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NAPOLEON'S SANHEDRIN AND THE HALAKHAH

Walter Jacob

Napoleon brought Jews into the modern world with a stroke of the pen in 1807; he began by summoning an Assembly of Notables on July 26, 1806¹ which was followed by a Great Sanhedrin on February 4, 1807. These bodies provided a carefully worded response to Napoleon's questions which balanced the halakhic tradition and Napoleonic pressure. Napoleon then reaffirmed the rights previously given to French Jews and extended them to the conquered territories. How extraordinary! An emperor involved in great battles, international treaties, and a massive restructuring of France and the newly conquered German lands, bothered to deal with this small fraction of the French population - and through the instrument of a Sanhedrin.

These events moved Jewish emancipation from slow debates among intellectuals and ineffective earlier political action to a long anticipated goal. This was not just emancipation, but an end to the corporate, semi-independent form of the Jewish community and so reset the boundaries of the halakhah. The halakhah had always acknowledged the laws of the lands in which Jews lived under the principle *dina d'malkhutah dina* ("The law of the land is the law").² This, however, went much further as Napoleon created a distinction between the eternal religious law and the temporal political injunctions of the halakhah. Furthermore he coerced the Jewish community into internalizing the changes through a Sanhedrin, the only body capable of making basic changes in the *halakhah*.

This paper will deal with Napoleon's views of Jews and his motivations of dealing with them. It will then turn to the responses given to Napoleon's twelve questions and the halakhic justification which could have been given. Finally it will look at the traditions governing a Sanhedrin

THE SETTING

The elimination of disabilities for Jews in Europe began with The Austrian Emperor Joseph II in 1781 through the well known "Patent of Toleration" and continued to move forward in his empire, though haltingly. Just a few years later in 1784 Louis XVI of France moved in the same direction through his removal of a body tax on Jews, (the equivalent of a cow).³ Actual citizenship was granted through a series of decrees in 1790 by the French Assembly and completed in one of its last acts in September of 1791.

France in this period only had a small Jewish population; the rights given to it in the autumn of 1791 were celebrated, but meant little as the Revolution was soon followed by the "Reign of Terror." Through it the Jewish communities, now with most synagogues closed, laid low. Individuals and communities, nevertheless, suffered. The revolutionary body had not worked out a new organizational pattern for Jews as it had for Catholics and Protestants by 1801 and Napoleon did not seem in a hurry to deal with this matter.⁴

Napoleon had inherited the declaration of the earlier French regime which he could have ignored.⁵ Furthermore that declaration had been reluctantly passed against strong opposition of philosophers and statesmen, including Voltaire. We should remember that for the previous half century French intellectuals as well as those in Germany had debated whether Jews were ready to be accepted as equal citizens. Were they not too different – an uneducated, and indigestible minority? Wilhelm Dohm, Gotthold Lessing and others fought against these opinions.⁶ A totally separate issue, the status of independent corporations and their powers, had been much debated in French society. Some felt that these were obstacles to the nation-state, while the Encyclopedist saw them as an obstacle to individual freedom. This was only incidentally a Jewish issue. In eighteenth century France it had been the basis for the withdrawal of rights

granted to the Hugenots by the Edict of Nantes (1598) and for the expulsion of the Jesuits in 1764 (which eventually led to the dissolution of the Order in 1773), and for unsuccessful attacks against the Order of the Freemasons.⁷

When the discussion turned to the Jewish community throughout this period, it took a different path as many felt that they could not be integrated into the broader society and should simply be expelled.⁸ Aside from personal disabilities ascribed to Jews, they were seen as a "nation within a nation." This was the argument raised by Clermont-Tonnerre in his speech to the French National Assembly on December 25, 1789, when he stated: "Everything should be denied to the Jews as a nation; everything should be granted to them as individuals."⁹ Similar sentiments continued to be expressed in France, Germany, and Hungary into the twentieth centuries.

The French Revolution changed the status of all religious groups as it sought to establish a secular government. This was difficult as the Catholic Church and the state had been thoroughly intertwined as expressed not only in the crowning of the king, the appointment of bishops, and heads of monasteries, but also in the number of seats assigned to the Church as one of the Estates in the rarely called Assembly. As the Church was heavily endowed, the appointment of its higher officials provided a generous income for many nobles who had little interest or knowledge of ecclesiastical matters.

As the Revolution progressed its leadership did not engage in discussions with the Church either in France or in Rome, but took rapid steps to gain what it wished. In the political maneuvering, the Church representatives were divided and so could not effectively fight the seizure of Church properties, the demand that all clergy take a civic oath or retire. As there was no guidance from the local bishops or Rome, a state of confusion emerged and the Church lost most of its

power and wealth. Nationalism and secularization meant an end to the corporate nature of the Church; this was especially divisive for Catholics. For example, when priests took a civil oath of allegiance to the government, they thereby denied the corporate nature of the Church. Monastic orders were dissolved and their inhabitants pensioned off. Most of the monastic and diocesan real estate were confiscated by the government; these steps were taken without any consultation with Rome and with limited discussion with French Church officials. Napoleon resolved all issues through the Concordat of 1801 though many of the agreements were promptly ignored. After the defeat of the Vatican States and their incorporation into France, Pius VII was imprisoned in Savona and the struggle continued. Napoleon wished to settle these questions permanently and prompted his ministers to continue the effort even from the battlefield.¹⁰ Protestants, who had only been given some civil rights by the pre-Revolutionary Assembly, were also reorganized.

In this period of turmoil and debate during Napoleon's reign, Jews were also discussed. Some of Napoleon's advisors were friendly to the Jewish population, among them were Beugnot, Ségur and Regnault. Opposed was the highly influential Jean Etienne Marie Portalis (1746-1807), who was responsible for the Code Napoleon. Marshall Kellermann, Fontane, and Mollé were also hostile to Jews.¹¹ Jews were seen as different; they were a "nation within the nation" with peculiar customs and a different sex ethos; their primary interest was financial. Of course, they were also Christ killers. The 32,000 Ashkenazic and 3,500 Sephardic Jews were viewed differently. The Sephardim had sought rights beginning in the mid-seventeenth century; though their presence as Marranos had been tolerated, they were only recognized as a Jewish community in 1722. By that time they were well acculturated and they were of sufficient economic significance in Bordeaux and southern France to publicly demand equality. They saw the Jews of eastern France - Alsace and Lorraine - as poor, medieval, and problematic as they were heavily involved in

loans to peasants, some of them usurious, that were universally resented. Neither group were able to participate in the debates over civil rights within the National Assembly in the late 1780s, though they lobbied extensively and mostly separately.

The decree of 6 March 1806 dealt with the Jewish issues as Napoleon saw them. Upon his return from his victory at Austerlitz, he was faced with complaints of Jewish usury from the Alsacian peasants. Napoleon declared a moratorium on all debts to Jews and ordered the Jewish question studied. These severe restrictions placed on the Ashkenazic community brought huge financial losses, some bankruptcies, and emigration. Napoleon was actually inclined to prohibit commerce with Jews, but also wanted to learn more and "summoned fifty or sixty Jews [to Paris] to hear them. I wish that a General Synagogue be held in Paris on June 15."¹² This led to 111 Jewish delegates from France and Italy to gather at the end of July. Napoleon's flair for good publicity led to their reception with full honors such as had never been accorded a Jewish delegation.

Through the second portion of this decree Napoleon sought to solve the issue of the Jewish community permanently. The Assembly of Jewish Notables was to respond to a set of Napoleon's questions. The answers were to be ratified by a Sanhedrin. The rather odd set of questions, actually insulting, that Napoleon addressed to the Assembly of Notables can only be explained through the accusations and issues raised during the previous half century, which included the corporate status of the community, special laws, usurious loans, and hostility toward non-Jews. The community would also be centralized through consistories, similar to the tight organization of the Catholic Church and provide absolute control of French Jews. His long term goal was complete assimilation through mixed marriage - goals clearly stated in notes of guidance to the French commissioners who would be present at the deliberations of the Assembly of Notables.¹³ This portion of the 1806 decree was a mixture of carrot and stick.¹⁴

NAPOLEON AND THE JEWS

What did Napoleon know about Jews and what were his motivations in dealing with Jews - not by decree, but through an Assembly and then a Sanhedrin?

Napoleon (1769-1821) had no contact with Jews while growing up in Corsica which had no Jewish population. He may have read a bit about Jews during his years of military study. Napoleon's initial contact came through his Italian campaign of 1796 during which he issued proclamations indicating that new freedoms would be granted while old customs and religious ways respected. Nothing in this dealt specifically with the Jewish population, but his destruction of the ghetto walls of Ancona soon became widely known and was celebrated by Jews. The Jews of Ancona sent a delegation of thanks and they were warmly received with the statement "you are free men."¹⁵ The freedom enjoyed by the Jews of Ancona, Venice, Verona, and Padua did not endure as the territories were returned to Austria after a brief period. Then the Jewish communities suffered as they had rejoiced in their liberation. Yet the Jewish population continued to celebrate Napoleon, so after the Peace of Amiens (1802), the French Jew Elia Halévy, composed a Hebrew synagogue hymn to praise Napoleon.

May 1798 found Napoleon on his expedition to Egypt and Palestine. The Jewish population of both lands was small, but Napoleon sought to make use of their Messianic longing, especially in his march through Palestine with proclamations that hinted at the promise of a restoration of the ancient Jewish kingdom once he had conquered the land. The seventeenth century Puritan Revolution in England had emphasized the Restoration of the Jews to their ancient land and through it brought about their readmission to England in 1640 under Cromwell. The French Revolution revitalized the spirit of millenianism, which may also have played a role.¹⁶ We should, of

course, note that this appeal to Jewish proto-nationalism was limited to Palestine, as he later sought to destroy Jewish nationalism when he eliminated the Jewish corporate community.

Napoleon, of course courted Muslims, respected Muslim law and customs and often dressed in the garb of an Egyptian ruler. He also looked after the Coptic community by giving them equal rights. For Egyptian Jews he reorganized the ancient Cairo Jewish community and set up two high priests. At the same time, it was reported that he called upon the Jews of Asia and Africa to gather under his flag to re-establish an ancient Jewish state. Some Jews joined the native battalions that Napoleon organized in Egypt.¹⁷

Perhaps the Jewish mystique influenced him. Here was a people that had retained its bonds to the ancient Land of Israel and continued to do so against all odds. The two pamphlets and letters distributed while in Egypt and Palestine in 1799 express such feelings and an uncommon friendship to Jews; the latter even with a Hebrew date. They certainly demonstrate Napoleon's masterful political sense. We should note that the authenticity of these documents continues to be questioned,¹⁸ but even if they are forgeries, the rumors about them played a role in the Jewish perception of Napoleon. The letters read as follows:

General Headquarters, Jerusalem
1st Florél in the year 7 of the
French Republic (April 20, 1799)

Bonaparte, Commander-in-Chief of the Armies of the French Republic in Africa and Asia, to the Rightful Heirs of Palestine.

Israelites, unique nation, whom, in thousands of years, lust of conquest and tyranny were able to deprive of the ancestral lands only, but not of name and national existence!

Attentive and impartial observers of the destinies of nations, even though not endowed with the gifts of seers like Isaiah and Joel, have also felt long since what these, with beautiful and uplifting faith, foretold when they saw the approaching destruction of their kingdom and fatherland: that the ransomed of the Land shall return, and come with singing unto Zion, and the enjoyment of henceforth undisturbed possession of their heritage will send an everlasting joy upon their heads (Isaiah 35:10).

Arise then, with gladness, ye exiled! A war unexampled in the annals of history, waged in self-defense by a nation whose hereditary lands were regarded by her enemies as plunder to be divided, arbitrarily and at their convenience, by a stroke of the pen of Cabinets, avenges her own shame and the shame of the remotest nations, long forgotten under the yoke of slavery, and, too, the almost two-thousand-year-old ignominy put upon you; and while time and circumstances would seem to be least favorable to a restatement of your claims or even to their expression, and indeed to be compelling their complete abandonment, she (France) offers to you at this very time, and contrary to all expectations, Israel's patrimony!

The undefiled army with which Providence has sent me hither, led by justice and accompanied by victory, has made Jerusalem my headquarters, and will, within a few days, transfer them to Damascus, a proximity which is no longer terrifying to David's city.

Rightful Heirs of Palestine!

The great nation which does not trade in men and countries as did those who sold your ancestors unto all peoples (Joel 4:6) hereby calls on you not indeed to conquer your patrimony, nay, only to take over that which has been conquered and, with that nation's warranty and support, to maintain it against all comers.

Arise! Show that the once overwhelming might of your oppressors has not repressed the courage of the descendants of those heroes whose brotherly alliance did honor to Sparta and Rome (Macc. 12:15), but that all the two thousand years of slavish treatment have not succeeded in stifling it.

Hasten! Now is the moment which may not return for thousands of years, to claim the restoration of your rights among the population of the universe which had been shamefully withheld from you for thousands of years, your political existence as a nation among the nations, and the unlimited natural right to worship Yehovah in accordance with your faith,

publicly and in like for ever (Joel 4:20).

Aaron, son of Levi, Rabbi of Jerusalem, to the Children of Captivity in the lands of sunrise and of sunset, of noon and Midnight!

