

## ERRATUM

### THE *MASKIL*, THE CONVERT, AND THE *AGUNAH*: JOSEPH PERL AS A HISTORIAN OF JEWISH DIVORCE LAW

by

**Nancy Sinkoff**

A typographic error appears on page 295 of “The *Maskil*, the Convert, and the *Agunah*: Joseph Perl as a Historian of Jewish Divorce Law,” by Nancy Sinkoff, in the November 2003 issue of *AJS Review* [2003:27(2), pp. 281–299]. In the indented paragraph from Joseph Perl’s manuscript, the original Hebrew phrase “vekhatav”—which is noted in footnote 61 as appearing in the text itself—was elided, leaving an underline with no text. The passage containing the missing Hebrew phrase follows in its entirety:

We see, for example, that Rabbi Joseph Karo, in his *Commentary on the Tur*, *’Even ha-’Ezer*, 123 (*Beit Joseph*), states: ‘One should not permit the man to write the writ with his own hands.’ In the aforementioned work, the *Set Table*, in contrast—which the same rabbi established as a norm for *Israel*—this way of making divorce more difficult is not included. *Rabbi Moses Isserles*, however, gave this particular restriction [of divorce] a respected place in his comments on the aforementioned *Set Table*. It appears that Karo, as an Eastern Rabbi, in whose country *polygamy* still ruled, despite the aforementioned ban by Rabbi Gershom, did not want to establish a restriction so contrary to the Pentateuch’s expression וְכָתַב as a norm in his work. *Rabbi Isserles*, in contrast, who lived in the same century, but in Kraków, where monogamy had been established already since the 11th century by Rabbi Gershom, granted a place to this restriction [on divorce] in his additions to the *Set Table* because it took away the right of an irascible man to move his wife out of the house for no reason.

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OF JEWISH DIVORCE LAW<sup>1</sup>

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Rabbi Elazar ben Azariah says: “Now whenever the gentiles were to judge according to the laws of Israel, I might think that their decisions are valid.” But Scripture says [to Moses]: ‘These are the laws *you* are to set before them.’ You [Israel] may judge their cases, but they may not judge your cases. On the basis of this interpretation the sages say, “a bill of divorce given by force, if by Israel it is valid, if by the authority of the [gentile] nations, it is not valid. It is however valid if the gentiles compel the husband and say to him, ‘do as the Israelite authorities say.’”

*Mekhilta de-Rabbi Ishmael—Nezikin 1*, “These are the Laws” (Ex. 21:1)<sup>2</sup>

I

Some time in the third decade of the nineteenth century, the *maskil* (enlightened Jew) Joseph Perl (1773–1839) appealed to the provincial authorities in Lemberg, Austrian Galicia to support those in the Jewish community who strove to find a solution to the rabbinic requirement that a male convert to Christianity grant his Jewish wife a writ of divorce (*get*).<sup>3</sup> Perl’s treatise, with the bold title,

1. Versions of this article were given as talks at The Association of Jewish Studies, December 1999; the Second International Conference on the History of the Jewish Enlightenment, April 2000; and the Association for the Advancement of Slavic Studies, November 2001. I am grateful for all the comments and questions generated at those conferences and for the comments of the anonymous readers of the *AJS Review*. Ulrich Groetsch was generous with his native German.

2. Cf. Rashi on Ex. 21:1, “[These are the laws you are to set] *before them*, and not before gentiles; even if you know of one law that they adjudicate as we do, don’t bring it before their courts, for one who brings a law to a gentile court blasphemes the Divine, and appears to do idolatry there, as it is written, (Deut. 32:31): “for their Rock is not as our Rock, even our enemies themselves are judges [over us]; [bringing a case to a gentile court] implies that their justice is superior to ours.”

3. Contested divorces where the husband had converted to Christianity were particularly poignant for Ashkenazic Jewry living in medieval and early modern western Christendom because of the paradox inherent in the halakhic requirement for a male Jewish apostate to grant his wife a Jewish divorce. The apostate was viewed as both immutably Jewish, always a potential *baʿal teshuvah*, to the Jewish community, and immutably Christian to the Church because the waters of baptism were indelible. Jewish jurists, well aware of their community’s susceptibility to conversionary pressures, struggled

*Über die Modifikation der Mosaischen Gesetze* (*Regarding the Modification of Mosaic Laws*),<sup>4</sup> did not urge the abandonment of rabbinic law or authority. Rather, he argued that a historical investigation of Jewish divorce law proved that minimizing the possibility of *'aginut* (“grass widowhood”) had always been a priority of a responsible rabbinic leadership. Were the Austrians able to empower an upstanding contemporary rabbinic leadership sensitive to women’s needs, Perl reasoned, a rabbinically-sanctioned halakhic solution to the problem of an *'agunah* married to a convert could be found. Although the Austrian censor rejected the publication of *Über die Modifikation der Mosaischen Gesetze*, the manuscript is illustrative of the ideological concerns of moderate *maskilim* in Central and Eastern Europe who wanted to participate fully in civil society while retaining the authority of Jewish law.<sup>5</sup>

The predicament of the *'agunah* married to a convert, Perl claimed, spurred him to write the treatise,<sup>6</sup> which included an analysis of three other subjects on his *maskilic* agenda: the permissibility of shaving the male beard, the question of the legality of Jews’ extending credit to Jews and Christians, and the obligation to release debts in the Sabbatical Year. Perl’s focus on Jewish divorce and conversion, costume, and economic behavior are symbols of the areas of premodern Jewish life *maskilim* felt challenged the integration of the massive Polish Jewish population into the modern Austrian Empire.<sup>7</sup> Taken together, the issues Perl historicized in his treatise represented the cultural insularity that was an impediment to Galician Jewry’s modernization, products of what David Sorkin has called the “baroque-ness” of early modern Ashkenazic Jewish culture.<sup>8</sup> The Polish Jews now living under the Austrian state valorized the exclusive study of the Talmud and its commentators, disregarded the grammar and philology of the Hebrew language, dis-

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between keeping the doors of repentance open and making an example of the convert by meting out harsh punishments against him. See Rashi’s famous responsum regarding the marital status of women whose husbands had been forcibly converted during the Crusades, cited in Jacob Rader Marcus, *The Jew in the Medieval World* (Atheneum, 1938), pp. 301–302; and the discussion in Jacob Katz, “Though He Has Sinned, He Remains an Israelite,” *Tarbiz* 27 (1958): pp. 203–217. For the early modern period, see Elisheva Carlebach, *Divided Souls: Converts from Judaism in Germany, 1500–1750* (New Haven, CT: Yale University Press, 2001), pp. 25, 138–139.

4. Joseph Perl Archive, folder 144, JNULA. Written primarily in Gothic German, with occasional use of Latin characters and Hebrew citations, the manuscript is 83 pages with an introduction. The only mention I have found of the text is by Avraham Rubinstein, who noted that the manuscript was indicated in Philip Koffler’s appendix to the Perl archive. See [Joseph Perl] *Über das Wesen der Sekte Chassidim*, Avraham Rubinstein, ed. (Jerusalem, 1977), p. 4, n. 17. See, too, Joseph Perl Archive, folder 131, “Comments or corrections to the book dealing with Jewish Law,” and folder 38.7075.

5. The censor rejected the manuscript on February 17, 1831. See number 6 in the list of manuscripts compiled as an appendix to Perl’s Archives by Philip Koffler of Tarnopol during the interwar years, Joseph Perl Archive, JNULA, appendix.

6. Perl, unpaginated introduction.

7. Scholars estimate that as a result of the first and third partitions of Poland, roughly 225,000 Jewish souls were absorbed into the Empire, comprising between nine and ten percent of the population. See Horst Glassl, *Das Österreichische Einrichtungswerk in Galizien (1772–1790)* (Wiesbaden: In Kommission bei Otto Harrassowitz, 1975), p. 191 and Piotr Wróbel, “The Jews of Galicia Under Austrian–Polish Rule, 1869–1918,” *Austrian History Yearbook XXV* (1994), p. 99.

8. On the term “baroque-ness,” see David Sorkin, “From Context to Comparison: The German Haskalah and Reform Catholicism,” *Tel Aviver Jahrbuch für deutsche Geschichte*, XX (1991), 23–58.

trusted non-Jewish sources of knowledge, and earned their livelihoods primarily through petty trade and leasing.<sup>9</sup> I have chosen to focus this article on Perl's treatment of divorce law because, as Perl knew, the unilateral nature of the *halakhah* on divorce made it, alone of the issues he historicized in his treatise, impervious to the secularizing aims of the absolutist state, which endeavored to bring Jewish law under its aegis. *Über die Modifikation* therefore provides a lens into the dualistic consciousness of the moderate *maskilim*, who simultaneously sought to liberate the Jewish individual from the strictures of the rabbinate that they deemed unreasonable while retaining and defending the principles of rabbinic authority.<sup>10</sup>

Despite the putative<sup>11</sup> gentile audience of the treatise and in contrast to earlier vernacular apologetic works on Jewish law and custom, Perl's tract was not a response to gentile provocation or denunciation.<sup>12</sup> *Über die Modifikation* was a

9. Perl decried what he believed to be the narrow economic profile of Polish Jewry. He argued that economic pressures over time, both restrictions on the part of gentile society and the decision sanctioned in the Babylonian Talmud (*BT Ketubot 105a*) that permitted teachers of Torah to be compensated not for teaching, but for their loss of time, encouraged the rabbinate to withdraw from the world. This retreat from society's economic demands led, in time, to Polish Jewry's devotion to Talmud, in great part because they were incapable of being gainfully employed doing anything else. Perl, pp. 69–75. On the aesthetic element of the Haskalah's rejection of certain aspects of early modern Ashkenazic culture, see Dan Miron, *A Traveler Disguised* (New York, 1973) and Mordecai Levin, *ʿArkhei ha-ḥevrah ve-ha-kalkalah be-idiologiyah shel tekufat ha-haskalah* (Jerusalem, 1975).

