

# Jews, Divorce and the French Revolution

**Suzette Blom**  
(University of Guelph, Canada)

**Abstract:** *On 28 January 1790 and 27 September 1791, the French national assembly passed decrees granting full political and civil rights to the Sephardic Jews and the Ashkenazic Jews respectively, thereby granting Jews as a group full civil and political rights for the first time in Western history. The prevailing attitude of the advocates of Jewish emancipation was, in the words of Clermont-Tonnere; ‘deny everything to the Jews as a nation and deny nothing to them as individuals.’<sup>1</sup> Emancipation marked the transformation of the Jews from a ‘nation within a nation’<sup>2</sup> to citizens of the French state.*

*Emancipation was a complex phenomenon, the legacy of which has never been resolved. A fundamental aspect of this complexity was that the metamorphosis of the Jews was neither as abrupt nor as dramatic as it appeared. The progression toward Jewish emancipation began decades before 1789 and merged with the greater national revolution, almost as an afterthought. In the decades before the revolution this was reflected in the movement toward the secularising of divorce, which had heretofore been considered a repugnant practice of a barely tolerated alien minority. The issue of divorce became a template for Jewish assimilation which could not occur without reform of Jewish customs and distinctiveness. The issue of whether this process accelerated integration or created an ambiguous distinctiveness continues to resonate both with the Jewish community and French society to date.*

In the courtyard of the Jewish museum in Paris is a large statue of Alfred Dreyfus who still stands as a powerful symbol of anti-Semitism in European society. The Dreyfus affair is often seen as the precursor of the horrors that were to engulf Europe’s Jews in the holocaust and a potent symbol of the failure of the philosophy of liberalism, which held out the promise of integration and civil equality. However, this telescopic view of the process of civil emancipation obscures the nuance and the complexity of modern Western European Jewish history and the formation of modern French Jewish identity. The revolution shattered the bonds of a rigidly corporate and

hierarchical society thereby creating the first modern identity crisis. The new identity was rooted in the revolutionary conception of citizenship which required total cultural integration of the individual in both the public and private sphere. For the Jews of France this was a costly but profound opportunity.

The transformation of the Jews from a 'nation within a nation'<sup>3</sup> to citizens of the French state ostensibly began on 28 January 1790 and 27 September 1791, when the French National Assembly passed decrees granting full political and civil rights to the Sephardic Jews and the Ashkenazic Jews respectively, thereby granting Jews as a group full civil and political rights on a national level for the first time in Western history. The prevailing attitude of the advocates of Jewish emancipation was, in the words of Clermont-Tonnerre; 'deny everything to the Jews as a nation and deny nothing to them as individuals.'<sup>4</sup>

However, this transformation and its hoped for 'regeneration' was a complex and uncertain process, the legacy of which has never been resolved. In part, this was the result of the Jews' status in French society having always been inherently ambiguous. The ambiguity stemmed in part from a lack of homogeneity. Jewish communities in France were politically and culturally diverse and lacked uniformity with respect to jurisdiction or status. These critical differences were reflected in the Jews' emancipation as two distinct political groups, by two different decrees, almost two years apart.

An even more significant aspect of the complexity of the emancipation process was that the metamorphosis of Jews from a 'nation within a nation' into French citizens

was neither as abrupt nor as dramatic as it appeared. The movement which led to the political emancipation of the Jews commenced quite independently of the general political upheaval in France. The progression toward Jewish emancipation began decades before 1789. It is only because this movement merged with the greater national revolution that one movement became politically part of the other. However, the expectation of the pre-revolutionary movement for the reform of Jewish status was often in conflict with the revolutionary process which eventually granted emancipation. The revolutionary regime required a far greater cultural assimilation than envisaged by the pre-revolutionary reformers.

Matrimonial customs, and particularly divorce law, are historical shibboleths in the construction of national identity. This was particularly true for the Jews. The emerging secularism of the enlightenment, which regarded divorce as an institution of natural law, contrasted with canonical ideals of the indissolubility of marriage as a sacrament. There is a critical nexus between Jewish adherence to civil law with respect to divorce and a new secular Jewish identity as state citizen. Jewish divorces, appealed outside the Jewish community to non-Jewish courts, became a forum for debate on the control of divorce as an aspect of a minority's right to determine how its membership reproduced. It would also become part of the rubric of a newly imposed universalism which would accelerate with the revolution. The well known cases of Borach Levi and Samuel Peixotto are important examples of Jewish divorces that caused controversy and engendered a critical debate fundamental to Jewish emancipation. These cases encapsulated the anomaly of Jews in France, living according to their own particular personal laws, which drew the attention of Rabbis, jurists, church men and politicians. Jurisdiction over Jewish divorce became

a multifaceted issue. First a determination of whether Jewish divorces fell under the jurisdiction of rabbis or local counsels – from which they could be appealed to the crown – was required. In the event a French body seized the jurisdiction to rule on Jewish divorce two ancillary issues would have to be addressed; should a Jewish custom be accorded some kind of legal recognition (which accordingly enhanced the position of Jews in society) and further, could a French body rule on an issue of personal law which was fundamentally repugnant to it?

In this context, the Peixotto and Levi cases became platforms for comment on the double-faceted issue, divorce and the civil status of the Jews. The secularising of divorce, which had heretofore been considered a repugnant practice of a barely tolerated alien minority, became an element of Jewish assimilation which required reform of Jewish customs and distinctiveness. The importance of these cases was underlined by the explicit consideration given to them by Malesherbes in his commission on the Jews. Moreover, the debates in the National Assembly would echo the commentary on these cases, which reflected the conflict between reform proposed by the old regime and the fundamental regeneration proposed by the revolution. The process would exacerbate the existing lack of clarity in the Jews' civil position and how they were to redefine Jewish identity by the principle of *dina de malkhuta dina* (the law of the land is my law).<sup>5</sup> It would culminate with the Napoleonic Grand Sanhedrin in 1806 which required the complete adherence by the emancipated Jewish community to French civil law for personal status issues. The question of whether this process accelerated integration or created an ambiguous distinctiveness continues to resonate both with the Jewish community and French society to date.

This question has also played a central role in the historiography of the Jews in France. Historians of the Jews in France have given considerable attention to the tension between the modern conception of a hegemonic right to be different and the assertion that secular homogeneity replaced the character, but not the spirit of religion in French society, making conformity essential to French citizenship. In this regard, historians of Jews in the revolution are most profoundly influenced by the revisionist paradigm of democratic absolutism. The revisionist approach, initiated by Alfred Cobban<sup>6</sup> and successfully developed by Francois Furet, focused on the 'revolution as process'<sup>7</sup> recalling Alexis de Tocqueville by locating the source of both French radicalism and egalitarianism in the absolutist regime that preceded the revolution. The overwhelming focus on the political origins of the revolution and political philosophy, most evident in Furet's celebrated *Critical dictionary of the French revolution*<sup>8</sup>, disregarded popular culture as well as socio-economic history to consider the evolution of the vocabulary of politics.<sup>9</sup> This marked the transition from the old regime to the political consequences of a discourse on the general will in the new regime. Therefore, a pre-existing 'conflict of interests' was replaced by 'competition of discourses for the appropriation of legitimacy.'<sup>10</sup> Furet asserted that the mechanics of power vested absolute authority in those who claimed to speak for the people, as the 'interpreters of action'<sup>11</sup>, and deprived individuals of the ability to speak for themselves. This framework laid the foundations for a parliamentary absolutism that was 'one and indivisible.'<sup>12</sup>

