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Table of Contents

Note on Translation and Transliteration ii

Introduction 1

Chapter 1: State Politics and Jewish Communal Autonomy in Metz 5

Chapter 2: Upheaval from Within 24

Chapter 3: Jewish Practice in Translation 40

Conclusion 50

Bibliography 52

Figure 1: 17

Figure 2: 34

Figure 3: 50
Note on Translation and Transliteration:

The documents used in this paper have been translated from French, Hebrew, and Yiddish. Translations from French and Hebrew are my own unless otherwise indicated. I was assisted in the translation of Yiddish documents by Professor Elisheva Carlebach. In all cases, I have tried to adhere to the original meaning of the excerpt, at times diverging from the literal meaning in order to more effectively express the content.

Quotations and terms from old French have, when necessary, been adapted to modern spellings for the sake of simplicity. When transliterating Hebrew terms, I have tried to adhere to the academic conventions set forth by the *AJS Review*. The Hebrew letter qof (ט) is represented by a 'q'; khaf (ך) by 'kh'; het (ה) by 'h'; and tzadi (צ) by 'tz'. As Hebrew does not differentiate between capital and lowercase letters, transliterations have only been capitalized where they represent titles of Hebrew works.
Introduction:

My subject emerged from a few passing remarks in an article by Professor Simon Schwarzfuchs on Jewish practice and leadership in the community of Metz:

In the days of Rabbi Jonathan Eybeschutz, the parliament of Metz imposed upon the local community the obligation to prepare a French translation of the Shulhan Arukh in order to enable the [non-Jewish] judges to judge the Jews in civil disputes according to their [Jewish] religious law. That way they, and not the rabbis, would be able to execute the law as translated.¹

I was struck by the idea Jewish law translated into the vernacular, and I resolved to study this undertaking to understand how a Jewish community made its complex code of laws comprehensible to secular authorities. What I discovered, however, was a much larger story of the evolution of Jewish autonomy in Metz, of which the translation was only one component.

Historians have cast the story of Jewish communal autonomy in various lights. Once regarded as the defining feature of early modern Jewish life in Europe, communal autonomy has been viewed through the prism of a state within a state, or a nation within a nation. Within this conception, Jews retained the right to be judged by their own laws, and the states which they inhabited demarcated clear boundaries between secular and religious jurisdiction. French Jewish emancipation following the French Revolution was, in this view, entirely transformative as the pivotal moment when French Jewish society received equal status under the law. To quote Jacob Katz, “the transformation of Jewish society from prerevolutionary state represents perhaps the greatest upheaval of any sector of European society at that time.”²

Yet even before Jewish emancipation, the boundaries between secular and Jewish jurisdictions were not impermeable. Jews were well aware of the power wielded by secular

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¹ Simon Schwarzfuchs, “Minhag u-manhig be-kehilat Metz,” in Mehkarim be-toldot yehude ashkenaz: sefer yovel likhevod Yitzhak (Eric) Zimmer [=Studies on the History of the Jews of Ashkenaz: Presented to Eric Zimmer], ed. Gershon Bacon et al. (Ramat Gan: Bar Ilan University Press, 2008), 256. The Shulhan Arukh was the most influential and well-known code of Jewish law at the time.

authorities and of the potential benefits of stepping outside the Jewish community to present their cases in front of non-Jewish courts. As European states began to centralize, they too breached the barriers of Jewish communities in an effort to assert their authority over corporate establishments. This combination of external, state-driven factors and the internally motivated desire of Jews to reach beyond the confines of their courts contributed to the progressive decline of Jewish communal autonomy throughout the eighteenth century. This process did not occur with one event, but rather was complex and textured. Only recently have Jewish historians begun to unearth documentation which elucidates the mechanics of this transformation.

The present study follows this uneven path, examining the internal strife of the Jewish community of Metz, as well as the triangular relationship that developed between the community, the local parlement, and the French monarch, Louis XV, during the mid-eighteenth century. Through an analysis of the production of the translation and the events that preceded and followed it, this study examines the central questions of French Jewish communal autonomy: its characteristics, its extent, its influence, and of course its limitations. Motions from within the community played an important role in altering the practice of Jewish juridical authority in Metz.

In addition to taking its cues from politics within the Jewish community itself, the transformation of Jewish autonomy in Metz was propelled forward by the tensions engendered by the process of state centralization in France. From the perspective of the royal government, Jews were simply another corporate group whose autonomy threatened the interests of consolidated absolutist rule. To the local parlement of Metz, authority over the Jews represented a reassertion of provincial control over corporate activity. In their prolonged contest for sovereignty, these local and royal powers each used the Jewish community of Metz as an entity through which to manipulate and amplify their own influence. The history of Jewish communal
autonomy in Metz thus finds its place both in the historiography of the Jewish community as well as in the body of scholarship concerned with the development of enlightened absolutism in France.

This study uses the experience of the French translation of Jewish law as a lens through which to understand the evolution of Jewish communal autonomy in Metz and the increasingly tense relationship between local and royal authority as the eighteenth century progressed. The first chapter establishes the situation of the Jews in Metz at the opening of the eighteenth century, with a critical eye on what was occurring in the larger French polity and the effect of these developments on the tripartite relationship between the Jewish community of Metz, the local parlement, and the French monarch. The second chapter focuses upon the events of the late 1730s and early 1740s which contributed to the parlement’s request for a French translation of Jewish law. This chapter illustrates the way in which tensions within the Jewish community, as well as the competition for sovereignty between the parlement and the king, influenced efforts to curtail Jewish autonomy. It also analyzes the response of Jewish communal leaders to the translation and the events which occurred in the wake of this project. Finally, the third chapter considers the contents of the translation and its subsequent restructuring, focusing on the self-presentation of the communal leaders and their attempts to defend their own authority both within and through it. Through the examination of a court case which was delivered to the parlement in the 1750s, this chapter reveals the shifting opinions with regards to the translation, and its transformation in the mind of communal leaders from an intrusive document to a source of power.

In conclusion, this episode sheds light on the trajectory of Jewish communal autonomy in Metz, as well as the complicated, evolving relationship between the French monarch, the local
parlement, and the Jewish community. The decline of Jewish communal autonomy was not encapsulated in the, albeit seismic, event of the French Revolution, but was rather a process which occurred over time. This episode, perhaps the penultimate chapter in a much longer history, directly challenged notions of sovereignty and forced the concept of legal coexistence to become a reality.
Chapter 1: State Politics and Jewish Communal Autonomy in Metz

The parlements resemble those ruins which one treads underfoot, but which still recall the idea of some famous temple belonging to the old religion of the people....These great corporations have followed the destiny of human things: they have given way to time, which destroys all; to the corruption of manners, which has enfeebled all; and to the supreme authority, which has brought all low.

Montesquieu, *Persian Letters*, no. 93

On July 30, 1742, an unnamed insider addressed a letter to Monsieur de Montholon, the Procureur of the parlement of Metz. “I remember what I had forgotten to tell you when you departed for Metz,” he opened, “regarding the arret that the parlement has decreed relating to the laws and customs of the Jews.” Nearly two years earlier, on August 29, 1740, the parlement had requested that the Jewish community of Metz produce a compendium of their laws (recueil), translated from the original Hebrew into French. Despite the parlement’s repeated prompting, the Jewish community had failed to deliver the translation, and the parlement was becoming increasingly frustrated.

The letter went on to suggest that instead of issuing an arrest du Conseil to encourage the Jews to comply with its request, the parlement might well turn to the king for assistance, as his publication of lettres patentes would lend the request more authority and thereby expedite the process. Furthermore, “at the moment when the object of your campaign became to ascribe the force of law to the translation,” the writer told Montholon, “it became necessary that this translation (of rules that they follow in their judgments) pass under the eyes of the king so that he could invest it with his authority.”

The writer of this letter thereby confirmed a distinction embedded in French politics: that legal authority ultimately resided with the king and more than this, that the parlement and the king represented two distinct sovereign entities.

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3 Archives départementales de la Moselle (henceforth A.D. Moselle) 17 J 23 Jur 36.
After a two-year lapse, what suddenly caused the parlement to realize the need to resurrect its request for the translation? Why now was Montholon advised to call upon the king for support, when this had not been suggested earlier? The translation was intended to wrest a certain amount of judicial authority from Jewish courts, but this process had already been occurring in Metz for some time, as we shall see below. It is thus perplexing as to why it was in the 1740s that the parlement decided to issue this particular appeal.

In order to understand the circumstances in which the translation was produced, we must examine what was occurring both in the Jewish community of Metz and in the French polity at large. In each case, the situation was characterized by instability and dissatisfaction with the status quo. Jews began to feel confined by their court system, whose rulings were often stricter than those granted by French civil courts, while parlements for their part were manifesting a greater readiness to mount opposition to the monarchy, to exercise local liberties and secure independent legislative power. This assertion of local privileges grew in response to the perceived infringement of royal power upon entrenched local governing bodies. The ongoing power struggle between the monarchy and the Metz parlement, combined with the growing discontentment of Jews with the outcomes of their own legal system, ushered in a period of upheaval for parlementary and Jewish community leaders alike, one in which Jewish juridical authority would be called into question and Jewish law laid bare for the consumption of secular authorities. A power struggle arose in which the sovereign power of the king would be invoked by the Jewish community, in a complex encounter of as yet uncodified and contested sovereignties.

Sovereignty and Governance in the Ancien Régime

Prior to the advent of enlightened absolutism, France had been governed in large part by local custom. Disparate regions practiced their own distinct customs, transmitted through oral tradition. Legal variations between districts within pays de coutumes (regions which adhered to customary/local law) revealed extensive localized customs, the territorial limits of which were often ambiguous. To combat this fragmentation, Louis XI had made several attempts prior to the opening of the sixteenth century to unify local customs under one authoritative text, assembling a commission of judges of the Parlement of Paris to review local texts and comment on the disparities between them. The new authoritative text which was to be produced would invest the king with wider legislative authority.

As only the residents of local communities enjoyed such a keen and intricate understanding of their laws and customs, representatives from these localities were often called upon to compile legal codes for the central government. Interestingly—and perhaps almost paradoxically—royal reliance on locals to document customary law reinforced local autonomy. The very project which sought to strip provincial bodies of their authority thus bolstered it by acknowledging that only local inhabitants possessed the requisite knowledge to produce such works. This was an unintended consequence which extended beyond the initial aims of the request, producing what was likely an undesired effect.