10. On the dualism of the Haskalah, see Shmuel Feiner, "Toward a Historical Definition of the Haskalah," *New Perspectives on the Haskalah*, Shmuel Feiner and David Sorkin, eds. (London: The Littman Library of Jewish Civilization, 2001), pp. 184–219.

11. I use the word "putative" because any work treating a Jewish subject would have to pass inspection by the censor of Hebrew books, most of whom were Jews or former Jews, individuals capable of reading some of Perl's footnotes, which were penned entirely in Hebrew. While Count Joseph Sedlnitzky ran the Empire's "Supreme Police and Censorship Office" from 1817–1848, the Lemberg censor was Peter (né Joseph) Tarler, a teacher of the *maskil* Isaac Erter before his conversion; the Viennese censor was Joseph Berger, who became Gabriel upon his conversion. See Raphael Mahler, *Hasidism and the Jewish Enlightenment: Their Confrontation in Galicia and Poland in the First Half of the Nineteenth Century* (Philadelphia and New York: The Jewish Publication Society of America, 1985): pp. 97, 364 n. 107, and 357 n. 112. The Jewish origin of the clerks in the Imperial censorship office raises a host of complicated issues regarding the way in which converts in Austrian Galicia shaped the image of Jews and Judaism produced in vernacular works, a topic which is beyond the scope of this article. For a discussion of these issues in early modern Germany, see Carlebach, *op. cit.*

12. With its attendant description and discussion of several points of Jewish legal behavior and custom, *Über die Modifikation* evokes the seventeenth-century apologetic tracts of Menasseh ben Israel, Simone Luzzatto, and Leone da Modena, as well as Mendel Lefin's late eighteenth-century French essay to the Polish *Sejm* in defense of the Talmud, and perhaps the most famous eighteenth-century example, Moses Mendelssohn's rejoinder to Johann Carper Lavater and August Crantz in *Jerusalem*. On Menasseh ben Israel's *Vindiciae*, see Jonathan Israel, *European Jewry in the Age of Mercantilism 1550–1750* (Oxford, 1985); on Simone Luzzatto, see "A Discourse on the Status of the Jews, and in Particular of those Living in the Illustrious City of Venice," cited in Benjamin Ravid, *Tolerance and Economics in Venice*; on Leone Modena, see Mark Cohen, "Leone da Modena's *Riti*: A Seventeenth Century Plea for Social Toleration of the Jews," in *Essential Papers on Jewish Culture in Renaissance and Baroque Italy*, David Ruderman, ed. (New York, 1992): 429–479; on Lefin, see Nancy Sinkoff, "Strategy and Ruse in the Haskalah of Mendel Lefin of Satanów (1749–1826)," in *New Perspectives on the Haskalah*, Shmuel Feiner and David Sorkin, eds. (London: Littman Library of Jewish Civilization, 2001): pp. 86–102; on Mendelssohn, see *Jerusalem*, trans. Allan Arkush (University, AL: 1973) and Alexander Altmann, *Moses Mendelssohn: A Biographical Study* (London: 1973).

voluntary proposal written by a *maskil* as part of his struggle to refashion Ashkenazic Jewish life, a pro-active pamphlet focused on the internal dialectic of Jewish legal culture. Perl believed that if he could successfully prove that Jews had adapted and modified their religious behavior based on time and circumstances (*Zeit und Umstände*) and that much of what was currently practiced was due to customary and not revealed law, then contemporary Galician Jews, without impugning their commitment to rabbinic authority and law, could modify certain contemporary practices. Perl's effort to leave intact the foundation of rabbinic law while removing what he believed to be pietist additions illustrates that he defined himself as a defender of rabbinic tradition, his vehemence against its supererogation notwithstanding.<sup>13</sup> He claimed that he wrote the treatise not as a means to obliterate the rabbinate and its authority, but to render it more flexible, to make it more attuned to the challenges of contemporary life: "The purpose of the present work is only to prove that Jewish laws—particularly the ceremonial—always underwent modification, and that the teachers in the past always made a consistent effort to adjust them to the *spirit of the times* (*Zeitgeist*)."<sup>14</sup> Historicizing Jewish law, Perl urged its modification, yet simultaneously defended rabbinic prerogative. Perl's reluctance to subordinate all of Jewish law under the tutelage of the Habsburg absolutist state underscores the necessity of examining, region by region, the Jewish "response to modernity," for both his treatise and its rejection for publication illuminate the distinctiveness of the Galician-Jewish encounter with the modern state.

## II

Known primarily as the author of the brilliant anti-Hasidic satire, *Megalleh Temirim* (*Revealer of Secrets*) (1819), an epistolary novel aimed at exposing what the *maskilim* believed was the stupidity of Galicia's Hasidim, Joseph Perl was also one of the most articulate spokesmen of the cause of Jewish modernity in Austrian Galicia in the early nineteenth century.<sup>15</sup> Like other *maskilim* in Galicia, Perl saw his campaign against the Hasidim as part of an effort to remake and revitalize the Jewish community. He founded and directed, mostly at his own expense, a modern Jewish school that educated both boys and girls, a "reformed" synagogue, a library, and an archive.<sup>16</sup> He wrote numerous memoranda to both the central au-

13. Among *maskilim* in the province there was a broad spectrum of attitudes toward Jewish law, ranging from Nachman Krochmal's appropriation of Hegelian idealism to defend rabbinic tradition to Joshua Heschel Schorr's articulate commitment to Reform Judaism. See Jay M. Harris, *Nachman Krochmal: Guiding the Perplexed of the Modern Age* (New York: New York University Press, 1991) and Ezra Spicehandler, "Joshua Heschel Schorr: Maskil and East European Reformist," *HUCA Annual*, 31 (1960): 181–222; 40–41 (1969–70): 503–528.

14. Perl, p. 82. Emphasis is mine. All translations of Perl's German and Hebrew are mine.

15. Biographical material on Perl can be found in N. M. Gelber, "The History of the Jews of Tarnopol," (Hebrew), *Enšiklopediyah shel Galuyot* (Tarnopol), Phillip Krongruen, ed. (Jerusalem, 1955): 21–108; on Perl's anti-Hasidism, see Mahler, *Hasidism and the Jewish Enlightenment*, *op. cit.*; Avraham Rubinstein, "Haskalah and Hasidism: Joseph Perl's Activities," in *Bar-Ilan*, 12, (1974): 167–178; Shmuel Werses, "Hasidism in the Perspective of Haskalah Literature: From the Polemic of Galician *Maskilim*" (Hebrew), in *Megamot ve-šurot be-Sifrut ha-Haskalah* (Jerusalem, 1990): 91–109.

16. On his activities as an educator, see Philip Friedman, "Joseph Perl as an Educational Activist and His School in Tarnopol" (Yiddish), *YIVO bleter*, 31–32 (1948): 131–190.

thorities in Vienna and the provincial government in Lemberg to enlist the state in his mission to transform Galician Jewry through the modernization of Jewish education, standardization of the rabbinate, and state supervision of kosher slaughtering.<sup>17</sup> In *Über die Modifikation*, Perl took a different tack: he engaged his readers in a lengthy discussion of the historicity of Jewish law, with a particular focus on the legislation surrounding a Jewish divorce. In his desire to “modify Mosaic Law,”<sup>18</sup> Perl not only articulated the struggle of *maskilim* in the Austrian partition of Poland to make traditional Judaism compatible with the modernizing absolutist state, but demonstrated the central role of historical consciousness in that effort.