Accordingly, Furet argued the discourse of the national sovereignty, embraced in 1789, was incompatible with that of guaranteed individual rights to which the

revolutionaries simultaneously committed themselves. The 1789 *Declaration of the Rights of Man*, was ‘less a charter of liberty than a blueprint for oppression.’<sup>13</sup> Political sovereignty vested in the constituent assembly, ‘owed its characteristics to absolutism’ and ‘pure democracy was substituted for absolute monarchy.’<sup>14</sup> Furet’s interpretation of democratic absolutism was central to the interpretations developed by other historians including Keith Baker, Dale Van Kley, David Bien and Patrice Guenniffey.<sup>15</sup> It was also critical to Shanti Singham’s conclusion that ‘intolerance to difference proved to be the revolution’s major short-coming,’ and that becoming a citizen meant shedding corporate identities and assuming a national one.<sup>16</sup>

Although the full development of Furet’s approach antedated the earliest historiography on the Jews in the revolution, the revisionist concept of democratic absolutism and the exclusion of difference continue to dominate and polarize interpretations of Jewish emancipation in the revolution. This is most evident in the erosion of corporate identity integral to interpretations of Jewish identity. This view maintains that the Jews were persistently regarded as a particular and specific collective, which was not acceptable in the ideological or constitutional framework of the revolution, or the empire which emphasized universalism.<sup>17</sup> Some support for this position comes from the fact that given their miniscule numbers and relative economic insignificance, the Jews received a disproportionate amount of attention in revolutionary France.<sup>18</sup> This unique position was in part the result of the Jews’ symbolic position as the litmus test to evaluate the possibilities of emancipation.<sup>19</sup>

This factor has not only supported the revisionist scholarship but has also had the effect of causing the historiography of Jewish emancipation to become intertwined

with the more general historical approach to the revolution. It has also caused the scholarship to bifurcate on this issue regarding the 'right to be different.'<sup>20</sup> Some scholars condemn the dissolution of the Jewish corporate identity and perceive it to be a forced assimilation which, in its most extreme form, is the root of modern anti-Semitism. This school of thought emerged with Robert Anchel's 1928 re-characterisation of Napoleon's relationship with the Jews as repressive rather than liberating,<sup>21</sup> a characterisation which was reiterated by Simon Schwarzfuchs<sup>22</sup> and resonated with Arthur Hertzberg's position on the enlightenment.<sup>23</sup> This ambivalence to universalism and the delineating of the *droit à la difference*, emanates from a post-holocaust position and has informed the work of scholars such as Shmuel Trigano, who called the Jews of post-revolutionary France 'hostages of the universal'<sup>24</sup>, and Patrick Girard, who purportedly was inspired to write a book about the revolution by a visit to Auschwitz.<sup>25</sup>

Conversely, historians who reject Furet's premise take a more progressive view of the revolution. These historians do not view assimilation for the majority of French Jews as a reality. Historians like Robert Badinter, who sees the revolution as progressive, are critical of a position which uses a twentieth century lens.<sup>26</sup> While acknowledging the many obstacles faced by Jews wishing to enter public life, assimilation, in the sense of no longer identifying as a Jew, was not necessary. These historians see the relegation of religion to the private sphere, by the liberal revolution, as exempting Jews from having to assimilate and shed their Jewish identity in order 'to buy their ticket to admission to society', unlike Germany and Austria where the price of admission was conversion.<sup>27</sup>

Critically, they see the erosion of communal authority as a more gradual process beginning in the middle of the eighteenth century, exemplified by appeals to secular courts (cases such as Peixotto and Levi), and the lack of religious observance among Bordelais Jews. In direct contrast to the condemnation of the Jewish elite's internalisation of the ideal of Jewish regeneration,<sup>28</sup> these historians see the desire to privilege secular Western culture over traditional Jewish learning as a method of seeking social integration rather than separateness.<sup>29</sup> In addition, they view emancipation as the reconstruction of Jewish identity as a parallel to the revolutionary construction of secular society. However, these more positive assessments are divided over whether the revolution had incidental and unintended benefits for Jewish corporate identity or, as the progenitor of the age of pluralism and tolerance, purposively created the ideological base of a trajectory of progress.

The progressive position takes account of several fundamental considerations which those based on the Furet model do not, specifically, the problem of periodisation.<sup>30</sup> The history of French Jews (or Jews throughout the world) is not simply as a chronology of 'expulsions, catastrophes and pogroms'<sup>31</sup> but part of the larger context of the history of France. The use of a twentieth century lens, shaped by the holocaust, distorts and inaccurately simplifies the relationship between events which may have no intrinsic connection. Thus the examination of other potentially relevant factors, where the history of the Jews in France is intertwined with French national history, is restricted. In this regard, it is important to note that the Jews in France had, at various periods, led an almost peaceful existence and developed a flourishing cultural life.<sup>32</sup> Moreover, the Jews' new found political status was never revoked unlike that of the slaves in the colonies and that of women.

This approach also acknowledges the impact of these regional and periodic disparities and differences on the Jewish communities, on the emancipation process and on Jewish identity. Moreover, the progressive model accounts for the anomalous status of Jews both in the *ancien regime* and under the republic. As Paula Hyman put it, Jews were 'long resident but foreign subjects of the king - the favors to a few potentially subverted the legal status of all Jews by invalidating the hegemony of existing legislation.'<sup>33</sup> However, the inevitability of a transformation of Jewish identity, in light of the seismic structural changes overtaking the revolutionary world from which the Jews could not exempt themselves, has been relatively unexplored.

The impact of regional and periodic disparities is evident in the consideration of Jewish civil status which long predated the revolution. It was complicated by the two distinctive and contrasting Jewish populations in France. The smaller but more prosperous Portuguese community, or *nation*, totalling about 3500 people, was centred in Bordeaux and Saint Esprit, a suburb of Bayonne. Conversely, the population of the German community (also referring to themselves as *nation* but with a less cohesive meaning), was scattered throughout hundreds of communities in Alsace, Metz and Lorraine. It included more than 30,000 people, the majority of whom lived in Alsace.

The Sephardic Jews of the southwest were the descendants of Marranos or crypto Jews who settled in France during the sixteenth and seventeenth centuries fleeing the Inquisition. *Letters patent* issued by Louis XV in 1723 confirmed the formerly 'new Christians' in earlier residence and trade privileges and for the first time officially

recognized them as Jews. Having developed juridical norms as Marranos, the Sephardim never attempted to acquire the privilege of autonomous civil jurisdiction, even after returning openly to Judaism. Moreover, in matters of religious ritual, lay leadership held sway over rabbinic authority.<sup>34</sup> By the latter half of the eighteenth century, the Portuguese *nation* largely identified with French language and culture and was committed to preserving the existing order. It was also wealthier than the Ashkenazim, organized into a strong central governing body and had far more bourgeois members. However, despite the strength of the lay leadership over the rabbis, and their efforts at assimilation into French culture by the adoption of the French language and customs, the Sephardim's strong identification as a distinct corporate body was antithetical to revolutionary conceptions of citizenship after 1789.

In contrast, the German or Ashkenazic *nation* was relatively fragmented and impoverished, having come under French rule in a piecemeal fashion during various parts of the sixteenth, seventeenth and eighteenth centuries. Each of the Ashkenazic communities was organized separately and enjoyed judicial autonomy. Although there were some wealthy Ashkenazics, who were largely purveyors, their communities were relatively impoverished compared to the Sephardim. The Ashkenazic's were bound by stringent commercial and residential restrictions and faced strong anti-Jewish sentiment from the local population, feelings that were exacerbated by the creditor-debtor relations that commonly existed between Jews and peasants. At the time of the revolution, the preponderance of Ashkenazic Jews in France was still Yiddish speaking and alienated from French society.<sup>35</sup>

The chasm that separated the Portuguese and German *nations* is reflected in the tract of the Sephardic Jew Issac de Pinto, *apologie pour la nation Juive*, published in 1762. The author maintained that it was essential to distinguish the Portuguese Jews from their co-religionists, for 'they do not wear beards and are not different from other men in their clothing: the rich among them are devoted to learning, elegance and manners to the same degree as the other peoples in Europe, from whom they differ only in religion.'<sup>36</sup>

The distinctive and particularistic nature of Jewish life was protected by the requirement of living under communal jurisdiction according to Jewish law and tradition. To preserve this status, communal authority was broadly perceived to affect all areas of life and to control most important religious and civil rights in the life of the Jews, particularly matrimonial law. Symptomatic of the pervasive cultural dilemma facing individuals, caught between the rigid protection of traditional communal identity and the enticement of integration, were the increasing number of Jews who rebelled against the discipline of the Jewish leadership and the rigidity of the corporate community by struggling to reach the sovereign courts. These challenges assumed greater significance in the context of the struggle between the crown and the *parlements*, with the *parlement* overruling the crown's confirmation of rabbinical jurisdiction. This not only threatened Jewish juridical autonomy but also suggested an avenue of potential integration, albeit on terms less far-reaching than those of 1789.