Eventually, however, the crown abandoned this venture to turn to larger state affairs, and the decision was made that local customs should be published before representative assemblies

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7 Idem., 768.
8 There was a parallel effort in the Holy Roman Empire during the sixteenth century to codify Roman law.
9 Idem., 772.
in each district.\textsuperscript{10} While this did not entirely terminate the king’s involvement in the project, the central administration displayed much indifference to this matter, provided that its own authority was not called into question in local disputes.\textsuperscript{11} Under the guidance of local assemblies, nearly all of the customs of the \textit{pays de coutumes} had been published by 1582, and through the seventeenth and mid-eighteenth centuries, French rule in the provinces was structured around these codified works of law.\textsuperscript{12}

By the mid-eighteenth century, however, European polities had again begun to gravitate towards more centralized state structures, and France was no exception. This process had begun in earnest with Louis XIV, who reigned from 1643 until 1715. Extremely concerned with the consolidation of state power through his own person, Louis XIV was famously quoted as having said, “l’état, c’est moi.” But it is often forgotten that the same ruler also remarked, “the interest of the state must come first.”\textsuperscript{13} He believed in a legal and constitutional order, but in which royal power provided the foundation of government.\textsuperscript{14} Frederick the Great’s ascendance to the throne in Prussia in 1740 ushered in an era of “enlightened absolutism,” as occurred similarly with Joseph II’s inheritance of the mantle of the Holy Roman Empire in 1765. With these more enlightened rulers, the monarch increasingly identified himself as the servant of the state. In France, Louis XV followed their example as well as that of his illustrious great-grandfather, Louis XIV, placing the interests of the state before his personal magnificence.

\textsuperscript{10} Ibid. Throughout this paper, I use “the king,” “the monarch,” or “the crown” to refer to the authorities and officials who executed royal jurisdiction. In many cases, the king, himself, probably had no direct involvement with the many \textit{arrets} issued in his name.
\textsuperscript{11} See Ibid., n.30 for an expanded discussion of this point.
\textsuperscript{12} Idem., 796.
\textsuperscript{14} Ibid.
Parlements and the Monarchy under Louis XV

When Louis XV ascended the throne in 1715, the parlements of France had been virtually silent for the last forty years under Louis XIV.\(^{15}\) By the mid-eighteenth century, however, the parlements had begun to lay claim to represent the principle of national sovereignty to give voice to the nation.\(^{16}\) During the reign of Louis XIV, the state had tended towards autocratic rule, leaving little room for the parlements to constitute an opposing force. One scholar has explained that, “the parlements were strong only when the monarchy was weak.”\(^{17}\)

While Louis XIV reigned, the parlements did not dare to challenge his authority. During the reign of Louis XV and the regency of Phillip of Orleans, by contrast, a prolonged conflict between the crown and the parlements erupted which would culminate only with the Revolution.

The tension between these two sources of authority came to a head with the Jansenist controversy in the 1710s over the acceptance of the Bull Unigenitus. Jansenism was an austere movement within Catholicism which clung to the doctrines of predestination and what was called “efficacious grace,” the belief that God had bestowed his grace upon a select few to grant them salvation. The religious revival movement had begun with Corneille Jansen’s publication of Mars gallicus in 1635. The work had criticized French participation in the Thirty Years’ War, contributing to governmental perceptions of Jansenism as a political and religious threat to the country.\(^{18}\)

In 1713, Louis XIV sought papal assistance from Pope Clement XI to deal with the Jansenist problem. The Pope issued the Bull Unigenitus, under which he rejected all ideas associated with Jansenism. While French Gallicanism had posited that the church should be

\(^{15}\) Egret, Louis XV et l’opposition parlementaire, 10.
\(^{18}\) Collins, 45.
under the joint control of the monarch and the pope, Louis XIV, in allowing Pope Clement XI to issue the Bull, effectively established the pope as the sole authority in matters of religion. This assertion of papal supremacy through the Bull directly challenged the Gallicanism of the French church to which members of the *parlements*—including those in Metz—had long subscribed. By aligning with the Pope and pursuing anti-Jansenist policies, Louis XIV created a gulf between the monarchy and the national interests of Jansenism and Gallicanism which the *parlements* supported.\(^\text{19}\)

Antipathy to the Bull thereby merged with the growing opposition of the *parlements* to the crown. Increasingly conceiving of themselves as the representatives of the nation, the *parlements* dissociated the king from the church and ultimately rejected the sacrality of the monarch.\(^\text{20}\) The *parlements* now called into question the divinity of the monarch that had undergirded the French state, mounting ever greater opposition to Louis XV and his minister, Cardinal Fleury, well into the 1720s and the 1730s and beyond. The involvement of the laity through the instrument of the *parlements* transformed Jansenism in the 1720s, inciting new questions about the sovereignty of the monarchy. If royal power rested only on manmade law and not, as had been previously assumed, on a preordained divine order which necessitated an absolute monarchy, then who should make the law?\(^\text{21}\) The *parlements* thus justified their desire to partake in the lawmaking power.

In the provinces, including Metz, the Jansenist controversy had equally profound effects.\(^\text{22}\) The migration of the nobility to Paris and the lure of court society at Versailles during the reign of Louis XIV had left the *parlementaires* in control of provincial society. These

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\(^{19}\) Blanning, 319.  
\(^{20}\) Collins, 189.  
\(^{21}\) Idem., 284.  
\(^{22}\) Emmanuel Michel, *Histoire du Parlement de Metz* (Paris: Chez J.Techener, Libraire, place du Louvre, 12, 1845), 318-323, details the Metz *parlement*’s response to Jansenism during the 1720s.
parlements often struggled with the royal intendants of their provinces, and the lack of landed nobility in provincial areas left the king without other local elites to whom he could turn for support. His system of patronage and centralization thereby undermined royal control over the provinces. In a declaration on March 24, 1730, and subsequently through an arret du conseil issued on March 10, 1731, Louis XV and Fleury made the Bull Unigenitus a law of the French state, confirming the jurisdiction of the church and giving the king the formal right to make decisions regarding the limitation of these two powers. The parlements continued to resist these royal policies until the 1750s, when Fleury’s policy was abandoned.

Already by 1715, though, the parlements had begun to resist royal edicts in order to promote local authority. Following the death of Louis XIV, the new French monarch Louis XV reestablished twelve provincial parlements in cities throughout France, including one in Metz. These parlements functioned in the judicial realm as local law courts, but they also exercised policing powers, which created tension between them and the royally appointed intendants whose roles often overlapped. Significantly in the eighteenth century, the parlements bore responsibility for registering royal decrees within their own jurisdiction (ressort). The king would deliver his legislative edicts and arrets to the parlements, which would in turn execute

23 Cobban, 75; Collins, 287. Egret, 31, notes that interventions from provincial parlements were rare during this period, but new scholarship seems to indicate that this is not the case and that parlements such as that of Metz consistently attempted to challenge the authority of the king.
24 Egret, 12, 27.
26 Egret, 43. The twelve provincial parlements were situated in Paris, Toulouse, Grenoble, Bordeaux, Dijon, Rouen, Aix, Rennes, Pau, Metz, Douai, and Besançon. See n.4 to Egret, 10. I am not certain why the monarchy reestablished these provincial parlements.
28 Cobban, 67.
them and occasionally change them if they conflicted with existing jurisprudence. This right to edit in practice made it difficult to locate the balance of power between these two bodies.  

Understanding well that local custom was a powerful force in these provincial areas (pays d’état, in French), the intendants or administrators sent from the “center” of France were careful to base their actions on a fusion of sovereign will and respect for local institutions. Louis XV was often left frustrated by the parlements and attempted to curtail their authority through disciplinary edicts which would frequently result in cessation of the legal system within their jurisdiction; nonetheless, he recognized the need to maintain a relationship with them. Instead of issuing direct orders as arrets du conseil, Louis XV more frequently submitted laws to the parlements first, believing that this infused them with authority and gravity that they would have otherwise lacked and encouraged local reception.

Yet as the process of state centralization gained pace, the provincial parlements came to pose an ever greater threat to the consolidation of authority within the monarchy. In the emerging political discourse of state formation, local governance and corporate interests were to be subsumed under the greater interests of the state. Parlements, relics of the medieval French constitution, presented an obstacle to the spirit of enlightened reform which the monarchy wished to exemplify. Desiring a share in the lawmaking power in addition to retaining their judicial function, they impeded reform wherever they could exert their influence. While Louis XV had to contend with often conflicting imperatives of state centralization and granting a degree of license to local governing bodies, so too did he have to contend with a growing

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31 Doyle, 163.  
32 Idem., 156.  
assertion of local autonomy, engendered by an expanding conception of local rights and traditions. The parlements invoked their historic customs and local practices to give themselves legitimacy as the building blocks of the nation. Though they acknowledged the divine right of monarchy, they maintained that France had always been a constitutional monarchy, and they conceived of themselves as the intermediaries between the king and the people.\textsuperscript{34} Even as late as 1724, a well-known scholar of Roman law wrote regarding local disputes, “it is not our practice to consult the king concerning all the private controversies that present difficulties […] in these matters the authority of the Parlement and of all the judges is supreme […] from the Parlement no one can appeal, not even to the king.”\textsuperscript{35} It was in this context that the episode of the translation must be placed.

The Jews of Metz in the Early Eighteenth Century

In the early part of the eighteenth century, the Ashkenazic Jewish community of Metz, much like other European Jewish communities, maintained an internal court system which adjudicated civil disputes that arose between community members.\textsuperscript{36} From the late sixteenth century when Metz came under French rule, communal ordinances were issued by a council consisting of lay syndics (parnassim, in Hebrew) and the chief rabbi of the city.\textsuperscript{37} Elected by the richest taxpayers of the community, the syndics collected taxes and served as liaisons between

\textsuperscript{34} Cobban, 73-74.
\textsuperscript{35} Dawson, 792, n.102.
\textsuperscript{36} For a general description of the Jewish court system in medieval and early modern Europe, see Jacob Katz, Tradition and Crisis: Jewish Society at the End of the Middle Ages (New York: New York University Press, 1993); for works that describe the Jewish court system in particular localities, see Gershon D. Hundert, Jews in Poland-Lithuania in the Eighteenth Century: A Genealogy of Modernity (Berkeley: University of California Press, 2004) and Azriel Shohet, Im hilufe tequfot: Reshit ha-haskalah be-yahadut Germaniyah [=Beginnings of the Haskalah Among German Jewry] (Jerusalem: Bialik Institute, 1960).
the Jewish community and both the local and royal authorities. Disputes between community members were also arbitrated by a tribunal of elected officials headed by the chief rabbi, which could exact penalties ranging from small fines to the powerful herem (excommunication). The herem was in many ways the focal point of communal authority. Through its execution, Jewish courts possessed the power to affect the lives of their constituents in the most severe way: not only could the herem remove banned individuals from the city, but it could require members of the community to exclude them from communal activities of every variety.38

Already by the mid-seventeenth century, however, the parlement had attempted to restrict Jewish judicial power. In 1634, it declared the right to adjudicate between Jews in cases that did not involve “matters of religion or internal police,” a turn of phrase which would appear in later documents which discussed the limits of Jewish judicial authority.39 “Internal police” likely referred to civil disputes, while “matters of religion” concerned questions of religious practice.40 It is doubtful whether Jews followed this restriction, as internal community sources point to the prioritization of a strong court system at least through the beginning of the eighteenth century, if not later.

