

Protocols of Justice

*The Pinkas of the
Metz Rabbinic Court 1771-1789*

Jay R. Berkovitz

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For Racheli

בשעה שאמר הקב"ה למשה עשה לי משכן התחיל מתמיה ואומר: כבודו של הקב"ה מלא עליונים ותחתונים, והוא אומר עשה לי משכן? ועוד היה מסתכל וראה ששלמה עומד ובונה בית המקדש שהוא גדול מן המשכן, ואמר לפני הקב"ה 'כי האמנם ישב אלקים על הארץ'... לכך אמר משה (תה' צא) 'יושב בסתר עליון'. א"ר יהודה בר ר' סימון יושב בסתר הוא עליון על כל בריותיו, מהו בצל שדי, בצל אל, בצל רחום בצל חנון אין כתיב כאן אלא בצל שדי, בצל שעשה בצלאל לכך נאמר 'בצל שדי יתלונן'.

(שמות רבה פרשה לד)



Contents of the Hebrew Volume

Introduction 1

Facsimile Page from the Pinkas 22

Volume One, Part One Fol. 5^a–46^a July 1771–December 1774 23

Volume One, Part Two Fol. 2^a–54^b January 1774–July 1777 176

Volume Two Fol. 1^a–147^a August 1777–1 July 1789 409

Appendix 1. Additional Cases August 1789–January 1790 993

Appendix 2. List of Judges on the Beit Din 1009

Appendix 3. Copy of Consultation from Messieurs Pierre-Louis Roederer and Paquin, *avocats* 1010

Appendix 4. List of Places 1012

Appendix 5. List of Foreign (non-Hebrew) Words and Phrases 1016

List of Abbreviations 1044

Indexes 1052

Preface

Fashioning a faithful portrait of the past is the task that society has entrusted primarily to professional historians. To fulfill this mission, historians scour primary sources, collect data, endeavor to provide context, and assess the uniqueness of specific phenomena in light of wider trends. But for all the improvements in historical method and recent advances in technology that have refined the historian's craft, there are two factors that chip away at what scholars might believe is the enduring character of their painstaking efforts. First, by raising questions that earlier generations had failed to consider, contemporary sensibilities and perspectives routinely challenge well-regarded interpretations of the past. Indeed, the scholarship of the last quarter-century offers unmistakable evidence of the impact exerted by innovative methodologies and fresh perceptions. Second, the range of archival, literary, or material sources that ultimately come to the attention of historians is dependent on several factors that include, among others, accessibility, funding, chance discovery, and the unpredictability of research impulses. As a result, even the judicious conclusions drawn by highly accomplished practitioners of historical research are contingent at best. Novel approaches, along with the emergence of sources that have been hidden, underappreciated, or in some cases misunderstood, will inevitably alter the image of the past that historians have constructed so meticulously. In some instances, the discovery or the rediscovery of unknown or neglected sources may yield a fundamentally new understanding of what was formerly believed to be an unassailable truth.

The *Pinkas* of the Beit Din of Metz is such a source. Largely overlooked by historians and by scholars of Jewish law since it was first produced over two centuries ago, the records of the Metz rabbinic court contain the rudiments of a new historical narrative that varies substantially from traditional accounts of the relationship between Jews and the surrounding society and culture. In contrast to legal codes that prescribe proper or acceptable behavior, and unlike rabbinic responsa that advance arguments based on nuanced readings of earlier legal opinions, rabbinic court records provide clear images of law as it was practiced and of life as it was lived. Overflowing with details regarding two entwined subjects—the behavior of litigants and the conduct of the court—the *Pinkas* of the Metz Beit Din offers an exceptional opportunity to investigate the interrelationship between law and society.