And another a bit later

Jerusalem in the month of Nissan in the year 5559

Albeit there is no need to add anything to the letter which the man after the Lord's heart, Bonaparte, that great and high enlightened Commander-in-Chief of the French armies in Africa and Asia, has addressed to you. I, Aaron son of Levi, of the tribe of Levi, by the mercy of our God, the Lord Zabaoth, after the passing of innumerable generations again here, First Rabbi and Priest in this Holy City, have for the sake of the weak, thought fit to remind them of the words of Joel, son of Pethuel, Chapter 4,5 and of Zephaniah son of Cushi, Chapter 2, and Malachi, Chapter 2, 3.

Brethren! The so glorious prophecies contained therein have been, as to their large part, already fulfilled by the victorious army of the great nation, and it now depends only on us, to behave not as the children of harlots and adulteresses, but as true descendents of Israel, and to desire the inheritance of the people of the Lord and the beautiful services of the Lord, Psalm of David 27:4.

Take then unto yourselves the wings of the eagle and the strength of the lioness, like unto our fathers in the days of Nehemiah, son of Hacaliah, and Ezra, son of Seraiah, to re-build the walls of the orphaned city and temple to the Lord in which His Glory shall dwell from now for evermore. Proclaim this to all nations among whom Jacob's seed is scattered, sanctify a combat, arouse the stronger, let all men of Israel, capable of bearing arms gather and come up to us, let even the weak say: I am strong! Joel 4.

May the God of Abraham, of Isaac and Jacob bless the work of our hands! May He do and accomplish this, as He has sworn to our fathers! May He remember for good all that the great nation has done unto us, Ezra 7:27, and let the whole people cry as of Gideon, son of Joash, Judges 7. Here the Sword of the Lord and of Bonaparte!¹⁹

We do not know how much of these propaganda pamphlets were inspired by Napoleon, but they or similar documents that are lost reflect his flair for propaganda. Despite bulletins sent home that proclaimed victory at Acre and the taking of Jerusalem, his army did not succeed in its siege of Acre. The plan of conquest failed and after a year, Napoleon abandoned his army and by August 1799 had returned to France, where, however, he stated that "If I governed a nation of Jews, I should reestablish the Temple of Solomon."²⁰ Did he see himself following the footsteps of the Roman Emperor Julian with the hope of re-establishing the ancient Temple?

NAPOLEON AND FRENCH JEWRY

Napoleon was friendlier to Jews than contemporary rulers and certainly than those a generation earlier. For example, Maria Theresia (1717-1780) expelled Jews from various provinces and also temporarily from Prague. When she had to meet with a Jewish financier, she sat behind a curtain !

Napoleon may have understood Jews as a nation now scattered around the world, but longing for their own country. What about them in France? After this aborted effort in the Near East, he faced the problem of the Catholic Church head on and curtailed it.²¹ Then turned to the Protestants and finally he felt compelled to deal with the Jewish population. He had stated that he would turn to them after completing the Concordat. "They are a particular nation whose sect does not mix with another; we will have therefore to deal with them later on."²²

None of this would have demanded a Sanhedrin as Napoleon could easily have settled matters by decree as he did with the first part of his Edict of 1806. This is what the Jewish community would have expected and would have fallen under the rubric *dina demalhutah dina*; it would be seen as the law which needed to be followed.

Napoleon might also have demanded decrees (*takkanot*) from a recognized rabbinic scholar or a representative assembly which would also have had the force of law. Both paths would have served his purpose. They would, however, have lacked the drama of a Sanhedrin and Napoleon had a flair for the dramatic as seen in so much else of his reign. The Emperor understood the longing of Jews for equal rights and their willingness to accommodate him; they also realized that there was little choice.

The careful preparation for the Assembly and Sanhedrin along with his proclamations and letters show that the Emperor's primary concern was the creation of an orderly French nation state. He wished to eliminate the medieval corporate structure which included religious bodies and guilds, even the small Jewish minority. There was to be no "nation within a nation." He sought to assimilate the community through intermarriage²³ and by force if necessary though this was never tested. He wanted complete control of the communal structure and the Sanhedrin acceded to his wishes by accepting the "Organic Ordinance" which established a central Consistory and others under the Ministry of Cults. Through this mechanism the wishes of the Emperor were executed by the Jews themselves, the role of the rabbi was circumscribed, and the Jewish population was carefully watched.²⁴ He was concerned with recruiting Jewish soldiers both in France (where they had to serve anyhow) or in newly conquered territories, but as their numbers were small this was ancillary.²⁵ The involvement of the consistories in that effort led to a minor increase in the number of Jewish recruits.²⁶ Napoleon may also have thought that his efforts might attract the support of Jews in Central and Eastern Europe. This was Metternich's view who felt that the Jewish population was only one of many that might be aroused by Napoleon's promises of freedom and civil rights.²⁷ That did not occur as Napoleon did not remain in those lands. The Jewish leadership of Eastern Europe that had faced intellectual battles with the followers of Mendelssohn, certainly opposed any change in status. Some Jews along Napoleon's line of

march into Russia sold foodstuff to the armies and the high prices demanded were criticized; that seems to have been the only report by any official.

Too much has been made in the popular mind of Napoleon's friendliness to Jews;²⁸ this is understandable as his action provided civil rights in his French Empire for a decade and those rights continued in France after his fall, where they had, after all already existed. Napoleon actually rejected equal rights through his decree of 1806 and in other ways as each of those documents treated Jews as a group rather than as individuals unlike other French citizens. This remained so as demonstrated by the "infamous decree" of 1808 which established the consistory organization of French Jewry, but negatively limited occupations, residency, and the ability of conscripts to purchase substitutes for their military service.²⁹ It took several years for most of these restrictions to be eliminated; in the meantime, Jews were second class citizens.

Napoleon did succeed in planting a seed of civil equality in the remainder of Europe, but it took decades of struggle to bring about those rights. Initially virtually all German states returned their Jewish population to their previous status. Even Prussia did not extend rights to the restored territories.

THE ASSEMBLY OF NOTABLES.

Let us return to the Assembly of Notables which dealt with the questions of the Emperor as the Sanhedrin only ratified what had already been decided. Although the Assembly was organized with imperial pomp, its opening session was marked by Molé's harsh speech that made the wishes of the Emperor quite clear. The delegates had decided to conduct their initial session as a festive opening even though it was *shabbat*.³⁰ Paeans of praise to the Emperor were offered then and were generously scattered throughout the lengthy meetings.

The meeting had the unforeseen effect of showing the Jewish community in a different light to the broader population as a piece by Pasquier testified.

It has been generally supposed that they (i.e., the Jews) were governed solely by their pecuniary interests, that they adhered to their religion merely as a matter of custom, and especially because it made their conscience feel easy on the score of living at the expense of all countries which harbored them or tolerated their presence. But one found oneself, face to face with men vastly superior to the common herd with which, generally speaking, public opinion classed them. Thoroughly conversant with their religion and its principles, they were strengthened in their attachment to it by the animadversion it drew upon them, and their well-cultivated minds were replete with every kind of knowledge. It was therefore no longer possible to ignore the existence of a Jewish nation, the dregs of which had so far along come under notice, and which, owing to the care bestowed in selecting the members of the Assembly, spoke a language worthy of being heard.³¹

The delegates to the Great Assembly were provided by each of the prefectures of France and from recently conquered northern Italy. Invitations were also issued to the entire western European rabbinate though none attended - in part due to government prohibitions as in Bavaria and otherwise due to a lack of interest. Lay member from the Sephardic community and from the Ashkenazic community of Alsace along with rabbis attended. We should remember that all were Orthodox Jews. The Sephardim among them were acculturated and had fought for rights, but neither they, nor the Ashkenazim had any contact with the Berlin *haskalah*.³²

All of the delegates sought civil rights and knew what Napoleon wanted from them. How well informed they were about Napoleon's basic attitude toward Jews is uncertain. Certainly the leadership was not naive and understood the parameters available for their discussion.

None wrote about their part in these proceedings at the time. Some documentation has come from later sources with a few recent additions. They include material written years after the event.³³

NAPOLEON'S QUESTIONS AND ANSWERS

In order to set the stage properly, the first act of the Assembly of Notables was a preamble that declared that Jews did not constitute a nation and so turned their back on a corporate Jewish community, which had been one of the main concerns of Napoleon. We should note that civil rights were given to Jews as individuals not as a "nation" by the French National Assembly in 1791. The delegates then turned to the twelve questions posed to them and here is the response abstracted from Tama's translation.

(1) Is it lawful for Jews to marry several woman?

ANSWER: Moses did not forbid it and it continues in the East, but in the West it has been prohibited by R. Gershon since the eleventh century.

(2) Is divorce permitted by the Jewish religion? Is divorce valid, even when not pronounced by courts of justice and by virtue of laws that contradict the French code?

ANSWER: Jewish law permits divorce, but as Jews have now become citizens, they are subject to the French code as Jewish law recognizes the supremacy of the law of the state. Furthermore as a Jewish divorce is only valid when no obstacle exists, the obstacle of the civil decree must be removed before it is a valid Jewish divorce. The same is true for Jewish marriages.

(3) Can a Jewess marry a Christian, or a Christian woman a Jew? Or does the law order the Jews to marry only among themselves?

ANSWER: Marriage with Christians is not prohibited as only the idolatrous Canaanites and Egyptians were prohibited, but not

monotheists like Christians. However the religious ceremony could not be conducted with a Christian partner, so the couple would be considered married civilly only. Rabbis would be "no more inclined to bless (such a union) than Catholic priests."

(4) In the Jews' eyes are Frenchmen considered as brethren or as strangers?

ANSWER: French Jews and French citizens are brothers and many commandments deal with loving one's fellow human being..

(5) In either case, what line of conduct does their law prescribe for them towards Frenchmen who are not of their religion?

ANSWER: The conduct prescribed is the same as toward a fellow Jew.

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

ANSWER: All such Jews even during the period when they were not considered as citizens, have considered France as their homeland. This view can be traced to Jeremiah (Jer. 29).

(7) Who appoints rabbis?

ANSWER: The appointment of rabbis is usually made by the majority of the congregation, but this is not clearly defined.

(8) What police jurisdiction do rabbis exert among Jews? What judicial power do they exert among them?

ANSWER: Rabbis possess no police powers. Depending on the will of the local government, rabbis could form a *bet din* and act as judges, but they possess no judicial powers

(9) Are these forms of election, this police jurisdiction, requested

by their law or only sanctioned by custom?

ANSWER: They do not exist, but if sanctioned in some places, it is due to custom.

(10) Are there professions which are forbidden to Jews by their law?

ANSWER: There are none.

(11) Does the law of the Jews forbid them to take usury from their brethren?

ANSWER: Jews shall not charge interest (Deut 23:19-21) to those who are poor; it is not limited to usury. However with commercial loans interest may be charged to Jews and Gentiles.

(12) Does it forbid them, or does it allow them, to take usury from strangers?

ANSWER: All usury is prohibited. The various views of rabbinic scholars were cited and it was shown that Maimonides' view on this subject was not followed.³⁴

Brief summaries of the discussion which took place were given along with limited citations from the traditional literature. The validity of the sources quoted was occasionally debated. The final response followed the opinion most favorable to Napoleon's wishes.

These responses which were of world wide interest, as the immediate English and German translations of 1807 demonstrated. The deliberations, much abridged in these reports, bring us more tributes to the Emperor in their 334 pages than details of the debates. Although individuals were named for the specific tasks they performed, such as presiding, and committee membership, none of the statements in the discussions were attributed to anyone, so we know nothing about the attitude of each delegate. We hear only faint echos of real debates. Nor were any of the answers documented with precise citations from traditional sources.

THE HALAKHIC BACKGROUND OF THE RESPONSES

The answers provided only vague references to the tradition, nor citations. The answers and the published resume of debates provided a united front to Napoleon and the French public, so all the details of the discussions, including references to individual speakers were omitted. In their place we have lengthy tributes and paeans of gratitude to the Emperor. All this is understandable as Napoleon sought answers, not a halakhic dissertation. However, a fuller rationale might have been expected for the Jewish reader, either contemporaneously or later. All the rabbis present were Orthodox., but they felt no need to set forth a full rationale then or later.³⁵ The answers to some of the questions went to the very edge of halakhic possibilities and beyond as recognized by the Reform rabbis later in the century. The following pages seek to provide a halakhic background and the diverse opinions from which responses could be drawn. .

Polygamy

Polygamy has a long history in the Jewish tradition. The major obstacle to a monogamous union was polygamy which was very much part of the Bible. The lives of the Patriarchs indicated that polygamy was well established and was taken for granted. The obvious problems of the status of each wife and the status of the offsprings were raised in a realistic manner in Genesis and later within the royal families of Israel and Judea. Polygamy, of course, was only possible for the wealthy. Polygamy waxed and waned in Jewish life; Epstein indicated that it virtually ceased at the end of the Biblical period,, but resumed in Hellenistic times.³⁶ Some groups, such as the Zadokites of Damascus³⁷ and later the Karaites³⁸ legislated monogamy; however the majority of the Talmudic scholars accepted polygamy.³⁹ Although the ideal of monogamous marriage existed, it was not pursued vigorously.