Most scholarly assessments of the emergence of historical consciousness among modernizing European Jews have emphasized the essential difference between East European *Hokhmat Yisra'el* and Prussian *Wissenschaft des Judentums*, characterizing the former as a traditional movement of Haskalah-oriented autodidacts who directed their traditionalist works solely towards a Jewish audience because they were uninterested in the quest for civic integration.<sup>19</sup> The historical method in *Über die Modifikation* appears to support this distinction. In contrast to Isaac Markus Jost and Leopold Zunz, and to other exponents of *Wissenschaft des Judentums*, Perl's treatise relied exclusively on Jewish sources. Like Solomon Judah Rapoport (SHIR), Perl's Galician compatriot and personal candidate to fill the position of the head of the rabbinical court in Tarnopol in the late 1830s, Perl felt no need to consult sources not penned in Hebrew.<sup>20</sup> Citations from the Bible, the Talmuds, Maimonides's *Mishneh Torah*, *Sefer Hīnukh ha-Miṣvah*, and the

17. Raphael Mahler published many of these memoranda in the original Yiddish version of *Haskole un ḥsides: der kampf tsvishn haskole un ḥsides in galitsye in der ershter helf fun nayntsnt yorhundert* (New York: Yivo Institute, 1942), but they have been neglected by most of the historiography on East Central European Jewry. See, too, Raphael Mahler, “Joseph Perl's Memo to the Authorities Regarding the System of Appointing Rabbis, Ritual Slaughterers and Circumcisers,” *Sefer ha-yovel mugash likhvod Dr. N. M. Gelber le-regel yovelo ha-shiv'im*, Raphael Mahler, Dov Sadan, and Israel Klausner, eds. (Tel Aviv: Olameinu, 1963): pp. 85–104.

18. Perl's use of the term “Mosaic” to connote Judaism did not imply an essentialist biblicist rejection of the Talmud or rabbinic tradition, as shall be demonstrated in this paper. Michael Brenner has argued that *maskilim*, early reformers, and practitioners of *Wissenschaft des Judentums* writing early in the nineteenth century used the terms “Jews,” Israelites,” and “Mosaites” interchangeably. See Michael A. Brenner, “Between Haskalah and Kabbalah: Peter Beer's History of Jewish Sects,” *Jewish History and Jewish Memory: Essays in Honor of Yosef Hayim Yerushalmi*, John Efron, Elisheva Carlebach, and David Myers, eds. (Hanover and London: Brandeis University Press, 1998), p. 403, n. 25.

19. Ismar Schorsch, *From Text to Context: The Turn to History in Modern Judaism* (Hanover and London: UP of New England, 1994) and David Myers, *Re-Inventing the Jewish Past: European Jewish Intellectuals and the Zionist Return to History* (New York: Oxford University Press, 1995), p. 25–29. Shmuel Feiner distinguishes between historical consciousness and modern historiography and argues for the constitutive role historical consciousness played in the formation of the ideology of the Jewish Enlightenment. See Shmuel Feiner, *Haskalah ve-historiyah: toldotav shel hakarat-‘ever yehudit modernit* (Jerusalem: Mercaz Zalman Shazar, 1998), particularly chapter one.

20. See Gerson D. Cohen's assessment of the historical method of Solomon Yehudah Rapoport (SHIR), Perl's contemporary, in “The Reconstruction of Gaonic History,” introduction to Jacob Mann, *Texts and Studies in Jewish History and Literature*, I (KTAV, New York, 1972), pp. xiii–xcvi. See also Isaac Barzilay, *Shlomo Yehudah Rapoport [SHIR] (1790–1867) and His Contemporaries* (Jerusalem: The American Academy for Jewish Research, 1969) and Simon Bernfeld, *Toldot SHIR [R. Shelomoh Yehudah Rapoport]* (Berlin: Zevi Hirsch bar Yizhak Izkowski, 1898). See also the collection of SHIR's

*Shulhan Arukh* supply the footnote apparatus—a signature of Perl’s literary style—at the bottom of the treatise’s pages. Although the treatise is not daring methodologically and strives to make its case for the dynamic mutability of Jewish law from within the internal sources of Jewish tradition, *Über die Modifikation*, like all of Perl’s other writings to Habsburg officials, was spurred by his politics: the overarching desire to make the Jews unexceptional subjects of the Habsburg Empire.<sup>21</sup> Protesting at the end of the treatise that it was not the place to specify exactly how this should be done, Perl nonetheless urged the government to appoint a group of Jews, selected by the Jewish community itself, who could advise the government on religious matters in order to show that there were no halakhic obstacles to modifying Jewish law where it appeared to be an impediment to the integration of the Jewish community into the life of the state.<sup>22</sup> “In this manner,” Perl suggested, “the Jews could become useful members of the state and even happier” (“*nützliche Glieder des Staates und eben dadurch glücklicher werden könnten*”).<sup>23</sup> *Über die Modifikation* reveals Perl’s desire to promote the civic emancipation of Galician Jewry, which he felt was only possible if it went through a process of self-reform not unlike the *quid pro quo* that characterized the German—Jewish engagement with the emancipatory struggle.<sup>24</sup> Like the founding fathers of *Wissenschaft des Judentums* in Prussia, Perl adduced history in his commitment to reforming Judaism, modifying Jewish law, and transforming Galician Jewish society.

Perl had already demonstrated his maskilic interest in disseminating historical knowledge in *Luah ha-Lev (The Heart’s Calendar)*, the second section of the almanacs, *Zir Ne’eman (Faithful Messenger)*, which he published between 1814–1816.<sup>25</sup> One section of the calendars was entitled *Zikhron Yemot ‘Olam* (“History”),

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rabbinic biographies penned between 1829–1832 and republished in *Toledot* (Warsaw, 1913). On Hebrew creativity in the Habsburg lands from the 1820s onward, see Bernhard Wachstein, *Die hebraische Publizistik in Wien* (Vienna, 1930), pp. 26–31.

21. On the politics of the *maskilim*, see David Biale, *Power and Powerlessness in Jewish History* (1986), particularly chapter four; Shmuel Feiner, “The Rebellion of the French’ and ‘The Freedom of the Jews’—the French Revolution in the Image of the Past of the East European Jewish Enlightenment” (Hebrew), *Ha-mahpekhah ha-šarfatiit ve-rishumah*, Richard Cohen, ed. (Jerusalem, 1991), pp. 215–247; Eli Lederhendler, *The Road to Modern Jewish Politics: Political Tradition and Political Reconstruction in the Jewish Community of Tsarist Russia* (New York: Oxford University Press, 1989).

22. Perl, p. 80.

23. Perl, unpaginated introduction.

24. On the *quid pro quo* implicit in the emancipatory struggle in Prussian lands, see David Sorkin, *The Transformation of German Jewry, 1780–1840* (New York: Oxford University Press, 1987) and Steven M. Lowenstein, *The Berlin Jewish Community: Enlightenment, Family, and Crisis, 1770–1830* (New York: Oxford University Press, 1994). Whereas political emancipation occurred unilaterally in France (if after many months of debate), most of European Jewry traversed a slow, sometimes tortuous, path to political emancipation, in which the separation of Jewish law into private and public realms was hardly clear. See Pierre Birnbaum and Ira Katznelson, eds., *Paths of Emancipation: Jews, States, and Citizenship* (Princeton, NJ: Princeton University Press, 1995).

25. Perl’s didactic commitment to imparting secular knowledge in his calendars illustrates his embrace of Naftali Herz Wessely’s challenge to modernizing Jews to expand the traditional curriculum of Ashkenazic Jewry. Wessely’s famous maskilic pamphlet, *Divre shalom ve-emet*, asserted that the

and included articles on general history, including the founding of Rome and Vienna, and the discovery and invention of gunpowder, the cannon, paper, printing, and lightening rods.<sup>26</sup> Perl's next work, *Über das Wesen der Sekte Chassidim (Regarding the Essence of the Hasidic Sect)* (1816), was far more ambitious and exhibited his interest in the historicity of Jewish law.<sup>27</sup> It sought to expose the fallacies of the new pietists through an examination of their own texts and by outlining a theory of universal religious development that could be applied to Judaism. The first stage represented the innocent consolidation of the faith; the second stage saw the penetration of mythological beliefs and the subsequent debasement of the religion; purification of the religion from mythology and mysticism was attained in

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curriculum of early modern Ashkenazic Jewry, with its exclusive focus on Jewish texts, particularly the Talmud, was incomplete without a grounding in secular knowledge, such as grammar, mathematics, geography, and history. Religious education (what he called *torat ha-'elohim*) was insufficient, Wessely argued, without *torat ha-'adam* ("secular knowledge"); worse, traditional Ashkenazic Jewish education that lacked a secular foundation made Jewish children incapable of comprehending their own textual tradition. Naftali Herz Wessely, *Divre shalom ve-'emet* (Berlin, 1782).

26. Mahler, *Hasidism and the Jewish Enlightenment*, pp. 149–167.

27. Perl shared his manuscript on the Hasidim with Peter Beer (1758–1838), a Bohemian *maskil* who later published *History, Doctrine, and Beliefs of All Once-Existing and Still Existing Religious Sects of the Jews and of the Secret Teachings or Kabbalah* (1822–1823), and with Isaac Marcus Jost, whose *History of the Israelites* (Berlin, 9 volumes, 1820–1829), in turn, informed the work of Leopold Zunz and later, Heinrich Graetz. See Brenner, *op. cit.* Perl's treatise illustrates the penetration of historical consciousness and reformist tendencies in eastern Europe simultaneous with the development of *Wissenschaft des Judentums* in Prussia. Although unpublished, Perl's treatment of Hasidism influenced subsequent analyses of Jewish "sectarianism," pietism, and Judaism's historical development.

