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Stepfamilies across Ethnicities

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Stepfamilies across Ethnicities

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Special Editor of the Thematic Issue

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Family Formation, Ethnicity, Divorce, and Marriage Law: Jewish Divorces in Hungary, 1786–1914*

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The role of broken marriages in the formation of "modern" patchwork families is well known, but if one tries to examine its historical roots, one encounters the problem of defining divorce and–despite the expansion of civil law–the differences in perceptions of divorce according to Church denominations. This study aims to consider the above mentioned difficulties in light of the development of Hungarian marriage law and the problem of Jewish divorces.

Keywords: juridical centralization, denominational and state law, official and communal law, Jewish marriages and divorces, use of courts, Jewish women and appropriation of the law, urbanization, social integration, stepfamilies

Until the nineteenth century, the formation of stepfamilies was determined in large part by mortality, more specifically by the high mortality rates of spouses. As long as the institution of marriage remained solid in Western societies (i.e. the bond of marriage was practically unbreakable and extramarital affairs and partnerships were punished with various sanctions), patchwork families came into being as widowed men and women entered into new marriages. Nineteenth-century changes were brought about by higher life expectancies, the crisis of the institution of marriage, the questioning of the indissolubility of the marriage tie, and the introduction and extension of the institution of divorce. These factors, which transformed the constraints of family life, appeared simultaneously, and Lawrence Stone also interconnected the two processes:

> In practice, the probability of a durable marriage was low, since it was likely to be broken before very long by the death of the husband or the wife. Indeed, it looks very much as if modern divorce is little more than a functional substitute for death. The decline of the adult mortality rate after the late eighteenth century, by prolonging the expected duration

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> of marriage to unprecedented lengths, eventually forced Western society to adopt the institutional escape-hatch of divorce.[1]

Stone's statements have frequently been criticized since then, but divorce undeniably took over the "function" of spousal death, and ever since, remarriages following divorce became the most important routes of making stepfamilies.

In light of all this, it seems rather surprising that the connection between the formation of stepfamilies and the spread of divorces has only rarely caught the attention of historians. The number of studies focusing on remarriages between divorcees is limited, and even fewer studies have addressed the fates of divorced husbands and wives or the fates of children from broken and newly-contracted marriages.[2] This gap in the historiography becomes less surprising, however, if one considers how difficult it is to follow the break-up of marriages in the period.

The difficulties mostly stem from the fact that divorce is more difficult to measure and study than death. While the latter is of biological nature, completed and absolute, and leaves an ineffaceable sign in the life of a family, divorce–in a narrow sense–is a legal act which gained its meaning and importance over the course of a long period of time. For most of the nineteenth century, in the overwhelming majority of the countries of Western Europe, it was exceptional for a judge to break the bond of marriage (and often it was not legally possible), so contemporaries mostly associated "divorce" with self-divorce (meaning separation in practice as the result of mutual agreement on the part of the spouses), separation, and abandonment, which of course made legal remarriage impossible. These spontaneous ways of ending marriages, unlike legal divorces, left hardly any written traces, so there is no way to determine how many marriages were broken up by spouses who chose one of these avenues or what proportion of marriages ended in one of these ways, and it is even more difficult to study how many of these "divorced" persons founded new families or fathered or mothered further children.[3] Breaking the bond of marriage in court became a widely accepted social practice only in the twentieth century. In other words, only since the beginning of the twentieth century have significant numbers of

1 Stone, *The Family, Sex and Marriage,* 55–56.

2 Vikström, Poppel, and Bart, "New Light on the Divorce Transition," 114–15 emphasize this as a future research direction in the study of the history of divorce, and they call for study of the consequences of divorce, noting the underrepresented state of the field. For a pioneering essay on remarriage in the capital of the Netherlands, The Hague, see Poppel, "Nineteenth-Century Remarriage Patterns in the Netherlands," 343–83.

3 Roderick Phillips discusses the unknown rate and types of separation. Phillips, *Putting asunder,* 314–60.

couples sought to resolve their marital conflicts with legal tools and also founded lawful new families by remarriage.

One would be wrong however to assume that lawful divorce meant the same things in different periods, as the definition of "lawful" was disputed even in the nineteenth century. Nowadays, it is clear that the state is the agent which defines the legal process and the reasoning that facilitates the break-up of marriages in court. Two centuries earlier, however, even if in many Western countries state power had already endorsed its claim to regulate divorce, because of the spiritual nature of the institution, the Church and various religious communities also played an important part, neither necessarily supporting or directly hindering the government in its efforts to assert its authority in this sphere of life. In places where the state was centralized enough to pass civil law codes or divorce laws which extended to all citizens and thus could enforce its authority through the civil courts, the transition took less time and was fraught with fewer ambiguities, in contrast with regions in which less powerful states exerted little or no influence on marital law and thus the institution of marriage retained its religious profile, which meant that the conditions and practices of divorce also remained different.

Throughout the nineteenth century, in territories in the eastern half of the continent, such as Hungary (which until 1867 was part of the Habsburg Empire and from 1867 the Austro-Hungarian Monarchy), the regulation of divorce was not unified. This was in part a consequence of the fact that most Eastern European nations lived under foreign powers and thus insisted on their traditions and religious confessions as a means of promoting political unity and nation building. In the territory referred to as the "countries of the Hungarian crown," the minority communities living alongside the Hungarians (Croats, Romanians, Slovaks, Germans, Ruthenians, Serbs, and Jews) together formed the absolute majority. The distribution of minorities was further colored by the distribution of faiths. Though the majority of the population belonged to the dominant Roman Catholic denomination, the proportion of Protestants (Calvinists, Lutherans, and Unitarians), Orthodox, Greek Catholics, and Jews remained significant. The different denominations, which often included different ethnic groups even within the same confession, had different attitudes to the question of making and breaking-up marriages and to the ways of adjudicating divorces. Finally, the growing number of religiously mixed marriages further complicated the application of different church regulations. The emerging Hungarian state therefore aimed to implement uniform regulation. It managed to extend its control over marital affairs at the end of the nineteenth century, when a

civil marriage law was passed in 1894 and put in effect at the beginning of the following year. This law created the legal framework for secular marriage, which thus was established in Hungary much later than it was in Western Europe.[4]

