, submit a report pressing their demands, most notably for the retention of their communal structure and authority. Unlike the Ashkenazim, the Sephardim had nothing to gain from calling special attention to their situation given that their lettres patentes gave them many of the rights of other French subjects. The extent of their desire to distance themselves from the Ashkenazim was apparent in their petition to the Abbé Gregoire not to make a plea for the emancipation of the Jews which, they believed, by affiliating them with the Ashkenazim would diminish their privileged standing.\(^1\)

The divisiveness between the two groups of Jews during the National Assembly's debates in 1789-1790 exacerbated the fierce resistance to granting the Jews active citizenship. The issue of whether to include the Jews in active citizenship drew the opposition of a coalition of deputies whose opposition to Jewish emancipation contrasted with their avowed revolutionary principles. Among the arguments against the granting of active citizenship was the recurring epithet that Jews were considered "a nation within a nation."\(^2\) In response Count Stanislas-

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\(^2\) Françoise Joseph Antoine de Hell, Observations d'un Alsacien sur l'affaire présente des Juifs d'Alsace (Frankfurt, 1779) attribution of the work is not identified; Clermont Tonnerre, Reimpression de l'ancien Moniteur depuis la
Marie-Adélaide de Clermont-Tonnerre gave a speech on December 23, 1789 in which he stated:

There is no middle way possible: either you admit a national religion, subject all your laws to it, arm it with temporal power, exclude from your society the men who profess another creed and then, erase the article in your declaration of rights (freedom of religion); or you permit everyone to have his own religious opinion, and do not exclude from public office those who make use of this permission...

...the Jews have their own judges and laws. I respond that is your fault and you should not allow it. We must refuse everything to the Jews as a nation and accord everything to Jews as individuals. **We must withdraw recognition from their judges; they should have our judges.** We must refuse legal protection to the maintenance of the so-called laws of their Judaic organization; they should not be allowed to form in the state either a political body or an order. They must be citizens individually. But, some will say to me, they do not want to be citizens. Well then! If they do not want to be citizens, they should says so, and then we should banish them. It is repugnant to have in the state an association of non-citizens, and a nation within...
nation... In short, Sirs, the presumed status of every man resident in a country is to be a citizen.³

Clermont-Tonnerre's speech, particularly his position that the Jews must conform their laws and submit to the French legal system, was an overt call for juridical centralization. His speech echoed the call for juridical conformity articulated by Target and Lacretelle in the Peixotto case, and by the terms of the regulations in the lettres patentes of 1784. To reformers like Clermont-Tonnerre, conformity to a centralized juridical administration, rather than religion or enlightened ideas of natural law, was the criterion for determining membership in French society.

Despite the advocacy of Clermont-Tonnerre and other reformers, the motion on 24 December 1789 to grant active citizenship to the Jews failed. Deprived of what they had assumed they already enjoyed by vote of 24 December, the Jews of Bordeaux launched a lobbying effort to gain recognition as active citizens. On 28 January 1790 the assembly decreed "all the Jews known in France as Portuguese, Spanish, and Avignonese⁴ will continue to enjoy those rights which they have enjoyed until now and which are sanctioned in their favour by the letters patentes; consequently, they will enjoy the rights of active citizens, when they fulfill the conditions required by the decrees of the assembly."⁵ In accordance with the abolition of their privileges, the Portuguese nation disbanded its communal organisation as the quid pro quo for active citizen status.⁶

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⁴ Avignon and Comtat-Venaissin ceased to be papal possessions in September 1791. The Jews of Avignon were granted active citizenship in June of 1791.
The Assembly postponed the question of equality for the Ashkenazim. The anomalous situation of excluding the Ashkenazis from active citizenship after granting it to the Sephardics had to be resolved. Therefore, shortly before it dissolved the Assembly admitted Ashkenazic Jews to the oath of citizenship. The decree of 27 September 1791 admitted all the Jews of France to the rights of active citizens. A complementary disposition was added to the text of the decree, which required a civic oath as a renunciation of all the privileges and exceptions introduced previously in favour of the Jews. In essence this text abolished communal autonomy by removing the privileges and private laws of the Jews. Although it did not specifically include divorce, it abolished particular statutes, autonomy and discordance between religious laws and the laws of the state. Despite the bold pronouncements of the emancipation decrees, however, the application of their principles to Jewish life and status remained ambiguous.