Jurisdictional authority over Jewish divorces by both ecclesiastical and secular courts became the platform for the articulation of a new concept of Jewish civil status. This occurred partially as a result of the erosion of the traditional canonical position on

marriage as a sacrament, characterised by its indissolubility, by juridical and political assertions of marriage as a civil contract. During the revolution, the new law on civil marriage and divorce became part of a larger attack on the Roman Catholic Church. By 1792, divorce became equivalent in the revolutionary lexicon to words much like *démocrate* and *citoyen*.<sup>37</sup> This movement eventually led to the first nationwide divorce law passed on 20 September 1792.

Jewish law permitted divorce under appropriate circumstances and provided certain formalities, such as the granting of the 'document of cutting off' (*Sefer Kitrut*), a requirement to obtain a Jewish divorce or *get*, yet this posed a problem for Christian authorities.<sup>38</sup> Should a divorce which is valid according to all rabbinic requirements be recognized in France despite the conflict with ecclesiastical law? To do so would amount to recognising that the Jews had a 'right to be different.'<sup>39</sup>

Before the eighteenth century, the focus of legal proceedings in France on the validity of Jewish marriage and divorce dealt primarily with Jews who had married a non-Jewish partner in a non-Jewish ceremony. Such cases frequently arose when the marriage of the parties in a non-Jewish ceremony was followed by the husband's abandonment of the wife and the wife's subsequent desire to marry according to Jewish law. Many such cases arose during periods of persecution and expulsion. The majority of marriages contracted outside Jewish law were, until the eighteenth century, consistently held to be without legal standing by rabbinic authorities.<sup>40</sup>

However, unlike the abandoned spouse who wished to remarry within the Jewish faith, the convert who wished to remarry outside the faith was confronted with a

dilemma. According to Jewish law the wife of a converted Jew remained legally married as long as her husband, although converted, did not divorce her according to the formalities of Jewish law. Most significantly he could not force her to accept the divorce. On the other hand, for the convert the Christian doctrine of indissolubility of marriage prevented divorce from his Jewish wife.

In some cases ecclesiastic tribunals, hoping to encourage conversion, considered marriages contracted before baptism as null. In other cases they refused to recognize dissolution of the Jewish marriage to permit remarriage to a Catholic. Appeals to the civil authorities such as the *parlement* or community councils were equally inconsistent.<sup>41</sup> However, a trend began to emerge which, although it did not resolve the dilemma, foreshadowed a new civil identity for the Jews. This envisioned the Jews as possessing an entitlement to the protection of the law as all other Frenchmen, provided their customs conform to French values.

This trend was clearly evident in the most sensational divorce case in the Ashkenazi community in the second half of the eighteenth century. The Alsatian Jew Borach Levi, a Christian convert, was barred by both church authorities and the *parlement* of Paris from divorcing his Jewish wife Mendel Cerf, to marry a Christian after his conversion. The ecclesiastical authorities refused to accept Levi's argument that in Alsace and other French provinces Jews who converted to Christianity were allowed to remarry if their Jewish wives refused a summons to convert to Catholicism. He appealed to the *parlement* of Paris which ruled against his request on 2 January 1758.<sup>42</sup> Parisian magistrates rejected his suit on grounds that the contract of marriage, even in the absence of sacramental consecration, was valid by natural law

and therefore indissoluble.<sup>43</sup> Jewish marriages were therefore recognised as valid by both Canon and secular authorities. '*Donc l'église même et l'état, décident que les mariages des infidèles contractés suivant leur loix politiques et civiles sont vraiment mariages et forment un lien.*'<sup>44</sup> Moreover, civic rights regarding personal status were linked to conformity by an acceptance of the Catholic stance on the indissolubility of marriage. In the words of one commentator, '*Si le refus que fait une Chrétienne de suivre son mari ne peut jamais opérer la dissolution de son mariage, je ne vois pas que le refus d'une Juive cet étrange privilège.*'<sup>45</sup>

In this interpretation, a Jewish wife was entitled to the same protection as a Christian wife. There was one law for all subjects harmonized with Christian law and necessary for societal order. By including Jews as entitled to the protection of the law, they attained some of the status of other citizens. However, in some respects this ruling was a double-edged sword because converts faced a new restriction which effectively prohibited them from remarrying and continued to distinguish them from the Christian community, of which they sought to become a part. The Levi case impacted subsequent Canon law, mentioned officially in the *lettres patent* of 1784 on the Alsatian Jews, which prohibited converted Jews from remarrying unless they became widowers.<sup>46</sup>

The most significant Jewish divorce case in the twenty years prior to the revolution was the *cause célèbre* of the Bordeaux banker Samuel Peixotto who wanted to divorce his wife Sara Mendes Dacosta whom he had married in 1762. This case amplified the issues raised by the Levi case. The appeals made by both parties to French courts generated discussion of whether the Jews were to be considered

aliens in France, permitted to live according to their private law, or whether they were to be treated as French citizens, subject to French law. Moreover, it dealt with how far the customs of a minority could be condoned, when they conflicted with the overriding French values. Its focus upon the status of the Jewish minority in French culture would resonate with the reformer Malesherbes, the National Assembly and Napoleon. On a deeper level, this would foreshadow the problematic legacy of civil emancipation.

The Peixotto case was elevated beyond a mere *cause célèbre* divorce case by the attention it garnered from illustrious jurists, including such prestigious names as Target, Martineau, Lacretelle, Durvergier, and other parties who would play important roles during the revolutionary era. The Parisian gazettes and journals, Bordelais and foreign press were all interested in the case. However, the timing of the affair made it propitious as a vehicle for a larger social commentary both on divorce and Jewish status. The Peixotto case occurred in the context of the most important pro-divorce movement prior to the French Revolution, in the years 1768-1774.