This essay studies the legal conditions that facilitated the formation of stepfamilies following divorce in Hungary in the long nineteenth century. The belated development of secular marital law and its judicial procedure and the use of secular courts in this multiethnic and multi-religious environment will only be studied in the Jewish religious community. This choice is due to the fact that this religious community was most deeply affected by the spread of state control over marriages, so the process in the case of Jewish marriages can be more easily grasped with regards to underlying motivations and aims, constraints, possibilities, and consequences. This example will also shed light on some of the problems which arise when historians use sources produced by courts and state offices: divorce files, marriage and birth certificates, census data, and religious and demographic statistics can be better evaluated in the context of the prevalence, formation, and dynamics of stepfamilies created by divorces and remarriages.

Until the end of the eighteenth century, Jews in Central Europe lived for the most part on the peripheries of Christian societies. Thus, they were more drastically affected by the endeavors to centralize the judicial branches of governments and tear down the legal barriers between estates and other social (ethnic, religious) groups. While legislators accepted all Christian definitions of marriage and, in the process of separating couples, tried to tolerate a wide array of religious beliefs, in the case of making and ending Jewish marriages, they had very superficial knowledge of religious regulations, and even if they were ready to look into them in more depth, they were not able or willing to heed them and act accordingly. The ways to form and dissolve Jewish marriages were determined by the *halacha*, which has been a foundation of Jewish communal identity for centuries and was based on the Talmudic tradition of the Torah, the commentaries in which included both authoritative and individual decisions. Divorce took place by the writ of divorce (*get*), which was handed to the wife by the husband with the assistance of the rabbis and rabbinic court (*beth din*).

4 1894: Statute XXXI. *Magyar Törvénytár, 1894–1895. évi törvényczikkek,* 174–93. The best survey of the evolution of matrimonial law in Hungary is the general part of the ministerial justification of the proposed law: *Az 1892. évi február hó 18-ára hirdetett Országgyűlés Főrendi Házának irományai*, 201–64. With respect to birth of the Hungarian family law: Loutfi, "Legal Ambiguity and the 'European Norm'," 507–21.

This was a highly formal religious ritual and a private legal act.[5] In the nineteenth century, due to the differences between civil and religious regulations in this field and their temporary balance, a kind of legal dualism developed, with secular and religious marriage laws and practices coexisting. In addition to the legal centralization pushed by the state, the extension of civil marital law also facilitated Jewish emancipation and their social integration on national scales, a process, however, which met with resistance on both sides, as it was laden with contradictions and interruptions.

Some better-known examples offer a grasp of the complexities of this long durée process. In France, it had already been proposed in the second half of the eighteenth century that Jewish marital affairs be handled by civil courts. Legislation was finally passed by the French National Assembly, which emancipated the Sefards and Ashkenazi Jews in 1790–1791 and then passed the regulation of divorce in 1792. The implementation of the French divorce act among Jews, however, may have remained ambivalent, as in 1807 the Jewish High Court (*Grand Sanhedrin*) convened by Napoleon had to confirm that civil marital law had priority over denominational ones.[6] In Prussia, two decades the civil law code was passed in 1794, it had to be stated that the Jewish ritual writ of divorce (*get*) was not a constituent part of the legal ending of a marriage, and divorce could be adjudicated solely before civil courts which applies civil law and did not take Jewish dogmas into consideration.[7] In the first half of the nineteenth century, the Rabbinic Court of London had the right to judge divorce cases of the whole Jewish community living in the British Empire, while Christian citizens could only divorce under special circumstances according to the specific acts of parliament. This practice continued even after the Divorce and Matrimonial Causes Act took effect in 1857, until the Registrar-General finally annulled ritual divorces in 1866.[8] Finally, in some regions, the state could not interfere with the Jewish religious "traditions" in the nineteenth century. In Russia, the government of the czar could not bring Jewish marriages and

5 Lajos Blau discusses the traditional ritual process in detail. Blau, *Die jüdische Ehescheidung und der jüdische Scheidebrief*.

6 Blom, "Civil Courts and Jewish Divorce," 40–60. She also discusses the notion of "legal centralization" originating from Alexis de Tocqueville: Blom, "Implications of Jewish divorces," 5–9. Berkovitz, "The Napoleonic Sanhedrin," 11–34. Atlan, *Les Juifs et le divorce,* 103–10, and passim also discusses the contemporary collision of civil and religious laws.

7 For the 26th–27th §§ of the decree passed on March 11, 1812 concerning the civil status of Jews who lived in the Prussian state, see Mannkopf, *Allgemeines Landrecht für die Preussischen Staaten,* 88.

8 Pfeffer, *"From One End of the Earth to the Other,"* 110–15.

divorces under the control of the state until the outbreak of the Bolshevik revolution.[9]

Joseph II and the Problem of Jewish Divorce

In the Habsburg Empire, the marriage patent (*Ehepatent*) of Emperor Joseph II pronounced marriage a civil contract and transferred marriage suits to civil courts. It thus played a pioneering role in the state regulation of marriage and divorces in Europe. In 1786, the Austrian government officially extended the marriage patent to the Jewry.[10] The 1786 Jewish marriage patent or, more precisely, the supplement concerning the Jewry of the 1783 marriage patent was part of the abovementioned centralizing efforts. The "nationalization" of the field of marriage rights was part of the lasting process of the codification of civilian rights in the Habsburg Empire, which concluded with the passage of the Austrian Code of Civil Law (*Allgemeines Bürgerliches Gesetzbuch*) in 1811.[11] The limitation of the jurisdiction of Jewish rabbinic forums was part of the jurisdictional and church political reforms of Joseph II. Accordingly, the patent passed in the summer of 1783 deprived the Rabbinic jurisdiction of its civilian character.[12] The legislators at the emperor's court, however, did not clarify precisely enough whether the questions that might arise regarding Jewish marriage belonged to the civil legal cases (like Christian marriage suits), and if so, how exactly the points of the *Ehepatent* should be applied to address them. The civil courts were confused so in the spring of 1785, the problem of Jewish marriages was brought to the imperial government.[13]