In 1709, the pingas ha-qahal (communal register) of Metz documented the appointment of Rabbi Avraham Broda of Prague as the chief rabbi and av bet din (head of court) of the town, containing the usual rhetoric of a rabbinic contract:

To be for us and for our community and for all [communities] attached to us an av bet din and the head of the Talmudic academy, yoreh yoreh yadin yadin, and to be an excellent judge; in his hand

38 The herem remained a powerful tool in Ashkenazic Jewish communities throughout the medieval and early modern periods. Jacob Katz’s Tradition and Crisis treats this subject across Jewish communities in early modern Europe.
39 Schechter, Obstinate Hebrews, 25. For uses of the phrase “internal police,” see, e.g., CAHJP F Me 260, CAHJP F Me 144, CAHJP HM2/755 (originally A.D. Moselle Ce 50), Observations sur l’arrest des Juifs; AN K1194, Memoire Pour les Rabins, Elus, et Syndics des Juifs de la Ville de Metz (1745) and Memoire et observations sur l’état des Juifs de Metz.
40 See n. 90 below, which explains more fully the concept of the well-ordered police state and the concern with internal policing in early modern France.
[he holds] the staff of God to uphold the pillars of the world along with the pillars of the Torah, laws, and statutes.  
41 Strength and the government should be with him to subjugate the eager nation and to teach them the path of the righteous on which they should go.  
42 [He should] direct the sinner to eat the fruit of his doings according to the law of our holy Torah […] and the great matter[s] they should bring in front of the group [bet din], their lives should be guarded, and they will enact judgment according to how they see fit… and all of Israel will hear and fear and will no longer sin knowingly.

The leaders of the community believed that the government would support Jewish courts, though it is unclear whether the Hebrew word for government (memshallah) was intended to refer to the king or to the parlement.  

Though lay leaders may have revered the authority of the av bet din, by 1709 constituents had already started to seek rulings outside of the domain of Jewish courts. In her memoir from 1715, the businesswoman Glikl of Hameln wrote nostalgically of the days of yore in Metz, when no person would dare step outside the bounds of the Jewish community to bring a case before a gentile tribunal. “When differences arose from time to time, as is customary among Jews,” she wrote, “everything was settled quietly with the community or the judges. There was no such arrogance in the old days as there is now […] [the community] time and again appointed the most eminent rabbis to serve the community.”

All this nostalgia for a golden age of autonomy was likely for an invented past that had not existed.

41 Yoreh yoreh and yadin yadin are two statuses of rabbinical ordination. Yoreh yoreh is the title granted to all ordained rabbis, who must study the legal areas of orah hayim (daily ritual), yoreh de’ah (kashrut), and even ha-ezer (marriage law). Yadin yadin status, which indicates that one is proficient in the area of hoshen mishpat (damages), authorizes one to adjudicate in civil disputes.
42 This is likely a reference to Exodus 18:20, “and you shall teach them the statutes and the laws, and shall show them the way wherein they must walk” (יִזדֶּרֶתְךָ אַחֲרֵיהֶם אֲתֹת הַחֲקָים וַאֲתֹת הַתְּוָרָתָם וַדּוֹדָתָם אֲתֹת הַדָּרוֹר יַלְכוּ בָּהּ). I thank Daniel Goldstein for calling this reference to my attention.
43 “The fruit of his doings” a play on Isaiah 3:10, “for they shall eat the fruit of their doings” (יֵאָכֵל הַפִּי מְשָׁלַלְתּוֹ). “The great matters they should bring” is again, another biblical reference, this time to Exodus 18:22, where Jethro instructs Moses to set up a court system, saying, “and it shall be that every great matter they shall bring to you (יִנְדֵּשׁ לְפִדְיוֹת נִגְדִּיקוֹ לְפִדְיוֹת לֵאמֹר לָכֶם). “And all of Israel will hear and fear” is extracted from a biblical verse in Deuteronomy 17:13, “and all the people shall hear and fear, and they will no longer sin knowingly” (וְכָל הָעָם יִשְׁמָעְו נָפְסָם יִאַיֵּר וְלֹא יַזִּיקוֹנִי וָנַעֲשָׂה). JTS M.S. 3704. Translated from Hebrew.
44 It is unlikely, in my opinion, that the Hebrew word memshallah would have been used to refer to the government of the Jewish community.
Nonetheless, a *taqqanah* (ordinance) from the community in 1710, too, reminisced about the strength of the community in the past, when all individuals respected the authority of Jewish courts. It lamented the rise of dissidents in recent times, who had been *poretz geder* (breached the law) in seeking the decisions of secular courts. The ruling stated that anyone who sought recourse to secular courts or encouraged someone to do so:

> will be cursed and damned, and all of the curses and oaths written in the book of the Torah will hang over them, and there will not be a remedy for this—it is a curse from the rabbis that does not have a remedy except for shame and embarrassment, and it will be decreed and publicized and they will be shamed and disgraced.

It further required that they be excluded from the communal *mi-sheberah* blessing in the Sabbath prayers. Interestingly, while the ruling initially described the actions of these dissidents as breaking the law, the end of the ordinance appeals to the dissident’s sense of morality, saying, “he shall sanctify himself in what is permitted to him and distance himself from that which is ugly and the like.”

The ordinance thus suggested that appealing one’s cases to secular court was not legally prohibited, but rather defied what was moral and constituted “that which is ugly.” Perhaps this extralegal consideration gave Jews more reason to appeal to secular courts: if it was not formally prohibited by Jewish law, then what could, in reality, stop Jews from attending them? This ordinance, it should be noted, applied only to cases between Jews, as Jews who conducted business with Christians would have routinely come in front of French courts.

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46 The prohibition against Jewish use of secular courts, called *arkha’ot*, originates in the Babylonian Talmud, Tractate Gittin 9b. See Rashi there, s.v. *pasula de-rabanan*, where he explains the reason for this proscription.
47 This statement is taken from Deuteronomy 29:20, which details the punishment of idol worshippers, saying “and the Lord shall separate him unto evil out of all the tribes of Israel, according to all the curses of this covenant that is written in this book of the law” (ויהבדיל יהוהlekufהמליךעבימייםיראלהכלאָשִׁיְנִיםבְּבֵיתָיויהוֹדָא). See A.D. Moselle 17J 23 Jur 15e. This *taqqanah* was authored by a certain Moshe Levi Ituno, about whom I have found no other information. I thank Professor Elishava Carlebach for graciously helping me translate this source from Yiddish. The concept of sanctifying oneself in what is permitted is likely influenced by the medieval commentary of the Ramban (Nahmanides) to Leviticus 19:2, who argues that one must separate himself from actions, even those which are permitted by Torah law, which are unethical. Frances Malino briefly refers to this document in her article, “Résistances et révoltes à Metz dans la première moitié du 18e siècle,” in *Juifs en France au XVIII siècle*, ed. B. Blumenkranz (Paris, 1994), 134.
taqqanah would have only mattered to those individuals who cared what the community thought. Those who stepped outside the bounds of communal jurisdiction suggested that they did not, so a censure or moral imperative may have been less powerful.49

Fig. 1: Taqqanah of the Jewish community of Metz forbidding the use of secular courts by community members. A.D. Moselle 17J 23 Jur 15e.

This ordinance nevertheless bears witness to the value that syndics placed on Jewish courts in early eighteenth-century Metz. Considering themselves inheritors of a divine tradition, communal leaders attempted to promote the continuity of these institutions, but royal and parlementary officials did not view this objective as favorably. In October of the same year that Broda arrived in Metz, the royal procureur complained to the officers of the bailiwick regarding

49 In Chapter 2, however, we shall see cases where Jews challenged the authority of the Jewish courts, but paradoxically so, using the jurisdiction of the parlement in order to uphold Jewish law. This complicates the notion that those who sought recourse to secular courts did not care what the Jewish community thought, as in many instances it is clear that these appellants valued Jewish law.
the establishment of a Jewish tribunal in Metz. The *procureur* attempted to reaffirm the 1634 ruling that Jewish courts could only judge matters of religion and internal police, criticizing the Jews for disobeying this *arrest*. The Jews “create societal acts amongst themselves without any formalities, [written] with Hebrew characters in the Hebrew language,” the *procureur* explained. “The conditions [of these acts] frequently become ruinous to the other subjects of the king, as all of their practices intend only to establish amongst themselves a sovereign and despotic authority which disrupts the order of the kingdom.”\(^{50}\) This was precisely the kind of case made in the interest of enlightened absolutism in order to codify, systematize, and standardize, and to abolish the kinds of special privileges which might hinder the creation of a unified, cohesive state. The special privileges which had been granted to the Jewish Nation within France now clashed with the agenda of the absolutist state.

Broda responded in January 1710 by explaining the necessity of a Jewish court system, saying, “this [Jewish] law giving them judges and containing, on all matters, decisions different from those given by civil law…only the Rabbis who have studied this [law] extensively from their early years are educated in it.” He further defended this right through the historical precedent of French kings who had allowed Jews to adjudicate “since time immemorial.”\(^{51}\)

Though Broda and the leaders of the community, having experienced a recent decline in the authority of Jewish courts, perceived the need to defend themselves against these claims, the *procureur* and the officers of the *parlement* clearly saw Broda’s arrival as a threat, a menacing assertion of sovereign Jewish power. Soon after, in August 1710, the king issued a declaration requiring the Jews of Metz to record their communal registers in French, an act which *parlement*

\(^{50}\) CAHJP F Me 260, *Plainte du Procureur du Roi contre l’établissement d’un tribunal juive a Metz et réponse du rabbin a ce sujet*, 22 Octobre 1709.

\(^{51}\) Idem., 23 Janvier 1710.
would verify less than a month later.\textsuperscript{52} This was perhaps a joint effort to ensure that the Jewish community could hide nothing from French officials by writing their documents in Hebrew. It was undoubtedly difficult for French officials to demarcate clear lines between competing, overlapping sovereignties: while on the one hand, the king and the \textit{parlement} accepted the need for the Jewish community to maintain its own documentation, on the other hand, the king required registers in French in order to maintain control over the Jews.

By 1718, the king had also seized control of the power to choose the rabbi for the Jews of Metz. Jewish leaders attempted to protest this royal invasion into communal life, noting that while some individuals of the Nation had tried to weaken the authority of the rabbi by contravening the intentions of the king, “this should not cause the community to lose the protection of the monarchy.” They implored the king to allow them to keep the rabbi that \textit{they} had elected, in the same capacity as in the past.\textsuperscript{53} Similarly with regards to the \textit{parlement}, practical decisions were made on the local level, not by the monarch.

Though this instance may appear to be merely a continuation of the process that began earlier, it is significant that in 1718, the Jews of Metz turned only to the king—not to the \textit{parlement} and the king—for support. It was the monarch who was responsible for ensuring the status of the Jews, and it was he whom the Jews perceived as the sovereign, authoritative voice of the French state. As the \textit{parlements} and the king began to separate into distinct entities, the fight for Jewish juridical authority in Metz came to encompass a power struggle between these two players, in which legal contests, disputes, and appeals brought to light the question of where sovereignty lay in eighteenth-century France.