Imperial Rome sought to eliminate polygamy throughout the empire, but as one can see from repeated decrees by Theodosius (379-395), Justinian (527-565), and Leo the Philosopher (886-912) with limited success.⁴⁰ According to Epstein matters changed through popular pressure in the Gaonic period (700-110), when clauses protecting the first wife were inserted into the *ketubah*. This method was used particularly by wealthy families to protect the status of their women folk. Such examples existed in *ketubot* found in the Cairo Geniza and were cited in Gaonic responsa. They stated: "That he may not marry or take during the bride's lifetime and while she is with him another wife, slave-wife, or concubine except with her consent, and if he does... he shall from this moment be under obligation to pay her the *ketubah* in full, and release her by a bill of divorcement by which she shall be free to remarry."⁴¹ We may conclude that polygamy continued to be accepted in Jewish life when tolerated by the surrounding society. This meant that it was practiced to some extent in the Near East throughout history.

In Christian Europe the decree (*herem*) ascribed to Rabbenu Gershom (960-1040), prohibited polygamy in the Ashkenazic lands; this may have been due to a slow internal development⁴² or have brought Jewish practice into line with the surrounding society. Falk, and earlier Frankel, has shown that the decree was in any case a part of a long series of steps taken in this direction.⁴³ The medieval legal discussions of polygamy did not deal with the nature of marriage or the status of women; they mainly treated the exceptions to monogamy which might be allowed in case of childlessness or the *yibbum*. Although the *herem* of Rabbenu Gershom prohibited the individual from marrying an additional wife, special permission for exceptions could be provided by one hundred rabbis from three districts, in other words in extraordinary circumstances, which will be discussed later. These rulings along with the nature of the contemporary discussion indicated that monogamy was established as the practical road of Ashkenazic Jewry; monogamy was considered binding by Asher ben

Yehiel (1250-1328) in his code. We can see from the contemporary responsa of Solomon ben Aderet (1235-1310) that it was not accepted in Spain and the Provence.⁴⁴

Polygamy was, therefore, almost eliminated in northern Europe while it continued in the Muslim dominated lands of the Mediterranean. When we view polygamy in the Islamic society, we find it taken for granted with virtually no statements about the ideal of monogamy. There were no successful effort to eliminate polygamy in Muslim dominated societies.

Exceptions from the Herem of Rabbenu Gershom

Despite the force of this decree, it was not seen as an absolute ban on polygamy in the Ashkenazic lands and in the border areas where Sephardic customs were followed by some communities. Exceptions were permitted, albeit seldom. However, the fact that other ways of dealing with the exceptional circumstances outlined below were not used, indicated a reluctance to move decisively in this direction. Other remedies could have been found for every instance in which polygamy was invoked, but this was not done.

The various discussions of the *herem* dealt with four instances in which polygamy could be permitted even in lands where it was normally not practiced. These were levirate marriages, a wife's barenness, the insanity of a wife, and special instances of the improper conduct of the wife.

Let us begin with the levirate marriage which represented a major area of concern through the ages; *yibbum* (levirate marriage to the widow of a deceased brother) was intended to assure that his lineage would continue. The widow could release her brother-in-law through the ceremony of *halitza*⁴⁵. In the Sephardic lands naturally, *yibbum* continued to be practiced and so led to numerous cases of polygamy; it

was also condoned in Northern Europe, although *halitzah* became the norm in northern Europe; there was no complete resolution to this question.⁴⁶

A woman had to be divorced or a second wife taken, if she remained barren after ten years according to the *Mishnah* which after all based itself on the Biblical command "be fruitful and multiply."⁴⁷ After some initial discussion such exceptions were not permitted for this reason in northern Europe.⁴⁸

A wife's insanity or her conversion to Christianity both of which made divorce impossible led to the suspension of the *herem*. It was similarly not enforced when the conduct of the wife demanded a divorce according to talmudic law, but she was unwilling to accept it⁴⁹ In northern Europe the authorities were reluctant to make any exceptions to the *herem* after the first generations, but they did occur. In the Sephardic lands nothing changed.

DIVORCE

Let us begin with a discussion to divorce in Judaism and then turn to the issue of civil versus religious jurisdiction. As divorce when granted by the male, has always been easy and as this question did not deal with the rights of women in marriage, it is the second clause which deals with French law versus Jewish law which may be troublesome.

Judaism looks upon divorce with sadness (Git. 90b; San. 22a) but recognizes that it might occur. It makes divorce easy and simple, when the parties are no longer compatible, in keeping with the Biblical statement (Deut 24:1 - 2). According to the Talmud, divorce could be given by a man for virtually any reason, even the most minor one (Git. 90a). This was subsequently restricted according to the decree of Rabbenu Gershom (*Shulhan Arukh, Even Ha-ezer* 119.6).⁵⁰ A divorce always originated with the husband, and the wife accepted the

document. A court could force the husband to give a divorce, and a man might be punished and imprisoned for his refusal to give a divorce; this remains true in modern Israel. If he remains unwilling after punishment, nothing further can be done (B.B. 48a; *Yad, Hil. Erusin* 2:20)⁵¹. There are also certain circumstances under which a court may demand a divorce, although neither one of the parties involved has requested it. The detailed reasons for a divorce have been codified in the various early codes and in the *Shulhan Arukh, Even Ha-ezer* (1.3; 11.1; 39.4; 70.3; 76.11; 115.5; 134; 154.1 - 7, etc.). The actual procedure and the document of divorce have been surrounded by many restrictions in order to ensure their complete validity. The procedures have been prescribed in greatest detail (*Shulhan Arukh, Even Ha-ezer* 119ff). The various problem areas have been treated extensively by Rabbinic law; for example, the mental incapacity of the husband or wife, the disappearance of the husband, or his presumed death. In these instances and in ordinary divorce, Orthodox law has found itself in a difficult position, for only the man can actually grant a divorce, and if he is unwilling or unavailable there is little that can be done.

As divorce proceedings frequently involve a great deal of bitterness, the husband may be unwilling to provide a religious divorce (*get*) along with the civil divorce unless a large payment or some other concessions are made. Sometimes a religious divorce is stipulated as part of the arrangement in a secular divorce. The Conservative Movement has sought to remove itself from this predicament by including a special statement in its marriage document. It provides for authority of a rabbinic court to grant a divorce in cases where the husband is unwilling to do so or if he becomes unavailable.⁵² This kind of ante-nuptial agreement, as well as other possible solutions, have been suggested by various traditional scholars as Freimann in his *Seder Kiddushin Venisuin* and Berkovits, in *Tenai Benisu-in Uveget*, but they have met strong opposition among other Orthodox authorities.

The limitations of the Orthodox procedure for granting a divorce are, therefore, quite clear. In theory, divorce should be easy to obtain; in practice, the stipulation that only a male may initiate the proceedings, the lack of enforcing power of the Jewish court and the many details necessary for the procedure make the *get* virtually unobtainable for many women.

Civil Jurisdiction versus Religious Jurisdiction

The problem which faced the Assembly was the intrusion of French law into areas also governed by Jewish law. This concerns the issue of divorce as well as those of rabbinic appointments and jurisdiction and so was basic to this set of questions.

Jews through the centuries have had to deal with civil and criminal laws of the lands in which they resided which differed from Jewish law. The principle of "the law of the land is law" (*dina d'malkhuta dina*) was invoked to cover these matters. It has ancient roots and the struggle between Jewish and alien law is as old as the first occupation of the Land of Israel by a foreign conqueror in 586 B.C.E. We know virtually nothing about the relationship between the inhabitants and the occupying forces. The law of the conqueror was the ultimate law and the ruler appointed the supreme governor whether Jewish or an outsider. It seems that conquerors permitted local autonomy to the native population, so that through Ezra, Nehemiah, and their followers Jewish leadership controlled their internal affairs and governed. This policy was continued by Egyptian, Persian, Seleucid, Ptolemaic, and Roman rulers. The only major exception came through Antiochus Epiphanes and led to the Maccabean revolt. Unrest under the Romans was caused by a harsh taxation policy and occasional insensitivity to Jewish feelings about the images of the Roman legions and not through a clash of legal systems. We know little till Roman times about the extent of outside domination aside from the payment of taxes and the restraint on wishes for independence. We have no record

of any struggle between the Jewish legal system and that of the occupiers. The New Testament statement attributed to Jesus "Give unto Caesar what belongs to Caesar and to God what belongs to God"⁵³ was the earliest Jewish source which dealt with this issue. There was no similar statement in the rabbinic literature even later in the time of the *Mishnah*.

Jewish life in the Diaspora should have raised the question of competing legal systems and jurisdictions. Even if we concede that the Pharisaic system was not developed until late in this period, Jews seem to have expressed more than superficial loyalty to their Mesopotamian or Roman rulers. Even after the Pharisaic system was fully developed, no clashes between the legal system have been recorded. Although there were substantial Jewish settlements outside the Land of Israel from 586 B.C.E. onward, we hear nothing of a clash of jurisdictions in Babylonia, among the Egyptian Jewish mercenaries of Elephantine, or in the Hellenistic and Roman world. There were rebellions in Alexandria which wished to define the citizenship status of the Jewish group, but they sought to settle the question by force rather than legal debate. From 586 B.C.E. the majority of the Jewish population lived outside the land of Israel and any problems which arose through a clash of legal systems led to solutions which have not been recorded.

The Talmudic Sources

The talmudic scholar Samuel's famous statement *dina demalkhuta dina* - "The law of the land is the law" came rather late, probably between 165 and 267 C.E. (Git.10b; Ned. 28a; B.K. 113a; B. B. 54b). The four citations in the Talmud were incidental and indicated that this was not as major issue. Each citation dealt with the authority of the governmental tax or customs collectors, or the authority of governmental documents issued by a non-Jewish court or witnessed by Gentiles. Alternatives were presented in every instance and *dina demalkhuta dina* was never fully discussed and played virtually no role

in the enormous mass of talmudic legal material. The primary expression of the ruler's power and this principle lay in his appointment of the Exilarch, the head of the Jewish community; he was often appointed through consultation with the head of one of the Talmudic academies, but this was a courtesy or a wise political gesture, not mandatory and the appointment itself lay outside the jurisdiction of the rabbinic authorities.

We do not know the reason for Samuel's statement or why he had to make explicit what had been implicit and *de facto*. We may speculate that he sought to ingratiate himself with the ruler through this effort. Perhaps in the face of border tensions between the Parthian and Romans he felt the need for a declaration of loyalty. Samuel might have sought to make this statement a firm part of the Jewish legal system. No contemporary or later rabbinic authority provided a reason for Samuel's enactment. They reported that he was close to the Persian ruler, but that does not provide a rationale for his statement.⁵⁴ As neither the Talmud nor Parthian documents shed light on this matter, speculation is futile.⁵⁵

The statement in the tractate *Gittin* came from Samuel himself, while the others quoted him. In *Gittin*, the problem discussed was a mishnaic statement which validated documents issued by a Gentile court and witnessed by Gentiles. The only exceptions were documents of divorce and manumission of slaves. Samuel's statement agreed with this while others felt that some documents were also excluded. Samuel's statement also meant that earlier mishnaic statements which permitted the evasion of the king's taxes, were now rejected (*M. Ned.* 3.3); this had also troubled rabbinic authorities of the Talmud and they concluded that the *Mishnah* referred only to an unauthorized tax collector (*Ned.* 28a) or one who did not proceed in a legal fashion (*B.K.* 113b). Rabba reported three rules which were given to him by Ukbar ben Nehemia, the Exilarch in which he further clarified the meaning of Samuel's rule as applying to documents which recognized the transfer of property, but not those which actually made the transfer

and to various situations of taxation or royal confiscation (B.B. 55a). It applied to the ruler and his agents in matters of civil law mainly in matters of property exchange, taxation and eminent domain. There was disagreement from talmudic times onward on whether the statement applied to documents which actually transferred property or which only validated such a transfer through a Gentile court, and were witnessed by Gentiles (Git. 10b). The question was settled to include only the latter.

Gaonic Period

There was also no full discussion of the principle in the Gaonic period (650-1050 C.E.) which marked the change from Sassanian to Arab rule. The ultimate Jewish authority was the Exilarch, appointed by the non-Jewish ruler; he was respected and feared by the Gaonim (Erub. 11b). For many centuries the Exilarch appointed the Gaonim, though this was reversed by the tenth century.⁵⁶ The Exilarchs through most of this period held a high position at court, were all powerful within the Jewish community and were extremely wealthy.⁵⁷ They did not need to discuss the basis of Samuel's principle. They were royal appointees who executed the mandates of the government which provided internal autonomy for the Jewish community.

During the later portion of Arab rule the Gaonim became powerful and because of the nature of the Gentile rulers *dina demalkhuta dina* was largely limited to matters of taxation. They excommunicated those Jews who used non-Jewish courts and made only rare exceptions.⁵⁸ In some instances they were stricter than the talmudic statement of the principle and refused to permit a transfer of property made through a non-Jewish court, witnessed by non-Jews.⁵⁹

The limited Gaonic discussions of the statement provided some philosophical basis for it. The scholars defended it through the theory of the divine right of kings; as the Jewish or non-Jewish ruler was

appointed by God, his laws had the same force as divine laws.⁶⁰ Those who held the theory of social contract felt that the popular acceptance of the ruler and his coinage meant that his laws also had to be accepted.⁶¹

The Sephardic Expansion of the Principle

In Islamic and Christian Spain the principle soon went beyond the authority of tax collectors and documents issued by a non-Jewish court, but was broadened to include a series of other matters. Jews often preferred to use non-Jewish courts to settle their affairs and quarrels with other Jews and with Gentiles. We should remember the Talmudic and Gaonic objections to this,⁶² but the later ruling of R. Tam was generally accepted. He opposed a Jew forcing another into the secular courts, but if both agreed to use them, then it was permissible.