In recent years there has been a reconsideration of accepted assumptions concerning the Jews' contact with other cultures in the medieval and early modern periods. Building on the burgeoning work of early modernists, the

present study attempts to move that conversation forward by focusing specifically on legal texts, insofar as these sources represent exceptionally precise indicators of such trends. The proceedings of the Beit Din convincingly dispel the claim that most Jews experienced only limited exposure to broader social and cultural influences until the dawn of emancipation when opportunities that were previously unknown to the vast majority of Jews became available for the first time. In fact, the Metz court records contain conclusive evidence that the engagement of Jews with the social, cultural, and economic dimensions of the society around them was far greater than is generally assumed. This is evident in the social and cultural data found on virtually every page of the Pinkas and is equally apparent in the judicial methods practiced by the Metz Beit Din. In the latter regard, the present analysis advances a conception of Jewish law that emphasizes its adaptability to change, taking into account the social foundations upon which the law rests. Beyond these particular foci, the larger goal of *Protocols of Justice* is to demonstrate the value that rabbinic court records hold out for contemporary historical scholarship.

Protocols of Justice expands on themes that have been at the center of my scholarly agenda during the past three decades. I have been especially intrigued by the modes of adaptation to the social, intellectual, and religious challenges posed by early modern and modern society. My earliest work concentrated on the impact of the French Revolution on Jewish identity, culture, and institutions in the nineteenth century, but during the last fifteen years I shifted my attention more to the early modern period. I became interested in ritual as a lens through which the modernization process could be investigated anew, which was the central focus of *Rites and Passages*. The sources utilized for that project—communal legislation in Alsace, Lorraine, and Metz; writings on Jewish law and custom; and classical rabbinic scholarship—pointed to a reworking of medieval models of religious authority, especially as these related to public policy. Communal legislation no longer drew its authority from the Jewish religious tradition but from a set of assumptions concerning the need to maintain the common welfare and preserve the social order. During the past decade I have cast the net of my research beyond France to include the legal methodology and jurisprudence of Rabbi Ya'ir Hayyim Bacharach of seventeenth-century Worms. Throughout these studies, and especially in this work on the Pinkas of the Metz Beit Din, I have found that the adaptive capacity of Jewish religious and legal traditions has been an important part of the transformation underway prior to the onset of modernity.

Consisting of more than one thousand cases that came before the Metz Beit Din in the years 1771 to 1789, the Pinkas manuscript poses a set of difficult challenges

because of its size, terse language, occasional illegibility, technical terminology, and frequent use of non-Hebrew vocabulary (mainly varieties of French, German, and Yiddish). At approximately 420,000 words, the Metz Pinkas may be the single largest extant collection of rabbinic court records in the world. Its highly compressed style, punctuated by numerous abbreviations and often unfamiliar subjects, has not been easy to surmount. From the start, I have been guided first and foremost by the goal of producing a fully accurate text of the Pinkas. Although most of the pages of the Pinkas are clear, some were written hurriedly or without having left sufficient space on the page. In some instances letters of a word, or entire words, have been omitted or are difficult to decipher. When there has been doubt about a letter or word, extensive efforts have been made to check comparable forms or clusters within the Pinkas and beyond. I have made use of standard and electronic tools, including talmudic dictionaries, the Bar Ilan data base, Hebrewbooks.org, and Googlebooks. For French terms, I have consulted several eighteenth-century and nineteenth-century dictionaries, including *Dictionnaire de l'Académie française*, 4th edition (1762), The Project for American and French Research on the Treasury of the French Language (ARTFL), especially the *Dictionnaires d'autrefois*, also online at the University of Chicago's ARTFL project; Claude Joseph de Ferrières, *Dictionnaire de droit et de pratique*, 2 vols. (Paris, 1769); Pierre-Jean-Jacques Guillaume Guyot, ed. *Répertoire universel et raisonné de jurisprudence civile, criminelle, canonique et bénéficiale*. 17 vols. (Paris, 1784–1787); *Le trésor de la langue française: dictionnaire de la langue du XIXe et du XXe siècle* (1789–1960) (TLF); and Joseph Wilson, *French and English Dictionary* (Boston, 1833). Yiddish terms have been more difficult to decipher, largely because of widely divergent patterns of usage and orthography in the Yiddish-speaking world of the eighteenth century.