This ambiguity was partially the result of the fact that juridical autonomy continued after the emancipation decrees in the first years of the revolution, when both friends and foes of Jewish emancipation voiced their opposition to the existence of autonomously administered Jewish communities. This juridical void tended to perpetuate an exclusion based on this past particularism. The Jewish law on divorce was recognized by some French courts of law even after 27 September 1791, when the last group of French Jewry, the Ashkenazim, was granted full citizenship and when Jewish communities, and with them separate juridical autonomy, ostensibly ceased to exist.

The issue of authority over matters of personal status, and specifically over divorce, continued to complicate Jewish status into the Napoleonic period. In May of 1806, after Napoleon entered into the Concordat with the pope and granted recognition to the Protestants, he

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passed an edict which created a body known as the Assembly of Jewish Notables which would represent the Jewish community and be a consultative body with the aim of bringing the Jews in line with his policies. In 1807 he convened a body known as the grand Sanhedrin, a form of Jewish high court, to give legal sanction to the principles expressed in the Assembly of Notables. Although convening the Assembly of Notables and sanhedrin implied that Napoleon's administration continued to regard the Jews as a separate corporate entity regardless of the dissolution of corporate autonomy which had been a condition of emancipation, it reinforced the prevailing desire for juridical centralization and the need to harmonise key issues like Jewish divorce to French law.

The edict provided that the Assembly of Notables was to have 111 deputies who were to be selected "by the prefects from amongst rabbis, householders and other Jews distinguished by their probity and enlightenment." The deputies chosen to attend the Assembly were from both communities, however, the majority were from Bordeaux. David Sinzheim, the Rabbi of Strasbourg, headed the Assembly. Abraham Furtado of Bordeaux was the first president. The Council met five times between July and September 1806. They were ordered to consider twelve questions. The questions presented were:

1. Is it lawful for Jews to have more than one wife?

2. Is divorce allowed by the Jewish religion? Is divorce valid, although pronounced not by courts of justice but by virtue of laws in contradiction to the French code?

3. May a Jewess marry a Christian, or may a Jew marry a Christian woman? Or, does Jewish law require that the Jews

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should only intermarry among themselves? In the eyes of Jews are Frenchmen not of the Jewish religion considered as brethren or as strangers?

5. What conduct does Jewish law prescribe toward the Frenchmen not of the Jewish religion?

6. Do the Jews born in France, and treated by the law as French citizens, acknowledge France as their country? Are they bound to defend it? Are they bound to obey the laws and follow the directions of the civil code?

7. Who elects the rabbis?

8. What kind of police jurisdiction do the rabbis exercise over the Jews? What judicial power do they exercise over them?

9. Are the police jurisdiction of the rabbis and the forms of the election regulated by Jewish law, or are they only sanctioned by custom?

10. Are there professions from which the Jews are excluded by their law?

11. Does Jewish law forbid the Jews to take usury from their brethren?

12. Does Jewish law forbid, or does it allow, usury in dealings with strangers?[^9]

The nature of the questions put to the Assembly of Notables highlighted the link between the issue of authority over issues of personal status and the integration of the Jews into French society. The issue of divorce figured prominently as the second question on the list, after polygamy, and before the question on interfaith marriage, and well ahead of the questions on usury.

The Assembly of Notables responded to these questions in a lengthy report on the three points concerning polygamy, repudiation and marriage. The notables of the Assembly framed their comments as a matter of natural justice. They proposed that divorce not be authorized except in grave cases, and even in those cases the assembly of the nation, a lay body and not a religious tribunal, "would decide definitively and without appeal, with a three quarter majority on the divorce." By providing that, in the event the nation rejected a demand for divorce, the claimant could appeal to the French courts of law, the Assembly formally recognized the prevalence of the French courts in matters of Jewish personal status. The Jewish notables, anxious to preserve their new found emancipation, also resolved a potential contradiction between Judaic law and the civil code by requiring that a civil divorce be obtained in order to receive the Sefer Kitrut, the religious document required for a Jewish divorce. Without a civil divorce, reasoned the rabbis, no rabbinic divorce could be valid. Although this requirement ran counter to contemporary rabbinic reasoning it was not novel, constituting a logical progression from the positions taken by the advocates for the parties in the Peixotto case and from the

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11 Sajkowski, Mixed marriages and conversions among French Jews during the revolution of 1789, 829.
12 Ibid.
regulations in the *lettres patentes* of 1784. This compromise, which was in effect the juridical centralization of Jewish divorce law, signified a profound aspect of cultural integration.