Initially, the publicity around the Peixotto case overwhelmingly pointed to the barbarity of the Jews and their custom of divorce. Examples include the work of the irreverent novelist Pidansat de Mairobert, who dedicated a whole chapter to Peixotto in Volume IX of the *Espion Anglosi, and Correspondence secrète entre Milord All eye et Milord All ear*. In this chapter he took license with the person of Peixotto through an *exposé* on the divorce which was printed verbatim in the city pamphlets.<sup>47</sup> However, the Peixotto case rapidly became central to the development of an important pro-divorce movement which would have critical ramifications during the

revolution. These pro-divorce arguments, which initially addressed the concern over a low birth rate, commenced with an anonymous work called *Cri d'un honnête homme qui croit fondé en droit naturel à répudier sa femme* (1768) which argued that husbands should have the right to divorce adulterous wives and remarry so that they could have heirs of whose paternity they were certain.<sup>48</sup> This was followed by the *Cri d'une honnête femme qui réclame le divorce* (1770) which, in contrast, promoted the idea that women should have the same right to divorce as men and that all people should have the liberty to leave a failed marriage and remarry happily.<sup>49</sup> This demographic theme was also apparent in *Législation du Divorce* by the demographer de Cerfvol (an anonymous pseudonym) which proposed legalising divorce to encourage more marriages and increase population growth.<sup>50</sup> This was followed in 1771 with a scathing critique of the works of de Cerfvol by the *avocat général* of the *parlement* of Paris, Antoine Louis Segulier. Segulier took the position that the law, as transmitted through Moses and Jesus, was clear concerning the indissolubility of marriage. In support of his argument he referenced the case of Borach Levi.<sup>51</sup>

The second phase of the debates shifted from concern over the birth rate and framed divorce as a natural consequence of the rights of man.<sup>52</sup> This phase opened in 1789 with the publication of Albert Joseph Hennet's *Du divorce*.<sup>53</sup> Hennet argued that 'man has enjoyed the right to correct a mistake.'<sup>54</sup> While Hennet's main argument was premised on increasing reproduction through happy marriages, he also linked divorce to the abolition of privilege.<sup>55</sup> As attitudes toward divorce shifted, the Peixotto affair, as a non-Christian divorce, offered a space of neutral reflection with little risk for both the adversaries and partisans of divorce. This debate became inextricably

linked with the broader debate on Jewish civil status and articulated arguments later used to emancipate the Jews.

Despite its complex judicial history, the facts of the Peixotto case are straightforward. Samuel Peixotto was the son of a banker from a wealthy family of the Portuguese *nation* in Bordeaux. The family's business frequently took him to London and Amsterdam. In London he was introduced to Sara Mendes d'Acosta, the sister and daughter of bankers well known throughout Europe. The two families rapidly agreed to what appeared to be an advantageous match. In March 1762 Samuel, aged approximately 20 years and represented by an agent of his parents, married Sara Mendes d'Acosta who was over 30 years old. The nuptial benediction was celebrated according to Jewish rights in the Portuguese synagogue in London after which the couple left for Bordeaux where they began to live. After five years of a union that was never happy despite three children, they separated. Samuel fixed his domicile in Paris and Sara lived with her mother-in-law. In 1775, Samuel requested an annulment of the marriage before the Chatelet of Paris. Thus began a long judicial battle that never found a solution and ended only in 1783 with Sara's death.<sup>56</sup>

The defenders of the parties were very celebrated personalities: Martineau and Foullon for Peixotto, Duvergier for Sara and Pierre–Louis Lacroix for the children of the marriage. Seguier, as advocate-general for the *parlement* of Paris, would also comment on the case. Three lines of thought crystallized over the course of the litigation. The advocate Duvergier saw Jewish customs as abhorrent and odious. He characterized the Jews as an indigestible foreign element whose customs, when they conflicted with the law of the land, should not be permitted.<sup>57</sup> Conversely, Louis-

Simon Martineau and Foullon, in defence of Samuel Peixotto, while still distinguishing Jews as foreigners, proclaimed that the *lettres patent* that permitted the Jews to reside in France granted them the right to their specific practices no matter how odious. Target and Lacretelle offered a third and crucial line of thought: the Jews are French.<sup>58</sup>

The litigation was divided into three phases which paralleled the larger pro-divorce movement. In the first of three phases the claim for an annulment took precedence. Peixotto invoked the application of the French law respecting the invalidity of his marriage and proclaimed himself as a French subject who was required to comply with French law regarding personal status. Conversely, Duvergier's argument on behalf of Sara asserted that the marriage would not have been declared null according to French law because Samuel was not a French citizen. Rather, he like all Jews the world over, was stateless;

*D'ailleurs, le sieur Peixotto n'est pas Francais, quoique naturalisé, mais juif... Les juifs portugais sont une nation. Un juif portugais né à Bordeaux a les mêmes droits en France qu'un Juif portugais né a Amsterdam, Londres ou Lisbonne. Lorsque P. s'est marié à Londres, ce n'est pas le mariage d'un Francais avec une anglaise, mais le mariage d'un Juif portugais né a Bordeaux avec une Juive portugaise née a Londres.... Répandus sur toute la surface de la terre, il n'y a ni patrie, ni pays étranger pour eux....Ils ne sont subjects des souverains qu'autant de temps qu'ils habitent dans les terres de leur domination ou relativement aux biens qu'ils possèdent...*<sup>59</sup>

Lacretelle, in his defence of the children of the marriage, used an entirely different approach. Similar to the position later taken by the Abbe Gregoire in his defence of the Jews of Alsace,<sup>60</sup> he did not question Samuel Peixotto's possession of status as a Frenchman but found the marriage valid according to French law although it had been formed according to Jewish rites in a foreign country. Lacretelle's stance on the recognition of Jews as Frenchmen and toleration of Jewish customs would resurface in the legislation on Jewish emancipation.

The Chatelet, by a default sentence of 30 December 1775 found in favour of Peixotto. Sara refused to accept the decision and appealed to the *parlement* of Bordeaux, which affirmed the decision of the Chatelet of Paris.<sup>61</sup> This initiated the second phase regarding the problem of the domicile of the spouses (Paris or Bordeaux) as well as challenging the competency of the tribunal. Sara appealed the first sentence of the Chatelet to the *parlement* of Paris and invoked, to her benefit, Jewish law which provided that the union was technically valid. Significantly, Duvergier, on Sara's behalf, took a relativist position that '*Il est absurde de vouloir rendre un tribunal chrétien, et surtout le premier sénat de France, le ministre d'un divorce judaïque*'.<sup>62</sup> He asserted that the Jewish customs, which might have been appropriate in another time and in another part of the world, were not appropriate in France and that Jews living in France must comply with French values. The practice of divorce even by foreigners offended French values and could not be permitted in France;

*Il est certain que sous un ciel de feu, le sang est plus ardent, la continence plus difficile et l'indulgence du législateur plus nécessaire. Mais les Juifs qui habitent au milieu de nous, qui sont nés sous le même ciel, n'ont pas besoin de tant d'adoucissement à la loi qui nous ordonne d'être la compagne de notre.*<sup>63</sup>

In contrast, Martineau argued that the Jews were foreigners who should be tolerated and whose laws should be respected even if they conflicted with French law; '*les juifs sont parmi nous comme des voyageurs, comme des étrangers que nous protégerons pendant leur séjour.*'<sup>64</sup> He asserted that the Jews had the right to have their customs respected;

*Ils ne sont point membres de la société politique au milieu de laquelle ils vivent. Les Juifs qui habitent parmi nous ne sont point nos concitoyens; La France n'est pas leur patrie; ils n'y vivent que comme dans un lieu d'exil, comme des étrangers, comme des membres de cette République dont le centre fut autrefois à Jérusalem, et n'est aujourd'hui nulle part. De la cette liberté qu'ils ont de se marier valablement, suivant leurs lois et usages, dans le royaume ou hors du royaume.*<sup>65</sup>

Espousing the same ideal, Foullon opposed the idea of judging Jewish customs no matter how odious. He granted the Jews respect, but with an affirmation that the Jew is a stranger in the realm. The odious character of divorce was '*...la loi des juifs. N'accusez pas d'injustice un droit différent du vôtre.*'<sup>66</sup> The Jews should '*vivre selon ses usages, il faut qu'il soit jugé selon ces mêmes usages.*'<sup>67</sup> Moreover, the Jews

should have the right to turn to Royal tribunals for the enforcement of their law. He referred to a celebrated case of the childless widow Blanche Silva, the sister-in-law of Jacob Telles da Costa against Daniel Telles da Costa, who sought to enforce the Jewish right to marry her brother-in-law.<sup>68</sup> In that case the brother-in-law was already married and his marriage to the widow would amount to bigamy. The *parlement* of Bordeaux, in an order of 1768, did not reject this Jewish custom outright and did not condemn Daniel Telles to submit, but he was required to pay damages to the widow.