With regard to the measures implemented by Joseph II, he may have been seeking to "civilize" (i.e. encourage the cultural and civil assimilation of) the large Jewish population. The Habsburg Empire was home to one of the biggest

9 Freeze, *Jewish Marriage and Divorce in Imperial Russia,* 131–200.

10 On the development of marriage law in Hungary and Jewish divorces in Budapest (Pest-Buda), see Nagy, *"Engesztelhetetlen gyűlölet,"* 103–75. The contemporary issue of the decree of May 3, 1786: 543. Patent vom 3-ten May 1786. *Justizgesetzsammlung* 42–43. Published along with the proposal submitted to the State Council: Pribram, *Urkunden und Akten zur Geschichte der Juden in Wien*, 541–46.

11 Korkisch, "Die Entstehung des österreichischen Allgemeinen Bürgerlichen Gesetzbuches," 263–94.

12 The court decree dated August 25, 1783. *Handbuch aller unter der Regierung des Kaisers Joseph des II, 544.*

13 The opinions of the state authorities differed. In the end, the State Council (*Staatsrat*) ordered the Legal Committee of the Court (*Kompilationshofkommission*) to prepare a detailed proposal. Cf. Pribram, *Urkunden und Akten*, I, 528–30. ÖStA, AVA, Oberste Justizstelle, Bücher. Ratsprotokoll der Kompilationshofkommission (Band 35, 1783–1785), 487–90.

Jewish communities in Europe. With the first partition of Poland, followed by the annexation of Galicia in 1772, a large Jewish population numbering approximately 200,000 people joined the already significant Jewish population in the Bohemian-Moravian provinces and the countries of the Hungarian crown. The change could not only be measured in the numbers; the appearance of Galician Jews, who for the most part were poor and held strictly to their traditions, caused a kind of "culture shock" in the Empire.[14] The administrative integration of Galicia and the social inclusion of its Jewish population were important motives in the general regulation of Jewish marriages, so in 1785, the Viennese court summoned the highly respected Jewish theologian, Ezekiel Landau, chief rabbi of Prague, and his Galician colleague, Loebel Bernstein, to give their opinions on the marriage patent.[15]

While both chief rabbis challenged the applicability of the *Ehepatent* to Jewish marriages, the Legal Committee of the Court (*Kompilationshofkommission*), which convened after long negotiations in December, 1785, made it definitive that the Jewish customs and practices were irrelevant from the point of view of marriage rights. According to the wording of the proposal, "in all civil legal affairs, no consideration should be given to the, until now, special laws of the Jews, which are founded merely on the constitution of their now destroyed state; they should be adjudged according to the general laws of the country in which they reside." (*In allen bürgerlichen Handlungen auf die bishörigen besonderen Gesetze der Juden, welche sich blos auf die Verfassung ihres nunmehr zerstörten Staats gründeten, keine Rücksicht zu nehmen, sondern sie nach den allgemeinen Gesetzen desjenigen Landes zu beurtheilen seyen, wo sie sich aufhalten.*)[16] And though the members of the committee differed as to

14 McCagg, *A History of Habsburg Jews,* 109–15. Kurdi, "Galícia és a galíciai zsidóság a 18. század végén," 68–70.

15 ÖStA, AVA, Hofkanzlei. Allgemeine Reihe. Akten. IV. T. 8. (Ehen der Juden, Galizien, Karton 1548.) 1785, without number. The document mentions the call for providing an opinion. Furthermore, it is not by chance that the Legal Committee of the court, which was about to discuss the problem of Jewish marriages, was increased with the addition of two Galician officers of the Austrian-Bohemian Court Chancellery. Nor was it merely coincidental that the Chancellery sent the plan of the new arrangements (*das gallizische neue Juden Sistem*) to the committee as a preliminary proposal for the decision. ÖStA, AVA, Oberste Justizstelle, Bücher. Ratsprotokoll der Kompilationshofkommission (Band 35., 1783–1785) 577–81.

16 For the proposal of the Legal Committee of the Court, see ÖStA AVA Hofkanzlei. Allgemeine Reihe. Akten. IV. T. 8. (Ehen der Juden, Galizien, Karton 1548.) 1785. without number. The skeptic report of the chief rabbis, Ezekiel Landau and Loebel, can be found in this file. The memoirs of Landau have also been published in print: Alexander Kisch, *Das mosaisch-talmudische Eherecht von Rabbi Ezechiel Landau, weiland Oberrabbiner von Prag, auf Verlangen Kaiser Josefs des Zweiten gegen Anwendung des kaiserlichen Ehepatentes vom 16. Januar 1783 auf die Juden erstattetes Gutachten* (Leipzig: M. W. Kauffmann Verlag, 1900).

how the religious regulations should be taken into an account, they agreed that the Jewish marriage suits had to be heard in the civil courts, and if possible, they had to be adjudicated on the basis of the same principles as the Christian cases. Accordingly, in March, 1786, Joseph II decided to have the effect of the marriage patent extended to the Jewry, without the courts' consideration of the "religious ceremonies." Legislators set aside the usual justifications given for divorce among "non-Catholics" and made the dissolution of the marriage bond dependent simply on the mutual agreement of the parties. This corresponded to prevailing practice among the Jewish communities. The supplement of the patent was put forth with this addition on May 3, 1786.[17]