The debate over the legalization of divorce encountered difficulties and delays that were similar to those regarding the grant of active citizenship to the Jews. It took over three years from the beginning of the revolution to pass the law legalizing divorce despite the legacy of the *divorçiaire* movement and the recognition of the value of Hennet's work on divorce by the National Assembly.\(^\text{14}\) The issue of divorce received scant attention in the *cahiers de doléances*, and even within those *cahiers* that did raise it, opposition to legalizing divorce outweighed support for it.\(^\text{15}\) It was referred to in debates on the reorganization of the judiciary and was included in lists of demands that petitioners presented to the legislature. The most important event, however, was an article in the Constitution of 1791 reading: "The law considers marriage to be only a civil contract."\(^\text{16}\) Until this time and for a year afterward marriage continued to be as it had been under the old regime: celebrated by the clergy, subject to canon law and indissoluble.\(^\text{17}\) The declaration in the constitution heralded a comprehensive reform of matrimonial law which included the legalization of divorce which eventually passed on September 20, 1792. The 1792 divorce law was not only more liberal than any contemporary divorce law, it was more liberal than current divorce law in many countries. As Roderick Phillips asserted, it "made the family secular and more individualistic."\(^\text{18}\) As had been required of the Jews under the *lettres patentes* of July 1784, the responsibility of registering personal status

\(^\text{14}\) The divorce law that was eventually passed in September 1792 followed Hennet's proposals closely and he received an honourable mention by the National Assembly, Roderick Phillips, *Untying the Knot: A Short History of Divorce* (Cambridge: Cambridge University Press, 1991), 59.

\(^\text{15}\) Ibid.

\(^\text{16}\) Ibid.

\(^\text{17}\) Ibid.

\(^\text{18}\) Ibid., 61.
such as births, marriages and deaths and divorce, was transferred from the Church to the state. The rules of marriage, and marriage ceremonies were secularized.\textsuperscript{19}

The divorce provisions of Napoleon's Civil Code were the successors to the decree of September 20, 1792. Although Napoleon's Civil Code codified the secularization of marriage it overturned or vitiated the most egalitarian aspects of family reform including a much curtailed version of divorce.\textsuperscript{20} The Napoleonic jurists maintained the principle of a uniform civil law but they structured this uniformity on very different principles than their revolutionary predecessors, reinforcing a model that resembled the patriarchal paradigm of the old regime rather than the revolutionary one.\textsuperscript{21} As Susan Desan has argued, "The jurists chose this model in contrast to the egalitarian families of the 1790s with their messy family courts, uncertain boundaries and overt protection of the rights of women and children."\textsuperscript{22} Jean-François Vesin described the new approach: "Public authority comes to join with paternal magistracy, but with a prudence compatible with the interest of the family."\textsuperscript{23} The Civil Code resurrected the option of the séparation de corps and created a much more limited form of divorce. Divorce became, in Napoleon's words, "an extreme remedy."\textsuperscript{24} All forms of divorce became much more expensive and legally complex. In 1816, after the Restoration of Louis XVIII, the Chamber of Deputies outlawed the practise entirely. Divorce would not be restored until 1884 and would not be as accessible as it had been in the 1790s until 1975.\textsuperscript{25}

After the pronouncements of the Jewish Assembly of Notables in 1806, and the Sanhedrin in 1807, the issue of divorce was separated from Jewish status in terms of reform.

\textsuperscript{19} Ibid.
\textsuperscript{20} Suzanne Desan \textit{The Family on Trial in Revolutionary France}, 284-285.
\textsuperscript{21} Ibid., 290.
\textsuperscript{22} Ibid.
\textsuperscript{23} Ibid., Vesin, 1 germinal an XI (21. Jan. 1801), Fenet 10:528.
\textsuperscript{24} Ibid.
\textsuperscript{25} Ibid., 303.
While divorce remained a political issue despite the changes to the political regime, Jewish status, albeit with some challenges such as the Infamous decree in 1808, did not. The role of the juridical control over divorce in the tension between Jewish communal autonomy, juridical centralization and secularization, which had made it an important platform for discussions on the reform of Jewish status in the eighteenth century, was not significant in the nineteenth century. In large part this was the result of the resolution of the process of social restructuring which required the shedding of layers of corporatism and conformity to the ideal of one secular law. Although the paradigm of patriarchal authority, which eschewed divorce, would resurface both politically and ideologically after the revolution, the adaptation of the Jews to juridical centralization, which Jewish divorce exemplified, prevented a retrenchment of Jewish status until the Vichy regime.