\textsuperscript{52} Bibliothèque Nationale de France F- 23619 (860).
\textsuperscript{53} Archives Nationales 29 AP 3.
The Jews of Metz were by no means unaware of the tension which characterized the relationship between the king and their parlement by the 1720s. While lettres patentes from the king consistently reaffirmed the juridical autonomy and authority of the Jewish community, the parlement repeatedly tried to derail this power and wrest authority from the Jews. Because the king had upheld the autonomy of the Jewish courts, the parlement’s defiance of the judicial rulings of those very courts represented an affront to the authority of the monarch. Ironically, though, both the parlement and the Jewish community could appeal to the king as a means of securing their own sovereignties, even when in practice their powers might challenge those of the king. In the case of the lettres patentes, ambiguity allowed the parlement to reinterpret these statutes as it saw fit, imposing harsher rulings between more broadly defined legislative acts from the crown. The Jewish community often turned to the crown for protection.\footnote{Frances Malino, “Competition and Confrontation: The Jews and the parlement of Metz,” in Les Juifs au Regard de l’Histoire: mélanges en l’honneur de Bernhard Blumenkranz, ed. Gilbert Dahan (Paris: Picard, 1985), 330.}

In a supplication from “les juifs de Metz” dated after 1728, for example, the Jews complained to the king about the religious conversion of young Jewish children to Christianity. They explained that prior to the age of puberty, a child did not possess the free will and sensibility to make such decisions, and they requested that the king declare it illegal to “remove children of this religion or to induce them to change religion before the age of fourteen for males and twelve for females.”\footnote{CAHJP F Me 45, Après 1728, Petition au roi pour interdire les conversions au christianisme avant l’age de 14 ans pour les garçons et 12 ans pour les filles.} When explaining the reasons why they approached the king to handle this matter, the Jews recalled the ordinance which the king presented to the Jews of Bordeaux on July 15, 1728, in order to facilitate the return of a certain Alexandre Mezes’s three daughters from an Ursuline convent in the city. The ordinance in Bordeaux, according to their description,
prohibited any Superiors, convents, or communities from receiving Jewish children under the pretext of religion before the age of twelve.

Having witnessed the authority which the king exhibited in his dealings in other cities, the Jews sought recourse to the throne for protection—not to *parlement*. They explained:

after the ordinance granted by Your Majesty in favor of the Jews of Bordeaux, it is useless to search for other authorities to establish the demand of the Jews of Metz. The reasons which determined Your Majesty to make this order are the same that the supplicants employ to obtain a similar [ordinance] in their favor.\(^{56}\)

The sweeping powers of the monarchy, extending beyond the limited jurisdiction of local authorities, caused the Jews to reach outside of Metz for support. It was the king, and not the *parlement*, who possessed the requisite authority to make such a decree. Clearly aware of a dichotomy between parlementary and royal authority, the Jews sought to manipulate this distinction to gain the support of the king, using a precedent from beyond the jurisdiction of the *parlement* to prove their point.

An example of this occurred again in 1734 under similar circumstances. The Jews complained that a certain young girl, Ester Salomon, from the neighboring community of Norbach (presently called Forbach, it seems), had been placed in the home of an abusive uncle following the death of her parents.\(^{57}\) After fleeing to the home of her uncle’s neighbor to escape maltreatment, the uncle demanded that Salomon return to his home immediately. An officer of the town, understanding the harsh situation from which Salomon had escaped, instructed the neighbor to keep the girl under her supervision. Shortly after, the neighbor placed Salomon into a convent.

\(^{56}\) Ibid.

\(^{57}\) From this and other documents, it is clear that the Jewish courts of Metz served as the central authority for many other communities in the area. Members from the communities of Norbach, Ventoul, Thionville, and even, occasionally, communities in Alsace, frequently turned to the Jewish authorities of Metz to adjudicate their cases. Likewise, the Metz *parlement* frequently heard non-Jewish cases from other towns, serving as the central authority for these locations. See, e.g., A.D. Moselle 17J 23, *Arrêt de la cour de Parlement Portant Reglement en faveur des Propriétaires des Fermes & Métairies, contre les Laisseurs de Bestiaux a Chapelt du 6 May 1749*. 

Katz | 21
Though this time the Jews registered their complaint with the Bishopric of Metz, a local authority, they still acknowledged their status as “subjects of the king, and consequently under his protection.” The approval of the king, they believed, obligated the authorities of Metz to respect their establishments as required by order of the state. They reasserted their demand that prior to the age of twelve, no Jewish child be forcibly converted or placed under Christian authority, again citing the order of the king given to the Jewish of Bordeaux which prevented any religious Superiors from receiving Jewish children under pretext of religion prior to the age of twelve.⁵⁸

The Jewish leaders of Metz clearly understood the protection of the king to be a legitimating force through which they could justify their own judicial authority over their community. Though they realized the limitations of communal government, support from the king bolstered and extended their claims. In numerous cases, Jewish leaders appealed beyond local authorities, unambiguously locating the monarch as the sovereign power of France. They recognized that the rulings of the *parlement* bore little influence in the face of intervention from the monarch, and that within the framework of a centralized state, the *parlement* was but one, subsidiary element.

The Metz *parlement*, too, began to recognize the power of royal endorsement, much to its dismay. While provincial *parlements* throughout France engaged the monarchy in a decades-long battle over Jansenism and national sovereignty, the Metz *parlement* recognized the legitimacy which royal authorization could equally lend to its rulings, ultimately choosing to capitulate to

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⁵⁸ CAHJP F Me 46, *Petition à l’évéque de Metz contre la conversion d’une fillette juive, 1734*. At the end of the petition, the Jews requested that the Bishop order the removal of Ester Salomon from the convent. This idea of providing a guardian for a minor was of central importance in the civil courts of France, and no less in the Jewish courts. Some of the cases that came to the Jewish courts will be discussed below. For information on the general phenomenon of guardianship for minors in France, see Sylvie Perrier, *Des Enfance protégées: La tutelle des mineurs en France (XVIIᵉ-XVIIIᵉ siècles)* (Saint Denis: Presses universitaires de Vincennes, 1998).
royal authority in order to more effectively execute its own agenda. As this process occurred in Metz, the Jewish community became a focus around which these questions of authority converged.
Chapter 2: Upheaval from Within

A body of perfect laws would be the masterpiece of the human spirit, in that which concerns governmental politics; one notices a unity of purpose and rules so exact and proportioned that a state which conducts itself by these laws would resemble a watch whose springs were all made for the same purpose. Everything would be expected, all would be combined, and nothing would be subject to disadvantages. But things are not perfect in the realm of humanity.

Frederick II, Dissertation sur les raisons d’établir ou d’aborder les lois

Tensions between the Jewish community and the Metz parlement began to intensify in the 1740s. Many individual members of the Jewish community, dissatisfied with the rulings of local Jewish courts, were already clamoring for the support of parlement and seeking recourse to the secular courts of the province. The parlement, in turn, wishing to solidify its own power in the face of royal opposition, gladly received the cases of Jews who chose to opt out of the Jewish court system. Two such cases, however, tipped the scales of parlementary interference in Jewish affairs and more aggressively called into question the juridical autonomy of the Jewish Nation. The content of these specific cases was in many ways similar to those which had appeared previously—contestations of excommunications, claims of property rights, and disputes over inheritances. Yet in a novel turn of events, the defendants in these two instances were both women, pointing to a new development both in French legal history and in the history of the Jewish community of Metz.

Though this unofficial initiation of women into the litigation system gave them a significant hand in challenging the existing framework of adjudication, the contentions of these women alone were not enough to encourage such a proactive response from the parlement. Equally important in the parlement’s decision to request a translation of Jewish law from the...
community in Metz was its own struggle to assert provincial parlementary authority in the face of the monarch and his intendants. While previous lawsuits contesting the rulings of Jewish courts had been handled on an individual basis, the political events of the 1730s and the tension between state and local sovereignty encouraged the Metz parlement to view the cases of these two women, Merlé and Magdeleine, as opportunities to justify a restructuring of legal boundaries. It was only at this moment, when these factors aligned, that the parlement took a definitive step to secure its own authority, in turn diminishing that of the Jews.

The Case of Merlé (Spir Lévi) Worms

On December 2, 1739, the will of a deceased woman by the name of Merlé was registered by the Lieutenant general of the bailiwick tribunal of Metz. Her will, quite shockingly, dispossessed Merlé’s husband of her estate and took their children out of his custody.61 Furious at this overturning of Jewish standards, her husband, Joseph Worms, claimed that this was without juridical precedence, and that a Jewish woman could not disinherit her husband in this manner. Merlé had written in her will that because her husband had used her dowry money and everything she had received from her father, she reserved the right to separate the remainder of her property from her husband, leaving him nothing.62

Worms decried the “injustice” of this action, citing Talmudic and rabbinic sources which forbade Jewish women from creating a will and gave husbands the rights to inherit the estates of their wives. These restrictions stood perhaps in contrast to French civil society under the ancien régime, where women were often given de facto control over family property in order to prevent the squandering of family capital or children’s inheritance. While in principle legal and political

61 Malino, “Résistances et révoltes à Metz,” 126.
62 Idem., 127. Merlé’s family, the Spir Lévi family, was one of the richest families in Metz. Merlé had apparently wanted to leave her husband for a long time, but her father had convinced her to stay with him.
theorists may have rejected the idea of women’s autonomy, curatorship over their children’s inheritance and the inviolability of contracts imparted a certain amount of autonomy to women in practice.\textsuperscript{63} As James B. Collins has noted, theoretical norms and institutional restrictions on women in French life did not necessarily unfold in social reality, and women often exercised popular resistance to authority.\textsuperscript{64}

Nonetheless, according to Jewish law, Worms was correct to say that Merlé did not possess this power. Citing the Code of Maimonides, the most famous medieval Jewish scholar, and the later work of Rabbi Joseph Karo which confirmed his rulings, Worms stated that “the man inherits the estate of his wife, whether dowry, patrimonial, or casuals, preferably [given] to their children.”\textsuperscript{65} Worms further explained that the only reason Merlé had been allowed to compose a will containing such terms, without disputation by communal authorities, was because her brother, Olry Spir Lévi, played a prominent role in Jewish life in Metz as a \textit{syndic} and had purportedly instructed the rabbi of the community not to meddle in the affairs of his family.\textsuperscript{66} Apparently, he had wished for some time that his sister would separate from Worms and sought to aid her in this matter even after her death. It was this that allowed his personal vendetta to interfere with local politics.

Olry Spir Lévi’s manipulative influence over the rabbi and communal leaders of Metz, and the willingness with which Worms shared this problem with parlementary authorities,

\textsuperscript{64} James B. Collins, “The Economic Role of Women in Seventeenth-Century France,” \textit{French Historical Studies} 16:2 (1989): 439, 469. The question of why women were more likely than men to disregard or challenge authority in early modern France is an interesting topic, but one that extends beyond the scope of the subject matter presented here. Collins mentions the perceived unruliness of women and briefly discusses this subject on p.469. For more on this, see also Natalie Zemon Davis, “Women on Top,” in \textit{Society and Culture in Early-Modern France: Eight Essays}, Natalie Zemon Davis (Stanford: Stanford University Press, 1975), 124-151.
\textsuperscript{65} CAHJP HM 2/824; 2/825 (INV/2195), \textit{Documents relatifs a l'histoire des Juifs de Metz (collection Emery) from BNF}, “Memoire contenant les moyens sensibles que le Sr. Joseph Worms, Juif de Metz, a pour se pourvoir par Apel…”
\textsuperscript{66} Ibid. See also Malino, “Résistances et Révoltes,” 127.
Katz

illustrates the growing problem of a wealthy individual’s corrupting influence on the Jewish community. While underhanded methods of control and use of political power to influence law had no doubt occurred before, members of the Jewish community might not have been as quick to share these injustices with parlementary authorities, preferring that internal communal problems remain within the Nation. Now, though, Worms became so infuriated by this overturning of Jewish law that he turned to the secular authority to defend Jewish legal principles. Defying the assumed boundaries between Jewish and secular law, Worms appealed to the parlement to protect the interests which Jewish law reserved for him, counter-intuitively employing secular authorities to accomplish this task.