In the third phase of the litigation, Peixotto turned to Jewish law to dissolve the marriage and echoed the arguments of Foullon and Martineau with respect to the incompetency of a French tribunal in judging Jewish law. He asserted;

*... nous sommes juifs, ma femme et moi; notre mariage a été célébré sous l'empire de la religion et des lois judaïques; suivant cette relation et ces lois, mon mariage est régulier... Si mon mariage, radicalement nul par la loi du royaume, n'est valide que selon la loi judaïque, ce sera alors loi applicable au mariage lui même... Il serait absurde que la loi d'indissolubilité, qui est la loi du royaume, vint imprimer son caractère à un mariage qu'elle n'est point censé connaître.*<sup>69</sup>

At this stage Target and Lacretelle articulated the position that would resonate with the National Assembly regarding Jewish emancipation 10 years later. '*Il est Juif, mais il est Français.*'<sup>70</sup> The *lettres patent*, which permit the Jews to reside in France with the full protection of French law, require a reciprocity which mandates that they abide by the law of the realm. Accordingly the Jews should be considered as other French

subjects. They also asserted that the Jewish practice of divorce was not contrary to French values as it emanated from natural law.

Moreover, this meant that French tribunals had jurisdiction to rule on Jewish divorce. '*La faculté du divorce appartient à l'ordre civil; et si les Juifs ont une religion à part, ils n'ont pas parmi nous de gouvernement séparé de notre.*'<sup>71</sup> This line of reasoning provides the rationale for giving the Jews civil standing comparable to other French citizens. However, Target made an important distinction between Jews and Protestants based on the Protestant's status before the revocation of the *Edict of Nantes* (and the lack of recognition of Protestant marriage), which bound them by the same strictures as Catholics regarding divorce. Lacroix confirmed Target's argument regarding the acceptability of divorce on mutual consent based on natural law, but refused to engage in an interpretation of Jewish law: '*Vous n'êtes pas les juges de la discipline judaïque.*'<sup>72</sup>

The divorce was brought before the *parlement* which, by an order of 9 April 1778, granted to Peixotto a stay in his demand for the annulment and granted his right to pursue his demand for a divorce. The two parties again found themselves in front of the Chatelet. Samuel requested the execution of divorce from Sara, and Sara, on her side, introduced a claim for a separation of bed and board. After this Peixotto, who without doubt was aware that the proceedings were not going in his favour, went to Spain where he was baptized in 1781 with the intent that conversion would annul his marriage. The death of Sara in Paris in 1783 terminated this long affair without giving Peixotto the result he desired. After her death he tried to affirm his right to the

possessions of his wife, who had remained his wife despite his efforts to sever the relationship.

The Peixotto affair would have a direct impact on Guillaume de La-Moignon Malesherbes, the minister responsible for the *Maison du Roi*. He, in addition to Turgot, drafted the decree granting civic status to 'non-Catholics' and were commissioned by Louis XVI in 1788 to study the question of the Jews' civil status. The informal committee he set up included prominent Jewish leaders as well as men well-disposed toward the Jews such as Pierre-Louis Roederer, Target and Lacretelle, the latter two of whom had written memoranda on the Peixotto affair. The purpose of the committee was to conduct a preliminary inquiry on a new system for regulating the condition of French Jewry and to prepare a memorandum for the king. Malesherbes, like the Abbe Gregoire in his essay 'How to make the Jews happier and more useful in France'<sup>73</sup>, wanted to improve treatment of the Jews to lead to their conversion. He saw the Jews' close ties to their community as the principle obstacle to assimilation. He therefore proposed that Jews be required to use public registers for their personal status, thus weakening their ties to the Jewish community.<sup>74</sup> He did not suggest civil registration of divorce, although he asked several pointed questions of the Jewish representatives to the committee regarding the current practice of divorce and extensively consulted memoranda and documents on the Peixotto affair. The universalist position taken by Malesherbes foreshadowed the approach of the National Assembly regarding Jewish civil status.

In addition to the fact that the revolution intervened before the commission could complete its work, its effectiveness was limited by the fact that the differences

between the Sephardic and Ashkenazic delegations were so marked that they could not reach agreement. The responses of the deputies of the Sephardic community on questions regarding divorce, however, foreshadowed the unresolved complexity of the issue. Feeling victimized by the notoriety of the Peixotto case, and concerned with the image of the *nation*, the Sephardic deputies asserted that divorce was a relative rarity and that repudiation of women without their consent was very remote in their customs and the laws of the Jews.<sup>75</sup> However, despite these reservations, they did not renounce the practice of divorce nor their communal religious autonomy. They framed their comments as a matter of moral justice and they proposed that divorce would not be authorized except in grave cases, and even in those cases the assembly of the *nation* (and, significantly, not solely a religious tribunal) 'would decide definitively and without appeal, with a three quarter majority on the divorce.' Anticipating the Napoleonic Sanhedrin, they provided that, should the *nation* reject such a demand, the person could appeal to the French courts of law.<sup>76</sup>

The summoning of the Estates General highlighted the disparity between the Sephardic and Ashkenazic communities and their approaches to obtaining civil status. Although the Sephardim participated in the general elections for the Estates General, the Jews of Alsace, Metz and Lorraine were excluded. However, the Ashkenazics did submit a report pressing their demands, most notably the retention of their communal structure and authority. Unlike the Ashkenazim, the Sephardim had nothing to gain from calling special attention to their situation given that their *lettres patent* gave them many of the rights of other French subjects. The extent of their desire to distance themselves from the Ashkenazim is apparent in their petition to the Abbe Gregoire not to make a plea for the emancipation of the Jews.<sup>77</sup>

The first motion on 24 December 1789 to grant active citizenship to the Jews failed. Among the arguments against the granting of active citizenship was the recurring epithet that Jews were considered 'a nation within a nation.'<sup>78</sup> Echoing the interpretation articulated by Target and Lacretelle in the Peixotto case, that the Jews should be treated as other French subjects, the prevailing attitude of the advocates of Jewish emancipation adopted Clermont-Tonnerre's approach of emancipating the Jews as individuals with no collective identity. Deprived of what they had assumed they already enjoyed by being included in the failed vote of 24 December, the Jews of Bordeaux launched a lobbying effort to gain recognition as active citizens. On 28 January 1790, the assembly decreed 'all the Jews known in France as Portuguese, Spanish, and Avignonese will continue to enjoy those rights which they have enjoyed until now and which are sanctioned in their favor by the *letters patent*; consequently, they will enjoy the rights of active citizens, when they fulfill the conditions required by the decrees of the assembly.'<sup>79</sup> Corporate privileges having been abolished by the National Assembly, the Portuguese *nation* disbanded its communal organisation as the *quid pro quo* for active citizen status.<sup>80</sup>

The Assembly postponed the question of equality for the Ashkenazim. This anomaly had to be resolved however, and, shortly before disbanding, the Assembly admitted Ashkenazic Jews to the oath of citizenship. The decree of 27 September 1791 admitted all the Jews of France to the rights of active citizens. A complementary disposition was added to the text of the decree, which required a civic oath as a renunciation of all the privileges and exceptions introduced previously in favour of the Jews. In essence this text abolished communal autonomy by removing the privileges

and private laws of the Jews. Although it did not specifically include divorce, it abolished particular statutes, autonomy, and discordance between religious laws and the laws of the state. Despite the bold pronouncements of the emancipation decrees, the application of their principles to Jewish life and status remained ambiguous and the ideal of Jews as French citizens was not fixed.