However, as it was expectable, process of putting the marriage patent into effect met strong resistance with the Jews, which clung to tradition tooth and nail. The officer of the Legal Committee of the Court, Johann Bernhard von Horten, made cautionary statement concerning the complexities of the forced uniform legislation during the discussions of the proposed patent: "The less the different classes of the subjects perform similar activities, the less benefit can be hoped from the unified acts that refer to these activities." (*Je weniger gegentheils zwischen verschiedenen Klassen der Unterthanen gewisse Handlungen gemeinschäftlich vorgenommen werden; um so weniger Nuzen sey auch von der Gleichförmigkeit der Gesetze, die sich auf diese Handlungen beziehen, zu gewarten.*) The Galician governorate (*Gubernium*) had to warn the Jews who sought to bypass the civilian courts and divorce and remarry of the risk of being prosecuted for bigamy at the beginning of 1788, and the governorate forbade rabbis from helping conduct these kinds of divorces and required them to submit the writ of divorce.[18]

Finally, after the death of Joseph II, the Viennese government had to back down and attenuate the regulations of the patent in response to the complaints of the Jewish delegations that appeared at the court. The councilors to the new ruler, Leopold II, firmly refused that the Jewish marriage suits should again be heard at rabbinic and not at civil courts, but they had to concede on some of the regulations of divorce procedures. Therefore, according to the order issued in the spring of 1791, the handing of the writ of divorce became an essential part of the legal procedure, and the unilateral breaking of the marriage bond

17 For the proposal of the Legal Committee of the Court at the State Council in spring, 1786, see Pribram, *Urkunden und Akten*, I, 541–46.

18 *Handbuch aller unter der Regierung des Kaisers Joseph des II.* 15. Band, 703–4 contains the order dated January 17, 1788. On the circumstances of the edition of the regulation, see Dolliner, "Allgemeine Bemerkungen," 319–20.

was also authorized in cases in which it could be demonstrated that the wife had committed adultery.[19] These regulations practically translated Jewish traditions into the language of modern law while at the same time acknowledging not their contexts and complexities. While the special compromise did not resolve all the issues, it set the stage for the paragraphs concerning Jewish marriages of the 1811 of the Austrian Code of Civil Law and created a transparent legal environment for at least a century in the Austrian Empire.[20] In the eastern half of the empire, the development of marriage rights took a different turn, and this created new constraints and possibilities and implied different consequences.

The Jews and the Denominational System of Marriage Law in Hungary

The developments sketched above affected Hungary only indirectly. The country enjoyed independence in its legal life within the Habsburg Empire, which the reign of Joseph II broke only partially and only for a short period of time. The patents issued by the ruler, which were not in conflict with the feudal "constitution" (the laws legislated by the diets and the customs expressed in the "lawful practices") could only be promulgated by the Hungarian authorities. Thus, the marriage patent of Joseph II was only put into effect in Hungary in 1786, and the supplement concerning the Jewry was never promulgated. Although in the of spring 1790 claims were made to hold Jewish marriage suits in the civil courts, in the midst of the political turbulence accompanying the change of rulers, the central authorities ordered the Hungarian and Transylvanian provincial government to leave the former practice (hearing these cases in the Jewish courts) in effect.[21]

19 On the petition of the delegation of the Jews of Prague, see Singer, "Zur Geschichte der Juden in Böhmen," 213–17, 226–28, 233–34, 237–39. Pribram, *Urkunden und Akten,* II, 13–17. For the proposal in the topic, see ÖStA AVA Hofkanzlei. Allgemeine Reihe. Akten. IV. T. 8. (Ehen der Juden, Böhmen, Karton 1545.) 88/1791. The published decree: 130. Hofdecret vom 21-ten März 1791. *Justizgesetzsammlung,* 17–18.

20 For the proposal of the court committee reviewing the draft of the civil law code dated April 16, 1800 on Jewish marriages, see ÖStA AVA Hofkanzlei. Allgemeine Reihe. Akten. IV. T. 8. (Ehen der Juden, Böhmen, Karton 1545.) without number. Pribram, *Urkunden und Akten*, II, 71–76 contains the later proposal and the decision in the case. For the order on the same issue for Galicia, see 510. Patent vom 28-ten October 1800. *Justizgesetzsammlung,* 85–86. On the background of the issue, see Dolliner, "Allgemeine Bemerkungen," 321–22.

21 Concerning the divorce of Ladislaus Novak (originally Moyses Neuländer), who converted to the Lutheran faith, the Jewish divorce patent was sent from Vienna at the end of the 1789, but because of the death of Joseph II, it was never published: ÖStA AVA Oberste Justizstelle, Bücher. Ratsprotokoll der Kompilationshofkommission (Band 36, 1786–1790) 717–18, 779–81. MNL OL A.39. 12390/1789,

After the death of Joseph II, at the diet held in 1791–1792, at which the Hungarian estates formed a united political front with the Churches (the rights of which had been significantly cut by Josephinism), restored the centuries-old rights of the latter, which included putting marriage suits back under the jurisdiction of the Catholic and Orthodox courts. (The *Ehepatent* was only left in effect with regard to marriages between Hungarian protestants.) As the Jewry, which was only tolerated by public law and had no political representation, thus was ruled out, the *Diaeta* did not address the question of Jewish marriages. In consequence, unlike in the Austrian provinces, Jewish divorce suits continued to be held in the traditional way, in other words in the bosom of the independent Jewish synagogues. In the first half of the nineteenth century, Jewish marriage cases were only seldom heard at civil courts, and typically only when one of the two spouses had converted to Christianity, a spouse was engaged in some kind of tactical strategizing, or there were some unresolved property issues.[22]

This only changed half a century later, after the defeat of the 1848–1849 Hungarian Revolution and War of Independence, when in 1853 the Austrian Code of Civil Law was promulgated in Hungary. This code only remained in force for a longer period of time in Transylvania, which until 1867 formed a separate crown province. The Law Code was in force in Transylvania until 1895, when the Hungarian marriage law was introduced. In Hungary, in the narrower sense (excluding Transylvania), at the beginning of the 1860s, when the former, traditional feudal rights and juridical system was restored, the question of Jewish marriage suits and jurisdiction again was raised. In the end, at the initiative of the Hungarian Supreme Court, the Curia, the Court Chancellery, issued a provisional regulation in 1863 which was more or less in accordance with the points of the Austrian Code of Civil Law. The difference was that the regulation of the Chancellery, in addition to allowing divorce in cases when a writ of divorce was submitted, there was mutual agreement between the parties, or it could be shown to the satisfaction of the court that the wife had committed adultery, also allowed unilateral separation in cases of "cruel desertion," a "disordered life" that threatened the wealth of the spouse or the morals of the

12885/1789, 591/1790, 3766/1790. The Hungarian Chancellery had already received the patent concerning a Jewish marriage case in Máramaros County in 1785, but in the uncertain legal environment, the king ordered to act in accordance with the previous practices for the time being: MNL OL A.39. 13932/1786, 1872/1787.

