CHAPTER 4

Overlapping Jurisdictions: Between Legal Centralism and Legal Pluralism

With the persistent encouragement of the state and its institutions, law functioned as a homogenizing force among diverse sectors of French society in the second half of the eighteenth century. Legal centralism was predicated on the assumption that the law was the exclusive domain of the state and was the foremost instrument of state bureaucracy. Its far-reaching effects were evident in the Metz Kehillah, where a powerful impulse was felt among communal leaders, and especially within the Beit Din, to work cooperatively with the French legal system. Although there are no signs of coercive pressure exerted by either the monarchy or the municipal authorities, and no overt indication of capitulation on the part of the Metz Kahal, the need to coordinate seems to have been felt keenly in every area involving property, monetary exchange and contractual agreements. This chapter focuses on procedural cooperation with the general courts and on strategies employed by the Beit Din in navigating between the competing jurisdictions of the Jewish and French legal systems. While judicial coordination may well have relied on any of several approaches available in Jewish legal theory, there is no explicit indication of how the av beit din or his fellow judges viewed such matters. The overwhelming evidence contained in the records of the Beit Din reveals that although its navigational efforts were motivated by practical considerations, they rested largely on an understanding of law that was deeply embedded in every aspect of social and cultural life.¹

Metz Jews encountered the tensions between legal pluralism and legal centralism on a daily basis. Legal centralism embodied the idea that the state was the sole source of law and that foreign systems must subordinate themselves appropriately to its authority. In conceptual terms, the growing influence of legal centralism was certainly not an unprecedented hurdle for Jewish law insofar as the principle of dina d’malkhuta dina was so well established within Jewish legal culture. But in practical terms, it posed a challenge to the authority of the Beit Din when, especially in the last decades of the ancien régime, litigants exercised greater discretion in determining which forum they would

¹ See Rosen, Law and Culture, xii.
approach with their disputes. Equally important was the far-reaching impact of legal bureaucracy, which had become integral to the workings of the state. At the same time, given the prevailing political constraints and exigencies of the second half of the eighteenth century, the state could not deny the validity of legal pluralism. Consequently, it confirmed the legitimacy of the Jewish community’s jurisdictional authority—in both theoretical and practical terms—alongside the jurisdiction of royal and provincial bodies. Without surrendering its own authority, the Beit Din regularly acknowledged the interdependence of cases brought before the rabbinic judges and those taken to the French civil court system. But on numerous occasions the Beit Din made it clear that it would need to await the judgment of the French court before it could issue its own ruling. In a case concerning the division of living space, it declared that its decision was valid “so long as the gentile courts do not object.” It is striking that even in matters that were presumably of minimal interest to the authorities, the Beit Din was hampered by contingencies of this sort. In such cases, it would seem that the pendulum had swung more in the direction of legal centralism than pluralism, at least as far as the rabbinic court’s understanding was concerned.

These developments typified a broader trend in France in relation to mounting tensions between clerical and civil authorities. But as a rule, in sharp contrast to the ecclesiastical courts, the Metz Beit Din enjoyed substantial independence from state interference and control. Whether they were considering contractual matters, offenses against the public order, or the civil consequences of strictly religious affairs, municipal and royal courts firmly imposed their jurisdiction and exercised the right to overturn the decisions of the ecclesiastical courts when there was evidence of a procedural irregularity. Moreover, the powers of ecclesiastical courts were limited to canonical penalties. The Beit Din, with the full support of the Kehillah leadership, was granted greater latitude by the state to resolve internal differences on the basis of Jewish legal traditions.

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2 See, for example, PMBD, Vol. 1, pt. 1, 27a, no. 77. See, also, PMBD, Vol. 2, 47b, no. 256 and 64b, no. 345 for references by the Beit Din to cases that had been settled in the bailliage.

3 PMBD, Vol. 1, pt. 1, 6a, no. 3.