As for the transcription of the Pinkas, every effort has been made to render the text as it appears in the manuscript. The cursive sign-letter indicating ך, which is frequently used at the end of words to denote the feminine plural ך, has been preserved in the transcription. The only exception is when the singular (construct) and plural forms are ambiguous. In those cases, as in צוואר, where it is only context that will establish whether the word is צוואר or צוואר, I have entered a ך where it would be otherwise impossible to know that the intended reference is to the singular construct form. On rare occasions I have corrected an obvious scribal error and have so noted in the footnote. But when an unusual form, though to my mind in error, is repeated several times, I have left it as it appears in the manuscript and have noted the more conventional form in the footnote. In addition, three stylistic changes have been introduced in the transcription of the Pinkas. First, each case that came before the Beit Din

is now assigned a number, whereas in the original manuscript none of the cases in volume one (parts one and two) was numbered; in volume two the existing number system is incomplete and somewhat unreliable, and it has therefore been replaced. Second, when cases are fairly long I have introduced paragraph breaks so that readers will find it easier to consult the material. Third, numbers listed in the margins of the Pinkas have been generally transcribed when they summarize or draw attention to a calculation that is otherwise not clearly stated in the text of the proceedings; however, on those rare occasions when such numerals repeat what is plainly recorded in the text, they have been recorded in an accompanying footnote.

Identifying the names of small towns and villages of the Moselle, Alsace and Lorraine, and beyond has been a particularly difficult challenge. Part of the difficulty relates to the phonetic ambiguity resulting from Hebrew orthography, and is compounded by the fact that of the hundreds of small villages in the region, many have names that are almost identical in spelling and pronunciation. A similar challenge is posed by the surnames of non-Jews listed in the Pinkas, since the Hebrew does not provide a consistent indication of French orthography.

A note on Hebrew transliteration and translation: I have generally adhered to the transliteration guidelines set forth in the *AJS Review*. As a rule, the Hebrew letter *quf* (ק) is represented by a 'q'; *khaf* (כ) by 'kh'; *het* (ח) by 'h'; and *zadi* (צ) by 'z'. However, when a Hebrew word is frequently used in English, it is not uncommon for it to follow an alternate transliteration style. Since many words beginning with the letter *quf* are generally transliterated using a 'k,' I have preserved that usage, despite the inconsistency. Thus, for example, *kehillah* and *kinyan*, but *teq'at kaf* and *taqqanah*. Finally, unless otherwise noted, all translations are my own.

Acknowledgements

When I first viewed the Pinkas of the Metz Beit Din in the Institute for Micro-filmed Hebrew Manuscripts in the Jewish National and University Library almost a quarter-century ago, I failed to appreciate the value of this treasured source. Years later, at the urging of a new acquaintance, David Kerschen, rare book librarian at the Schocken Institute, I took another look. Together, we began the work of transcribing the Pinkas from the microfilm while struggling to decode the text. I am very thankful for his passionate commitment to this project since its inception. On the strength of these early efforts, I was awarded a Faculty Research Grant from my home institution, the University of Massachusetts Amherst, which funded most of the transcription. I wish to thank Esther Shdeour for her extraordinary efforts in undertaking the bulk of this essential task. Additional support provided by the Lady Davis Fellowship Trust during a semester-leave at the Hebrew University in 2007, and by the Memorial Foundation for Jewish Culture in 2011–2012, were vitally important as the project progressed. In 2011–2012 I was awarded the Inaugural National Endowment for the Humanities Senior Scholar Fellowship in Jewish History, which I am very pleased to acknowledge. The support provided by the NEH enabled me to work directly on the Pinkas manuscript, which is in the archival collection of the YIVO Institute for Jewish Research in New York. I am grateful to Jonathan Brent, YIVO Executive Director, and to Fruma Mohrer, Chief Archivist, for facilitating my unimpeded access to the Pinkas and for granting me permission to publish the manuscript in its entirety. My thanks to the YIVO staff, including Gunner Berg, Ettie Goldwasser, and Leo Greenbaum, for cheerfully and patiently enabling me to consult the manuscript during the past several years, and to Chava Lapin and Rivka Schiller for their valuable assistance with Yiddish vocabulary in the Pinkas.