A further development in the early Middle Ages led to *dina demalkhuta dina* becoming part of Jewish law and not merely law for the Jewish population. Rabbenu Tam did this by utilizing the principle of *hefker bet din hefker*.⁶³ Slightly earlier the same effect was brought to the principle through inclusion in the code of Maimonides.⁶⁴

In twelfth century Spain the transfer of any property (sale, gift, will, etc.) through a Gentile court was recognized.⁶⁵ This was so despite the fact that other authorities considered wills and *ketubot* outside the realm of Gentile courts⁶⁶ and excluded them from *dina demalkhuta dina*; Later others also considered such documents within the power of the ruler and that they were valid if written in the language of the land⁶⁷ and even when the marriage was done under Gentile auspices, they were not considered invalid.⁶⁸ So we see a case in which Isaac b. Sheshet (Barfat) invalidated a Gentile marriage, but upheld the *ketubah* issued with it;⁶⁹ sometimes Gentile practices were accepted into the Jewish court system.

In Aragon we have the curious example of a ruler demanding that *his* court decide an issue between two Jews in accordance with Jewish law, as the *bet din* had been unable to reach a timely decision.⁷⁰ Still later Joseph Caro provided an interesting twist by making a distinction between a *ketubah* issued in a Christian land where the King made no such demands and a Moslem land where such documents were subject to royal decrees.⁷¹ Concerns were also expressed about the fairness of the courts and whether they were influenced by bribes.⁷²

The most bitterly debated issue was the appointment of communal leaders through royal decree. Did *dina demalkhuta dina* permit this? As we have seen, this had occurred without question throughout the talmudic period in Persia. The Exilarch was a royal appointee; this had continued to be accepted without question through the entire Gaonic period. As mentioned earlier, the rabbinic academies vied with each other over the right to propose candidates and for a long time Pumpedita was dominant; however, the ruler had the power to ignore such nominations and proceed on his own.⁷³ The appointment of Isaac b. Sheshet as the leader of the Algerian community without consultation led to a bitter struggle which was only resolved after his appointment was modified by the king.⁷⁴

The Sephardic community unto modern times, as far as one can ascertain through a brief review of the responsa, continued along this path and accepted a rather wide ranging interpretation of *dina demalkhuta dina*. This comported with the reality that Jews preferred to settle their fiscal affairs in the general courts and usually trusted them. Appointments made by the ruler with consultation were accepted even if reluctantly. One may well say that *dina demalkhuta dina* became customary and so was accepted into the *halakhah* as occurred with other customs too, despite its lack of any biblical authority.⁷⁵

The Ashkenazic Application of the Principle

The smaller and more compact Ashkenazic communities of early Central Europe were unwilling to go so far and saw all but the most necessary compliance with royal decree as a violation of Jewish law. If a choice between Jewish law and the king's law existed, then Jewish law was to be followed. Although they agreed with the Tosafists, who considered that the king's power stemmed from his ownership of the land which he ruled and recognized the principle that any litigants could decide whether to use the non-Jewish or Jewish courts, it was strongly discouraged,⁷⁶ although it continued to be reported frequently.

These Ashkenazic as well as some Sephardic authorities sought to place restrictions on the effect of Samuel's law and to limit the king's law, but that was a procedure of doubtful value and seemed intended more for internal consumption.⁷⁷ An effort was also made to restrict impositions and taxes of the king to those placed on all citizens, not Jews alone; although this was a nice thought, it could often not be carried into practice.⁷⁸ Some sought to limit *dina demalkhuta dina* to new ordinances which were in the spirit of earlier ones; others were considered invalid.⁷⁹ Of course even these authorities understood the royal need for additional revenue⁸⁰

The Ashkenazic community faced the same problem as the Sephardim of royal appointees to positions of communal leadership or to the communal rabbinate, but they fought it with partial success through *takanot*.⁸¹ The smaller size of the community and their compact nature made this possible. The appointee might not be removed and his power of taxation remained, but otherwise, no one paid any attention to him. In fact unfit individuals regularly applied to the king for such positions and then had to be accepted by the communities. The practice of recognizing the power of the government to appoint continued and we find individuals from Isserles to the nineteenth century Hatam

Sofer accepting it, albeit reluctantly.⁸² On the other hand in the Ashkenazic lands communal autonomy nevertheless prevailed.⁸³

In Poland, Lithuania, as well as some other lands, the communities began to cooperate by the middle of the sixteenth century; they formed national tribunals, organized synods and governing councils. This was encouraged by the rulers as it simplified the collection of taxes. In turn they provided a higher degree of autonomy for the Jewish community and so *dina demalkhuta dina* played a smaller role than elsewhere for several centuries.⁸⁴

In the main, Samuel's principle was limited to civil law outside the realm of family law as codified by Maimonides.⁸⁵ The boundaries became vaguer from the seventeenth century onward, so we find purely Gentile witnesses to a death, or the state's declaration of death for a soldier, accepted for purposes of releasing an *agunah*; similarly *dina demalkhuta dina* was also invoked in the commercial aspects of the redemption of the first born, the sale of leavened items, Gentile wine, etc.⁸⁶

The Gentile governments were often not trusted, so we find contradicting decisions and interpretations of *dina demalkhuta dina*, so it was possible for a scholar to decide that it was not permitted to hide a Jew sought by the government, but one could advise him and presumably not turn him in when one knew where he was.⁸⁷

The parameters provided by earlier times were interpreted restrictively in the Ashkenazic lands until the nature of the State changed. The ancient stability began to disappear by the middle of the eighteenth century. Jews along with many in the rest of the population became restless and sought to eliminate old disabilities, but this also meant taking on new responsibilities which came with such privileges. The boundaries of *dina demalkhuta dina* needed to be altered. Jewish corporate existence in the Ashkenazic lands meant that Jews governed

themselves and the areas of possible friction only existed on the periphery in dealings with Gentiles, disputes among "Court Jews," and those who sought to use Gentile courts. All of this was about to change.

Emancipation

The late eighteenth and early nineteenth centuries saw the emergence of larger more powerful national entities in central Europe. This meant a change in the status of various classes and groups in society. For Jews this brought a glimmer of hope for more rights. In the lands of Eastern Europe all of this was to take longer and the unified character of Ashkenazic Jewry was about to change. This meant that questions addressed by rabbinic authorities in Eastern European lands from the West rarely dealt with the realities of life of the questioner, but with the facts as seen from a distance and in totally different circumstances. The western rabbis eventually had to face the onrush of modernity; they were challenged by the new merchant class and their large enterprises, the financial transactions of corporations, a much larger involvement with the non-Jewish world, and the demands of the state in matters of marriage, divorce, as well as compulsory school attendance. The world had changed drastically and *dina demalkhuta dina* whose scope the Ashkenazic community had limited, now had to be considered anew.

The governments which sought broader national authority through curbing the power of the cities, the clergy, and guilds. None of this was easy; it was simpler to limit the autonomy of the Jewish community and its leaders. Various privileges often had a long history, but they could be abrogated by the ruler.⁸⁸ The new charter given by Frederick II of Prussia in 1750 reflected this change and limited rabbinic jurisdiction to ritual and synagogal matters.⁸⁹ Moses Mendelssohn placed all of this into a philosophical context through his division of Judaism into 'eternal truths,' available to all human beings and 'revealed law,' which was particular to Jews.⁹⁰ As significant for

our purposes, he understood that the modern state derived its authority which included all the inhabitants of a country, Jews as well. Furthermore, only the state had the right to coerce, which in Judaism had been accomplished through the *herem*; it was now eliminated and with it the chief power of the rabbinic court. The major effect of this charter would take a while to be felt; it was seen as progress by the Jewish communities as a number of restrictions were lifted.

A more difficult situation arose through Joseph II of Austria's *Ehepatent* (1783) which provided state regulation for marriages.⁹¹ The rabbinic authorities needed to deal with this immediately. The best way to face this new demand was through a *takanah* which obligated the communities involved to observe the secular law.

The general principle was to indicate the validity of *dina demalkhuta dina* in all matters where it did not specifically contradict Jewish obligations. In the area of marriage and divorce, *dina demalkhuta dina* was carefully cited and extended into the field of family law. Other citations were also used to create the necessary compliance. As a *get* was not considered valid if any bond between husband and wife remained and as the lack of a civil divorce created such a bond, a *get* was not valid until a civil divorce had been given.⁹² Thus civil marriage and civil divorce was added to the Jewish requirements in the western lands. Various rabbinic authorities added their voice to such decisions.⁹³

MIXED MARRIAGE

The Bible and Mixed Marriage

If we review the marriages of the Patriarchs, we can see that they went to considerable trouble to obtain wives within the family circle, presumably with individuals who would be friendly to the religious ideals which the Patriarchs held. It is clear that endogamous

marriages were preferred to exogamous marriages: Abraham married his half-sister (Gen. 20:12); Isaac married Rebecca, the granddaughter of Abraham's brother and niece, his double first cousin once removed (Gen. 24:5); Jacob married Leah and Rachel, who also were his first cousins, the daughters of his mother's brother (Gen. 29:12); and Esau married Mahalat, the daughter of Ishmael, his uncle, also a first cousin (Gen. 28:9). It is quite clear that Abraham wished Isaac to marry someone not a Canaanite; later Esau understood that the daughters of Canaan would not please his father, Isaac. There were many instances which demonstrated that endogamous marriages were preferred for religious, family, and national reasons.

It would be appropriate to look at the Biblical legislation against mixed marriage more closely. A prohibition against marriage with Edomites and Egyptians appeared in Deuteronomy 23:8-9. Children of such unions were not to be admitted into the congregation until the third generation. The Bible reported no marriages with Edomites, but mentioned a number of marriages with Egyptians and two involved problems. Leviticus 24:10-11 dealt with the son of an Israelite woman and an Egyptian father who became a blasphemer. Solomon married many foreign wives for the purpose of political alliance, and among them was a daughter of Pharaoh (I Kings 3:1, 9:16, 11:1). The Book of Kings specifically warned against these foreign wives: "You shall not enter into marriage with them, neither shall they with you, for surely they will turn away your heart after their gods" (I Kings 11:2), which happened in the case of Solomon. Finally, there is a reference to Sheshan who married his daughter to Jarha, an Egyptian slave (I Chronicles 2:34). These three isolated incidents indicate that such marriages involved both male and female Egyptians. Moabites and Ammonites were prohibited from being admitted to the congregation of the Lord ... even in the tenth generation" (Deut. 23:4). This statement contains no reference to mixed marriages. Negative references connected with mixed marriages refer to Naamah, the Ammonite wife of Rehoboam (II Chronicles 12:13). Joash was slain by courtiers whose

mothers were Ammonite and Moabite (II Chronicles 24:26). While the Israelites were in the desert, they consorted with Moabite women and were led astray after their gods (Num. 25:1ff). In that same section we have a report of an Israelite who brought a Midianite woman into camp and was slain by a zealot. In both these instances the danger of other religions was decried. However, Ruth, a Moabite woman, demonstrated an opposing point of view, as she became the antecedent of David (Ruth 4:18).

The most thorough Biblical injunctions were directed against mixed marriage with the seven Canaanite nations; so the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites, and Jebusites (Deut. 7:1; also Exodus 34:11) were prohibited. "You shall not intermarry with them and not give your daughters to their sons or take their daughters for your sons" (Deut. 7:3). A clear exception was made for a woman taken as prisoner of war (Deut. 21:11 ff). After a period of delay, her captor could marry her; and the legislation made no comments of a religious nature, nor did it mention conversion. The Bible contains few references to proselytes (Is. 14:1; Esther 10:27).

When the Israelites entered Canaan, they intermarried with the local inhabitants and served other gods (Judges 3:6). The most striking example of such a mixed marriage was that of Samson and Delilah (Judges 14:1). She was a Philistine, and became responsible for his downfall. Later Solomon married many foreign women as part of royal alliances (1 Kings 11:1 ff), and they, too, led him astray in his old age. If we look at the subsequent record of the kings of Judah and Israel, we may be surprised at the paucity of mixed marriages. Among the nineteen kings of Israel who ruled for two hundred forty-one years, we find only Ahab, who was married to Jezebel (I Kings 16:31). Among the twenty kings of Judea who ruled for three hundred ninety-three years, we have only Jehoram (II Chronicles 21:6), and possibly Jehosaphat (II Chronicles 18:1), whose mother's name may have been omitted because she was not an Israelite.⁹⁴

The Book of Proverbs contains a number of references against associating with loose or foreign women (Prov. 2:16-17, 5:3-20, 7:5-27). These are hortatory statements, not prohibitions. The prophet Malachi denounced such marriages (Mal. 2:11). The clearest statements against mixed marriage appeared at the end of the Biblical period in the days of Ezra and Nehemiah, when we find specific legislation prohibiting such marriages and demanding that Israelites separate themselves from foreign wives (Ezra 9:12, 10:10 ff). Ezra scrutinized the marriages of the citizens of Jerusalem and neighboring villages. Considerable time was taken to complete this task against some opposition. A list of priests, Levites, and other Israelites who had intermarried and relinquished their foreign wives was provided (Ezra 10:18 ff). Among those listed by Ezra as having engaged in intermarriage we find many among the High Priests' families, thirteen among other priests, ten Levites, and eighty-six Judeans. The problem was not entirely solved, as the same difficulty arose again in the days of Nehemiah, who railed against those who had taken wives from Ashdod, Ammon, and Moab. Nehemiah did not advocate the dissolution of these marriages, although he removed the son of a High Priest who had entered such an alliance.