Perl apparently sought the advice of his former student, Bezalel Stern, on his manuscript treating Jewish law, as he had with his German anti-Hasidic treatise. Written at roughly the same time, or even before, the work of Beer, Jost, and Zunz, *Über die Modifikation* affirms Michael Meyer's criteria of defining reform in the early nineteenth century not as a crystallized movement with a doctrinal essence, but as a purposeful commitment to reforming Judaism, rendering it more flexible, and granting pride of place to individual conscience as emblematic of the spirit of the new age. Perl's treatise also anticipates the writings of Michael Creizenach, Joshua Heschel Schorr, Leopold Löw, and Abraham Geiger. Isaac Marcus Jost's *Geschichte der Israeliten*, 9 volumes, appeared in Berlin in 1820–1829 and Leopold Zunz published *Die gottesdienstlichen Vorträge der Juden* in 1832. Creizenach's work, *Shulchan Aruch oder encyclopädische Darstellung des Mosaischen Gesetze*, appeared between 1833–1840; Löw preached his sermon, "Die Reform des rabbinischen Ritus auf rabbinischem Standpunkte," in 1838. It is collected in his *Gesammelte Schriften*, Immanuel Löw, ed., Band I (Hildesheim, New York: 1979), pp. 16–19. On Stern and his editorial help, see *Über das Wesen*, see *op. cit.*, p. 6; Michael Stanislawski, *Tsar Nicholas I and the Jews* (Philadelphia and New York: The Jewish Publication Society of America, 1983), pp. 58, 78, 93–94; Steven J. Zipperstein, *The Jews of Odessa: A Cultural History, 1794–1881* (Stanford, CA: Stanford University Press, 1985); N. M. Gelber, *Encyclopedia of the Jewish Diaspora: The History of the Jews of Tarnopol (Hebrew)*, Phillip Krongruen, ed., (Jerusalem, 1955), p. 91; Philip Friedman, "The First Battles Between the Haskalah and Hasidism (Yiddish)," *Fun noentn ovar (From the Recent Past)* IV (1937), pp. 259–73. On Jost, Zunz, et al., see Ismar Schorsch, "From Wolfenbüttel to Wissenschaft: The Divergent Paths of Isaak Marcus Jost and Leopold Zunz," in *From Text to Context: The Turn to History in Modern Judaism*, ed., Ismar Schorsch (Hanover and London: Brandeis University Press, 1994), pp. 233–54; and Schorsch, "Scholarship in the Service of Reform," *op. cit.*, pp. 303–333. Perl's correspondence with Jost is mentioned in his letter to Judah Leib Mieses, May 5, 1828, in Phillip Friedman, "The First Battles," pp. 272–273. See also Michael A. Meyer, *Response to Modernity: A History of the Reform Movement* (New York: Oxford University Press, 1988).

the third phase.<sup>28</sup> For Perl, Isaac Alfasi (the *RIF*), Maimonides, and Joseph Karo personified the historical figures within Judaism who, in their works of codification, had cleansed earlier Judaism of its mystical accretions; later rabbinic writers expanded on these earlier codes and “adapted them to the *spirit of the times*, especially with regard to civil circumstances.”<sup>29</sup> The phrase “spirit of the times” is the critical marker of Perl’s historical consciousness and a leitmotif in *Über die Modifikation der Mosaischen Gesetze*.

### III

“The spirit of the times” that informed Perl’s worldview and treatise on Jewish law was the cameralist ethos of the centralizing Habsburg state embodied by Joseph II’s Empire-wide *Toleranzpatenten* (Bohemia: October 18, 1781; Silesia: December 15, 1781; Lower Austria: January 2, 1782; Moravia: February 3, 1782; Hungary: March 31, 1783; Galicia: May 7, 1789) that he initiated after becoming sole regent in 1780. Committed to a program of reforming absolutism, Joseph II’s statecraft was indebted to cameralist theory, which advocated rationalizing and professionalizing the state’s bureaucracy, creating a secular civil realm, and subjugating the clergy to its authority.<sup>30</sup> Joseph II sought to integrate the Jewish community into the Empire by subsuming Jewish law under the civil law of the state; redirecting the economic behavior of the Jews away from lease-holding and trade and towards agriculture and artisanship; and broadening the educational program in Jewish schools. Jewish schools were required to use German, now the official state language, and to provide instruction in secular subject matter, such as arithmetic and geography, which was necessary for participation in civil society.<sup>31</sup> The edicts embodied Joseph II’s activist politics, which sought to strengthen and modernize the state by dissolving all prior medieval corporate privileges and institutions in order to make the peoples of his empire “useful” and loyal subjects. Although the majority of the edicts were issued within a two-year period between 1781–1783, the Emperor delayed promulgation of the *patent* for Galicia because of the unusual demographics of the province, which was home to a larger, poorer, and more traditional Jewish population than all the other Habsburg territories combined. Moreover, the provincial authorities, embodied by the Galician Court Chancellery that represented noble interests, resisted Joseph II’s effort to equalize the

28. Feiner, *Haskalah Ve-historiyah*, p. 135.

29. Joseph Perl, *Über das Wesen der Sekte Chassidim*, p. 65. Emphasis is mine. For Perl, Hasidic pietism represented a regression in Judaism’s historical development.

30. See Adam Zólatowski, *Border of Europe: A Study of the Polish Eastern Provinces* (London: Hollis & Carter, 1950), p. 71; Roy Porter, *The Enlightenment* (London: Macmillan Education Ltd., 1990), p. 29; Joachim Whaley, “The Protestant Enlightenment in Germany,” in Roy Porter and Mikuláš Teich, eds., *The Enlightenment in National Context* (Cambridge: Cambridge University Press, 1981), p. 223; Robert A. Kann, *A History of the Habsburg Empire, 1526–1918* (Berkeley, CA: University of California Press, 1974), p. 173–177.

31. Artur Eisenbach, *The Emancipation of the Jews in Poland, 1780–1870*, Antony Polonsky, ed., Janina Dorosz, trans. (London: Basil Blackwell in association with the Institute for Polish-Jewish Studies, 1991), p. 55; Mahler, *Hasidism and the Jewish Enlightenment*, pp. 3–6; and Raphael Mahler, *Divre yeme Yisra’el*, 1:4 (Rehavia: Worker’s Library, 1956), pp. 69–71.

privileges and duties of the Jews.<sup>32</sup> Notwithstanding the obstruction of the provincial Chancellory, the final version of the *patent* reflected Joseph II's enlightened principles.<sup>33</sup> Its preamble stressed parity between the state's treatment of Jew and Christian, and emphasized the goal to renounce

. . . the difference (*Unterschied*) that the legislator has observed between Christian and Jewish subjects and to bestow upon the Jews living in Galicia all of the benefits and privileges that our other subjects have to enjoy. In general, Galician Jewry, which has now also come of age in its rights and duties, should from now on be regarded in the same way as other subjects; this holds especially true for regulations regarding religious practices, education, communal administration, population, the political and legal authority, and the duties towards the state (*Pflichten gegen den Staat*).<sup>34</sup>

The *patent* for Galicia did not innovate in the realms of marriage and divorce, but, rather, built on earlier legislation informed by the state's drive toward centralization. On January 16, 1783, Vienna issued a new *Ehepatent* (*Marriage Edict*), which produced a hybrid law for the performance and dissolution of marriage. The state was to control marriage, which was defined as civil, but was buttressed by religious ceremonies, functionaries, and recordkeepers, a blurry compromise between cameralism and tradition. Rather than clarifying the law, the *Ehepatent* created a gray area between private and public in the Habsburg Empire and is illustrative of its incomplete state-building.<sup>35</sup> Among other provisions of the 1783 *patent* was halving the marriage tax for Jews working on the land.<sup>36</sup> On May 27, 1785, a provisional general *patent* for Galicia was issued, with a more progressive, less onerous tax burden, including the elimination of the marriage tax for Jews living on the land. The provisional *patent* abolished Empress Maria Theresa's Jewish Directorate as the state endeavored to subject the rabbinate and its scribes and courts to state control.<sup>37</sup> Marriage contracts, and divorce proceedings, too, were

32. Polish noble landlords in Galicia resented and opposed Austrian centralization that threatened their economic power, and strove to retain control over the peasants and Jewish administrators living on their lands. See Glassl, *op. cit.* and N. M. Gelber, "The History of the Jews of Tarnopol," in *Enšiklopediyah shel galuyot: Tarnopol*, Phillip Krongruen, ed., vol. 3 (Jerusalem, 1955), p. 41.

33. Samuel T. Myovich, "Josephism at Its Boundaries: Nobles, Peasants, Priests and Jews in Galicia, 1772–1790" and Joseph Karniel, "Das Toleranzpatent Kaiser Joseph II. Für die Juden Galiziens und Lodomeriens," *Jahrbuch des Instituts für deutsche Geschichte* XI (1982), pp. 55–91.