22 Some cases from the files of the Chancellery: MNL OL A.39. 8545/1806, 5928/1816, 11484/1816, 3859/1833, 6156/1833. On the marriage conflict between Rufold Wodianer and Rozina Koppel, who turned to the council of the town of Pest in 1831, see: Bácskai, *A vállalkozók előfutárai,* 185–87.

family, "dangerous endeavors" against life or good health, "especially sensitive, recurrent aggravations," and "bodily bruises that threaten with contagion." The fact that this dubious order, which was issued without the assistance of the legislative powers and was not ratified by the ruler, still served as a reference point in adjudging Jewish marriage suits until the marriage law came into effect is a reflection of the contemporary disinterest in the question of Jewish marriage.[23]

Jewish marriage suits received somewhat more attention, after the Austro-Hungarian Compromise of 1867, in the implementation of the program of Hungarian state formation and nation building. The liberal Hungarian politicians saw potential allies in the rapidly Hungarianizing Jewry, which was largely concentrated in towns and cities. In order to foster this envisioned alliance, however, they had to overcome social differences which were products of religious difference, which meant working to change distinctive customs and practices. When it came to marriage rights, these customs included the practice of dissolving of marriages simply with presentation of a writ of divorce without the assistance of a "qualified" rabbi or the authorization of the royal courts, a practice which was, from the perspective of civil law, technically illegal. As this practice remained common and as there was an increasing number of civil suits and prosecutions, the Hungarian ministry took measures to impede ritual marriages and divorces in 1878. In 1881, it submitted a bill concerning marriages between Christians and Jews, which were unrecognized and essentially forbidden by the denominational system and which for the most part were held abroad (mostly in Austria).[24] The proposal inflamed anti-Semitic voices, according to which it went too far as an effort to put members of the Jewish community on equal legal footing with Christian society, while it also strengthened voices among the liberal community, in whose assessment it did not go far enough. The failure of the proposal years later in fact only added further momentum to efforts to arrive at a legal definition of marriage as a civil institution that would apply to all citizens (this eventually happened in 1895, the same year in which the law was passed making Judaism legally equal to the other so-called received religions in Hungary). The failure of the proposal notwithstanding, however,

23 Files of the order of the Chancellery: MNL OL D.189. Magyar Királyi Udvari Kancellária, általános iratok 15940/1863.

24 The decree no. 17619 of the Ministry of Religion and Education dated September 27, 1878. *Magyarországi rendeletek tára 1878*, 774–83. The final proposal of the act: *Az 1878. évi október hó 17-re hirdetett országgyülés képviselőházának irományai*, vol. 23, 193–206. The standard was the Austrian institution of the civil "emergency-marriage" *(Not-Zivilehe)* established in 1870, with the difference that, in the Austrian Empire, civil marriages could only be concluded between people who had no Church affiliations.

the Jewish communities in Hungary were under much stronger pressure to make marriage a civil institution (and thus put the practices involved in marriage and divorce practices under the jurisdiction of the civil courts) than Jews in the Austrian half of the Monarchy. The most important site in which this pressure was applied and these changes were encouraged was the royal courts of law.

Conflicts around the Get

Though in the denominational system of marriage rights, Hungarian courts of law theoretically dealt with the citizens of different denominations, both husbands and wives, according to their religious traditions, in the marriage suits (Protestant and Jewish) heard at the royal courts of law, a rather peculiar practice prevailed which broke with the norms and procedures of the denominations. Some of the conflicts surrounding Jewish marriages and divorces (apart from the rejection of the jurisdiction of the state courts by the spouses) originated in the aforementioned practice, which paid no attention to Jewish law (*halacha*) or the feasibility of the ritual obligations. This may seem peculiar, as the order of the Chancellery issued in 1863 regulating the conclusion and break-up of Jewish marriages was founded on the Austrian Code of Civil Law (which was essentially tolerant) and would have allowed for the emergence of a judicial practice to a large extent in alignment with Jewish religious regulations.

The explanation for this legal practice has to be sought in the conflicts concerning the central motif, as it were, of Jewish divorce, which was the handing of the ritual writ of divorce. In cases of mutual agreement, the imperial-royal courts that dealt with these kinds of cases on the basis of the Austrian Law Code did not dissolve the bond of marriage. Rather, they only authorized the handing over of the *Scheidebrief*, which formed the essential part of the civilian procedure.[25] The Hungarian courts of law, which were restored in the 1860s, also followed this practice for a time. For instance, the Court of Law of the Town of Pest announced the dissolution of the marriage of butcher József Neumann and his wife, Regina Rosenbaum, in vain; their marriage endured, as the parties did not appear for the handing over of the writ of divorce by the deadline.[26] The court of law of the neighboring town of Óbuda only provided assistance with

25 In the case of the Jewish divorce suits, the early regulations of the Austrian Code of Civil Law can be consulted: Budapest Főváros Levéltára (BFL) IV.1120.a. Budai Cs. Kir. Országos Törvényszék, polgári perek 1856. III. 123, 1856. III. 163, 1859. III. 82, 1859. III. 88, 1860. III. 80, 1860. III. 81, 1860. III. 87.