The NEH fellowship was initiated and co-sponsored by the Center for Jewish History. I am profoundly appreciative of the support extended to me by the Center for Jewish History, and I wish to acknowledge, in particular, Michael Glickman, the Center's Chief Operating Officer and Judith Siegel, Director of Academic and Public Programs. Their interest in my work and their efforts to include me in many of the projects undertaken at the Center made my stay ever more productive and rewarding. I am especially grateful for the Center's commitment, along with that of YIVO, to bringing the Pinkas of the Metz Beit Din to the wider attention of scholars and into the arena of public history.

None of the foregoing opportunities would have been feasible without the vigorous commitment to research and the generous support provided by the

University of Massachusetts Amherst. During the long gestation period of this project I have amassed quite a number of debts of gratitude that I am happy to acknowledge. I wish to thank Lee Edwards, former Dean of the College of Humanities and Fine Arts, who recognized the potential value of the Metz Pinkas at an early stage in the research; the Office of Research Development for a Faculty Research Grant in 2005 that funded much of the transcription of the Pinkas manuscript; Michael Malone, Vice Chancellor for Research Engagement, for his enthusiastic support of this project and of *Jewish History*, the journal I co-edit; and Julie Candler Hayes, Dean of the College of Humanities and Fine Arts, for her unflagging encouragement and support, especially as this project moved closer to completion.

I am pleased to acknowledge with sincere thanks the following archives and libraries for their assistance: the Archives and Rare Book Room of the Jewish Theological Seminary of New York; the Special Collections of the Harvard Law Library; the Library of the Faculty of Law, Hebrew University; the staff of the Judaica Reading Room at the National and University Library, Jerusalem; the Central Archives of the History of the Jewish People, Jerusalem; the Archives départementales de la Moselle; the Brandeis University Library; and the W.E.B. Du Bois Library of the University of Massachusetts Amherst.

I also wish to express appreciation to several institutions for their support and encouragement. I am grateful to the Faculty of Law at the Hebrew University for warmly welcoming me in spring 2011 as a visiting scholar. During that semester I audited classes in civil procedure and legal anthropology, and participated in the weekly faculty seminar and the monthly meetings of the Legal History Forum. In 2011–2012 I was an Affiliated Fellow at the Tikvah Center for Jewish Law and Civilization at New York University Law School. I thank the co-directors, J.L. Weiler and Moshe Halbertal, for the gracious hospitality and support extended to me. Finally, for many years I have been hosted as a visiting scholar by the Institute for Advanced Studies of Jerusalem during summers and occasionally during sabbatical leaves. I am deeply grateful to Associate Director Lea Prawer, Shani Freiman, and to the entire staff for their amiable hospitality in a most stimulating and congenial setting.

I have benefited greatly from the intellectual support of friends and colleagues, particularly as I endeavored to gain a firmer footing in civil law and jurisprudence. Ted Fram, whose pioneering work on the rabbinic court of Frankfurt am Main appeared two years ago, encouraged me to undertake the Metz project and has been enormously helpful with a myriad of issues that we have each faced in the course of our work. I also owe a debt of gratitude to the following: Ann Blair, Anthony Crubaugh, Matthew Gerber, Ephraim Kanarfogel, Aaron Katchen, Rabbi Eliezer Katzman, Goldie Maxwell, Sylvie Perrier,

Jeffrey Ravel, Ronald Schechter, Adam Seligman, Daniel Sinclair, Kenneth Stow, Francesca Trivellato, and Rabbi Dr. Yehudah Warburg. I am also pleased to thank Marion Aptroot, Jean Baumgarten, Paul Glasser, Chava Turniansky, and Georges Weill for their help deciphering Yiddish and French terms. Simon Neuberg of Trier deserves special mention. He provided countless hours of assistance with French, German, and Yiddish terms. It is fair to say that I could not have produced the glossary of foreign terms (Appendix 5 in the Hebrew volume) without his extraordinary help.