While appeals from Jews to secular authorities may seem anomalous, recent scholarship has shown that this phenomenon was spreading across Europe during this time. David Horowitz has demonstrated how Jews living in Hamburg, Germany around the same time attempted to challenge the decisions of the rabbinic court and attack its constitutional legitimacy by complaining to the Hamburg Senate. Jews often claimed that the rabbinic court was abusing its power, prompting the secular government to intervene and force the court to reverse its decisions.67 Others have shown how this experience was manifest in Central Europe.68 Metz was no different in this regard, where individual Jews increasingly sought to enlist the support of the parlement in the effort to challenge communal jurisdiction on these occasions.

Though unfamiliar with Jewish laws and traditions, the parlement upheld the need to judge the Jews according to Jewish law. Like Jewish community members who realized the effectiveness of obtaining parlementary support to protect their rights, the parlement recognized

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68 Horowitz, pp.1-2, n.1, provides a comprehensive bibliography of recent works which have examined the mechanics of Jewish communal autonomy throughout different European localities in the early modern period.
the need to appeal to Jewish law to assert its own interests. Invoking a position taken by Worms, who had sought secular means to establish his rights, here, the parlement used religious law to confirm its own rights. Until now, it had relied on information from Jewish defendants who cited passages from the legal codes of Maimonides and Rabbi Joseph Karo (French: Cara), but the parlement had no definitive, interpretable code with which to work. Evidently, the parlement had frequently referenced Leone da Modena’s earlier Italian translation of Jewish ritual, entitled Riti Hebraici, when evaluating cases concerning Jews. A Christian Hebraist, Richard Simon (Simonville), had translated Modena’s Riti into French, making it an easy work for the parlement to digest. The parlement’s eventual demand for a translation from the Jews of Metz was certainly intended to be similar to these previous attempts. Additionally, other corporate communities within the region had produced compendia of local customs to which the parlement referred when adjudicating cases involving Jews, but the Jews of Metz had yet to generate a similar work. In order for the parlement to be considered an authority, it needed to produce its own source.

Resolved at once to limit the juridical autonomy given to the Jews of Metz in the 1718 Lettres Patentes and to have a document of reference by which to fairly judge Jewish cases in parlementary courts, on August 29, 1740, the parlement requested a compendium of Jewish

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69 CAHJP F Me 144, Observations sur l’aigine des juifs de Metz et leurs lois et usages, après 1759. For a detailed analysis of Modena’s Riti Hebraici and the circumstances under which it was produced, see Mark Cohen, “Leone da Modena’s Riti: a Seventeenth-Century Plea for Social Toleration of Jews,” Jewish Social Studies 34:4 (1972): 287-321. Cohen also discusses Simonville’s translation of the Riti into French, entitled, Cérémonies et coutumes qui s’observent aujourd’hui parmi les Juifs. Traduites de l’italien de Léon de Modène par le sieur de Simonville. Though parlementary knowledge of the basic structure of the Shulhan Arukh may have come from information provided by a local rabbi, it is possible that the parlementary conception of Jewish law came from Simonville’s translation. His work may have been the source of the parlement’s inquiry into Jewish legal codes which were based on the Shulhan Arukh.

70 It seems that the parlement used examples of other local customs to justify what they thought would be the law for the Jews, comparing Christian laws and those of the Evêché to that stated by defendants to be the law according to Judaism. This comparison served to make Jewish law appear more logical by showing where it dovetailed with other local variations. See, e.g., CAHJP HM 2/824: 2/825 (INV/2195), Documents relatifs a l’histoire des Juifs de Metz (collection Emery) from BNF, “Précis pour Joseph Worms, Juif de Metz, Apellant,” p.6, “The custom of the Jews…does not have less wise grounds than that of the Evêché.”
customs and practices, translated into French.\(^{71}\) At this time the community was still under the rabbinic leadership of Joshua Falk, who deferred the demands of the *parlement* until his departure the following year.\(^{72}\) In the interim between Falk’s departure and the arrival of Rabbi Jonathan Eybeschutz, community leaders excused their tardiness by explaining that they were waiting for a rabbi to assist them in producing the translation. Even after Eybeschutz’s arrival in Metz prior to Passover of 1742, however, community leaders ignored this demand until the summer, when the *parlement* revisited the order and—through the involvement of the king—reminded the Jewish community of the obligation which it had neglected.\(^{73}\)

**The Case of Magdeleine Cahen**

The *Archives Départementales* in Metz contain dozens of manuscripts which discuss the case of Magdeleine Cahen, the fiancée of Bernard Cahen. Prior to her marriage, Cahen requested that 3600 livres from her dowry and thirty ounces of silver dishes that her father had left her in a notary document from 1731 be excluded from her marital property.\(^{74}\) The syndics of the community, one of whom was her guardian, Isaac Cahen, tried to convince her to take a reduced dowry, but she refused.\(^{75}\) Subsequently excommunicated by the syndics, perhaps to temper

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\(^{71}\) Malino, “Résistances et Révoltes,” 128. Nathan Netter, *Vingt Siècles d’histoire d’une communauté juive: Metz et son grand passé* (Paris: Libraire Lipschutz, 1938), 111, dates this order to July 24, 1740. I believe that Malino’s dating of this event is more accurate.\(^{72}\) Netter, 112.\(^{73}\) Claude Heymann, “Rabbi Yonathan Eibeschutz et l’étude de la Torah à Metz,” *Archives Juives* 28, no. 2 (1995): 21-22, details Eybeschutz’s hiring and arrival in Metz.\(^{74}\) Malino, “Résistances et Révoltes,” 128. All information in the following summary of this case comes from A.D. Moselle 17J 23 Jur 34 d-l, and from Malino’s article which synthesizes these various documents.\(^{75}\) Cahen had been presented with two guardians, Alexandre and Isaac Cahen. The simple fact that she had been given two guardians in place of one illustrates the Jewish community’s adaptation to the standards of French civil law, which required the appointment of two guardians, while according to Jewish law one guardian would suffice. See Jay Berkovitz, *Protocols of Justice: The Pinkas of the Metz Rabbinic Court, 1771-1789*, 15 (forthcoming) for further discussion of guardianship.
disputes and thereby divert attention away from the internal problems of the community, Cahen appealed to the bailiwick and then presented her case to the parlement.76

Intending to appeal her excommunication, Cahen complained that her status as an excommunicated person rendered any decisions of the bailiwick impossible to apply to the Jewish community. The syndics, in turn, denied having excommunicated her, claiming that she was delusional and thus not to be believed. Yet the parlement eventually confirmed Cahen’s excommunication, instructing the community—at the request of Cahen herself—to issue a decree in synagogue stating that she had not been excommunicated and that all Jews should help her to make sure that the decision was properly executed.77

Magdeleine Cahen’s case not only challenged Jewish law, but it also called into question the authority of the syndics.78 Though the syndics acted indifferent ly to the issue of Cahen’s dowry, it is clear that it would have benefited at least one of them to present her with a reduced sum; furthermore, while they denied the excommunication, this must surely have been the impetus for Cahen to take her case to a non-Jewish court. The syndics had tried to mask internal strife, but by trying to silence Cahen’s dissent, they had effectively encouraged her to seek support elsewhere. The parlement could now cite this instance as proof of the need to limit the judicial powers of the Jewish community and use the case as an imperative to adjudicate in order to protect the rights of individual Jews.

76 Berkovitz, Protocols of Justice, 13 has noted that cases involving women—primarily widows—who sought to collect the assets recorded in their ketubot (marriage contracts) were some of the most common to appear before the bet din from 1771 onwards. Though Cahen was engaged and not yet married, her dispute bears similarity to many of these later cases.

77 David Horowitz, “Fractures and Fissures in Jewish Communal Autonomy in Hamburg, 1710-1782,” 154-155, records a similar case in Hamburg in 1766, in which a certain Moses Joseph, excommunicated by the chief rabbi of the community and subsequently by the Jewish (lay) council, submitted a petition to the municipal government of Hamburg to protest this alleged abuse of power.

78 Malino, “Résistances et Révoltes,” 128.
Cahen’s case occurred in June, 1742, with some of the documentation extending into the month of July. This explains why the king issued his *Lettres Patentes*, placing a royal stamp upon the request for a *recueil*, shortly after in mid-August. While there is no explicit connection between the Cahen case and royal involvement in the *recueil* process, one has only to look closely at the chronology of events to infer that there must certainly have been some link between them. The case of Magdeleine Cahen most certainly reinforced the need in eyes of the *parlement* for a translation of Jewish law to be available for reference. What is more, it may have illustrated to the *parlement* the necessity of involving the monarch in order to support this demand with more authority. The *parlement* recognized that it could use the authority of the king to bolster its position.

**The Royal Request for a Recueil**

As we have already seen, a letter dated to July 30, 1742 and addressed to Monsieur de Montholon, Procureur of the *parlement* of Metz, offered advice to the official regarding how to expedite the production of the translation. The letter suggested that the *parlement* turn to the king for assistance, presuming that his issuance of *lettres patentes* would bolster the *parlement*’s request and make it more authoritative, thus awakening the Jewish community to the gravity of the matter.

Though further correspondence between the Procureur and the king regarding this matter remains undiscovered, on August 20, 1742 the king followed through with whatever requests the *parlement* may have had and issued his *Lettres Patentes*. The *Lettres Patentes* first mentioned the privileges which the king bestowed upon the community in 1718, requiring them to come before the civil courts for matters involving Christians, but yielding judicial authority to the

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79 A.D. Moselle 17J 23 Jur 34.
rabbis to adjudicate cases between Jews in Jewish courts. The document went on to discuss how things had changed since the dispute between Joseph Worms and Bernard Spir Lévi—the aforementioned case of Merlé. The *Lettres Patentes* explained that as a result of Merlé’s case, “you [the Jewish community] were ordered, that by the chiefs, elected officials, and syndics of the community of Jews, there should be a compendium in the French language of laws, customs, and usages that they observe.”\(^{80}\) This would consist of laws concerning marriage contracts, guardianships, minors, wills, and other civil matters.

The king required that the community produce a *recueil* “in the time and space of six months.”\(^{81}\) During that time, Eybeschutz arrived in Metz and assumed this task along with members of the *bet din*, taking meticulous care to rely strictly on the customs of Metz, and employing a lawyer to assist in the translation of the work into French.\(^{82}\) But the *parlement* was dissatisfied with the final product, finding the translation to be convoluted, inexact, and meandering, and hired a distinguished legal consult by the name of Nicholas Lançon to abridge and amend the work.\(^{83}\) Lançon had previously worked on a compendium of the customs of the nearby city of Verdun, making him a respected authority in such matter.