26 BFL IV.1343.f. Pesti Visszaállított Városi Törvényszék, válóperek 1867. V. 11.

the issue of the *get*: after mediations by the rabbinate, if the parties still sought to dissolve the marriage, the court simply approved the ritual act (and in the majority of the cases, no sources offering any sign of significant negotiations of any kind have survived).[27] However, even at the time, on some occasions the divorce verdict did not simply note that the writ of divorce had been offered and received, but also made this mandatory for the parties. By the mid-1870s, this had become a rule in standard judicial practice.[28] Thus, the court did not pay any attention to what took place outside the courtroom. If the parties did not exchange the writ of divorce by the given deadline (usually fifteen days), the divorce came into force, and instead of the writ of divorce–sounded the invented legal formulation–the judgment itself served as proof of the breaking up of the marriage.

In the Hungarian capital of Pest-Buda, sources reveal that, in the critical period, civilian courts not only proceeded in an inconsistent and illegal when dealing with Jewish divorce cases, but the ambivalence in the phrasing of the verdicts and the negligence shown for the expectations and regulations of the religious communities at first were tied to a clearly defined circle of cases. The judgments of the Court of Law of the Town of Pest in the 1860s suggest that the definitive formula used in the judgements was preferred in part in an effort to come to the assistance of Jewish wives from disadvantageous backgrounds who were compelled to seek the assistance of the courts because they were unable to reach mutual agreements with their spouses concerning divorce. In cases of divorce between Jewish spouses, the husband handed the writ of divorce to the wife. Moreover, in a case in which the wife was accused of having committed adultery, the writ could be issued unilaterally (this was not the case if the husband was accused of adultery). If the husband refused to cooperate or blackmailed his wife or simply disappeared, the wife was powerless. In accordance with the laws of the Jewish community, she was given the status of "tied" (*agunah*), which meant that she was unable to enter into a new marriage. Many Jewish women

27 Cf. BFL V.48.b. Óbuda Mezőváros Törvényszéke iratai 273/1862, 1155/1864, 1026/1865, 1328/1866, 1380/1866, 2556/1867, 1818/1868, 2407/1869, 2833/1869, 2866/1870, 2889/1870, 2979/1871.

28 The decision of June 19, 1866: BFL IV.1343.f. 1866. V. 1. For another decision with similar wording dated December 13, 1866: BFL IV.1343.f. 1866. V. 9. In 1884, the Royal Court of Law still made the handing over of the writ of divorce a condition for the divorce to enter into legal force, but by then, the Curia did not refuse to break from standard the legal practice and dissolve the decision of the court of the first degree and order a definitive final decision by the court of law: Sztehlo, *A házassági elválás joga,* 81–82.

who found themselves in this situation in Pest used civil law to put pressure on their husbands through the civil courts.[29]

The Christian judges were aware, of course, that what these wives sought to do violated Jewish religious regulations. The uncertain legal environment, however, created an opportunity for the judges to do as they saw fit, and the seriousness and merits of the complaints that were submitted gave them motivation to do so, as did the difficult fates faced by the people who were submitting the complaints. Accordingly, as the legal practice concerning the handing over of the writ of divorce would have drastically limited their ability to do anything to protect the women in these cases, the courts addressed the situation by using a rather inventive interpretation of the 1863 decree of the Chancellery; they started to use the reasons given by the decree as justifications for legal separation (crime, abandonment, a disorderly lifestyle, life-endangering acts, abuse, aggravation) as adequate justifications for the dissolution of a marriage. Moreover, increasingly commonly, the courts of law dissolved Jewish marriages using the justification typically used in Christian divorce suits, namely "inveterate hatred." According to Jewish law, none of these reasons constituted legitimate grounds for divorce, nor did they entitle a spouse to hand over the writ of divorce, which is why the courts decided to use a formula for the judgments which explicitly required the handing over of the write of divorce.

This connection between the practices of the courts (specifically, the ways in which the courts interpreted the Chancellery's decree relatively freely and made it easier for Jewish women to divorce their husbands) and the circumstances faced by Jewish spouses seeking a divorce is perhaps clearer if one considers the cases known from Pest-Buda. The Court of Law of the Town of Pest dissolved the marriage of Antónia Schwarcz and Samu Grünberger on the grounds of "inveterate hatred," and it order the issue of the writ of divorce. The court arrived at this decision because of an assault committed by the husband against his wife. He had hit his wife in front of the rabbi hard enough to draw blood. Some months earlier, the court of Pest characterized the abuse and life-threatening "physical approaches" committed by Antal Abeles against his wife,

29 On the disadvantageous, unilateral character of Jewish divorces for women, see: Adelman, *Women and Jewish Marriage Negotiations;* Dubin, "Jewish Women, Marriage Law, and Emancipation," 68–70; Dynner, "Those Who Stayed," 303–7. The problem had also been well known among Christian legislators for a long time by then. At the meetings of the *Kompillationshofkommission,* during the discussion of the Jewish Marriage Patent, the necessity of defending women came up a number of times: Cf. ÖStA AVA Hofkanzlei. Allgemeine Reihe. Akten. IV. T. 8. (Ehen der Juden, Galizien, Karton 1548.) 1785. without number.

Franciska Neumann, as sensitive aggravation. At the end of 1867, the supreme court changed the justification to "inveterate hatred," and put the first-instance decision into force. In the divorce suit between Mária Stern and Simon Moser, the court of law dissolved the marriage on grounds of aggravation, or more specifically, because the husband had beaten his pregnant wife so severely that the woman had miscarried, and when she was home sick, he had abandoned her. As the respondent hesitated to hand over the writ of divorce, the court of law mandated that the judgment also serve as a writ. Mór Breier, a hat-maker, also refused to hand over the *get*, in spite of the fact that the mediation certificate given by the assigned rabbi offered a vivid account of the sufferings of his wife Emilia Baruch (Bachrach) and their children. His refusal to cooperate, which lasted for years, was probably broken when, in February 1870, the town court decided to dissolve the marriage because of unfaithful abandonment, though Breier had not actually gone missing. In autumn 1870, Eliza Kanitz, a member of an influential Jewish family in Pest and wife of merchant Gyula Hertzka, managed to secure a divorce on the grounds of aggravation. Her husband, who the sources indicate was ruined and impotent, was put in an asylum.