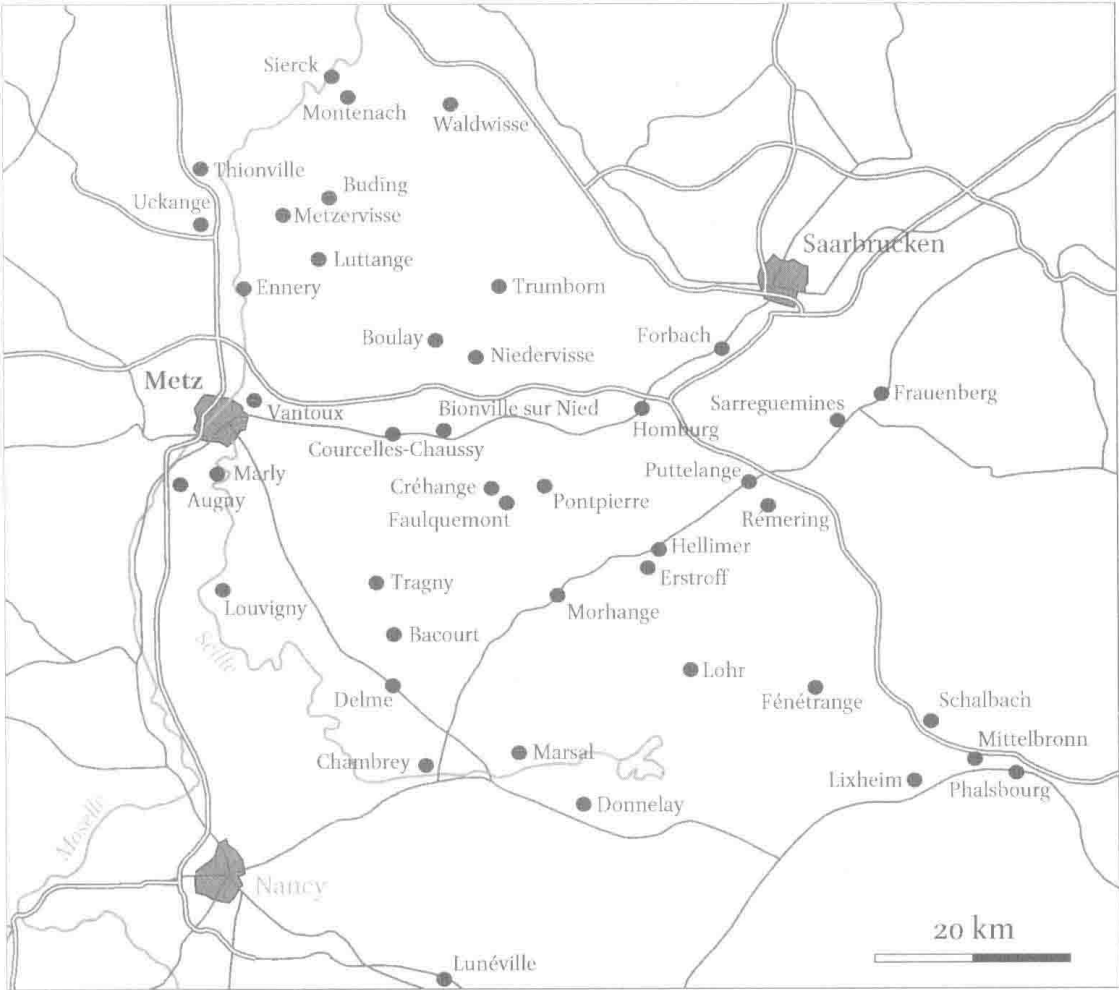
I have also been fortunate to have had the able assistance of Jesse Abelman, Jordan Katz, and Yonina Hoffman-Wanderer to help me proof-read the typescript of the Pinkas and assemble the data necessary for indexing its contents.