Each of these statements prohibiting mixed marriage was subjected to detailed Talmudic discussion, which provided a totally different interpretation. We should remember that all of these Biblical statements which dealt with mixed marriage or prohibited it, did not declare such a marriage invalid. That thought was foreign to the Bible and did not appear until a later period.

Hasmonean and Hellenistic Period

Mixed marriages were discussed by the "Book of Jubilees", which opposed them with the same vigor as Ezra and Nehemiah earlier. In it Abraham, and later Rebeccah, condemn marriages between Israelites and Canaanites (Jub. 20:4, 25.1). This theme also continued

in later portions of the book (Jub. 22:16 ff). Those who permitted their daughters to marry Gentiles were to die through stoning and the daughters through fire (Jub. 30:7 ff). There could be no atonement for this sin, and the act was considered akin to presenting the child to Molech.

The *Book of Maccabees* reported mixed marriages as part of the general pattern of assimilation to the Hellenistic culture and condemned them (1 Macc. 1:5, 11:18). The "Prayer of Esther", an interpolation to the Biblical Esther, stressed her detestation "of the bed of the uncircumcised and of any alien." it was only necessity which brought her into the palace and into her position ("Prayer of Esther," 115 f). Charles considered this and other additions as dating from the first century of our era or earlier. The same reluctance to engage in public intercourse or marriage with non-Jews was reflected in Josephus' tale of Joseph, who loved a pagan actress (Josephus, *Antiquities* XII, 4.6); he was eventually tricked into marrying the Jewish daughter of his own brother. Further evidence of mixed marriage is provided by some of the papyri.⁹⁵ Those who left Judaism and probably were motivated by the desire to marry Gentiles were also vigorously denounced in Egypt by Philo (*Moses* 1, 147) and by the author of *III Maccabees* (7:10 ff).

Talmudic Period

The vast literature of the Talmud contains few discussions concerning mixed marriage. Each of the Biblical statements cited in the earlier section provided a basis for further development. Every effort was made to create a protective wall against the outer pagan world and to shield Jews from contact with non-Jews. During the most restrictive periods, non-Jewish bread, wine, and oil were prohibited, and anything cooked by non-Jews could not be consumed by a Jew (A.Z. 35b-38a); virtually all contact with non-Jews was prohibited (Nid. 34a; Shab. 16b; A.Z. 36b). Naturally, this prohibition extended to casual sexual contact, and those who violated this injunction faced punishment without trial

in the same fashion as imposed by Phinehas (Num. 25:7f; A.Z. 36b). If the parties involved went further and actually married, they were subject to whipping (A.Z. 36b; Kid. 68b; *Yad*, Isurei Bi-a 12.1).

Not all the Talmudic authorities and not all periods were as restrictive as those previously cited, and the exchange of food, as well as social intercourse, with non-Jews was allowed, but the basic wall of separation remained (A.Z. 57a, 58b, and 59a).

The most significant change made during this period was the declaration of invalidity of mixed marriages. This remained a dictum of Rabbinic literature (*M. Kid.* 6b, 68b). This Talmudic tractate provides a long list of marriages which are null and void for a variety of reasons, as well as marriages which are valid but interdictive. Marriages which involve Gentiles are declared void as no *Kiddushin* is possible. This new view may have reflected an internal Jewish development, or it may have been influenced by Roman law.⁹⁶

The Biblical laws against intermarriage were reinterpreted sometimes more strictly, and on other occasions leniently. The Schools of Hillel and Shammai expanded the list of nations excluded from intermarriage beyond the seven peoples of Canaan, to include all pagans. Simeon ben Yochai agreed with this interpretation (A.Z. 36b). A very strict view was taken by Rava, who felt that the prohibition against the seven nations continued after their conversion. This was one of the many attempts to maintain absolute family purity. It meant that intercourse or marriage with pagans was seen as prohibited from a biological or racial point of view; it was *zenut*, and would be punished through whipping (*Yev.* 76a; *Yad*, Isurei Bi-a 12.1). Part of the strong feeling against mixed marriages was reflected in a general emphasis on family purity. It existed from the time of Ezra and Nehemiah to the destruction of the Temple. The loss of records at that time and in the later revolt of Bar Kochba made such genealogical practices difficult. The long genealogical lists in Chronicles reflected the mood, as did the

mishnaic concern with *mamzerim* and *netinim*. Degrees of family purity were established for various Israelites (Kid. 71b, 75aff). Such laws of purity were especially enforced for the priesthood (Kid. 66a, 76a, 77a).

The tannaitic interpretation of the prohibition against marrying Ammonites and Moabites was limited to males, and did not extend to females – provided that they converted to Judaism. They could marry a native Israelite in the third generation (M. Yev. 8.3; Yev. 76bf). Rabbi Simeon sought to apply the same principle to Egyptians. Another mishnah simply declared that Ammonites could no longer be clearly identified since the days of Sennacherib (M. Yadayim 4.4; Ber. 28a; *Yad*, Isurei Biah 12.25). Deuteronomy had prohibited Egyptians and Edomites until the third generation, and in this case there was no tradition to make marriages with females possible after conversion, while excluding males. Although Rabbi Simeon sought to establish such a practice (M. Yev. 8.3; Yev. 76b, 77b), his view was not accepted. If the Egyptians and Edomites converted, they were not permitted to marry born Jews until the third generation (*Yad*, Isurei Biah 12.19). Others rejected these interpretations, so Rav Asi stated that the century-long mingling of pagans and Jews in Babylonia meant that many might be descendants of the ten lost tribes. One could marry them without conversion or any other step, as they were Jews of doubtful status (Yev. 16b, 17a). Similarly, Sennacherib so mixed the nations that it was no longer possible to tell who belonged to the seven prohibited peoples. This meant that they were eligible for conversion and acceptance as Jews (M. Yadayim 4.4). Rabbi Judah and Rabbi Johanan simply stated that Gentiles outside of the Land of Israel were not idolaters, but blindly followed the habits of their fathers, so matters of belief were no longer at issue, nor was there a danger of being led astray by them (A.Z. 65a; Hulin 13b). The principle of population mixture could be applied to Egyptians and Edomites also, and there was some Talmudic discussion about this (M. Yadayim 4.4; Tos. Kid. 5.5; *Yad*, Isurei Biah 12.25). In general, the Talmudic period expanded the

prohibition against intermarriage so that it included all pagan peoples. Restrictions against specific nations were eliminated. This meant that they, as well as any other pagan, could convert to Judaism and thus become part of the Jewish people. If this occurred without ulterior motive, but simply because of an attraction to Judaism, then the convert – no matter what his national origin – was treated as any other Jew. The Talmudic invalidation of all mixed marriages meant that an insurmountable wall had been erected between the Jewish and pagan communities. As marriage to a pagan was simply not recognized (*einam tofesin*), that family unit did not exist as far as the Jewish community was concerned, and was effectively excluded from the community. The union had no Jewish legal status in the various Christian communities. It was then unlikely that such unions would occur with any degree of frequency.

The Middle Ages

The discussion of mixed marriage continued into the Gaonic period. The responsa of the Geonim show some incidence of mixed marriage. The prohibitions of the Talmudic period were extended with further discussion about their implications, but without substantial changes.⁹⁷ In these instances both casual intercourse and long-term relationships with servants, concubines, or wives were contemplated. We should recall that interdictions toward mixed marriage were expressed with equal vigor by Christians; this occurred frequently during the Middle Ages. The statements generally followed the pattern of those of the Council of Orleans, adopted in 538 C.E., which declared:

Christianis quoque omnibus interdiciamus, ne Judaeorum conjugii misceantur: quod si fecerint, usque ad sequestrationem, quisquis ille est, communione pellatur. Item Christianis convivia interdiciamus Judaeorum; in quibus si forte fuisse probantur, annuali excommunicationi pro hujusmodi contumacia subjacebunt.

But occasionally also saw them as simply following the practices of their ancestors (Responsum by Gershom b. Judah *Or Hagola*). Rashi had come to a similar conclusion, quoting the Geonim about the same time (Tos., A.Z. 2a, 57b). There were some variations in the outlook adopted toward Christians or Moslems, depending on the economic and social circumstances of the Jewish communities, as well as on the distinction between Ashkenazim and Sefardim.

This new and friendlier outlook towards Christians and Moslems was limited to commercial transactions and set clear boundaries for all religious or ritual contact (Tos, to A.Z. 57b; *Yad*, Hil. Ma-achalot Asurot XL.7; Ribash, *Responsa*, 255, 256; Moses Schick, *Responsa*, *Yoreh Deah* 15). The restrictions definitely prohibited sexual relations with non-Jews and mixed marriage. Marriages of Jews with Christians or Moslems were clearly prohibited by Maimonides and others (*Yad*, Hil. Ishut 4.15; Hil. Isurei Biah 12.1; Hil. Melachim 8.7; *Tur*, *Even Ha-ezer* 16.1; *Shulchan Aruch*, *Even Haezer* 16.1, 44.9). All the medieval codes contain the talmudic prohibition against mixed marriage. The codes differed in their interpretation as to whether the prohibition represented a biblical or rabbinic ordinance (based on Yev. 76a). Maimonides considered it biblical, while Jacob ben Asher in his *Tur* invalidated such marriages on Rabbinic grounds. The codes, like the Talmud, indicate definite punishment for intercourse with Christians or for mixed marriages. Thirty-nine lashes were prescribed for such intercourse, and if a man lived with a Gentile concubine, then the punishment was to be tripled (*Shulchan Aruch*, *Even Haezer* 16.1-2). In addition, the sinner was also to suffer divine punishment. Maimonides' code mentioned the Talmudic teaching that the slayer of a Jew engaged in intercourse with a non-Jew was not liable for punishment (*Yad*, San. 18.6).

Rabbi Simon of Duran reported that the government permitted the Jewish community to stone Jews who had illicit sexual relations with a non-Jewess (*Responsa* 111, 158). The responsa not only reported a

variety of forms of such relationships, but also created solutions for specific cases such as unions between Jewish masters and Gentile slaves (*Zichron Yehuda*, 91, p. 44a). The master could be compelled to liberate such a slave and convert her to Judaism. In those instances, she may then have become his Jewish concubine (Adret, *Responsa* 1, 12.19).

In the 18th century, when social barriers between Jews and non-Jews decreased in England, intermarriage increased. Conversions to Judaism were rarely permitted, so such individuals usually married in the church. Intermarriage did not necessarily mean that the party wished to leave the Jewish community, but they had little choice, as they were inevitably expelled from the synagogue. Sometimes the children of such unions later converted to Judaism, and were brought back into the community. Although no numbers are provided, it seems to have been a noteworthy group. We find a similar phenomenon in France before and during the great French Revolution. We can see from latter essay that a goodly number of individuals who entered mixed marriages subsequently converted to Catholicism. All of these incidents have been cited to demonstrate the reality of the problem throughout the medieval period. The codes and legal literature attempted to halt the process, and generally succeeded, but the same incidence continued throughout the period.

Modern Times

Mixed marriages occurred with increasing frequency beginning in the latter part of the 18th century. This was true in all lands of Western Europe and in the United States. Szajkowski has shown that such marriages occurred among the obscure and the prominent during the French Revolution. Mixed marriages increased rapidly during the succeeding century as a number of careful studies have indicated.⁹⁸

The largest incidence of mixed marriage and conversion to Christianity, in many cases, was found in the German-speaking lands of Central Europe. This began in the generation after Moses Mendelssohn, and occurred in the fashionable circles of the upper class as well as among those who sought upward mobility. Much has been written about Rachel Varnhagen and her intellectual circle, but we should note that the phenomenon also existed among those further down the social ladder. Eastern European Jews who settled in Central Europe in large numbers throughout the 19th century were equally involved in this phenomenon. If we look at the entire 19th century, we shall find that approximately ten percent of the Jewish population was intermarried.⁹⁹ The percentage remained fairly stable throughout the century, but increased in the 20th century.

The lands of Eastern Europe and the Balkans were not entirely free from this problem, although the numbers involved were smaller.¹⁰⁰

We should remember that opposition to mixed marriages remained equally strong on the part of Catholics and Protestants. Hesitantly some Protestants granted concessions if the children were raised as Christians. The Catholic Church insisted that such marriages were not valid and that remarriage was necessary after conversion of the non-Catholic partner, although some changes in this view began to occur in 1821¹⁰¹. Slowly intermarriage was legalized in modern European states. This occurred in Germany in 1875, in Hungary in 1895, and in Rumania a little later. In 1913 it was still prohibited in Austria, Russia, Spain, Portugal, and Islamic lands. Even within the Jewish community, marriages between subgroups like Ashkenazim and Sefardim were rare in the 19th century.

These strong and consistent objections to mixed marriages and their recognition did not permit any deviation. The discussion of the Assembly made this clear and provided a negative mildly worded response. Only with the question on inter-marriage did the Assembly

refuse to answer as the Emperor wished. Napoleon had expressed his goal clearly in a letter sent from Posen (November 29, 1806). There he proposed as a goal that one of every three Jewish marriages should be with a Christian and so Jews would lose their unique character.¹⁰² It had taken a vigorous struggle to get the Assembly to accept such marriages as civilly valid. The delegates placed their response into a broader framework by stating that rabbis would be "no more inclined to bless such a union than Catholic priests."