While the Jewish community ultimately complied with requests of the king and the *parlement*, the communal leaders certainly viewed this process as an affront to their own authority and repeatedly sought to defend the principles on which Jewish juridical autonomy in Metz rested.

\(^{80}\) BnF, *Lettres Patentes du Roi*, 20 Aout 1742.
\(^{81}\) Ibid.
\(^{82}\) Netter, 112.
\(^{83}\) A.D. Moselle 17J 23 Jur 45. See also Netter, 112.
The Jewish Response to the *Recueil*

Though communal leaders had successfully deferred the *parlement*’s requests for two years, the complaints of disgruntled community members now necessitated their compliance with both the *parlement* and the king. Jonathan Eybeschutz, the newly arrived chief rabbi of Metz and the *av bet din*, complied with the *parlement*’s order, as indicated by his signature (both in Hebrew and French) on the final page of the manuscript deposited with the *parlement*, “Jonas Nathan Eibichitz, rabin des juîfs de Metz.”\(^84\) Though it is unclear whether or not Eybeschutz knew French and understood the translation, his role as *av bet din* and chief rabbi of the community required him to approve of the document before it was delivered to the *parlement*.\(^85\)

Given his vehement opposition to Jewish use of secular courts, however, Eybeschutz’s compliance in this affair is quite puzzling. In his commentary to *Hoshen Mishpat*, the section of the *Shulhan Arukh* which deals with civil law, Eybeschutz wrote:

> And I watched as I saw the holy community of Metz, and so it is in the other Ashkenazic communities...that defendants have the option to seek judgment according to the law of secular courts. Who permitted this to them? For though the assumption is that since the community [leaders] allowed it, it is as if all inhabitants of the city agreed and accepted it upon themselves, everyone is satisfied to raise the value of idolatry...and in any case although they [community members] seek judgment there [in secular courts], it is forbidden to adjudicate before them.”\(^86\)

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\(^84\) A.D. Moselle B 1624. In Hebrew, “יְהוֹעֵשׁ נַתָּן אֶיבִּישָׁצֵי אָבֶּ בֵּי תָּן מִיָּשׁ.” Though the letters are not absolutely clear, this is my provisional reading. Eybeschutz’s name appears here along with the signatures of the syndics of the Jewish community of Metz. Interestingly, the copy of the manuscript which resides in the Archives Nationales in Paris only records Eybeschutz’s first name, “Jonas Nathan,” and makes no mention of the fact that he was the rabbi of the community. See the final folio page of AN H 1641, *Recueil des Coutumes et Usages des Juifs de Metz*.

\(^85\) My inquiries regarding the question of whether or not Eybeschutz knew French have yielded different responses. Through email correspondence, Professor Simon Schwarzfuchs posited that Eybeschutz did, in fact, know French, as he stayed in Metz long enough to become acquainted with it. Professor Jay Berkovitz, also through email correspondence, expressed his doubts that Eybeschutz could speak French, though he acknowledged that he was not certain. He suggested that it is more likely that Eybeschutz had someone whom he could trust look at the translation. For Eybeschutz’s attitudes towards the study of French, see Berkovitz, “Social and Religious Controls in Pre-Revolutionary France: Rethinking the Beginnings of Modernity,” *Jewish History* 15 (2001): 19.

\(^86\) Jonathan Eybeschutz, “Urim ve-tumim,” *Hoshen Mishpat*, par. 26, translated from the Hebrew. I wish to thank Professor Jay Berkovitz for sharing this reference with me.
In the same passage, he implicitly accused the Jews of Metz of shirking Torah law, rhetorically asking, “for is the law of the king preferable to the law of the King of the Universe, that of the holy Torah?” Considering his fervent beliefs on this matter, why did Eybeschutz agree to initiate the parlement into the world of Jewish law? Perhaps he did not have a choice. Though we cannot be certain, it is plausible that Eybeschutz simply opposed civic disobedience and therefore did not feel that he should rebel against the decision of the parlement and the king. He may have concluded that if recourse to secular courts could not be prevented, this was the best possible option.\textsuperscript{87}

\textsuperscript{87} Professors Schwarzfuchs and Berkovitz, via email correspondence, essentially agreed on this point.
The syndics, however, were not so eager to please. Though they complied with the official request of the *parlement* in 1742, they expended much energy during the following years advocating for the juridical autonomy of the Jewish community in the form of supplications and letters to the *parlement* and the king. Overlooked in historical work on Metz until now, these supplications convey the intense worry and the sense of urgency which plagued the leaders of the community during this time.  

Though community members had already breached the boundaries between the secular and the religious, the syndics sought to regain the level of authority which they had previously possessed by reassuring the *parlement* of the necessity for Jewish self-governance.

Many of these supplications and letters appear to have been delivered along with the *recueil* itself. One such document presented the *recueil* to Monsieur le Chancelier of the *parlement*, “with the effect of ascribing the necessary authority to the said customs and laws,” and then went on to defend the right of the rabbis and leaders of the community. The first chapter of the compendium, the writers explained, concerned the jurisdiction of the rabbis, lay leaders, and elected officials, but this section was not of interest to anyone outside of the Jewish community. This qualifying remark constituted an attempt to deflect the gaze of the *parlement* from the Jewish community, playing down the significance of the *recueil* by asserting that autonomy was a fundamental principle of the laws. The document then explained that if the rabbis and leaders of the community were left without jurisdiction, insurgents would slander them and form factions within the community. The communal leaders, furthermore:

> Hold the place of the ancient judges of Israel under the orders and protection of the monarchs, to ensure the observance of ceremonial as well as moral laws which constitute the distribution of

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88 One *memoire* to M. Bussenne, a lawyer in the Metz *parlement*, goes so far as to say that open revolt burst forth in the synagogue following the publication of the king’s *lettres patentes* in 1742. See CAHJP HM/2 825.

89 “Le premier titre de ce recueil est celui qui concerne la juridiction des rabins, chefs, et elus, pour ce qui regarde les affaires et contestations des Juifs a Juifs et qui n’interessent aucun autre de quelque nation ou religion qu’il puisse estre…” A.D. Moselle 17J 23 Jur 37.
justice between them, conforming to the precepts set out in the books of Moses and other [books]
of law, written following the interpretations of the Talmud and which they call ‘oral law’ or
tradition…It is a part of their religion and their police [administration], one that has always been
recognized above all in Metz.90

As in earlier times, the communal leaders of Metz appealed to Christian officials on the basis of
passages which Christians would recognize, justifying their authority by invoking ancient
biblical practice, Talmudic interpretation, and oral tradition. The letter continued at length to
attempt to demonstrate the historical precedent for this autonomous communal structure in Metz.
From the defensive character of their response, it is clear that to the leaders of the community,
the recueil posed a threat to existing structures of Jewish jurisdiction, one which they sought to
counter through an assertion of historic rights. At the same time, they had conceded to the king’s
protection.

Many other documents from this time follow a similar pattern, in which the leaders of the
Jewish community endeavored to establish historical precedent for Jewish juridical autonomy
and requested the right “to judge and to be judged amongst themselves” according to their laws
and customs in any disputes between two Jews.91 In one petition from the rabbis of Metz to the
king, dated to 1744, the supplicants explained that only through the privilege of civil jurisdiction
could societal peace be maintained. Civil law, they affirmed, was equally important as ritual law,
and thus the ability to adjudicate civil cases was “an absolute necessity for the maintenance of
their police [administration], customs, and religious ceremonies, and even for that which

90 A.D. Moselle 17J 23 Jur 37. The well-ordered police state was a major emphasis of the French absolutist project.
See James Collins, The State in Early Modern France, 254. Collins explains that “police” meant administration,
particularly of a city, in early modern France. He quotes from Nicolas de la Mare’s “Treatise on the Police” from
1705, in which de la Mare stated, “the Police includes in its objectives all those things that serve as a foundation
and a rule to the societies that men have established among themselves.” See also Marc Raeff, “The Well-Ordered Police
State and the Development of Modernity in Seventeenth- and Eighteenth-Century Europe: An Attempt at a
91 “…de juger et d’être jugés entre eux conformément aux dites loix, usages et coutumes, pour être observé dans
47, 17J 23 Jur 56; CAHJP F Me 62 Memoire relatif a reception du recueil des lois des juifs en langue français.
concerns the administration in order to collect the payment of taxes."92 Presumably, this was the very kind of case which the parlement would have made for its jurisdiction. Here, though, the community leaders asserted the importance of Jewish civil jurisdiction, emphasizing that it was integral to their religion and therefore required protection. Moreover, the leaders understood the monarch’s concern with orderly tax collection and intimated that this process would be put in jeopardy should Jewish officials cease to secure control over it. Not only was Jewish jurisdiction essential for the Jews and for the preservation of their religious infrastructure, but it was also necessary for the program of the absolutist state.

In 1745, disputes between the parlement and the syndics of the Jewish community resulted in a lawsuit brought before the king over jurisdiction. In the affidavit which it delivered to the king, the parlement contended that the historical premise on which the Jewish community based its jurisdiction—beginning with the lettres patentes delivered by Henri IV in 1603—was of no consequence in present times, as these events may have preceded the establishment of royal sovereignty over Metz.93 The parlement thus presented the Jewish argument as one which challenged or undermined royal authority. In order to do so, however, it also acknowledged its own subordination to the rule of the monarch, using royal sovereignty as a counter to the Jewish position.

92 CAHJP F Me 261, Petition des rabbins de Metz au sujet du recueil des leurs lois. Written for secular authorities, many—if not all—of the letters and supplications to the parlement and the crown were composed in French. This document, however, bears a title in Yiddish, one that may lend us insight into the situation of the Jews during these years. In Yiddish, the title reads, “iskei recueil odot d’y mishnat 1743” (עסקי רעקעיל אודוט די מישנת 3471—regarding the recueil from the year 1743). ‘Recueil,’ curiously, is spelled in Yiddish according to the French spelling, not simply phonetically. Even in the Yiddish, the author chose to use the word ‘recueil’ instead of an equivalent Hebrew or Yiddish word for ‘compendium,’ perhaps indicating a certain level of integration into French culture and language, or a familiarity with French legal terminology that did not exist with similar Hebrew terms. See the introduction to Jay Berkovitz, Protocols of Justice: The Pinkas of the Metz Rabbinic Court, 1771-1789, which discusses at length the use of French legal terms in court proceedings from the bet din of Metz. Berkovitz contends based on the phonetic spellings in Yiddish of many of the French terms that Jews in Metz may have possessed oral comprehension of the French language while lacking formal literacy. The present example might serve as an indication to the contrary.

93 AN K 1194, Memoire et observations sur l’état des Juifs de Metz.
The parlement’s memoire continued by explaining the impetus for the recueil, citing the need to “give a regular form to the space of jurisdiction which the rabbis and elected judges use amongst themselves.” It then took a distinctive turn in tone, expressing pity for the Jews. “This people has rejected Jesus Christ,” the memoire stated, “has lost its country, its temple, and its priesthood, its state and its royalty, but the Nation remains dispersed, people and religion at once.” Scattered in numerous different countries, the Jews were “neither master nor independent in any of them.” Requiring the Jews to adjudicate amongst themselves according to their own customs would be, according to the parlement, to reduce them to a separate status, one which would take them outside of the authority of the state. On the contrary, codification of their laws—a process which should take place in any province or royal territory—would give the Jews a “degree of establishment” and treat them as an integral part of the state.