Mary Van Steenberg had primary responsibility for editing this volume. I wish to thank her and Sara Tropper for their excellent editorial work. Shmuel Bolozky, my longtime friend and colleague at UMass, generously assisted in editing the introduction to the Hebrew volume. Tzophie Leibovitch edited the annotations to the Pinkas and put the Hebrew introduction into its final form.

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Maps



MAP 1 *Department of Moselle*



MAP 2 *Europe in the 18th century*

Abbreviations

A.D. Moselle	Archives départementales de la Moselle
Arch. JTSA	Archives of the Jewish Theological Seminary of America
B.N.	Bibliothèque Nationale
B.T.	Babylonian Talmud
CAHJP	Central Archives for the History of the Jewish People
JSS	<i>Jewish Social Studies</i>
J.T.	Jerusalem Talmud
M.	Mishnah
PMBD	Pinkas of the Metz Beit Din
REJ	<i>Revue des études juives</i>
Resp.	Responsa

Contents

Preface	IX
Acknowledgements	XIII
Maps	XVII
Abbreviations	XX
Introduction	1
1 Law and Historical Narrative in the Eighteenth Century	26
2 Communal Autonomy and Rabbinic Jurisdiction	46
3 Legal Acculturation and Its Broader Social Foundations	79
4 Overlapping Jurisdictions: Between Legal Centralism and Legal Pluralism	106
5 Women, Family, and Property	135
Conclusion	183
Glossary	195
Bibliography	198
Index	216

Introduction

The authority to adjudicate civil disputes ranked among the most highly valued and the most vigorously defended of all the privileges extended to Jews over the course of their history. Whether under Roman, Christian, or Muslim rule, communities enjoyed the right to establish courts, to appoint their own judges, and to enact and enforce legislation. The wide range of disputes relating to civil and criminal law, inheritance, guardianship, marriage, divorce, and communal obligations were adjudicated in several different types of tribunals: established rabbinic courts usually consisting of three trained rabbinic experts who judged on the basis of talmudic law; ad hoc courts assembled at the initiative of a local rabbi or when litigants each chose a judge, joined by a nonaligned third judge; and communal tribunals, comprised of lay officers, that customarily heard cases of a public nature. At times, two or more of these courts operated side by side. In the view of communal officials and rabbis, such courts represented the only legitimate venue for the adjudication of civil cases between Jews, and as such, have been a salient feature of Jewish communal life for nearly two millennia. Recourse to gentile courts, though far more common than has generally been assumed, was viewed by rabbinic authorities in most circumstances as a religious offense—a betrayal of the talmudic tradition—and was consistently proscribed by communal legislation as a severe violation of community discipline.¹

Of the varied tribunals to which Jewish litigants brought their disputes, the rabbinic court enjoys the greatest prominence, owing to its longevity and multifaceted historical significance. Firmly rooted in the talmudic tradition, and on account of the rich documentation it has left behind, the rabbinic court is particularly valuable for what it reveals about the development of Jewish law and the nature of community over the centuries. Nevertheless, it was only in the early modern period that rabbinic courts were formally established as communal institutions. In an era when Jewish communities and a wide range of communal agencies were duly constituted by the laws of the state and according to legislation recorded in public registers, rabbinic courts were, perhaps for the first time, authorized to adjudicate the full range

1 On medieval rabbinic courts, see Simḥa Assaf, *Batei ha-din ve-sidreihem aḥar ḥatimat ha-Talmud* [Jewish Courts and their Procedures after the Talmudic Period] (Jerusalem, 1923–1924); and Jacob Katz, *Masoret u-Mashber: ha-Ḥevrah ha-Yehudit be-Motsa’ei Yemei ha-Beinayim* (Jerusalem, 1958), 119–129; English edition: *Tradition and Crisis: Jewish Society at the End of the Middle Ages*, trans. with an afterword by Bernard D. Cooperman (New York, 1993), 80–87.