ATTITUDE TO NON-JEW

Since Medieval times Christianity and Islam were viewed as monotheistic religions. Therefore, none of the strictures which the *Bible* and *Talmud* place upon idolatry are relevant for Christianity.

The *Talmud* began to consider pagans of its day differently from the ancient heathen; it treated Christians similarly. The precise attitude toward Gentiles during the five centuries of Talmudic times depended upon specific circumstances. Thus, Simeon ben Yohai could be uncomfortably negative (Kid. 66c, with full reading in Tosfot to A. Z. 26b; Soferim 15.10). On the other hand, it was possible for Meir and Judah Hanasi to have warm friendly relationships with Gentiles (B. K. 38a). We comfort their dead, visit their sick, help their poor, etc. (Git. 29b; *Tur Hoshen Mishpat* 266). R. Hiya bar Abba said in the name of R. Johanan that Gentiles outside the land of Israel were not idolaters. They merely continued to follow the customs of their fathers (Hul. 13b).

By the Middle Ages, Christians were generally no longer classified as idolaters (Meir of Rothenburg, *Responsa* #386). Rabbi Isaac of Dampierre placed Christians in the category of Noachides and not of pagans (*Tosfot* to San. 73b and Bek. 2b). Menachem Meiri (1249-1306) went further by stating that Christians and Moslems who live by the discipline of their religion should be regarded as Jews in

social and economic relationships (*Bet Habehirah* to A. Z. 20a). Maimonides stated that Christians or Muslims should be considered as *gerei toshav*. They would assist in the preparation for the Messianic era (*Yad Melakhim* 8.11 and *Responsa* 3.5; *Edut*. 11.10, etc.). At other times he considered Christianity as a form of idol worship (*Yad Hil. Avodat Kokhavirn* 9.4; *Hil. Akum* 10.2; *Hil. Maakhalot Asurot*), although he, too, had some positive thoughts about Christianity (*Yad Hil. Melakhim* 11.4). Of course Maimonides dealt with Christianity in the abstract in contrast to the other authorities who lived in a Christian world.

A French Tosafist of the same period expressed positive views akin to Meiri, and so we see that they were not restricted to Sephardic Jewry (*Bekh.* 2b). This point of view became normative, and Christians as well as Muslims were considered in the same category as the *gerei toshav*. This point of view was accepted by Caro in the *Shulhain Arukh* (*Yoreh Deah* 148.12; also *Tur Yoreh Deah* 148) and most forcefully by Mosheh Rifkes, author of the *Beer Hagolah* to the *Shulhan Arukh* (*Hoshen Mishpat*, 425 at the end). The statement is remarkable because the author himself had fled Vilna to Amsterdam from anti-Jewish riots. He stated: "The sages made reference only to the idolaters of their day who did not believe in the creation of the world, the Exodus, God's marvelous deeds, or the divinely given law. But these people, among whom we are scattered, believe in all these essentials of religion. So, it is our duty to pray for their welfare, and that of their kingdom, etc."

The status of the Gentile in the general application of Jewish law had, therefore, changed and this positive opinion of Gentiles was reemphasized at the beginning of the modern era by Emden, Bacharach, Askenazi and other Orthodox authorities.¹⁰³

The classification of Christians as *gerei toshav* had theological implications and important economic consequences. For example, wine made by a Gentile was permitted to be handled by Ashkenazic Jews.

Although it could not be consumed by Jews, they could trade in it (*Tosfot* to San. 63b; Isserles to *Shulhan Arukh Yoreh Deah* 123.1). Sephardic Jews did not follow this practice and had no pressing need to do so, as they were not involved in extensive wine growing and lived among Moslems, whose consumption of wine was limited (Maimonides, *Responsa* 11, #448; *Tur Yoreh Deah* 124).

Despite these friendly views, all of the traditional authorities made it quite clear that major distinctions continue to exist between Judaism and Christianity. Maimonides felt that we should restrict our relationships with Christians (*Yad Hil. Akum* 10.2) and also prohibited Jews from dealing in Christian wine (*Yad Maakhalot Asurot* 17). He and all the other medieval authorities thought that both Christianity and Islam had strange concepts (*shituf*) which impinged on the absolute unity of God (Isserles to *Shulhan Arukh Orah Hayim* 156; Maimonides, *Peer Hador* 50, etc.). In secular relationships Christians could be treated as *b'nei noah*, but in religious matters, distinctions were to remain.

Jay Berkowitz in his recent book has demonstrated Rabbi Aaron Worms of Metz in his address to the Assembly provided the halakhic arguments for a modern understanding of the Gentile world. Quoting earlier rabbinic sources from Maimonides and Meiri onward, he demonstrated that the Talmudic rejection of an unethical pagan world and its system of courts could not be applied to contemporary Christians who were law abiding and ethical. They were to be placed into the category of Noahides and as monotheists and as brothers.¹⁰⁴

All of this was useful in establishing the relationship between Jews and Frenchmen, but the question of intermarriage required and received a different response. The distinction between civil marriage and the religious ceremony was clearly stated in the published discussions. The Jew in this relationship remained a Jew, though how viewed was not mentioned.

MONEY LENDING AND USURY

Three statements in the Torah prohibit interest (Ex 22:24; Lev 25:35-37; Deut 23:20,21); each of these verses encourages lending to the Israelite poor. The third made a clear distinction between Israelites and others. You shall not deduct interest from loans to your countrymen, whether in money or food or anything else that can be deducted as interest; but you may deduct interest in loans to foreigners. Do not deduct interest from loans to your countrymen, so that the Lord your God may bless you in all your undertakings in the land that you are about to enter and possess." This was interpreted as a distinction between Israelites and the idolatrous peoples. Loans without interest were not mentioned in other ancient legal codes. The taking of interest from the poor seems to have been general and so was denounced (2 K. 4:1; Ezek. 18:8 ff; Psalm 15:5; Prov. 28:8; Neh. 5:1-5), but then likened to a grave crime, especially in Ezekiel and Proverbs.

The early rabbinic tradition took two different roads which clashed in the later halakhah. The Mekhilta (Ex. 22:24) emphasized that no interest should be taken from Jews and non-Jews and called those who did so robber or murderers. On the other hand the Sifrei (Lev 25:35-37) stated that interest could be charged to non-Jews. The discussion in the Mishnah (B.M. 5:6) clearly stated that interest from Gentiles was permissible while prohibited with Jews; R. Hunah later limited it to economic necessity (B. B. M. 71a). We should contrast this statement with the concluding section of *Makkot* which proscribed charging interest to Jews and Gentiles alike. The mishnaic discussion also dealt with various subterfuges as cloaking it in a sale or the reduction of rent (B.M. 5:1; 5:7; 75a); however profit sharing partnerships were permitted (B.M. 65a) and led to their general use in the form of *heter iskah*. Arrangements with non-Jews were also permitted (B.M. 61b) though sometimes frowned upon (*Yad*, Hil. Malveh 5:15)

The Gaonic R. Amram permitted interest charges to non-Jews (*Shaarei Tzedek* 40a). The twelfth century *Sefer Hassidim* (#133; #808) prohibited the charging of interest to non-Jews while Rashi took it for granted that interest would be charged.¹⁰⁵ Slightly later we find a similar answer from R. Tam which was followed by Meir of Rothenburg, but making use of a non-Jewish intermediary which became a frequent practice and was often cited in the responsa literature of the Middle Ages. Similar decisions came from the Spanish Solomon B. Adreth (1235-1310). We should note that the Tosafists continuing a discussion of Nahmanides (to A. Z. 2a) expressed some doubts as they no longer considered Christians as idolaters. On this we have a difference of opinion especially in the late Middle Ages with the path of Meiri slowly taken into modern times as shown by my earlier discussion.¹⁰⁶ As in other matters a wide range of rabbinic traditions existed and could be used as the basis for a statement to Napoleon.

THE NATURE OF NAPOLEON'S QUESTIONS

Both the nature of the questions and their sequence were unusual. The beginning with polygamy and family matters is curious; they then proceeded to the matter of French national authority, the corporate existence of the Jewish community and finally to the issue of usury that had been raised by the conflict in Strasbourg. The primary concern was the elimination of the semi-autonomous existence of the community. There was to be no "nation within a nation" accompanied by the assimilation of the Jewish community

The actual work of providing initial answers to these questions was delegated to a commission which consisted of nine members of the Assembly who met along with the French Commissioners assigned to the Assembly who had been carefully instructed in great detail.¹⁰⁷ Abraham Futardo, a leading member of the Portuguese community, who was the President of the Assembly appointed them. Rabbi Sintzheim played a major role in crafting the careful responses, under the watchful

eyes of the three commissioners assigned to them. Napoleon seems to have been kept current on the discussions. The historian Heinrich Graetz wrote that the decisions were largely made by this committee. What Napoleon sought was understood by everyone. There was considerable debate in the Assembly as reported in the proceedings, but the published form remains vague. Some wished to give the rabbis a greater voice in the theological matters, but that was rejected.¹⁰⁸

The responses provided the answers that Napoleon sought and attempted not to be destructive to essential Jewish matters. The new understanding of rabbinic authority changed the nature of Jewish life. Jurisdiction over most areas of the halakhah was surrendered as were enforcing powers. This was the price for civil rights and the members of the Assembly and the later Sanhedrin were willing to pay it. The Sanhedrin, that had been specifically instructed to deal only with the matters presented and nothing else, ratified the responses in a few sessions and so placed them into an official Jewish context.

The Sanhedrin was in session for a single month (February 9 to Match 9, 1807) and then virtually forgotten by Napoleon and by his government. Some delegates arrived very belatedly; that mattered little as there were no discussions. Comments on the decisions were to be presented in writing to the Commissioners, and every detail had been worked out to preclude debates. The only matter that moved forward was the organization of the French Jewish community, signed into law in March 1808. Napoleon may have felt that this system if also installed outside France would give him control of Jewish communities throughout Europe.¹⁰⁹ A third decree, issued at the same time, illustrated Napoleon's feelings about Jews, as it limited Jewish commerce and free movement for a period of ten years. Only following vigorous protest were most departments of France exempt from these restrictions by 1811.

THE RABBIS

The delegates to the Assembly included rabbis from France and Italy. The rabbis participated vigorously in the discussions, though in most instances their comments along with those of the other delegates were not attributed to an individual, as for example the long discussion on lending funds on interest to Jews and non-Jews.¹¹⁰ Rabbis who were not part of the assembly also commented on various matters which were discussed.¹¹¹ We do not know of any protest against rabbinic participation in these meetings. On the contrary Sintzhim in particular was praised for his leadership.

CREATING A SANHEDRIN

There had been some notable attempts in earlier centuries to create a Sanhedrin in order to deal efficiently with major problems, but no one had ever imagined that a non-Jew would assemble a Sanhedrin. The rabbis of France, those invited and those excluded did not oppose it. They may not have been able to oppose the will of Napoleon or of the lay members who sought civil rights, but different avenues were open to them. They could have dragged out the discussions further; they could have abandoned or denounced the entire proceedings. If they felt forced into acquiescence, they could have spoken up after the fall of Napoleon. Nothing like this happened. The French Orthodox rabbis returned to their communities, now organized under government control without a word of protest or any further discussion even decades later.

Let us take a brief look at the special function of the ancient great Sanhedrin. The origins and the way in which the ancient great Sanhedrin functioned are not clear as the various sources contradict each other. This Sanhedrin as a religious and political institution seems to have functioned through the Hellenistic period with its membership changing to reflect the struggle between Saducees and Pharisees. Echoes of these struggles appear in the Mishnah, Tosefta, the Babli and Jerushalmi, Josephus, and the New Testament as well as the Dead Sea Scrolls. It was viewed as the ultimate religious authority.¹¹² Long after

it had ceased to function, an idealized version of its procedures was described in the mishnaic literature. We cannot judge the accuracy of this description.

Maimonides provided a description of its powers and functions as he understood them.¹¹³ It had the power to make major decisions that were to be recognized by all and could do so by majority vote.

Membership in this august body was limited to those who had received ordination in the continuous line that according to tradition traced itself to Moses.¹¹⁴ However, when the Great Assembly turned to the qualifications for membership, they agreed that there were no specifications, voted on the matter and settled it.¹¹⁵ As ordination in the traditional sense stopped in the fourth century¹¹⁶ it meant that this route for making changes or modifications in the halakhah were no longer available. Subsequently changes were made through the process of *responsa*. Leading authorities in each period of Jewish history were accepted as final arbiters; however, they did not make radical changes. Greater changes were sometimes made through *takkanot* adopted by a group of rabbis. These were normally limited to a specific locale and valid for a specified period of time. This was true even of the *takkanot* attributed to R. Gershom whose *takkanah* eliminated polygamy among Ashkenazic Jews in the 9th century.¹¹⁷

The need for greater flexibility was felt from time to time, but no one was sufficiently bold to attempt the reintroduction of ordination and thus to begin the process of re-creating a Great Sanhedrin. Jacob Berab of Safed in the sixteenth century made this bold attempt which immediately failed as he did not include the leading rabbinic authority of Jerusalem. The attempt would undoubtedly have collapsed anyhow a bit later. Those who participated in this venture, such as Joseph Karo, did not mention it in their writings as it would only have injured their reputation.¹¹⁸

No subsequent similar efforts to create a central Jewish religious authority that might have the power to make major changes in the halakhah was undertaken.