The Metz parlement thereby turned the Jewish argument on its head: the purpose of codifying Jewish law was not, as the Jews had assumed, to take their judicial powers away from them, leaving the community with little to no autonomy; rather, the process of organizing and categorizing Jewish law through a compendium would treat the Jews as full-fledged members of the French state, confirming upon them a status which other state establishments had previously denied them.

Unsurprisingly, the affidavit delivered in response by the leaders of the Jewish community differed markedly in its approach. Like other supplicatory documents, the memoire of the syndics emphasized the ultimate importance of civil jurisdiction within the Nation. Composed by Monsieur de Serionne, the lawyer for the Metz syndics and élus, the memoire explained that the order and tranquility of the Nation essentially depended upon the exercise of jurisdiction, which they had maintained since the establishment of the Jewish community in
Metz. This privilege of jurisdiction, they claimed, was authorized in all Christian states. Again, they emphasized the divine source of Jewish jurisprudence, quoting in Latin directly from Exodus in order to draw a parallel between the ancient judges of Israel and the contemporary rabbinic and lay leaders of Metz. Eliminating the right of jurisdiction, the leaders informed the secular authorities, would not only shake the foundations of their religion, but it would infringe upon their right to practice religion freely.

Yet despite these contentions, members of the community clearly desired something different from what the syndics had been able to deliver. Severe internal tensions, coupled with the resolve of the *parlement* to cement its own authority through assuming control of another corporate body within its jurisdiction, produced the need for a translation of Jewish law. For the *parlement*, this experience represented the extension of power into a new arena. But for the leaders of the Jewish community, it meant that the privacy of their internal corpus of law had now been breached, that Jewish adjudication could not be contained nor communal autonomy upheld. They were now open to becoming a part of the state machinery.

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94 AN K 1194, *Memoire Pour les Rabins, Elus, et Syndic des Juifs de la Ville de Metz*. I am not certain if M. Serionne was Jewish or not, but my supposition is that he was not, and was hired by the Jewish community leaders specifically for this case.

95 Ibid., “…l’exercice de la Jurisdiction fait l’une des parties des plus importantes de leur Religion, il seroit impossible de leur interdire la Jurisdiction, sans en détruire les premier & les principaux préceptes, & de concilier par consequent leur établissement & la liberté d’exercer leur Religion…”

Katz | 39
Chapter 3: Jewish Practice in Translation

In an article on the codification of French customs, John P. Dawson remarked, “even in areas as to which tradition had crystallized, the necessity for verbal formulation must have impelled a new precision of thought and given sharper contours to the experience expressed, often in colloquial language, by the early texts.” The same can be said of the Recueil des lois, coutumes, et usages codified following the request of the parlement of Metz. Though Jewish law had been practiced and transmitted orally for generations, the new era of codification required a new systematic approach to the law, one in which the legal compendium served as reference material for any cases presented to the parlement or disputes between the parlement and the Jewish leaders. There was now a formal body of scholarship to consult, which would necessarily alter the legal experience of the Jews both within their own community as well as in the secular courts which they attended. In short, Jewish law was no longer exclusively ‘Jewish.’ It had become an instrument of the French state. This led Jewish leaders to approach the law differently, catering more frequently to the parlement’s understanding of it than to the community’s internal comprehension of Jewish law.

The parlement of Metz was not the only governmental body to demand a translated book of law from its Jewish inhabitants, but it was perhaps the first. Later in the century, in 1770, the Prussian government asked Hirschel Lewin, rabbi of Berlin, to produce a compendium along with the philosopher Moses Mendelssohn, and after years of delay, they published Die Ritualgesetze der Juden in 1778. In Moravia, too, the imperial government requested a

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97 David Sorkin, Moses Mendelssohn and the Religious Enlightenment (Berkeley: University of California Press, 1996), 105. While some of the delay was due to circumstantial factors, it had another cause: the rabbi of Berlin wanted to maintain his consultative role for as long as possible, while the Prussian courts, in using the compendium, intended to rule without rabbinic consultation. Though Mendelssohn supported the Jewish use of secular courts, he felt that it would be impossible for Prussian courts to use an abbreviated handbook to judge Jews according to Jewish law and preferred, instead, that courts make use of secular law to adjudicate cases involving Jews, just as...
translation of Jewish protocols during the mid-eighteenth century. Nonetheless, the *recueil* produced in Metz was, it seems, the first of its kind. As such, an analysis of what occurred in the wake of the translation lends insight into the struggles that the Jewish community grappled with, and the shifting legal and social norms under which the community operated.

**The Contents of the Translation**

Though it is not the aim of this thesis to analyze in depth the contents of the translation, there are certainly elements of the *recueil* which merit discussion. Drawing on the sections of the *Shulhan Arukh* which deal with civil law and marriage and divorce contracts—*hoshen mishpat* and *even ha-ezer*, respectively—the syndics, in their introduction, explained that the *recueil* contained sections concerning “marriage contracts, tutors and curators, majors [and minors] with regard to inheritances, wills, and other civil matters.”

Though it purported to include a representative condensation of the laws of courts and adjudication, there was one seemingly glaring omission. In detailing who qualified as an appropriate judge for Jewish cases, the *recueil*, like the Hebrew *Shulhan Arukh*, recorded, “judges cannot be parents or related to one another, nor to the parties involved […] there cannot be any enmity between them, and if there is, they [the defendants] cannot be judged in fear that the desire to contradict oneself not prevail over the law.” Information concerning the fact that non-Jews were not allowed to serve as witnesses either, however, was conspicuously left out of the *recueil*. Stricken from the record was the line stating, “it is forbidden to litigate before non-Jewish judges or in their courts, even if they rule in

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accordance with Jewish law, and even if both litigants have agreed to litigate before them.”

Jewish leaders either did not consider these prohibitions important enough to include or, more likely, did not want the parlement to know that embedded in their corpus of law was a ruling which disallowed them from participation in the French civil court system, even when the governing parties exerted considerable effort to adhere to Jewish customs, as the parlement had.

Furthermore, within the translation itself, as in the supplications written directly to the parlement and the king, were subtle intimations that only those knowledgeable in Jewish law would be able to decipher cases and deliver appropriate rulings. In one case, the translation instructed that in order to assess the validity of the situation, “it is necessary to recall the Hebrew texts regarding the situation.” This assertion continued: “it is all dependent on different words, letters, punctuations, or accents in the Hebrew—these cannot be expressed in French. Science, experience, and prudence of the judge are the sole [factors] which will facilitate a just decision in this case.”

Even in the core of the translation itself, the leaders of the Jewish community it seems could not resist the opportunity to inform their parlementary readers of their inability to deal with such matters. Interestingly enough, this assertion appeared in a section of the recueil dedicated to the laws of estates and inheritances, as if to say that the parlement’s decision to assume the role of arbitration in the cases of Merlé (Spir Lévi) Worms and Magdeleine Cahen had reflected the essential incompetence of the institution, for it would only have been possible for a qualified, Hebrew-proficient authority to judge this case fairly. In the following article, which concerned the trusteeship of a minor’s possessions, the authors of the translation again maintained:

as in the preceding article, it is necessary to return to the Hebrew terms, and to the manner in which the disposition is conceived, in order to assess whether she [the mother] carries the status of

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101 Shulhan Arukh, Hoshen Mishpat, Hilkhot Dayyanim, 26:1. Emphasis added.
102 Idem., p.52, Article 16.
heir, or is simply a guardian. This cannot be determined except through an exact and scrupulous examination by the judge of the Hebrew act which contains the disposition.103

Once more, the writers stressed the importance of consulting the original Hebrew document before ruling. Only a Jewish judge would be capable of executing such a task.

These examples, among others, illustrate the attempt of the Jewish community leaders to subtly imply the necessity of their expertise in legal matters. The text of the translation was carefully crafted, fulfilling not only a legal function but constituting a justification for the continued existence of rabbinic and lay Jewish judges.

**Reforming and Refining the Recueil**

The Metz *parlement* found the translation to be cumbersome, “filled with propositions which corresponded neither to the gravity [of justice] nor to the proper administration of justice.”104 Aside from this, it was repetitive and self-contradictory, which would prevent this version of the *recueil* from receiving the legal approbation of secular authorities. In a letter dated May 10, 1744, Monsieur de Montholon thus decided that an abridgement of the already abridged *recueil* was in order, so that Jewish law and ritual could finally be codified and used by the *parlement* to adjudicate in contestations between Jews. Montholon concluded his letter by saying that it was up to the king to decide whether the new, edited version of the translation was “de votre gout”—to his taste—and could thus be given force of law by the king.105

Aside from sporadic mentions, there are a few documents which yield information regarding the *recueil* between 1745 and 1758/9. During this period, it is unclear exactly how Jewish communal autonomy shifted, though it is evident that the *parlement* inserted itself more

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103 Idem., p.53, Article 17.
104 A.D. Moselle, 17J 23 Jur 45.
105 Ibid.
forcefully into Jewish communal life. In a document dated 1754, for example, the *parlement*—not the syndics—assumed responsibility for the collection of taxes from a member of the Jewish community who had neglected to pay his annual fees to the community. Whether the *recueil* was used in any formal sense during these years, though, remains uncertain.

Yet by 1758, the *recueil* had resurfaced in numerous legal manuscripts. While some scholars have maintained that the community wished to distance itself from the *recueil* after its production, it appears that both the *parlement* and the Jewish community referred to it in court cases which involved disputes in Jewish law. Moreover, parlementary officials began to ascribe authoritative status to the translation. When a Jewish man from Alsace approached the Metz *parlement* with a question about finding a guardian for an orphaned minor, the syndics and the *parlement* both accused the individuals who wished to become the guardians of trying to slow the decision process so that they could benefit economically from the inheritance of the orphan. The syndics cited their *Recueil des lois*, explaining that the legal code did not allow for the ruling that the potential guardians believed to be correct. Furthermore, the *parlement* stated that the *Recueil des lois* was the definitive book of Jewish law, though the prospective guardians tried to explain that these laws were compiled in many different works.

In a letter from the Chancelier de France to the Procureur of the *parlement* of Metz, the Chancellor attested to the legitimacy of the *recueil*, stating:

> The syndics of the Jewish community of Metz have requested *lettres patentes* ordering that the translated collection of their ancient laws, which was deposited in the registry of the *parlement* of

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106 CAHJP F Me 213, *Procès verbal de sommation faite a Barache Levy de Basse Yutz par le sergent royal au ressort du Parlement de Metz, de payer ses impots a la communauté de Metz, 22 janvier 1754*. The *parlement* of Metz pursued a certain Barache Levy, from the neighboring community of Basse Yutz in the Moselle region, who had failed to pay the required sum to the Metz community under whose jurisdiction he resided. This stood in contrast to previous decades, in which the syndics were responsible for the collection of taxes. See Chapter 1 for more detail.