34. Published in Karniel, p. 75.

35. Lois C. Dubin, "Les Liaisons Dangereuses. Mariage Juif et État Moderne à Trieste au XVIIIe Siècle," *Annales: Histoire, Sciences Sociales* 49.5 (Septembre-Octobre 1994): 1139–1170 and also Dubin's *The Port Jews of Habsburg Trieste: Absolutist Politics and Enlightenment Culture* (Stanford, CA: Stanford University Press, 1999), pp. 174–197.

36. Mahler, *Hasidism and the Jewish Enlightenment*, pp. 262–268.

37. Empress Maria Theresa had promulgated the Galician Jewish Ordinance in 1776 in order to begin formal rule of her realm's new subjects, but she had little real interest in the Jews, except to ensure that they remain an important source of tax revenue and settled in the eastern part of the partitioned territory. Her Ordinance reaffirmed medieval Jewish privileges, for example, self-government and communal autonomy, and introduced a greater measure of government supervision of the Jewish

to become a matter solely for the civil courts. The problem with this bureaucratic effort at standardization was not merely the practical difficulties of centralizing and codifying a new legal system in Galicia under the authority of Vienna, but the formidable obstacles presented by Jewish law to the very bifurcation into strictly religious and civil spheres that the Habsburgs hoped to effect—a conundrum throughout Europe publicly articulated during the meetings of the Paris Sanhedrin in 1808.<sup>38</sup> Moreover, there was disagreement between the central and regional authorities as to whether or not the provisions of the 1776 Ordinance had been effective. The provincial authorities argued that a separation between civil and religious had occurred. Vienna demurred, and decided to let the rabbinic courts remain open, apparently waiting for Moses Mendelssohn to complete a massive codification project of Jewish law.<sup>39</sup> The 1789 *patent* did not alter the *Ehepatent* significantly, but removed all levies on Jewish marriages. The requirement that married couples pass a German exam in order to be registered civilly remained on the books.<sup>40</sup>

Whereas the traditional Jewish community in Galicia regarded Joseph II's efforts as an attack on their way of life, and responded, when they could, by non-compliance with the edicts,<sup>41</sup> the Emperor found allies within the Jewish community among the small, but important, group of self-consciously modernizing Jewish *intelligenti*, the *maskilim*. Penned long after Joseph II's death in 1790, *Über die Modifikation der Mosaischen Gesetze* illuminates how Perl's politics were indelibly shaped by the optimistic alliance formed between the reforming absolutist state and the *maskilim* in the late eighteenth century.

Perl's treatise on Mosaic Law tried to locate, through historicizing Jewish law, the source of Galician Jewry's aversion to the cameralist program of the state. Although the most conspicuous opponents of acculturation in Perl's view were the Hasidim, *Über die Modifikation der Mosaischen Gesetze* was not explicitly di-

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community than was present under Polish rule, including the creation of a Jewish Directorate controlled by the rabbinate and supervised by government officials. Taxes on kosher meat, candles, marriage, and toleration were levied. Nonetheless, there was little significant change in the lives of the Jews of Galicia under Maria Theresa's rule. See Arnold Springer, "Enlightened Absolutism and Jewish Reform: Prussia, Austria, and Russia," in *California Slavic Studies* XI (1980), pp. 237–267 and Glassl, *op. cit.* The provisional *patent* is reprinted in Karniel, pp. 72–74.

38. The first three questions posed to the notables gathered to give a Jewish imprimatur to Napoleon's and the French state's delimiting of Jewish law to the private realm included a specific inquiry into Jewish family law. On the questions of exogamy and divorce, the notables of the Sanhedrin dissimulated. They assured Napoleon that Mosaic Law did not proscribe intermarriage and that a Jewish divorce was only valid if affirmed by the state's civil law. See M. Diogene Tama, trans., *Transactions of the Parisian Sanhedrin, or Acts of the Assembly of Israelitish Deputies of France and Italy* (London [New York]: University Press of America, 1807), pp. 150–156; 197–207; and Simon Schwarzfuchs, *Napoleon, the Jews and the Sanhedrin* (London, 1979), pp. 69, 203 n. 22.

39. Myovich, p. 275. No other European Jew in the eighteenth century had the stature as philosopher and flawless German stylist, as well as intercessor for the Jewish community, as did Moses Mendelssohn. See Altmann, *op. cit.*, pp. 288–295, for Mendelssohn's well-known mediation of the "burial controversy" for the Jews of Mecklenburg-Schwerin.

40. See paragraph 13 of the *patent*, reprinted in Karniel, p. 77.

41. Few Jewish parents allowed their children to attend the new Jewish schools founded in 1788 by the enlightened Prussian Jew, Herz Homberg, and the schools were subsequently closed in 1806.

rected at Hasidic custom.<sup>42</sup> Rather, it was devoted to exposing the general tendency within Ashkenazic jurisprudence—the legal tradition of northern French and German Jews that was the inheritance of Polish and Galician Jews—of viewing custom as tantamount to *halakhah*. Perl’s text surveys and analyzes the pietist penchant indigenous to medieval Ashkenazic Jewish culture well before the efflorescence of Hasidism in the mid-eighteenth century.<sup>43</sup> Explaining why he had undertaken a long treatise on the modification of Jewish law in order to address the dilemma of a male convert’s obligation to grant his former wife a *get*,<sup>44</sup> Perl emphasized his effort to separate the chaff of “variable” custom from the wheat of

42. Perl, and others in his circle, such as Isaac Michael Monies (d. 1844) and Judah Leib Mieses (d. 1831), had long been alarmed by the seemingly endless creation and performance of new religious customs among Galician Hasidim. Monies, the first Talmud teacher in Perl’s school in Tarnopol, wrote a maskilic *responsum* in 1825 critical of the contemporary Hasidic custom of lighting candles on Lag ba-omer in memory of R. Shimon bar Yoai, and Judah Leib Mieses devoted *Kinat ha-emet (Truth’s Zeal)* entirely to the issue of customary law. See Isaac Michael Monies, “*Responsum* on Lighting Candles on Lag ba-omer in Memory of R. Shimon bar Yohai,” *Yerushalayim* (Żółkiew, 1844), pp. 9–21 and Judah Leib Mieses, *Kinat-ha-emet* (Vienna, 1828). On Mieses, see Feiner, *Haskalah ve-historiyah*, pp. 137–144. Perl himself waged a battle from 1822 forwards against the custom of collecting money in the name of R. Meir Ba’al ha-Nes, a second-century rabbinic figure whose grave is believed to be on the shores of the Kinneret. Perl viewed the proliferation of collection boxes as evidence of the relenting debasement of Galician Jewry by Hasidic *ṣaddikim* (*rebbe*s), the new charismatic leaders of the Jewish community, and wrote a pamphlet to the Austrian authorities, *Katit la-ma’or (Beaten Oil for the Eternal Light)*, against the practice. Because the collection boxes were ultimately removed, Perl felt that his campaign against superstitious *minhag* (custom), abetted by the Austrian government, was successful. See Avraham Rubinstein, “Joseph Perl’s Pamphlet, *Katit la-ma’or*,” *ʿAlei sefer*, 3 (1977), pp. 140–157.

On collection boxes for R. Meir Ba’al ha-Nes among the Jews of eighteenth-century Morocco, see Moshe Idel, “The Kabbalah in Morocco,” in *Morocco: Jews and Art in a Muslim Land*, Vivian Mann, ed. (New York, 2000), p. 150, catalog number 45. Dr. Vivian Mann graciously shared this reference with me.

43. For a fuller discussion of the relationship between life, custom and law in medieval Ashkenaz, see Elimelech Westreich, “The Ban on Polygamy in Polish Rabbinic Thought,” *Polin: The Jews in Early Modern Poland*, Vol. 10, Gershon David Hundert, ed. [London: The Littman Library of Jewish Civilization, 1997], p. 68; Haym Soloveitchik, “Religious Law and Change: The Medieval Ashkenazic Example,” *AJS Review* XII.2 (Fall, 1987), pp. 205–221; and Avraham Grossman and Israel Ta-Shma, “Law, Custom and Tradition among Ashkenazic Jews in the Eleventh and Twelfth Centuries,” *Sidra* 3, (1987), pp. 85–161, in which they argue that ancestral custom was the decisive component in determining behavior for Ashkenazic Jews already in the medieval period. Ta-Shma writes that the Jews of Ashkenaz believed “Our ancestral custom is Torah.” For a discussion of customary vs. codified law in early modern Italy, see Talya Fishman, *Shaking the Pillars of Exile: ‘Voice of a Fool,’ an Early Modern Jewish Critique of Rabbinic Culture* (Stanford, CA: Stanford University Press, 1997), particularly p. 196 n. 58.