Interestingly, in time, a Jewish spouse seeking a divorce from an unwilling partner could prevail on the civil courts without necessarily having to demonstrate that she or he had endured the kinds of aggravations or afflictions that arise in a marriage that has become plagued with conflict. While the court of law did not find the evidence provided by Zsófia Mannheimer adequate as support for her claim that she had endured aggravation, in the end, the Curia ruled against her husband, the lawyer Dr. Ignác Mannheimer. It changed the verdict of the court of first-instance in the summer of 1871 and granted the divorce, noting that earlier the husband had expressed in a contract his willingness to hand over the writ of divorce. The abandoned wife of the physician Izsák Simon also did not base her request for a divorce on the claim that her marriage was unbearable. She lived as an *agunah* for seventeen years and then converted to Christianity, and only then did she sue for divorce. The court in this case issued the divorce on the grounds of faithless desertion in the spring of 1869. Eleonóra Singer petitioned for divorce in 1872. Her husband, Han Veit, had vanished into thin air. As had been true in the case of Mrs. Simon Izsák, under the circumstances, it was quite impossible to hand over the writ of divorce. The court not only had no hesitations about granting the woman's request, it even referred specifically in its ruling (which was issued towards the end of 1874) to the fact that "in the 22nd point of the highest decree, which serves as the law for divorces in the case

of marriages between Jews, cruel abandonment is listed among the grounds for divorce." In order to avoid misunderstanding, the regional high court made the ruling more precise by specifying that "the parties to the suit are permitted to remarry."[30]

As these examples make clear, in some cases, the petitioners succeeded in having the *get* handed over, but in some, they did not. At first, in the 1860s, the courts of law tried to put pressure on hesitant husbands to hand over the writ of divorce, but later, they did not insist on this act, which they were unable to enforce anyway. But the women, who found themselves in difficult situations and probably had few other available means at their disposal, still trusted their fates to the civil court. It is hardly surprising that, until the marriage law was passed, at the Royal Court of Budapest and the town courts (which were its legal predecessor), two thirds of the cases of divorce between Jewish spouses were brought by the wives, while in the case of the divorce suits involving Christians, the proportion of female petitioners was somewhat lower than that of male petitioners. The *agunah* problem was addressed in part by the 1895 legislation, which made it possible for a Jewish woman who had been abandoned by her Jewish husband to enter into a civil marriage, but nonetheless, far more Jewish wives petitioned for divorce than Jewish husbands (the proportion of female petitioners between 1895 and 1914 was 58 percent).[31]

The practice of the civil courts, which essentially disregarded the Jewish regulations, meant that, for some time, these courts were unable to guarantee the most important legal effect of a divorce, the possibility of remarriage. Until 1895, there was no civil alternative to religious ceremonies, and very few rabbis were willing to wed a divorced woman or man without her or his writ of divorce. Given the practice of the courts described above and the practice of members of the Jewish communities of getting divorces which, because they were only matters of religious authority and ritual, were illegal in the eyes of the state, from the 1870s onwards, conflicts between the Hungarian courts, the couple in question, and rabbis caught in the middle were a constant cause of concern

30 The following is a list of the divorce suits referred to: BFL IV.1343.f. 1866. V. 1, 1866. V. 9, 1867. V. 18, 1867. V. 21, 1868. V. 16, 1870. V. 23. BFL VII.2.c. Budapesti Királyi Törvényszék, peres iratok 1872. V. 41. BFL IV. 1343.f. 1870. V. 35. It was important for women to seem innocent of causing conflict. Cecília Weisz offered strong arguments in support of her actions when she was faced with serious accusations, but in vain. Her request for divorce from the physician Vilmos Sagl was refused by the court: BFL IV.1343.f. 1867. V. 22. Sztehlo, *A házassági elválás joga*, 84–86 offers further examples of these kinds of judicial customs in the 1880s.

31 Nagy, *"Engesztelhetetlen gyűlölet,"* 314.

and conflict. These conflicts included tensions which arose in cases of criminal cases involving allegations of bigamy, annulments of Jewish divorces, "violent" attempts by rabbis to reconcile spouses, and cases of forgery involving writs of divorce. In the early 1890s, going against decades of practice, the government even went so far as to acknowledge the illegal (concluded without the rabbi in charge) ritual marriage of Regina Weisz, a woman from Hódmezővásárhely, even though Weisz, though legally separated, had not been granted a writ of divorce. The government only rescinded its decision in response to the indignation prevalent in Neologue public opinion and the critical remarks made by rabbis and legal experts.[32]

The situation changed after 1895. Jewish ex-wives and ex-husbands who had not been given a writ of divorce could enter a new marriage following their civil divorce suit. They of course had to accept sanctions by the religious authorities of the Jewish community, as well as the disapproval of their community, and in some cases (again as a way of punishing women who went against the norm), the stigmatization of their children (who from the perspective of religious dogma were illegitimate) as *mamzer*. Despite this, with increasing social integration and secularization, these kinds of threats and tribulations were less and less effective as means of persuading people not to defy religious tradition. The process unfortunately becomes difficult to study after the turn of the century, as the conflicts around the handing of the *get* were irrelevant from the point of view of civil law, and the court records therefore contain no mention of them. The change, however, was tangible. As Mihály Guttmann, the rabbi of Csongrád, complained in 1913, "The questions concerning the property rights of people who are married are not regulated by the rabbinate anymore, but are being brought to the civil court. People do not negotiate with the dayan, but with a lawyer."[33] Although the number of Jewish men and women who married in front of civil ministers without any assistance or contribution from a rabbi was probably low, the tendency is unmistakable: the strict religious traditions which had formed part of everyday life and had been essentially mandatory for every member of the community in the mid-nineteenth century gradually became less important with the spread (in law and social practice) of marriage

32 Ibid., 163–75.

33 G[uttmann], *A Sulchan Áruch és a magyar zsidóság,* 15.

as a civil institution, at least among Jews who were in the process of assimilating, and within one century, they had become little more than "legal folk customs."[34]

Social Consequences

The lasting conflict between state law and denominational law and the social impact of this conflict, which included the ways in which it affected families in space and time, varied in the different Jewish communities in Hungary, which, moreover, were increasingly divided from the mid-nineteenth century onward and followed different movements, in part because of their different approaches to religious tradition. While the rapidly Hungarianizing members of the Neologue communities accepted the supremacy of state law, Orthodox Jews, who clung more assertively to their traditions, took whatever measures possible not to take note of the latter. In reality, of course, the division lines were not so straightforward, and in a given situation, considering the anticipated pros and cons, the married parties decided themselves whether or not to turn to the civil and/or religious forums in order to reach their goals. Nonetheless, some specificities merit emphasis, as they shed light on opposition to the expansion of the state law and the personal decisions and strategies which indicate acceptance of the law, as well as the spatial and temporal dimensions of these changes.