Napoleon's effort was unique especially as it was constituted by a non-Jew and yet involved the French rabbinate including its leader Rabbi Sintzheimer, who took a leading role in the proceedings and signed the document that resulted. This Sanhedrin affected the Jewish population throughout western Europe.

NAPOLEON'S SANHEDRIN

Napoleon dealt with the complaints he heard in Strasbourg directly, but he and his advisers felt that a Jewish group could be induced to make other changes that he wished to impose. This led to the Assembly of Notables and to the Sanhedrin; its decisions would have implications in whatever lands Napoleon conquered. The composition of the Sanhedrin was also not traditional as it consisted of only forty rabbis along with lay leaders which would then reach the required number.¹¹⁹ Napoleon made his wishes quite clear in a letter to Champagny of Poznan, dated November 29, 1806.

Monsieur Champagny.

Regarding the project of the organization of the Jewish nation, it is necessary that the Sanhedrin be assembled. Call it for such a time that I can send to it all that has to be regulated.

It is necessary to remove from the Laws of Moses all that is intolerant, to declare a portion of these laws as civil and political laws and to leave of the religious laws only what is related to the moral obligations of French citizens.

Notes relating to the Sanhedrin.

1. In order to proceed in a regular manner, one should begin with the declaration that the laws of Moses contain religious as well as political

dispositions are unchangeable, while this does not apply to the political dispositions which are open to modifications; that only the Great Sanhedrin is able to establish this distinction; that during the whole time during which the Jews stayed in Palestine and formed a corporate nation, the political circumstances having remained the same as in the time of Moses, the Great Sanhedrin had no cause to make this distinction; that, however, since the Israelites have left their fatherland, no Great Sanhedrin has convened.¹²⁰

The idea of assembling a Sanhedrin came from a published appeal and a direct letter to Napoleon from Israel Jacobson (1768-1828), the noted German reformer and banker. He admired Napoleon and saw the possibilities of enlisting him in the struggle for equal rights in this fashion.¹²¹ As Napoleon thought globally, invitations to the Sanhedrin were extended to all parts of Europe according to the Emperor's instructions by a committee of nine of the Assembly of Notables. The invitation, in the form of a proclamation, was issued in Hebrew, German, French, and Italian. Napoleon felt that this mechanism could effect the changes he demanded, appear to be in line with the tradition, cause fewest problems, and win Jewish approval throughout Europe which would be helpful in his conquests - quiet assistance as his armies arrived or perhaps aid with espionage. It could also lead to additional Jewish soldiers for his armies; actually military service without the possibility to purchasing a substitute was made compulsory in 1808.¹²² As I have noted earlier governments outside Napoleon's realm refused to permit delegates from their lands as they feared Napoleon's influence on their Jewish population. The Austrian government kept close watch on its Jews and read all mail between France and Austria, only to report that there was little interest in this matter.¹²³ Aside from the French and Italian delegates, five from Germany and Holland attended. The proceedings and debates had to be translated into those languages

The agreement on the part of the rabbinic representatives to participate in a Sanhedrin was astonishing, especially as it occurred without any discussion among themselves or consultation with any other Jewish leaders. The Great Assembly was akin to other large scale

meetings of Jewish leaders through the ages that had led to *takkanot* or tax agreements. The assembly of a Sanhedrin was astonishing.

What led to this strange phenomenon? The Orthodox rabbis who constituted a part of the Great Assembly and Sanhedrin along with their colleagues throughout western Europe understood the longing for civil rights. They supported this effort. The rabbinic participation in the deliberations of the Great Assembly is understandable as it presented an opportunity to provide responses that were halakhically valid. When this proved to be impossible, they could have quietly withdrawn or publicly resigned. Napoleon might have ignored such a move and permitted the effort to continue or he could have dissolved the Assembly and acted by decree as with the major religious groups.

These paths were open, but not taken and presumably not discussed. Significantly no rabbi resigned from the Assembly. Nor were these Orthodox rabbinic authorities denounced by the rest of the Orthodox establishment. Upon Rabbi Sintzheim's death, he was eulogized by Hatam Sofer, the leading Orthodox authority.¹²⁴

Throughout the nineteenth century some Orthodox and Reform rabbis saw the Sanhedrin as the proper model for creating unified answers to contemporary problems.¹²⁵ The Sanhedrin was roundly celebrated universally on its hundredth anniversary and to a lesser extent on its bicentenary, but grandly in France.¹²⁶

As the historians Jost, Graetz¹²⁷ along with contemporary sources make clear, the decisions reached by the Sanhedrin were received with joy by the general Jewish population which began to move into a wider range of occupations and out of the ghettos wherever Napoleon's armies made it possible. As the disabilities imposed by the "Infamous Decree" were slowly withdrawn, they were overlooked. Napoleon's

defeat meant that civil rights were withdrawn outside of France, but hope had been strengthened throughout Europe and the struggle for civil rights was resumed with renewed vigor in Germany and Austria.

Notes

1. This included sixteen from Italy who were appointed too late to attend the initial meeting and others from Germany. Many members were business men who could only attend sporadically. Some writers have confused the numbers by mixing those who attended the Assembly and the later Sanhedrin. The total numbers are given differently by various historians, so Franz Kobler, *Napoleon and the Jews*, New York, 1976, p. 139 who mentions 111 delegates. Martin Philippon, *Neueste Geschichte des Juedischen Volkes*, Leipzig, 1907, Vol. 1, p. 17, writes that the Sanhedrin consisted of 71 including 46 rabbis and 25 lay individuals. Tama lists the lay members as well as 15 rabbis: Rabbi Samuel Cracovia (Venice), Rabbi Abraham Andrate (St. Espirit), Rabbi Jaques Carmy (Reggio), Rabbi Abraham Cologne (Mincio), Rabbi Bonaventura (Modena), Rabbi Grazziadio Napi (Ferrara), Rabbi Zinsheimer (Strasbourg), Rabbi Jaques Meyer (Niederhuheim), Rabbi Hirsch Lazare (Haguenau), Rabbi Jacob Brunswick (Upper Rhine), Rabbi Solomon (Colmar), Rabbi Emmanuel Deutz (Coblenz), Rabbi Lattes Elie Aaron (Savigliano), Rabbi Segre (Verceil), Rabbi Calman (Beischem), Rabbi David (Hegenheim). David Sintzheim was the most prominent. M. Diogene Tama (tr.) *The Transactions of the Parisian Sanhedrin or Acts of the Assembly of Israelitisch Deputies of France and Italy*, London 1807, pp. 108 ff. See also Alexander Bran, *Gesammelte Aktenstücke und öffentliche Verhandlungen über die Verbesserung der Juden in Frankreich*, Hamburg 1807 and note the difference in the title of the English version which simply refers to the transactions of the Assembly while the German title emphasizes the improvement of the French Jews.

There were linguistic problems as many members knew only German or Italian and some of the French only French. Everything, therefore had to be translated into German and Italian. The chairman, Abraham Furnado, was fluent in French as were others of the Portuguese delegation. A commission of twelve was soon appointed to prepare responses to the questions; among them were three rabbis.

2. See Walter Jacob "The Law of the Land and Jewish Law," *Re-Examining Progressive Halakhah*, New York, 2002, pp. 71 ff.

3. The tremendous change in substance and tone between these documents and the "Charter of Frederick II for the Jews of Prussia" given in 1750 shows how revolutionary these documents were. Jacob R. Marcus, *The Jew in the Medieval World, A Source Book*, Cincinnati, 1938, pp. 84 ff.
4. Simon Schwarzfuchs, *Napoleon, the Jews, and the Sanhedrin*, London, 1979, p.21.
5. Ibid., p. 21 who cites Angel, *Napoleon et los Juives*.
6. Wilhelm Dohm, *Ueber die buergerliche Verbesserung der Juden*, 1783. The plays and other writings of Lessing helped to produce an intellectual climate conducive to change.
7. Jacob Katz, "A State Within a State," *Emancipation and Assimilation - Studies in Modern Jewish History*, Richmond, Surrey, 1972, pp. 51 ff.
8. Katz p. 56f.
9. Katz p. 67.
10. See the following internet link: "Napoleon's Letters to Bigot de Preameneu," www.napoleonica.org/us/corbi/corbi_boudon.html A variety of other sources are cited in footnotes of this collection.
11. Martin Philippon, *Die Neueste Geschichte des Jüdischen Volkes*, Leipzig, 1907, Vol. 1, pp. 10 ff.
12. Franz Kobler, *Napoleon and the Jews*, New York, 1976, p. 138.
13. Simeon J. Maslin, *An Analysis and Translation of Selected Documents of Napoleonic Jewry (Readings in Modern Jewish History [Ellis Rivkin ed.]*, Cincinnati, 1957, p. 16. The "Note Relative to the Sanhedrin" signed by Napoleon makes his intentions absolutely clear. They and other material show how deeply involved Napoleon was in this project.
14. Kobler, pp. 141 f.
15. Schwarzfuchs, p. 23.
16. Kobler, pp. 26 ff.

17. Philippson, vo. 1, p. 9.
18. Schwarzfuchs, pp. 23 ff. The existence of such documents has not been questioned, but whether the documents here quoted are authentic continues to be debated.
19. Kobler, pp. 55-57 and pp. 59-60.
20. Kobler, p. 82.
21. This was only partially so as the Catholic Church was to remain the official Church of France.
22. Kolber, p. 133.
23. Maslin, p. 8 and later, citing Napoleon's letter to Champagny on August 23, 1806.
24. Maslin, pp. 26 ff pp. 65 ff. The oath of office of the rabbis made them part of the government; it demanded absolute loyalty to the Emperor and required that any disloyal behavior be reported. How this was carried out has been described on p. 99 ff. The rabbis were also called upon to enforce the laws which imposed family names on the Jewish population (Maslin p. 89). The consistoires were also forced to deal with Jewish beggars in a specific way, pp. 78 ff., 108 ff. In addition there were constant efforts to encourage Jews into professions, see pp. 76 ff., 93 ff., 102 ff.
25. "When we consider that the Jewish population of France and Italy is not calculated, by the deputies themselves, at more than one hundred thousand souls, (a small number indeed when compared with the population of those countries. We are at a loss to see what great advantage could immediately result to Bonaparte from the Jews embracing zealously the profession of arms. We well know that his gigantic plans of ambitions rest on the laws of conscription; but the Jews already liable to them." F.D. Kirwan. "Preface," *The Transactions of the Parisian Sanhedrin or Acts of the Assembly of Israelitisch Deputies of France and Italy*, M. Diogene Tama tr.), p. vii.
26. Maslin p. 9. The defense of France was pointed out as important in early instructions to Champagny. Maslin provides some statistic about an increase in Jewish enlistments on p. 69. The folklore about contact between French Jewish soldiers and Easter European Jews suggests a greater number. We should note that

on the other side, Prussian Jews were proud of their service in the Prussian army during the conflict with France.

27. Heinrich Graetz, *Geschichte der Juden von den ältesten Zeiten bis auf die Gegenwart*, Leipzig, 1868, Vol. 11, pp. 273 ff.; Kobler p. 164.

28. Other views have been stated by Schwarzfuchs in his chapter is entitled "The Duped" and also by Berkovitz, *Rites and Passages - The Beginnings of Modern Jewish Culture in France 1650-1860*, Philadelphia, 2004..

29. Maslin p. 19. Article 7 of Napoleon's note prohibited substitutes for Jewish conscripts, a practice widely use by the general population; it became law and was not changed until the decree of July 9, 1812.

30. Kobler, p. 140.

31. Kobler, pp. 147-148 quoting E. D. Pasquier, *Memoires*, p. 297.

32. Graetz provided biographical background of some of the leading members of the Assembly including Abraham Furtado, who presided, Rabbi Sintzheim who was the leading rabbinic figure as well as many other lay and rabbinic figures. Graetz, Vol. 11, pp. 259 ff.

33. Berkovitz, pp. 167ff.

34. Tama, pp. 133 ff.

35. Berkovitz, pp. 126ff. describes some halakhic background provided by rabbis, who participated in the deliberations or corresponded with those who did; these were published many years later and not as justifications for the reponses to Napoleon.