44. Perl evidently saved a “*Responsum* over a governmental question whether there is a solution to the problem of a convert who has divorced his Jewish wife or a Jew who has divorced his non-Jewish wife without being bound by the customs that have governed divorce law up until now,” by Solomon Judah Rapoport, in his archive. See the appendix by Phillip Koffler of Tarnopol, item number 37, JNULA. An examination of SHIR’s father-in-law’s *responsa*, to which SHIR contributed, did not reveal such a *responsum*. The *Avnei Milu’im* was asked by Joshua Heschel, the head of the rabbinical court in Tarnopol, to help with the problem of a husband whose identity was unclear due to a precipitous death, thus putting his wife in the position of being an *ʿagunah*. See Aryeh Leib ben Joseph Heller, *Avnei Milu’im* (Lemberg, 1815), “*be-ʿeseq ʿagunah*.”

“essential” law. As he wrote: “I, alas, am not afraid to admit—and every honest man among my co-religionists will agree—that the most insignificant custom that gets the opportunity to sneak in, will take root so quickly and deeply that it cannot even be imagined to be uprooted.”<sup>45</sup> The penchant within medieval and early modern Ashkenazic Jewish culture to consider custom as binding as written law, its tendency towards supererogation, had created its “baroqueness.”

#### IV

Perl addressed the historical development of the ceremonies required to effect a Jewish divorce in his day as proof of Ashkenazic Jewry’s attachment to its own insularity. Given that the Habsburg *Ehepatent* legislated state supervision of Jewish marriages, Perl reasoned that the authorities would be sympathetic to his argument about Jewish divorce. But subsuming divorce proceedings under a civil code of law remained more complex than doing the same for marriage law, given the singular problem within Jewish law that a woman seeking to remarry must still obtain a religious writ of divorce from her converted husband, and the concomitant problems of *mamzerut* (bastardization) and *ḥaginut*.

Perl’s desire to free a convert from obeying a rabbinic court, in the process enabling his former Jewish wife to remarry, stumbled against not only the unilateral—and patriarchal—nature of *halakhah*, but also Habsburg divorce law. The *Allgemeines Bürgerliche Gesetzbuch* of 1811 (*ABGB*) allowed for denominational difference and empowered ministers of respective denominations to enforce the praxis of their respective faiths with regard to marriage and divorce, which meant that Catholics could not divorce, but Protestants and Jews could.<sup>46</sup> Jews wishing to divorce still had to conform to traditional rabbinic requirements. *Über die Modifikation der Mosaischen Gesetze* reflects Perl’s frustration at the state’s retreat from creating a civil sphere independent of confessional considerations in which individuals in the Jewish community who wished to divorce or remarry in cases that were forbidden by Jewish law could plead their cases, if they so desired. His treatise strove to elucidate the historical reasons for the development of the corpus

45. Perl, unpaginated introduction.

46. Subsuming Roman Catholic interpretations of canon law under a secular civil code presented its own singular problem. Marriage, a sacrament as permanent as baptism, can never be dissolved, thus rendering divorce and membership in the Church impossible. Although permitting Protestants to divorce, the *ABGB* blocked couples in which one member had converted from Catholicism to Protestantism after the marriage from severing their marital vows because it viewed the marriage, following Catholic dogma, as indissoluble. Two decrees, passed in 1814 and 1835 respectively, expanded the Catholic view of divorce to *all* Christians: Protestants could still divorce, but their marital sundering was considered invalid by the state. If a Protestant from a failed union chose to remarry, he or she could only do so with a non-Catholic Christian. In 1855, the Catholic doctrine of the indissolubility of marriage became the definitive influence on the civil code, marking the complete subordination of the state’s legal jurisdiction to the Catholic Church. While the concordat with the Church was overturned in 1868, Habsburg marriage and divorce law continued to reflect the denominational nature of the Josephinian marriage *patent* and the *ABGB* until 1938, when conditions of absolute civil marriage and intermarriage entered into law. See Ulrike Hermat, “Divorce and Remarriage in Austria-Hungary: The Second Marriage of Franz Conrad von Hötzendorf,” *Austrian History Yearbook XXXII* (2001), pp. 69–104.

of law surrounding Jewish divorce that placed marital disunion in the hands of a rabbinic court. In so doing, Perl demonstrated an acute sensitivity to the gendered experience of matrimony and to the relative powerlessness of Jewish women in determining their marital status.<sup>47</sup>

In *Über die Modifikation der Mosaischen Gesetze*, Perl surveyed the history of divorce, beginning with biblical times, and compared it to the ritual of *ḥaliṣah*, the ceremony releasing a man (the *levir*) from the obligation of marrying his deceased brother's widow. Perl concluded that the goals of both ceremonies in the biblical period were not simply to sever the marital bond between a man and a woman, but to enable the woman to remarry. "Nonetheless," he wrote, "one finds in the [case of the] writ of divorce that matters are left to the couple—particularly to the man; in contrast, *ḥaliṣah* is subjected to the intervention of a court."<sup>48</sup> Perl sought to emphasize the original biblical distinction between the private nature of divorce and the public nature of dissolving the obligation to perform levirate marriage in his quest to free contemporary converts from the authority of the rabbinic court. Divorce, his reasoning implied, was a private matter, but had developed historically to become public, requiring the intervention of a court. Given the biblical record, argued Perl:

It follows that there is no basis extant in *Mosaic* Law to make divorce the business of the court, give it any kind of publicity, or make it important through any kind of ceremony. Justifiably, one is amazed if one witnessed a contemporary *Israelite* divorce procedure and to see the number of ceremonies that are performed with a most unbelievable scrupulousness.<sup>49</sup> An unbiased person would scarcely want to believe that this people at one time—devoted to the same religion—used to consider its marriages dissolved only through the removal of the woman from the house and the handing over of a simple writ of divorce, *respectively*.<sup>50</sup>

How could the evolution of divorce proceedings from a simple writing and delivery of a writ of divorce by the man to his wife to a complicated system involving a rabbinical court be explained? For Perl, "time and circumstance" explain the seeming contradictions, as did the inverse relationship between the status of women in a given society and period and the ability to divorce. In the age of the

47. Perl's historical survey compares well with several modern studies. See Ze'ev W. Falk, *Jewish Matrimonial Law in the Middle Ages* (Oxford: Oxford University Press, 1966); Judith Romney Wegner, *Chattel or Person? The Status of Women in the Mishnah* (New York: Oxford University Press, 1988); Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder, CO: Westview, 1998); John D. Rayner, "Gender Issues in Jewish Divorce," *Gender Issues in Jewish Law: Essays and Responsa*, Walter Jacob and Moshe Zemer, eds. (New York and Oxford: Berghahn Books, 2001), pp. 33–57.

48. Perl, p. 10.

49. Perl's footnote reads: "Die Ehescheidungs-Ordnung die im Werke *Schulchon Aruch Aben Hueser* zu Ende unter dem Titel *Seder Haget* vorkommt, enthält in allem 250 Beobachtungs-Regeln, von dern bei jeder Scheidung über 220 zu beobachten sind ("The body of divorce laws, which appears in the final section of the *Shulḥan ʿArukh*, *ʿEven ha-ʿEzer*, under the title, *Seder ha-Get*, includes 250 rules of observance, of which over 220 are observed for each divorce"). Perl, p. 16.

50. *Ibid.* Emphasis is Perl's.

Patriarchs, “before Moses established law in Israel,”<sup>51</sup> when polygamy was the norm of society, and a man “considered his wife like his furniture,” he could easily rid himself of her and it would not be such a disaster for the woman.<sup>52</sup> Another man’s harem could easily absorb her. Few obstacles to divorce existed, both because women’s status was so low and because remaining within the first husband’s harem would be tragic.

[In the time of Moses], as soon as one of his wives lost [her husband’s] good favor, it was easy for him to withdraw from her; among the *many* women in his harem, it was not difficult for him to spare *one*. He tried to compensate himself with the remaining [wives]. These, as we know, did not live among themselves in the best harmony<sup>53</sup> and united to harm one out of their midst, and typically mustered up all their effort to debase the woman who had fallen out of favor in the eyes of the man even more. Disfavor is then transformed very quickly into hate. The woman, who in the beginning was only neglected, then became hated, reviled, and abused. Her natural drives were not satisfied. She could not take part in any of the pleasures of human life. The harem becomes the most painful prison to her and the dissolution of such a marriage must truly have been a heavenly blessing for this unhappy wife.<sup>54</sup>

Perl concluded that the rituals involved with Jewish divorce had emerged as protection for women, implicitly arguing that such considerations should inform Habsburg policy in his day. In circumstances where divorce would be disadvantageous for women, such as if her husband had besmirched her virtue without proof, or if she had been raped, the rabbis forbade divorce in perpetuity.<sup>55</sup> In the Talmudic period, Perl reasoned, when it became more difficult for women to remarry, the Sages made divorce more difficult by adding numerous conditions to the writing of the *get*. Nonetheless, divorce was still possible. The writ could be in foul condition and written in any language and alphabet to ensure that a woman could remarry. The Sages, argued Perl, took time and circumstances into consideration when devising the conditions rendering a *get* acceptable. This considered rabbinic posture was evident, too, in more recent times. In the medieval period the rabbinic leadership strove to make divorce more difficult in those parts of Europe—Ashkenaz, and particularly France—where women “were given more rights. How many

51. Perl, p. 10. Emphasis is Perl’s.

52. Perl, p. 17. John D. Rayner points out that biblical Israel was a polygynous society, in which a man could have several wives, not a polygamous one. It was forbidden for a woman to have several husbands (polyandry). See Rayner, p. 33.