Ronald Schecter, in his book *Obstinate Hebrews*, considered how French Jewry tended to co-opt many of the values of the enlightenment, the revolution, and the Napoleonic system into its ideology and to identify dominant French values as inherently Jewish values. Schecter, examining the issue of assimilation, asserted that because Jews took a certain control over the terms of reference employed in discussions of their place in society they were able to maintain their separate identity even while becoming a part of the French polity: "Rather than being assimilated into France, they assimilated France into themselves." The resolution of the issue of juridical authority over Jewish divorce, however, reveals more than the ideological adaptation suggested by Schecter. It was part of a structural and

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28 Ibid., 13.
cultural transformation. This transformation resulted from efforts to re-align the locus of legal authority in the state, as opposed to a distribution of authority in different corporate bodies, and was manifested by the rule of the state directly over its citizens through a uniform legal code for both public and private spheres. One element of this process was the divorce movement. Divorce, as Roderick Phillips wrote, "was the negation of the corporate notion, and implied the assertion of the interests of the individual over those of the familial or conjugal unit." 29

For the Jews, equality as citizens was dependent not only on the dilution of a religiously based identity. It was predicated on the subjugation of personal status, formerly a critical characteristic of Jewish autonomy, to secular civil law. The fact that both Jewish communities resisted the implementation of this new structure but ultimately condoned it as the cost of an elevated civil status demonstrates its significance. Jewish divorces appealed beyond the Jewish community's courts placed Jews in the category of French subjects. Jews came before the courts as Frenchmen subject to the same law that governed other subjects even on issues as intimate and culturally charged as divorce. Doing so enhanced the role of the Jews as part of the larger process of an impetus toward juridical centralization. The challenge that bringing Jewish divorces before secular courts, presided over by Catholics, posed to the authority of the Church and to the traditional basis for the paradigm on which patriarchal hierarchy rested enhanced the role of the Jews in efforts toward juridical centralization. Borach Levi's experience before the court publicized the role of Jewish divorce in the incipient stages of the impetus toward juridical centralization, although the ruling in his case reinforced the indissolubility of marriage and the convert's ties to the Jewish community. It also reflected the political conflict inherent in the implementation of juridical centralization. The Church, backed by local authorities, successfully

29 Roderick Phillips, "Women's Emancipation, the Family and Social Change in Eighteenth-Century France," *Journal of Social History*, vol. 12, No. 4 (Summer, 1979) 553-567.
dominated the struggle over juridical authority concerning Levi's divorce. The prohibition on Levi's ability to obtain a divorce from his Jewish wife to remarry a Catholic reinforced the Church's influence.

The Peixotto case in 1779 acquired attention in the context of the national debate on divorce waged by writers and advocates which had only been nascent at the time of the Borach Levy case twenty years earlier. In this context, the Peixotto case generated a much broader debate on Jewish civil status. Taking a position which was clearly influenced both by enlightened ideals and concepts of legal centrism, the advocates Lacretelle and Target took the position: “il est Juif, mais il est Français,”30 a claim which would resonate with the National Assembly. The Peixotto case showed a marked departure from the Levy case both in its toleration of the concept of divorce, which had been condemned in the Levy case, and in its approach to Jewish status which encouraged the consideration of the Jews as French subjects.

This process was nuanced, however, and was not a simple trajectory of progress. Examining the lettres patentes in light of the abolition of the péage corporel and inclusion of the rule in Borach Levy reveals the strength of the competing interests of local authorities, the Church and the Jewish community and the politicization of control over Jewish personal status. The lettres patentes of 1784 taken as a whole, however, confirm an impetus toward juridical centralization. Although Malesherbes did not conclude his work or make any formal recommendations, the extensive research he compiled is an important indication of the policy of Louis XVI's administration to reform itself in keeping with the centralization of authority. His efforts to collect information from as many sources as possible and to consult with representatives of all interested groups represented a modern approach to setting policy and

30 Plaidoyer pour la demoiselle Sara Peixotto, Target, M.S. Joly de Fleury 508, Fol.92 Bibliotheque Nationale de France N Richelieu, Paris.
implied an impetus toward rationalizing membership in French society as an aspect of juridical centralization. Although the lack of formal recommendations makes a final assessment of his work impossible, Malesherbes's close collaboration with reformers like Lacretelle, and his specific interest in events like the Peixotto case reflected his attention to a consistently applied standard of law, including litigation of personal status for particular groups such as the Jews, as the principal mechanism of reform.