36. Louis .M. Epstein, *Marriage Laws in the Bible and Talmud*, Cambridge, 1942, pp. 3-33.

37. Louis. Ginzberg, *Eine unbekannte jüdische Sekte*, New York, 1922, pp. 24-25.

38. A. Neubauer, *Geschichte des Karäertums*, Leipzig, 1866, p. 46.

39. Suk. 27a; Yev. 15a, b; 44a; Justin Martyr, *Dialogue* 134, 141; in some instances the second wives lived in different cities (Yev. 37b; Yoma 18b). Earlier Josephus, *Antiquities* XVIII, 1,2. As polygamy was less common in the Land of Israel, it could be grounds for the first wife's suit for divorce, but not in Babylonia (Yev. 65a).
40. J. Starr, *The Jews in the Byzantine Empire*, Athens, 1939, p. 144.
41. Louis Epstein, *Jewish Marriage Contract*, New York, 1927, p. 272; J. Mann, *Texts and Studies*, Cincinnati, 1931-38, Vol. 2, p. 177; S. D. Gottein, *A Mediterranean Society*, Berkeley, vol. 3, p. 147.
42. The decree itself was lost long ago, but it has been cited by many early sources. M. Güdemann, *Geschichte des Erziehungswesens*, Vienna, 1888, Vol. 3, pp. 115-119.
43. Z.W. Falk, *Jewish Matrimonial Law in the Middle Ages*, Oxford, 1966, p. 1, pp. 24-34.
44. Neuman, *The Jews of Spain*, vol., 2, p 52ff; Solomon ben Aderet, *Responsa*, I, 812, 1205; III, 446; IV 180, 257, 280.
45. Both *yibbum* and *halitza* are based on *Deut. 25:5-10*.
46. *Shulhan Arukh, Even Haezer* 1.10; Karo and Isserles differ; the commentaries cite numerous responsa on each side of the argument; *Sefer Hassidim* 284; Jacob Weil, *Responsa* 188.
47. *Gen.* 1.28; 9.1, 7; *M. Yev.* 6.6.
48. *Tur Even Haezer* 1.1 and *Bet Yosef* as well as other commentaries; Solomon Luria, *Responsa* 65.
49. R. Joel Tam or earlier according to L. Finkelstein, *Jewish Self-Government in the Middle Ages*, New York, 1924, pp. 20 ff.; *Shulhan Arukh Even Haezer* 1.10 and commentaries; *Otzar Haposkim, Even Haezer* 1.10 # 61.
50. *Ibid.*, pp. 29ff.

51. David Werner Amram, *Jewish Law of Divorce*, Philadelphia, 1896, pp. 57ff; Benzion Schereschewsky, *Dinei Mishpachah*, Jerusalem, 1984, pp. 285 ff.
52. Isaac Klein, *A Guide to Jewish Religious Practice*, New York, 1992, pp. 98f.
53. Matthew 22.21; Mark 12.17; the New Testament also contains various statements of loyalty to Caesar (John 19.15; Acts 17.7; 25.8, etc.). The meaning of these statements in their context is not entirely clear.
54. An example of closeness was provided through the citation that Samuel did not order mourning for Jews fighting on the Roman side against the Parthians in their siege of Caesarea as this did not involve the majority of Jews. It simply indicated that he would not mourn for those who allied themselves with the enemy forces (*Moed Katan* 26a).
55. Walter Jacob, "The Law of the Land and Jewish Law: Opposition and Concurrence," *Re-Examining Progressive Halakhah*, New York, 2002; Leon Landman, *Jewish Law in the Diaspora*, Philadelphia, 1968; Samuel Shilo, *Dina d'Malkhuta Dina*, Jerusalem, 1974; Jacob Neusner, *A History of the Jews in Babylonia, II The Early Sassanian Period*, Leiden, 1966.
56. *Letter of Sherira Gaon* (ed.) N.D. Rabinowich, Jerusalem, 1988.
57. Salo W. Baron, *The Jewish Community*, Philadelphia, 1945, Vol. 1, pp. 175 ff.
58. Lewin, *Baba Kama*, p. 99; Harkavy, *Teshuvot Hageonim*, p. 440
59. Simcha Asaf, *Teshuvat Hageonim*, Jerusalem 1927, p. 75.
60. Simcha Asaf, *Ibid.*, vol. 2, p. 75.
61. Samuel b. Meir (Rashbam), *Baba Basra* 54b; Hayim ben Isaac, *Or Zarua* 34; Solomon Ibn Adret, *Responsa* Vol. 6 # 149; *Shulhan Arukh, Hoshen Mishpat*, 369.2. The effect of new coinage issued by the king on a debt previously incurred raised the question of royal prerogative (Solomon ibn Adret, *Responsa*, III 34, 40, V 198).
62. *Gittin* 88b; Harkavy, *Teshuvot Hageonim* 278.
63. I. Agus, *Teshuvot Baalei Tosfot*.

64. Hil. Gezeleh 5.12-18; Hil. Sekhiyah Umatan 1.15.
65. Jacob ben Asher, 18.2; Solomon b. Adret, *Responsa* III 15, 16, 79; VIII 48; Barfat, *Responsa* 51.
66. R. Yerucham, *Sefer Mesharim*; Samuel de Medine, *Hoshen Mishpat*, 350; Barfat, *Responsa* 51; Caro, *Bet Joseph to Tur*, *Hoshen Mishpat*, 26.
67. For the text and a discussion of its meaning see Louis Finkelstein, pp. 350 ff.
68. Isaac b. Sheshet (Barfat), *Responsa* 5 and 6; though Joseph Caro disagreed with this decision (*Abkat Rachel*, 81) by stating that there was a distinction between Islamic lands where such documents were part of the royal prerogative and Christian lands where they were not.
69. Issac b. Sheshet (Barfat), *Responsa* 5 and 6.
70. Isaac b. Sheshet (Barfat), *Responsa*, 305.
71. Joseph Caro, *Abkat Rachel* 81.
72. Solomon ibn Adret, *Responsa*, II, 244, V 287; Jacob ben Asher, *Responsa*, 89.8; *Mishneh Torah*, Hil, *Malveh velaveh* 27.1; etc.
73. Appointments occurred often without consultation and aroused storms of protest. See Salo W. Baron, *The Jewish Community*, vol. 1, pp. 285 ff.
74. Isaac b. Sheshet (Barfat), *Responsa* 271; Samuel b. Simon of Duran, *Responsa*, I, 158; 533; Solomon ibn Adret, *Responsa* I, 475; Abraham Neuman, *The Jews in Christian Spain*, Vol. 1, pp. 12 ff.
75. An interesting modern Israeli discussion of the place of custom and *dina demalhuta dinah* may be found in Nahum Rakover, *Modern Applications of Jewish Law*, Jerusalem 1992, pp. 103 ff.
76. This principle stated that every person had the right to decide how to dispose of his financial affairs. However the authorities understood the use of non-Jewish courts to be destructive to communal cohesion.

77. In the eighteenth century Moses Sofer tried to keep the financial issues of *ketubot* outside the range of the king's law by stating that, after all, they were intended for women only and so of no significance. (Hatam Sofer, commentary to *Even Haezer* 126).
78. *Mishneh Torah, Hil. Gezelah* 5.14; Solomon b. Adret, *Responsa*, 5.198.
79. Solomon Ibn Adret, *Responsa* 6.254; Asher ben Yehiel, *Responsa* 86.9; Solomon ben Simon of Duran, *Responsa* 212; etc.
80. *Shulhan Arukh, Hoshen Mishpat* 369.
81. Finkelstein, pp. 357 f.
82. Isserles, *Responsa*, 123; also Hatam Sofer.
- 92.. Finkelstein, p. 154.
84. Baron, pp. 323 ff.
85. *Mishneh Torah, Hil. Zekhiya umatanah* 1.15; *Hil. Gezelah* 5.12-18; Solomon ibn Adret, *Torat Habayit* III
86. Hatam Sofer, *Even Haezer* 43; Joseph Saul Nathanson, *Shoel Emeshiv*, etc
87. Jair Hayyim Bachrach, *Havat Yair*, 176.
88. Jacob Katz, *Tradition and Crisis*, New York, 1993.
89. J. R. Marcus, *The Jew in the Medieval World*, Cincinnati, 1938, p. 96.
90. Moses Mendelssohn, *Jerusalem and Other Jewish Writings*, New York, 1969, pp. 102 ff.
91. Abraham C. Freiman, *Seder Kiduishin Venisuin*, Jerusalem, 1964, pp. 312 f.
92. Tama, also *Shulhan Arukh, Even Haezer* 137, 143
93. Ibid. also Jacob Reischer, *Shevut Yaakov, Orah Hayyim* 1.20.

94. Leopold Loew; "Eherechtliche Studien," *Gesammelte Schriften*, Szegedin, 1889, Vol. 3, pp. 138 ff.
95. Victor Tcherikover, *Hellenistic Civilization and the Jews*, New York, 1970, p. 70.
96. Boaz Cohen, *Jewish and Roman Law*, Vol. I, pp. 339f.
97. B. Lewin, *Otzar Hage-onim*; Yev. 48b; Kid. 22b, 66b, 68b, etc.
98. Szajkowski, pp. 826ff) E. Schnurmann, *La population juive en Alsace*, pp. 87ff; N. Samter, *Judentaufen im Neunzehnten Jahrhundert*, pp. 86ff.
99. A. Ruppin, *Die Juden der Gegenwart*, Leipzig, 1911, pp. 157ff.
100. *Ibid.*, p. 159.
101. Leopold Loew, "Eherechtliche Studien," (*Gesammelte Schriften*, vol. 3, pp. 194ff
102. Maslin, pp. 21 ff.
103. A. Shohet, "The German Jew, His Integration Within Their Non-Jewish Environment in the First Half of the Eighteenth Century" *Zion*, Vol. 21, 1956, pp. 229 ff.; Moses Mendelssohn "Schreiben an Lavater," *Schriften*, 1843, Vol. 3, pp. 39 ff.
104. Berkowitz pp. 126 ff. He provides a summary of the development of the Jewish understanding of Christianity.
105. Elfenbein *Teshuvot Rashi*, New York, 1947..
106. See p. 44.
107. Maslin, pp. 6ff; 16 ff.
108. Tama, p. 142 ff. Here, early in the discussions the rabbis with support from other delegates insisted on their authority. After several brief adjournments it became clear that they would be consulted, but not have a final voice.

109. F. D. Kirwan suggested that such a system of control would also provide a source of espionage throughout Europe. F.D. Kirwan, "Preface," Tama, pp. xii.
110. Tama, pp. 197 ff.
111. Berkovitz, p. 126
112. The literature on this subject is enormous; an excellent overview and bibliography may be found in Geza Vermes, Fergus Millar and Martin Goodman (eds.) of Emil Schürer *The History of the Jewish People in the Age of Jesus Christ*, 1987, Vol. 2, pp. 199 f.
113. Hilkhot Mamrim 1 and 2.
114. The clearest simple statement of this lineage of ordination is found in the opening chapter of *Pirkei Avot*.
115. Tama, p. 265 ff.
116. There is some controversy about this among scholars, but general agreement that it did not extend beyond the eighth century.
117. "Takkanot of R. Gershom," in Louis Finkelstein, pp. 111 ff.
118. Jacob Berab's Sanhedrin has been described a number of times; see Jacob Newman, *Semichah*, New York, 1950.
119. Kobler, pp 152 ff.
120. Kobler, pp. 156-157.
121. Jacob R. Marcus, *Israel Jacobson*, Cincinnati, 1972, pp. 38 ff.
122. Maslin, p. 19 and later decree.
123. Schwarzfuchs, pp. 167 f.
124. *Sefer Hatam Sofer, Derashot*, Cluj, 1929, pp. 80b.

125. Rabbi Benedik Levi of Giessen (1828), Rabbi Elias Grünebaum of Landau (1843), an anonymous Orthodox rabbi (1866), and another in 1871. Brocke and J. Carlebach (ed.) *Biographisches Handbuch der Rabbiner*, Munich, 2004, Vol. 1 pp.386 ff., and Pierre Birnbaum, *L'Aigle et la Synagogue: Napoleon, les Juifs et l'Etat*, Paris 2007, pp. 10, 17, 46, 266, as cited in Carsten Wilke "Der Freibrief des Despoten," *Kalonymos*, 2007, Vol. 10, Nu. 1, pp. 4-5.

126. Ibid., p. 5; Joseph Byron, "French Jewish Assembly Celebrates 200th Anniversary," *European Jewish Press*, March 12, 2007.

127. Jost, vol. 3, pp. 327 ff.; p. Graetz, Vol. 11, pp. 251 ff. Philippson, Vol. 1, pp. 19 ff.

110. Rappaport Hovav, *Le statut personnel des Juifs de France* (Paris: CNRS, 1978), pp. 129-30. For a discussion of the halakha in the Napoleonic era, see also Rappaport Hovav, *Le statut personnel des Juifs de France* (Paris: CNRS, 1978), pp. 129-30. For a discussion of the halakha in the Napoleonic era, see also Rappaport Hovav, *Le statut personnel des Juifs de France* (Paris: CNRS, 1978), pp. 129-30.

111. Rappaport Hovav, *Le statut personnel des Juifs de France* (Paris: CNRS, 1978), pp. 129-30. For a discussion of the halakha in the Napoleonic era, see also Rappaport Hovav, *Le statut personnel des Juifs de France* (Paris: CNRS, 1978), pp. 129-30.

112. *Idem*, *Le statut personnel des Juifs de France* (Paris: CNRS, 1978), pp. 129-30.

113. The closest simple statement of this concept of ordination is found in the opening chapter of *Pirkei Avot*.

114. *Idem*, *Le statut personnel des Juifs de France* (Paris: CNRS, 1978), pp. 129-30.

115. There is some controversy about this among scholars, but general agreement that it did not extend beyond the eighth century.

116. "Takkanot of R. Gershom," in Louis Finkelstein, pp. 111 ff.

117. Jacob Rappaport Hovav's Sanhedrin has been described a number of times; see Jacob Rappaport Hovav, *Sanhedrin* (New York, 1978).

118. Kober, pp. 152 ff.

119. Kober, pp. 152-53.

120. Jacob R. Marcus, *Israel Jacobson* (Cincinnati, 1977), pp. 38 ff.

121. Maslin, p. 19 and later *ibidem*.

122. Schwarzfuchs, pp. 167 ff.

123. *Seder Hatan Sofer*, *Devarim*, Chof, 1929, pp. 305.