53. Emphases are Perl’s. He cited Leviticus 18:18, “And you shall not take a woman to her sister, to be a rival to her, and to uncover her nakedness, beside the other in her lifetime, and I Samuel 1:6, “And her rival vexed her sore to make her fret, because the Lord had shut her womb,” as prooftexts. Perl, p. 18.

54. Perl, p. 19. Here we can hear the grumblings of the concubines in Montesquieu’s *Persian Letters*, a work that had an important influence on Perl’s own *Megalleh Temirin*. On Perl’s debt to the *Persian Letters*, see Shmuel Werses, “Regarding the Lost Pamphlet, *Maḥkimat Peti*,” in Werses, *Megamot ve-šurot be-sifrut ha-haskalah* (Jerusalem: The Magnes Press, 1990), pp. 326–327.

55. Perl, pp. 20–22.

lines the writ of divorce had to contain, how the parchment had to be cut, in what manner the woman had to hold her hands when receiving the writ, etc., was determined.”<sup>56</sup> Moreover, Perl cited the edict attributed to R. Gershom (960–1028), “Light of the Diaspora,” which banned those who divorced their wives without their consent, indicating an elevation of women’s status.<sup>57</sup>

The vast cultural divide between the worlds of Ashkenazic and Sephardic Jewry and the status of women within those societies proved Perl’s point about the mutability of customary law. Perl’s analysis illustrated that Ashkenazic custom had developed historically to be more stringent than had Sephardic custom. In the case of divorce, he contrasted the opinions of the two great legal thinkers of the sixteenth century that appear appended to one another in the authoritative Jewish code, the *Shulhan Arukh* (*Set Table*).<sup>58</sup> Perl wrote:

We see, for example, that Rabbi Joseph Karo,<sup>59</sup> in his *Commentary on the Tur*, *’Even ha-’Ezer*, 123 (*Beit Joseph*), states: ‘One should not permit the man to write the writ with his own hands.’ In the aforementioned work, the *Set Table*, in contrast—which the same rabbi established as a norm for *Israel*—this way of making divorce more difficult is not included.<sup>60</sup> *Rabbi Moses Isserles*, however, gave this particular restriction [of divorce] a respected place in his comments on the aforementioned *Set Table*. It appears that Karo, as an Eastern Rabbi, in whose country *polygamy* still ruled, despite the aforementioned ban by Rabbi Gershom, did not want to establish a restriction so contrary to the Pentateuch’s expression \_\_\_\_\_<sup>61</sup> as a norm in his work.<sup>62</sup> *Rabbi Isserles*, in contrast, who lived in the same century, but in Kraków, where monogamy had been established already since the 11th century by Rabbi Gershom, granted a place to this restriction [on divorce] in his additions to the *Set Table* be-

56. Perl cited the *Tosafot*, “one who brings a divorce,” *Gittin 2a*; “to exclude this,” *Gittin 21b*; and “one who brings a divorce,” *Gittin 78b* as prooftexts. Perl, p. 26.

57. Perl, p. 26. Both the ban on polygamy among Ashkenazic Jews and the prohibition on divorcing a woman against her will have conventionally been ascribed to R. Gershom since the twelfth century, but Ze’ev Falk has shown that the ban on polygamy was decreed later. Monogamy became standard marital practice in Ashkenaz by the twelfth century, but may have evolved slowly and not through a unilateral legal decree. See Falk, pp. 1–14 and 115–119.

58. On the *Shulhan Arukh*, see Isadore Twersky, “The *Shulhan Arukh*: Enduring Code of Jewish Law,” in *The Jewish Expression*, Judah Goldin, ed., (New York, 1970), pp. 322–342.

59. In the original German treatise, Perl wrote Karo’s name as Karu, divulging his Galician origin, where the Hebrew vowel *kamaz* (“ah”) was pronounced like a *shuruk* (“ooh”), informing the articulation of both Hebrew and Yiddish. See D. Dombrowska, Abraham Wein, and Aharon Vais, eds., *Pinkas ha-kehillot. Polin: ’ensiklopediyah shel ha-yishuvim ha-yehudiyim le-min hivasdam ve-’ad le ’aḥar sho’at milḥemet ha-’olam ha-sheniyah, galisiyah ha-mizraḥit* (Jerusalem: Yad Va-Shem, 1980), p. 15. Mordkhe Schaechter, a Yiddish linguist, confirmed this dialectal version of the pronunciation of the *kamaš*.

60. The *Shulhan Arukh* is actually a digest of Karo’s voluminous *Beit Yosef*.

61. Perl kept the original biblical Hebrew phrase within the German prose.

62. The culturally-constructed diversity of Jewish marital practices was acknowledged by the notables of the Napoleonic Sanhedrin in 1806 when pressed to answer the question, “Is it lawful for Jews to marry more than one wife.” See Tama, p. 151.

cause it took away the right of an irascible man to move his wife out of the house for no reason.<sup>63</sup>

Ashkenazic Jewish legal culture erred on excessive pietism and the creation of innumerable rituals that were not part of the original intent of Mosaic Law, argued Perl. He noted, however, that even in Ashkenaz the value of preventing *agunot* took precedence over ceremonial precision: "It is remarkable that in cases where the authenticity of the writ of divorce was in doubt, and cancellation of the writ places the woman in danger of remaining husbandless for her entire life, this Rabbi [Isserles] was almost always well-disposed to dispense with several ceremonies, which he otherwise strongly recommended."<sup>64</sup> Even within the dark penchant of medieval Ashkenazic supererogation, reasonableness had flickered. The implication, of course, was that reasonableness should prevail in Perl's time as well, meaning, that a woman should be able to obtain a divorce privately, without the supervision of a Jewish court.

V

The Austrian censor's rejection of Perl's treatise highlights the general conservatism of the Habsburg state and its reluctance to interfere in the confessional lives of its subjects after the Congress of Vienna. The state's efforts to separate civil law from religious law for the Jews in the area of marriage and divorce failed in the late eighteenth century, and its conservative politics after Joseph II's death bolstered the traditionalism of its Galician Jewish subjects. Until World War I, the Jews of Galicia generally avoided civil marriages, married religiously, and gave their children their mothers' surnames.<sup>65</sup> Perl's treatise thus illustrates the degree to which the ideology of Jewish *intelligenti* outpaced both the community they wanted to serve, and the government they hoped would provide the muscle for their community's transformation.

While Perl's preeminent concern in *Über die Modifikation der Mosaischen Gesetze* was to obviate the need for a male apostate to Christianity to submit to a rabbinic court, he *was* sensitive to women's status within Jewish law, particularly to the plight of an *agunah* in cases of conversion.<sup>66</sup> Because earlier generations of

63. Perl, pp. 28–29. Polish Jewry's adherence to customary law is illustrated by Isserles's decision to prohibit polygamy based on custom, not on R. Gershom's ban, which, he argued, had expired: "Therefore, even though in practice the edicts of the Gaon [R. Gershom] are still followed, nevertheless the edict itself has expired and henceforth only has the custom in which the practice is to be strict, and one is not entitled to relax it for them." Cited in Westreich, p. 70.

64. Perl, p. 28.

65. A. Y. Brawer, *Gališyah vi-hudeihah: meḥkarim be-toledot Gališyah be-me'ah ha-shemonah-esreh* (Jerusalem: Mossad Bialik, 1965), pp. 149, 202, 280. Galician Jews, either because they failed to pass or did not take the required German exam to be registered as married by the state, married traditionally and the state recorded their unions under their mothers' family names. The *Toleranzpatent* of 1789 had stipulated that "each Jewish householder bear a particular [sur]name." See paragraph 29 of the *patent*, reprinted in Karniel, p. 81.

66. The sections of *Über die Modifikation* dealing with divorce affirm Perl as an early advocate of Jewish women; his petition to the Austrians antedates Judah Leib Gordon's justifiably famous poem, "The Tip of the Yud," which decries the plight of the Jewish grass widow and was published first

Jews treated divorce law in inverse relationship to the status of women in their respective societies, making it more difficult where women's status was high and creating alleviations where women's status was low, Perl's compassion for women in the modern period compelled him to try to find a way to make divorce easier. In *Über die Modifikation der Mosaischen Gesetze*, he argued that customary law, not *halakhah*, stood in the way of the *agunah*'s predicament. But his argumentation, no matter how well intentioned, was rejected by the censor, who undoubtedly knew the Jewish law of divorce. Regardless of the myriad customs associated with the writing and delivery of the *get*, which Perl justly described as having evolved through time and circumstance, divorce remains unilateral in Jewish law, denying women's agency. Although Perl's discussion of divorce law displays concern for the "grass widow," his efforts to unchain the wife of a convert from the bonds of Jewish law were due to his overarching goal of making Judaism and Jewish law compatible with the aims of the centralizing state. Perl deliberately blurred the distinction between *halakhah* and *minhag* because of his desire to encourage the state to support modification of Jewish divorce law if change derived from the rabbinate itself.