Ironically, juridical autonomy continued after the emancipation decrees in the first years of the revolution, when both friends and foes of Jewish emancipation voiced their opposition to the existence of autonomously administered Jewish communities. In fact, the Jewish law on divorce was recognized by some French courts of law even after 27 September 1791, when the last group of French Jewry, the Ashkenazim, was granted full citizenship and when Jewish communities ostensibly ceased to exist. This judicial void tended to perpetuate an exclusion based on a past particularism.<sup>81</sup>

Napoleon, contrary to the recommendations of jurists like Portalis who advocated for the retention of some cultural autonomy for minorities specifically concerning divorce, refused to tolerate this ambiguity and required unequivocal ideological conformity. Under the guise of harmonising Jewish law to French law he convened an 'Assembly of Notables.' Their task was to answer twelve questions regarding the compatibility of Jewish law with the law of the empire. The issue of divorce figured prominently as the second question on the list, after polygamy, and before the question on interfaith marriage. Given the prominent placement on the list of questions and common subject matter, the first three questions' connection to the issue of assimilating Jews to the prevailing French values is clear. The Jewish notables, anxious to preserve their new found emancipation, resolved a potential contradiction between Judaic law

and the civil code by making the obtaining of a civil divorce a requirement for the *Sefer Kitrut*. Without a civil divorce, reasoned the rabbis, no rabbinic divorce could be valid. Although this requirement ran counter to contemporary rabbinic reasoning it was not a radical innovation as the problematic cases of Levi and Peixotto had demonstrated.<sup>82</sup>

Although convening the Assembly of Notables was paradoxically a declaration that the Jews were still to be treated as a distinct corporate entity, despite the dissolution of corporate autonomy which had been a condition of emancipation, it confirmed the necessity of conformity to the ideals of French citizenship. Both Napoleon's government and the Jewish community itself recognized a need to harmonise key issues like divorce within French law and in doing so, preserved the Jews' new political status.

The cases of Borach Levi and Samuel Peixotto are critical examples of a society redeveloping its sense of national identity and its approach to the integration of minorities, in the decades before 1789. They reflect the ideal of the Jew assimilated into French society, which grew out of the interplay between tolerance for Jews as foreigners, theological law and a growing secularity which included the recognition of a new moral order based on natural law. However, these cases also reflect the emerging concept of a uniform French nation shedding the distinction of a layered corporatism which required conformity to the ideal of one law, whether Christian or secular. For the Jews, equality as citizens was dependent on the dilution of a religiously based identity, in turn predicated on the subjugation of personal status to civil law.

Divorces appealed outside the confines of the Jewish community provided a platform for the articulation of a new Jewish identity as French citizen. Jews came before the courts as Frenchmen rather than merely tolerated foreigners. In the Levi case, uniformity meant religious uniformity exemplified by the issue of the indissolubility of marriage. Conversely, in the Peixotto case, uniformity meant the application of natural law to the issue of divorce. In both cases a Jew needed to shed the framework of Judaism to seek French justice and French Justice needed to find a method to respond to the Jews. In this context, the eighteenth century saw a re-conceptualisation of identity which penetrated both the Jewish community and the greater French society. This was a mutually transforming process, in which the Jew strove to be part of a national identity and the nation strove to absorb the Jew. The cost exacted by the revolution and the Napoleonic empire on this new identity, was a loss of communal autonomy and a submersion to French cultural norms. Whether the cost was too high a price to pay has not yet been determined because the exact parameters of this new identity have never definitively been established. However, further study of prerevolutionary Jewish divorce and the intimate perspective it provides can only assist in resolving this enduring dilemma.

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<sup>1</sup> Clermont Tonnerre, *Reimpression de l'ancien Moniteur depuis la reunion des Etats-generaux jusqu'au consultat*, Mai 1789 - Novembre 1799, Paris, 1842-1843, 23 Decembre, 1789, Vol. II-III, 253. Archives Nationales, Paris, France.

<sup>2</sup> Clermont Tonnerre, *Reimpression de l'ancien Moniteur*.

<sup>3</sup> Clermont Tonnerre, *Reimpression de l'ancien Moniteur*.

<sup>4</sup> Clermont Tonnerre, *Reimpression de l'ancien Moniteur*.

<sup>5</sup> Gil Graff, *Dina de malkhuta dina: separation of church and state in Jewish law 1750-1848*, University of Alabama Press, Alabama, 1985 p.1.

<sup>6</sup> Alfred Cobban, *Aspects of the French revolution*, W.W. Norton, New York, 1968.

<sup>7</sup> Francois Furet, *Interpreting the French revolution*, Cambridge University Press, Cambridge, 1981, p. 102.

<sup>8</sup> Francois Furet and Mona Ozouf, *A critical dictionary of the French revolution* Arthur Goldhammer trans., Belknap Press of the Harvard University, Cambridge, Mass., 1989.

- <sup>9</sup> Francois Furet and Mona Ozouf, *A critical dictionary of the French revolution*, p. 73.
- <sup>10</sup> Francois Furet and Mona Ozouf, *A critical dictionary of the French revolution*, p. 49.
- <sup>11</sup> Francois Furet and Mona Ozouf, *A critical dictionary of the French revolution*, p. 73.
- <sup>12</sup> Francois Furet and Mona Ozouf, *A critical dictionary of the French revolution*, p. 75.
- <sup>13</sup> Francois Furet and Mona Ozouf, *A critical dictionary of the French revolution*, p. 75.
- <sup>14</sup> Francois Furet and Mona Ozouf, *A critical dictionary of the French revolution*, p. 75.
- <sup>15</sup> Keith Baker, *Inventing the French revolution: essays on French Proletariat culture in the eighteenth century*, Cambridge University Press, Cambridge, England: New York, 1990.; Dale Van Kley, *Religious origins of the French revolution from Calvin to the civil constitution, 1560-1791*, Yale University Press, New Haven, Conn., 1996.; David Bien, 'Furet, the Terror and 1789' *French Historical Studies*, Vol.16, No. 4, Fall, pp. 777-783. Patrice Gueniffey, *Le nombre et la raison: la Revolution francaise et les elections*, Fayard, Paris, 1993.
- <sup>16</sup> Shanti Singham 'Betwixt cattle and men: Jews, Blacks and women and the Declaration of the Rights of Man' in *The French idea of freedom: the old regime and the Declaration of the Rights of 1789* Dale Van Kley ed., Stanford University Press, Stanford, California, 1994, p.153
- <sup>17</sup> Shmuel Trigano 'The rebirth of the 'Jewish nation' in France' in *The Jews in Modern France*, Frances Malino and Bernard Wasserstein eds., Brandeis University Press, Hanover and London, 1985, p. 22.
- <sup>18</sup> Ronald Schechter, *Obstinate Hebrews: representations of the Jews in France, 1715-1815*. University of California press, Berkeley, California, 2003, pp. 163-164.
- <sup>19</sup> Bernard Wasserstein, *The Jews of Modern France*, Brandeis University Press by University Press of New England, Hanover, New Hampshire, 1985, p. 1.
- <sup>20</sup> Phyllis Cohen Albert, 'The right to be different: interpretations of the French revolution's promises to the Jews', *Modern Judaism*, Vol.12, no.3, October 1992, pp. 243-57.
- <sup>21</sup> Robert Anchel, *Napoleon et les Juifs*, Les presses Universitaires de France, Paris:, 1928.
- <sup>22</sup> Simon Schwarzfuchs, *Napoleon, the Jews and the Sanhedrin*, Routledge and K. Paul, London, 1979.
- <sup>23</sup> Arthur Hertzberg, *The French Enlightenment and the Jews*. Columbia University Press; Jewish Publication Society of America, New York, Philadelphia: 1968.
- <sup>24</sup> Shmuel Trigano, *La republique et les Juifs après Copernic*, Presses d'Aujourd'hui, Paris:, 1981, pp. 36-83.
- <sup>25</sup> Patrick Girard, *The French Revolution and the Jews*, Robert Laffont, Paris, 1989.
- <sup>26</sup> Robert Badinter, *Libres et egaux; l'emancipation des Juifs 1789-1791*, Fayard, Paris:, 1989.
- <sup>27</sup> Esther Benbassa, *The Jews of France: a History from Antiquity to the Present*, xvii.
- <sup>28</sup> Ronald Schechter, *Obstinate Hebrews: representation of Jews in France, 1715-1815* University of California Press, Berkeley: Los Angeles, 2003; Simon Schwarzfuchs, *Du Juif a l'israelite; histoire d'une mutation, 1770-1870* Fayard, Paris, 1989; Gary Kates, 'Jews into French men: nationality and representation in revolutionary France' in *The French revolution and the birth of modernity* Ferenc Feher ed., Oxford: University of California Press, Berkeley: Los Angeles: 1990, pp. 103-116; Phyllis Cohen Albert, 'The right to be different: interpretations of the French revolution's promises to the Jews', *Modern Judaism*, Vol.12, no.3, October 1992, pp. 243-257; Jay R. Berkovitz, 'The French revolution and the Jews: assessing the cultural impact' *AJS Review* 20, no.1, 1995, pp. 25-86.
- <sup>29</sup> Benbassa, *The Jews of France: a History from Antiquity to the Present*, p.xvii.
- <sup>30</sup> Benbassa, *The Jews of France: a History from Antiquity to the Present*, p.xvi.
- <sup>31</sup> Benbassa, *The Jews of France: a History from Antiquity to the Present*, p.xvii.
- <sup>32</sup> Benbassa, *The Jews of France: a History from Antiquity to the Present*, p.xvii.
- <sup>33</sup> Paula Hyman, 'L'impact de la Revolution sur l'identite et la culture contemporaine des Juifs d'Alsace' in *Histoire politique des Juifs de France: Entre universalisme et particularisme*, Pierre Birnbaum ed., Fondation Nationale de Sciences Politiques, Paris, 1990, p. 29.
- <sup>34</sup> Frances Malino, *The Sephardic Jews of Bordeaux: Assimilation and emancipation in Revolutionary and Napoleonic France*. University of Alabama Press, Alabama, 1978, p. 58.
- <sup>35</sup> Ronald Schechter, *Obstinate Hebrews: representations of the Jews in France, 1715-1815*, p.163.
- <sup>36</sup> Quoted in Arthur Hertzberg, *The French Enlightenment and the Jew*, .pp. 141-153.
- <sup>37</sup> James S. Traer, *Marriage and the Family in Eighteenth-century France*, Cornell University Press, Ithaca: London, 1980, p. 200.