107 In a personal correspondence regarding this subject, Simon Schwarzfuchs informed me that as far as he knew, the translation was never used in court. He inferred that it was obvious that the Metz community did its best to avoid it.

The Chancelier continued by explaining that the translation merited the utmost consideration, as it might authorize Jewish precepts that stood in contradiction to the laws of the monarchy.

Evidently, the recueil had become an authoritative document in the eyes of the parlement, one in whose credibility they trusted when confronted with judicial rulings involving Jews. The monarch, too, legitimated the document, stating that Jews who brought their disputes to the parlement would be treated as favorably as they had previously been in Jewish courts. Thus unforgotten, the translation remained at once a symbol of dwindling Jewish communal autonomy and an instrument of parlementary and royal influence on Jewish affairs.

Marianne d’Alsace and the Invocation of the Recueil

The elevation of the recueil to the status of a respected official document is perhaps most apparent in the documents concerning a certain Marianne d’Alsace, whose case was presented to the Metz parlement in early 1758. When Marianne’s father, Moyse [English: Moses] d’Alsace, died, she was placed along with her other minor-aged siblings under the guardianship of Abraham Halphen le jeune and Moyse Maye, who were to serve as their “tuteur et curateur.” Marianne had requested to be considered an adult in order to collect the inheritance which her guardians would otherwise be entitled to use. Halphen and Maye contested Marianne’s

109 A.D. Moselle, 17J 23 Jur 58. A duplicate of this document can be found in CAHJP F Me 50, Lettre ecrit par Mgr. Le chancelier de France a M. Le Procureur General du parlement de Metz.
111 The exact chronology of the documents dated to 1758 and 1759 is unclear to me, but the request for confirmation of the recueil which I discussed in the previous section may have been issued in response to this case. It may, however, have been issued prior to the case of Marianne d’Alsace.
112 Halphen’s name is sometimes written as “Alphen,” and Maye’s name is frequently written without an “e” at the end. I am uncertain which version is accurate.
claim on Jewish legal grounds, stating that Marianne, who was twelve years old, could not take control of her own funds. According to the original Hebrew laws of the Jewish community, they explained, thirteen and twelve were the respective ages at which males and females entered puberty, but not the age at which they would be considered adults able to manage their own property if there existed guardians who could do so in their stead.\textsuperscript{113} Halphen and Maye asserted that the \textit{recueil} which the syndics and the \textit{parlement} used had been translated incorrectly, and that it was necessary to refer to the original Hebrew text to see if the translation conformed to the original.\textsuperscript{114}

The syndics, however, refused to provide the original Hebrew document for verification and called into question Halphen and Maye’s qualifications to serve as guardians for the children of Moyse d’Alsace, given their personal interest in delaying a decision in order to prolong their authority over the minor children. Halphen and Maye explained, “in order to ascribe a pretext to their refusal to communicate the original Hebrew of their laws and customs, they [the syndics] dare to assume that these laws and customs had been compiled in many different works, while in actuality there is only one compendium for all synagogues, for all Jews in all countries and spread across the entire earth.”\textsuperscript{115}

The fact that Halphen and Maye had to challenge the 1742/3 translation in order to uphold their claim that Marianne was still a minor in the eyes of Jewish law illustrates status of the \textit{recueil} as a legitimate legal source. Furthermore, in their allegation that local compilations of Jewish law were invalid, and that there existed one code for all Jewish communities, Halphen and Maye devalued the position of the \textit{recueil} and uplifted the status of the “one

\begin{footnotes}
\item[113] A.D. Moselle, 17J 23 Jur 50, 7 January 1758.
\item[114] Ibid.
\item[115] Ibid.
\end{footnotes}
compendium”—the *Shulhan Arukh* written by Joseph Karo—to a legal code which applied to the entire Jewish world.

The syndics, by contrast, had maintained the authority of the *recueil* by refusing to provide the original Hebrew document. This perhaps represented another attempt by the leaders of the Jewish community to assert the need for educated Jewish law experts to adjudicate in such cases. The very fact that two community members could challenge the *recueil* and question its accuracy and faithfulness to the original served as the syndics’ evidence for the *parlement* of the necessary role which Jewish judges played in interpreting the complex code of Jewish law. Without judges who could easily refer to the original Hebrew document to validate the translation, cases would remain muddled and indecipherable. The syndics’ refusal to present a copy of the original Hebrew text to the *parlement* constituted a reassertion of the authority of the *recueil*, as if to say that it was entirely unnecessary for the *parlement* to refer to the original Hebrew given the comprehensive nature of the translation.

The defendants contended that the syndics’ refusal to provide the original Hebrew source was based on the desire of one of the syndics, Nehemie Recher [Nehemiah Reischer], to marry his son to Marianne d’Alsace. According to this logic, Recher would have wanted Marianne to be considered an adult so that she could become engaged to and then wed his son. He and the syndics therefore prolonged the verification of the translation with the original in order to facilitate this union. If the *parlement* were to cross-check Chapter 12, Articles 1-2 of the translation with Section 235, Articles 1-2 of the original, Halphen and Maye insisted, the court would be convinced that “the translator who did the work was not faithful [to the original].”\(^\text{116}\)

In actuality, Halphen and Maye had grounds on which to stand. While the *recueil* presented an abbreviated version of Section 235, it omitted details which were important to

\(^{116}\) Ibid.
Halphen and Maye’s claim of guardianship. The translation, for example, recorded the laws concerning minors as follows:

Article 1: All minors who are placed under the authority of a guardian cannot conduct business, whether for movables or fixed property, and guardianship lasts until the age of thirteen for males, and twelve for females.  
Article 2: Males can nevertheless be emancipated at the age of ten and placed outside of guardianship if they seem intelligent enough to govern their own affairs, and thus they can sell and have their movables and household effects at their discretion. But according to an ancient ruling of the synagogue in Metz, they cannot issue Promissory notes or contracts without the assistance of their father or stepfather, brothers or other family members. Without this [assistance], their [the minors’] notes and contracts are considered null and void, or if they were made during the first three years of their marriage when they would be well over thirteen years.117  

The Shulhan Arukh itself, however, only elucidated the rights of an emancipated minor with regards to movables. With regards to fixed property, the text stated that a minor could not buy or sell until he reached adulthood. Moreover, the Shulhan Arukh stated explicitly that these rules of transactions “refer to a minor who has no guardian. A minor who does have a guardian, though, cannot make transactions even with regards to movables unless the guardian approves.”118 Thus Halphen and Maye were technically in the right, lending more credence to their claim that the syndics were merely trying to forestall the presentation of the original Hebrew text because of the fallacies that such a comparison would reveal.  

According to a record from after 1759, it appears that the recueil was eventually confirmed on the side of the syndics. Halphen and Maye were accused of stirring up trouble in order to prolong their control over Marianne d’Alsace’s property.119 A letter written by one of the syndics to Monsieur Adrian in Paris—presumably an assistant to the Chancellier—on May 14, 1759 explained that the recueil had been consulted and approved within the community, but

118 Shulhan Arukh, Hoshen Mishpat, Section 235, Articles 1-2.  
119 CAHJP F Me 144, Observations sur l’aigine des juifs de Metz et leurs lois et usages, après 1759.
that upon his return, the rabbi, Moshe [Moses] Bellin, would consult the Chancellier directly to receive official royal confirmation.\footnote{A.D. Moselle, 17J 23 Jur 54. Bellin must have been traveling at the time when this letter was crafted, as the author states—in Hebrew and in French—that he is writing in the absence of the rabbi.}

Regardless of the outcome, though, Halphen and Maye had attempted to use the \textit{parlement} to prove the syndics wrong in Jewish law. While we saw this previously in the cases of Merlé Spir Lévi and Magdeleine Cahen, the existence of a reference book of Jewish law altered the nature of the legal struggle. The defendants now had a document on which to base their claims, making it more difficult for the syndics to dispute their allegations. Challenges had to be more precisely worded and formulated, as they relied on written French sources as proof rather than mere summaries of documents written in a foreign language. More than this, the \textit{parlement} and the king together had become the arbiters of Jewish law and the mediators of Jewish practice. The syndics’ words were no longer taken at face value, but had to be reviewed and confirmed by the \textit{parlement} and then by royal officials. The documentation of Jewish law thus constituted a fundamental shift in the structure of Jewish communal autonomy, one in which the request of secular authorities fused with internal communal strife to produce a more fragmented organization of Jewish juridical power.
Fig. 3: List of *arrets* delivered to the Jewish community between 1646 and 1769. The 1742 *arret* concerning the *recueil* does not appear here. JTS M.S. 3704.

**Conclusion:**

By 1760, the French codification of Jewish law had indelibly linked secular and Jewish jurisdiction. There was not, as earlier historians had presumed, a bipolar division between the royal and municipal authorities and the Jewish community of Metz. Jews were savvy with regard to French civil courts and indeed had to be in order to conduct business successfully and garner rulings in their favor. Even early in the eighteenth century, leaders of the Jewish community of Metz understood the value of harmonious relations with both the *parlement* and the monarch. But when necessary, they did not hesitate to pit one authority against the other to achieve the outcome that would protect their communal jurisdiction. The *parlement*, in turn, used control over the Jewish community as a way of asserting its sovereignty. Ultimately, however, sovereign power rested with the king. Both the Jewish community and the *parlement* recognized this fact
and both used the king’s support to bolster their respective claims to autonomy and authority. Within the Jewish community itself, dissatisfaction with the fairness and effectiveness of courts contributed to a desire to move beyond the bounds of communal jurisdiction in search of more just rulings.

The complex relationship between the monarch, the parlement, and the Jewish community illustrates the uneasy path towards legal and social integration which occurred in Metz. While conventional histories have posited that unlike the experience of other Jewish communities, integration in France came in a single one blow struck by the French Revolution, we would do better to view the Revolution as one step in a much lengthier process. The translation of Jewish law into French in the 1740s was certainly a critical chapter in this process, one which made Jewish tradition available to parlementary authorities and thereby paved the way for the legal coexistence of later decades.

Though during the 1740s and 1750s the rabbis and syndics of Metz endeavored to preserve and protect their juridical authority, by the 1770s, the Metz bet din understood the limits of its jurisdiction. In particular cases the bet din admitted its uncertainty as to how to rule and encouraged litigants to seek the opinion of French legal experts. Acknowledging the place of French civil law, the bet din respected the procedures of the French civil court system while maintaining its own processes and practices, producing in practice a kind of legal pluralism in which the bet din coordinated with the corresponding French civil courts.\(^{121}\)

The process of codification, of fine-tuning Jewish law to make it palatable to non-Jewish authorities, altered the practice and hence our picture of communal autonomy in Metz. As the relationship between the parlement and the king shifted, so too did relationships between individuals in the Jewish community. Once the parlement obtained a compendium of Jewish law,

\(^{121}\) Berkovitz, Protocols of Justice, 31, 34.
it became impossible for communal leaders to maintain the same degree of autonomy which they had previously enjoyed and exercised. Though the syndics attempted to set the competing sovereignties of the parlement and the king in opposition to each other in order to reinforce Jewish autonomy, a certain degree of legal coexistence proved unavoidable. As the Jews of Metz became part of the larger French legal community, so too the parlement and the king became a greater part of theirs.
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