I believe that I have sufficiently supplied [evidence] in the text that the ceremonies of divorce have only been produced through time and circumstances; that the teachers of the adoption [of the ceremonies] of divorce have always looked at the spirit of the times; that Jewish law generally and particularly the ceremonial law—except several central points—were subjected to change from time immemorial; that the ancient communal teachers actually used to modify [the law]; and that disregard for the spirit of the times only first occurred with later rabbis, while these [rabbis]—except a few—succumbed to stringency, without considering whether or not the people could bear the bur-

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in 1875. Perl was unusual in other regards as well. He gave his own daughter, Sheindel, an education beyond the limited confines of a traditionally pious East European Jewish woman. Married to the Tarnopol printer, Nachman Pineles, Sheindel was educated in non-Jewish languages; maintained a correspondence about literary matters with a fellow *maskil*, Moses Inländer, and a friendship with the venerable Mendel Lefin in his later years; and was called an *isha maseket* by many of Perl's correspondents. Sheindel's "enlightenment" was not the rule for Polish-Jewish women in the early nineteenth century, for the Haskalah was deeply gendered. See Shmuel Feiner, "The Modern Jewish Woman: Test Case in the Relationship Between the Haskalah and Modernity," *Zion* 58.4 (1993), pp. 453–499. The female Hebraist, Miriam Markel-Mosessohn (1839–1920), who corresponded with major figures of the mid- and late-nineteenth-century Russian-Jewish Haskalah, was also exceptional. See Carole Balin, *To Reveal Our Hearts': Russian-Jewish Women Writers in Imperial Russia* (Cincinnati, OH: Hebrew Union College Press, 2001), pp. 13–50. However, the existence of an educated Jewish woman literate in the traditional sources and languages so beloved by the *maskilim* found literary expression in *Bohen šaddik*. See Perl, *Bohen šaddik*, p. 26. On Gordon's poem, see Michael Stanislawski, *For Whom Do I Toil?: Judah Leib Gordon and the Crisis of Russian Jewry* (New York: Oxford University Press, 1988), pp. 125–128. For references to Sheindel Pineles, see the letter from Benjamin ha-Cohen Reich to Mendel Lefin, undated, folder 70, and that of Hayim Malaga to Mendel Lefin, 1821, folder 135a, both in the Joseph Perl Archive, JNULA. On Sheindel's correspondence with Moses Inländer, see the unpublished master's essay by Tamar Schechter, Bar-Ilan University, and N. M. Gelber, "The History of the Jews of Tarnopol," *Enšiklopediyah shel galuyot: Tarnopol*, Phillip Krongruen, ed., vol. 3 (Jerusalem: 1955), p. 41.

den or whether or not they would have to succumb to the same. . . . [If am correct], then I will have the right to most submissively request—in the name of my distressed coreligionists—the acceptance of my proposal, and the government would then no longer find any obstacles to introducing such a beneficial means [of making divorce easier] and to allow it to work efficiently, for the state and, all the more so, for its subjects of Mosaic religion.<sup>67</sup>

Perl's self-conscious desire to harmonize Jewish law with the cameralist aims of the Habsburg state is both a sign of his modernity and a classic expression of the étatist politics of the *maskilim* living under absolutism.<sup>68</sup>

Perl's appeal to the Austrian authorities on behalf of a male convert to Christianity to be able to divorce his Jewish wife without going to a rabbinic court also illustrates a new position, if unarticulated, on the meaning of conversion among the *maskilim*. Perl displays none of the angst exhibited by medieval and early modern Jewish communal leaders who worried about not considering the convert to Christianity a Jew, and as such not required to grant his wife a *get*, lest he be lost to the Jewish community. For a *maskil* like Perl, although he neither fully admitted nor realized it, Jewishness (what is now called "Jewish identity"), was evolving from being determined by a state-sanctioned communal authority empowered to adjudicate Jewish law to a matter of individual conscience and choice. If a male convert's refusal to grant his former Jewish wife a *get* made her an *'agunah*, then it was the duty of a responsible and reasonable rabbinate, supported by an enlightened state, to modify the customs within Jewish divorce law that kept her chained. Perl expressed no concern about the fate, existential or social, of the male Jew who exited the community, even at the expense of closing the gates of repentance to the convert himself.

Perl saw no contradiction between his support for the priority and privacy of individual conscience and his commitment to upholding the authority of rabbinic law. In his turn to historicizing Jewish law and urging its modification, Perl positioned himself as a legitimate successor to internal traditions of rabbinic critique. He wanted to make a principled commitment to the ability of contemporary rabbinic authorities to fine tune Jewish law in the spirit of the age and within the culture of the Jewish community, and was critical of his predecessor Herz Homberg's zeal in imposing radical reform measures upon Galician Jewry.<sup>69</sup> He sought to transform Galician Jewry by combating its supererogation from within the sources

67. See Perl, unpaginated introduction. Perl anticipated much of the modern (and post-modern) debate on the status of women within Jewish law and its relationship to *minhag*. See Elliot N. Dorff, "Custom Drives Jewish Law on Women," *Gender Issues in Jewish Law: Essays and Responsa*, Walter Jacob and Moshe Zemer, eds. (New York and Oxford: Berghahn Books, 2001), pp. 82–106.

68. On the self-consciousness appropriation of the past as a hallmark of modernity, see Michael A. Meyer's comments in Jack Wertheimer, ed., *The Uses of Tradition: Jewish Continuity in the Modern Age* (Cambridge, MA: Harvard University Press, 1992), p. 463.

69. In a memo to the Russian authorities, who controlled Tarnopol before the Congress of Vienna, Perl described Herz Homberg's schools as doing great harm by throwing out the kernel [of rabbinic tradition] with the husk [pietist additions]. "They [Homberg's cronies] are usually uneducated or have a skewed education. . . . They are superficially enlightened and more benighted than were their fathers." Cited in Friedman, p. 137.

of rabbinic Judaism and from within the culture of premodern Polish Jewry. He did so as a moderate *maskil*—in contrast to his characteristic immoderation regarding Hasidism—never explicitly challenging the authority of the Oral Law, but, rather, focusing on the cultural insularity that Ashkenazic Jewry's fidelity to custom had created, which in turn produced resistance to their integration into the Habsburg state.

Yet, despite his efforts, Perl failed to historicize rabbinic divorce law systematically and to locate the moment when Polish rabbinic culture became resistant to change. Nor did he fully engage halakhic argumentation on its own, well-established terms, for, in the end, Perl was neither historian nor halakhist. He was an activist. A sentence of the treatise, poignant for its incompleteness, illuminates Perl's quandary: “[the sanctification of custom] seems to have originated in the \_\_\_ century and in the following way,” but Perl did not (could not?) fill in the date.<sup>70</sup> This gap in his treatise suggests that the very flexibility and centrality of customary law in Judaism, itself a response to a lived social reality and not just to a legal ideal, created a paradox both for halakhists acting in an official capacity within the Jewish community and for social critics, like the *maskilim*. Indeed, *minhag* was *ke-halakhah* (“considered as binding as law”) and even more so. The culture of Jewish life (in all its diversity), and the law that reflects that culture, would only change when new social forces required it to change, and not through the promulgation of legal dicta or maskilic excurses.<sup>71</sup> The legal requirement for a converted Jew to grant his Jewish wife a divorce in a Jewish court could only fall out of custom in the modern world, when the incremental evolution of the modern state together with the power to enforce a distinct civil sphere and legal code would render Jewish law voluntary and, as such, obligatory only for that part of the Jewish community that wanted to be obligated by it.<sup>72</sup> Despite Perl's hope that the Austrian authorities would respond favorably to what he believed was a reasoned and reasonable argument about the historical development of Jewish divorce law, as one who had argued that “the spirit of the times” had always shaped *halakhah*, he should have known better. The conservative *Zeitgeist* of 1830s Restoration Austria, which had long superseded the interventionist and optimistic cameralist ethos of the 1780s, recoiled from tampering with age-old law and custom.

70. Perl, p. 69.

71. Edward Fram, *Ideals Face Reality: Jewish Law and Life in Poland, 1550–1655* (Cincinnati, OH: Hebrew Union College Press, 1997) and Jacob Katz, “‘Alterations in the Time of the Evening Service’: An Example of the Relationship Between Religious Custom, Law and Society,” *Zion* 35 (1970): 35.

72. Russian–Jewish women increasingly appealed to the state's courts to resolve their marital conflicts in the course of the nineteenth century. See ChaeRan Freeze, *Jewish Marriage and Divorce in Imperial Russia* (Hanover and London: Brandeis University Press, 2002), pp. 69, 123, 241. On religious obligation in the modern period, see Peter L. Berger, *The Sacred Canopy: Elements of a Sociological Theory of Religion* (New York: Doubleday & Company, Inc., 1969).