The study of Jewish divorces that became *causes célèbres* adds a new dimension to the idea that French nationalism did not have solely political origins and that there was a static and unitary conception of national identity through time. These cases provide a lens into the complexities of efforts and impetus toward juridical centralization in three important ways. The examination of these Jewish divorce cases which became *causes célèbres* reveals the reduction in the power of the Church with regard to issues of personal status, and the dialectic between the Church and the secular courts with regard to the principle criterion defining membership in French society. They also provide an intricate view of the nature of the competition between the power of the monarchy, local interests and corporate bodies such as the autonomous Jewish community over the structure of authority. Finally, they provide an alternative way of analyzing the reform of Jewish status and the revolutionary emancipation decrees. In conclusion, this analysis reinforces the idea that the events of the revolution were not only grounded on the developments and reforms of the previous decades, but that an impetus toward juridical centralization, although not always successful, played a more critical role than has previously been considered.

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Appeal Court Routes\textsuperscript{32}

order in council can arrest parlementary decrees
\[ \downarrow \quad \uparrow \]
Parlements \[\rightarrow \quad \uparrow \rightarrow \] (conseils souverains - Colmar, Perpignan, Arcos, Bastia)
also exercised police powers
\[ \uparrow \]
Bailliage Sénéchusée (Présidal Courts) →→ pre-empted other royal courts:

\[ \uparrow \uparrow \quad \uparrow \]

seigneural assizes

\[ \uparrow \]
\[ \uparrow \text{prévots,} \]
\[ \text{vigueries,} \]
\[ \text{vicomtés,} \]
\[ \text{chatelaine} \]
(court of last instance in some cases)
Extraordinary justice-
summary
judgement-no
appeal

\textsuperscript{32} Summary based on descriptions in P.M. Jones Reform and Revolution in France: the Politics of Transition, 1774-1791, 24-45.
The French Courts in the Eighteenth Century

Lower courts:

*baillages* (Northern France) and *sénéchaussées* (southern France), *présidiaux*.

*prévotés*, in areas such as Normandy into *vicomtés*, in southern France into *chatellaines*, in other parts in the south into *vigueries* or *baylies*.

The *prévots* and their equivalent were the first level judges for non-nobles and ecclesiastics. In the exercise of the legal functions they sat alone but had to consult with certain lawyers (*avocats* or *procureurs*) they chose themselves. The appeals from these sentences went to the *bailliages*, who also had jurisdiction in the first instance over actions brought against nobles. *Bailliage* and *présidaux* were also the first court for certain crimes (called *cas royaux*) which had formerly been under the supervision of local seigneurs. These included sacrilege, lèse majesté, kidnapping, rape, heresy, alteration of money, seditious insurrections. Appeal from the *baillage* went to regional *parlements*.

**Superior courts or *cours souveraines*, whose decision could only be revoked by the king in his conseil Parlements.**

The *parlements* were the final courts of appeal for nearly all sentences except those where the *bailliage* and *senechaussches* had been granted the right to be the court of last appeal. Only an order in council emanating from the highest levels of government could revoke their *arrets* or judgements. In addition the *parlements* exercised police power which in eighteenth century meant market practices, guilds, local government finance, servitudes, customary rights and public decency, as well as habitual concern with law and order.

**Conseils souverains** - equivalent to regional *parlements* in more recently annexed territory

Specific courts:

*chambre des comptes* combined with *cours des aides*

*Cours des monnaies* oversaw money, coins and precious metals

*Grand conseil* originally created to oversee affairs concerning ecclesiastical benefices; occasionally the king sought the *Grand conseil's* intervention in affairs considered to be too contentious for the *parlement*.

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33 Summary based on descriptions in P.M. Jones Reform and Revolution in France: the Politics of Transition, 1774-1791, 24-45.
**Royal Authority:**
The king retained the ultimate judicial authority - the king's privy justice was dispensed by the *conseil d'etat privé*, also known as the *consiel des parties* whose function was to dispense the king's justice above and beyond the competence of the *parlements*. This council ordered judicial reviews, heard appeals against judgements of the intendants and was empowered to issue resolutions quashing the rulings of the courts.
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