<sup>38</sup> D.W. Amram, *The Jewish Law of Divorce*, Herman Press, New York: 1968; B. Berkovitz, 'Jewish Divorce Law' *New Law Journal*, Vol. 139, April, 21, 1989, pp. 551-553; Zvi Jonathon Kaplan, 'The Thorny Area of Marriage: Rabbinic Efforts to harmonize Jewish and French Law in Nineteenth-Century France,' *Jewish social studies: History, Culture, Society*, Vol.13, no.3, Spring/summer 2007, pp. 59-72.

<sup>39</sup> Phyllis Cohen Albert, 'The right to be different: interpretations of the French revolution's promises to the Jews', pp. 243.

<sup>40</sup> Kaplan, 'The Thorny Area of Marriage: Rabbinic Efforts to harmonize Jewish and French Law in Nineteenth-Century France', 64; Zosa Sajzkowski, 'Marriages, mixed marriages and conversions among the French Jews during the revolution of 1789' in *the Jews and the French revolutions of 1789, 1830, 1848*, Ktav Publishing House, New York: 1970, pp. 827.

<sup>41</sup> Sajzkowski, 'Marriages, mixed marriages and conversions among the French Jews during the revolution of 1789', pp.827.

<sup>42</sup> Sajzkowski, 'Marriages, mixed marriages and conversions among the French Jews during the revolution of 1789', pp.827.

<sup>43</sup> Sajzkowski, 'Marriages, mixed marriages and conversions among the French Jews during the revolution of 1789', pp.827.

<sup>44</sup> 'Therefore, the church and state decided that the marriage of infidels contracted according to their political and civil laws are true marriages that form a valid bond.' *Plaidoyer pour M. l'evêque de Soisson, initime contre Joseph-Jean Elie Levy (Levi) ci-devant Borach Levy, juif de nation, appellant comme d'abus*, 1758, BNF 4-FM-30290(1) Bibliothèque Nationale de France, Paris.

<sup>45</sup> 'If the refusal of a Christian to follow her husband is never permitted to dissolve a marriage then I cannot see how the refusal of one Jewess should have this strange privilege.' *Plaidoyer pour M. l'evêque de Soisson, initime contre Joseph-Jean Elie Levy (Levi) ci-devant Borach Levy, juif de nation, appellant comme d'abus*, 1758, BNF 4-FM-30290(1).

<sup>46</sup> Sajzkowski, 'Marriages, mixed marriages and conversions among the French Jews during the revolution of 1789' 824.

<sup>47</sup> Pidansat de Mairobert, *L'espion Anglois* London: 1778-1784 vol IX (1783), pp. 192-221 in Evelyne Oliel-Grausz, *Divorce mosaïque et Législation révolutionnaire*, in Mireille Hadas-Lebel and Evelyne Oliel-Grausz eds. *Les Juifs et la révolution Française: histoire et mentalités* Peeters Louvain, 1992, p. 73.

<sup>48</sup> Anonymous, *Cri d'un honnête homme qui croit fondé en droit naturel à repudier sa femme*. P.G. Simin, Paris, 1768, reprinted Librairie A. Marescq Aine, Paris, 1879.

<sup>49</sup> Cerfvol, de (pseudonym), *Cri D'une honnête femme qui réclame le divorce conformément aux lois de la primitive église*. London, 1770, reprinted Kessinger Publishing, London, 2009.

<sup>50</sup> Cerfvol, de *Législation du divorce, précède du cri d'un honnête homme qui se croit fondé en droit naturel et divin à repudier sa femme; pour représenter à la législation française les motifs de justice tant ecclésiastique que civile, les vues d'utilité tant morale que politique qui militeroient pour la dissolution du mariage dans certaines circonstances données*, London, 1769, reprinted Kessinger Publishing, London, 2009.

<sup>51</sup> Andre Jean-Simon Nougard de Foyt, *Lois du mariage et du divorce depuis leurs origine dans le droit romain*, Imprimeur-Libraire, Paris, 1816.

<sup>52</sup> Arnaud Berquin, *L'ami des enfants*, Elmsley, London, 1783.

<sup>53</sup> Albert Joseph Henet, *Du divorce*, Impr. de Monsieur, Paris, 1789.

<sup>54</sup> Albert Joseph Henet, *Du divorce*, Paris, 1789..

<sup>55</sup> Albert Joseph Henet, *Du divorce*, Paris, 1789.

<sup>56</sup> *Memoire à consulter et consultation pour dame Sara Mendes d'Acosta... contre sieur Samuel Peixotto, sur une demande en nullité de mariage et sur le divorce Judaique*, M.S. Joly de Fleury 508, fol.92. Bibliothèque nationale de France N Richelieu, Paris.

<sup>57</sup> *Consultation sur le divorce de la loi Judaique, signée Martineau, Clement, Blondell, Jolly, Courtin*, date du Juin 30 1778, Paris; *Observations sur la separation et le divorce judaïques, pour S. Peixotto contre Sarah P.* signé de M. de Saint-Frageau, avocat du roi, et de Foullon, procureur au Chatelet, 1779 M.S. Joly de Fleury 508, Fol. 92, Bibliothèque nationale de France N Richelieu, Paris.

<sup>58</sup> *Plaidoyer pour la demoiselle Sara Mendes d'Acosta par Target*, 1779, M.S. Joly de Fleury 508, Fol. 92. Bibliothèque nationale de France N Richelieu, Paris.

<sup>59</sup> 'For that matter, Mr. Peixotto is not French, albeit naturalized, but still a Jew. The Portuguese Jews are a nation. One Portuguese Jew born in Bordeaux has the same rights in France as a Portuguese Jew born in Amsterdam, London, or Lisbon. When P. married in London, it was not the marriage of a

French man with an English woman, but the marriage of a Portuguese Jew born in Bordeaux to a Portuguese Jewess born in London. Throughout all the surface of the earth, there is no foreign homeland or country for them. They are the subjects of the sovereign in whose dominions they have lived for so long.' *Memoire pour la Dame Sara Mendes d'Acosta... contre sieur Samuel Peixotto, sur une demande en nullite de mariage et sur le divorce de la loi Judaique*, par Duvergier, avocat, 1778 ,M.S. Joly de Fleury 508, Fol. 92. Bibliotheque nationale de France N Richelieu , Paris.

<sup>60</sup> Gregoire, Henri-Baptiste., 'essai sur la regeneration physique, morale et politique des Juifs.' Vol. III in *La Revolution francaise et l'emancipation des Juifs*. 8 Vols. Editions d'histoire sociale, Paris, 1968, documents first published, 1781-1806).

<sup>61</sup> Zosa Szajkowski, *Franco-Judaica, an analytical bibliography of books, pamphlets, decrees, briefs and other printed documents pertaining to the Jews in France, 1500-1788*, American Academy for Jewish research, New York,1962, pp. 50-53.

<sup>62</sup> 'It is absurd to render a Christian tribunal and the first senate of France the minister / judge of a Jewish divorce.' Duvergier, *Memoire pour la dame Mendes d'Acosta*, Joly de Fleury 508, Fol.92.

B.N.

<sup>63</sup> 'It is certain that under a burning sky, the blood is more fervent, control is more difficult and the leniency of the legislature is a greater necessity. But the Jews that live among us, who were born under the same sky as we were, do not need the inducement of the law as we have ordained it to make this country theirs.' Duvergier, *Memoire pour la dame Mendes d'Acosta*, Joly de Fleury 508, Fol.92. B.N.

<sup>64</sup> 'The Jews are among us like travelers, like foreigners that we protect during their stay ( sojourn).' *Consultation sur le divorce de la loi judaique (30 Juin 1778) Sur la question de savoir si le libelle de divorce donne par le sieur Peixotto a la dame da Costa, a rompu les liens qui les unissaient*. P.G. Simon, Paris, 1778 BN 4 FM 25362; *observations sur la separation et le divorce judaique: pour le sieur Samuel Peixotto contre la dame Sara Mendes d'Acosta*. P.G. Simon, Paris, 1779, BN4-FM-25361.

<sup>65</sup> 'They are not perfect members of the political society in whose milieu they live. The Jews that live among us are not fully fellow citizens. France is not their nation; they live among us like they are in exile, like strangers, like members of this republic whose center is also Jerusalem, and is not today any part of their freedom. They are validly married, following their laws and customs in or out of this realm.' *Consultation sur le divorce de la loi judaique (30 Juin 1778)*, BN 4 FM 25362; *observations sur la separation et le divorce judaique: pour le sieur Samuel Peixotto contre la dame Sara Mendes d'Acosta*, BN4-FM-25361

<sup>66</sup> '...the law of the Jews. Do not accuse a law different than yours of injustice.' *Consultation sur le divorce de la loi judaique (30 Juin 1778)*, BN 4 FM 25362; *observations sur la separation et le divorce judaique: pour le sieur Samuel Peixotto contre la dame Sara Mendes d'Acosta*, BN4-FM-25361.

<sup>67</sup> '...according to their customs, it is necessary to judge them according to the same customs.' *Consultation sur le divorce de la loi judaique (30 Juin 1778)*, BN 4 FM 25362; *observations sur la separation et le divorce judaique: pour le sieur Samuel Peixotto contre la dame Sara Mendes d'Acosta*, BN4-FM-25361.

<sup>68</sup> Theophile Malvezin, *Histoire des Juifs à Bordeaux*, Lafitte, Marseille, 1875, p.280.

<sup>69</sup> 'We are Jews, my wife and I; our marriage was celebrated in the religious domain according to the laws of Judaism; according to these relationships and laws it is regular....If my marriage, was completely void by the law of the realm, it would not be valid according to Jewish law, it will then be the applicable law to the marriage itself. It would be absurd for the law of indissolubility, which is the law of the realm, to be imprinted on the character of marriage that it is in no way supposed to recognize.' *Memoire sur S. Peixotto, signe Peixotto*, 1778 M.S. Joly de Fleury 508, Fol. 92. Bibliotheque nationale de France N Richelieu , Paris.

<sup>70</sup> 'He is a Jew, but he is French.' *Plaidoyer pur la demoiselle Sara*, Target, M.S. Joly de Fleury 508, Fol. 92, Bibliotheque nationale de France N Richelieu , Paris.

<sup>71</sup> 'The faculty of divorce belongs to the civil order; the Jews may have a religion a part they don't have a separate government from ours.' *Plaidoyer pur la demoiselle Sara*, Target, M.S. Joly de Fleury 508, Fol. 92, Bibliotheque nationale de France N Richelieu , Paris.

<sup>72</sup> 'You're not the judge of Jewish law.' *Sur une repudiation de sa femme par un Juif; La plaidoire de Pierre-Louis Lacretelle*, Oeuvres completes, Tome premier, Paris, 1823, p.292.

<sup>73</sup> Gregoire, Henri-Baptiste. 'Essai sur la regeneration physique, morale et politique des Juifs.' Vol.III in *La Revolution francaise et l'emancipation des Juifs*. 8 vols. Editions d'histoire sociale,Paris, 1968, documents first published, 1781-1806.

<sup>74</sup> P. Grosclaude, *Malescherbes-temoin et interprete de son temps* Librairie Fishcbacher, Paris, 1961, pp. 631-649.

<sup>75</sup> Evelyne Oliel-Grausz, 'Divorce Mosaïque et législation révolutionnaire' in *Les juifs et la révolution française; histoire et mentalités*, M.Hadas-Lible and E. Oliel-Grausz eds., Peeters-Louvain, Paris, p. 73.

<sup>76</sup> Sajkowski, *Mixed marriages and conversions among French Jews during the revolution of 1789*, 829.

<sup>77</sup> Malino, *The Sephardic Jews of Bordeaux: Assimilation and emancipation in Revolutionary and Napoleonic France*, p.45.

<sup>78</sup> *Reimpression de l'ancien moniteur depuis la reunion des etats-Generaux jusq'au consulat, mai 1789-nov 1799*, (Paris, 1842-1843) December 23, 1789, Vol. I, 253.

<sup>79</sup> *Reimpression de l'ancien moniteur depuis la reunion des etats-Generaux jusq'au consulat, mai 1789-nov 1799*, (Paris, 1842-1843) December 23, 1789, Vol. I, 253.

<sup>80</sup> Malino, *The Sephardic Jews of Bordeaux: Assimilation and emancipation in Revolutionary and Napoleonic France*, p. 53.

<sup>81</sup> See the case of David Mendes 19 Germinal in VI (April 8, 1798). The *tribunal civil de la Gironde* pronounced on the legitimacy of a child of a marriage contracted in 1780 simply by exchange of a ring by a man who was already married. The tribunal treated the affair as anterior to emancipation and recognized the jurisdiction of Jewish law on these types of cases.

<sup>82</sup> Roderick Phillips, *Putting Asunder: a History of Divorce in Western Society* University Press, Cambridge, 1988, pp. 164-65.