In the last decades of the nineteenth century, the statistical administrative offices in both halves of the Austro-Hungarian Monarchy had begun to provide more or less reliable demographic data on births, marriages, and deaths. The registers of births, marriages, and deaths kept among the Jewish communities were admittedly less consistent and comprehensive than the records kept among Christians (in part because there was some resistance to the practice itself, which initially had been a Catholic practice which was adopted by the state and pushed on the Jewish citizenry), but they nonetheless indicated larger trends and tendencies, and statisticians who dealt with this data drew attention to the high rate of Jewish children born out of wedlock. In the Austrian Empire at the end of the century, two thirds of Jewish newborns were registered as illegitimate, and the illegitimacy rate was even higher among Jews in eastern territories, where it came to 75 percent of the total. As Jakob Thon, statistician

34 In 1896, the first year in which the civil marriage law was in effect, there were only two civil marriages in the Budapest, and in both cases, a Church ceremony was impossible because there was no writ of divorce. Frisch, "Az egyházpolitika jegyében," 209. By the turn of the century, however, civil marriages were characterized as matter of course in the periodical *Magyar-Zsidó Szemle* (18: 1901): 3–4. (No title)

who dealt with data concerning Jewish communities, note, "the ratio of natural children is actually very low among the Jewry." This difference, however, could be characterized as misleading, as children who were born of couples united in ritual (not civil) ceremonies were considered illegitimate, even though they were legitimate according to Jewish law. According to Thon, in Galicia and Bukovina, two thirds of Jewish marriages were ritual marriages, which meant that they were not recognized by the laws of the state.[35]

The situation was similar in Hungary, even if not to the same degree. Hungarian statisticians drew attention to fluctuations in the Jewish marriage numbers and the unreliability of the statistics: "The wedding rate among Israelites, however, until now cannot be considered a reflection of the reality."[36] For a marriage between two Jews to be considered valid, originally there was no need for the involvement of a rabbi, a wedding ceremony at the synagogue, or the addition of a new entry in the register. However, as was the case in the other half of the Monarchy, the state considered technically irregular marriages illegal. Despite this, illegal weddings remained common even decades later. According to a complaint by an unnamed rabbi from Sáros County published in 1889 in the Neologue periodical *Magyar-Zsidó Szemle* (Hungarian-Jewish Review), only approximately one third of the local marriages were declared officially, and "the unannounced weddings were held by uninvited people in secret," and children born of these marriages were to be registered as illegitimate. With respect to the 1889–1891 demographic statistics, statistician Dávid Kohn refers both to the high rate of unregistered Jewish marriages and the high ratio of illegitimate children in the "upper counties" and in Máramaros County, and he notes that "this phenomenon no doubt can mostly be attributed to administrative reasons, and not moral."[37] The northeastern areas bordering Galicia and Bukovina appear again and again in the different reports; at the beginning of the 1890s, for instance, one third of all Jewish childbirths were illegitimate in Bereg County and half were illegitimate in Máramaros. Previously, the situation has not seemed

35 Hugelmann, "Die Ehelösungen in Oesterreich," 9; Seutemann, "Die Legitimationen unehelicher Kinder," 18–24; Thon, *Die Juden in Oesterreich,* 20–21, 27–28. For an overview, see: Keil, "Recte Lax, False Kritz," 30.

36 Keleti, "Magyarország népesedési mozgalma," 20–21. Earlier it was precisely in connection with the relative scarcity of Jewish marriages concerning that the inaccuracy of the denominational marriage records was brought up. Konek, *Az Ausztriai Birodalom,* 77.

37 *Magyar-Zsidó Szemle* 6 (1889): 28–29 (No title); Kohn, "Zsidó népmozgalmi statisztika," 39–40.

so catastrophic simply because the synagogues and the parents had not bothered with the registers, which the state, after all, was trying to force on them.[38]

Thus, as noted by contemporaries, the frequency of illegitimate births was not a consequence of some kind of sexual non-conformism, but rather was to some extent a matter of resistance to the threatening extension of the civil marriage law, which was perceived as a challenge to the traditional Jewish lifestyle. The "geography" of illegitimate childbirths reveals that this resistance was more stubborn in the eastern provinces of the monarchy, where the majority of the Orthodox population lived, than it was in the West, among the Jewish communities which were gradually assimilating and becoming part of the emerging bourgeoisie. Thon specifically mentions Bohemia, Moravia, and Vienna as places where Jewish couples usually married in accordance with the laws of the state, and thus the rate of illegitimate childbirths was a considerably lower. In fin-de-siècle Hungary, compared to the situation in the northeastern counties, the conditions in Transdanubia, the western part of Upper Hungary, and Budapest were more consolidated. The state endeavors to regulate Jewish marriages accordingly were successful in regions (mostly major towns and their agglomerations) and among social groups (merchants, artisans, officials, and intellectuals) which prospered, had significant wealth, and had strong ties to members of the Christian society.

Although the temporal dimension of the phenomenon and the wide diversity of personal decisions cannot be emphasized enough, we can nonetheless assume that there were some trends and tendencies in the breakup of Jewish marriages. The number of Jewish divorces at the turn-off the century in the Austrian Empire was only about 100 a year, and even a decade later, this number had only doubled, despite the attempt of the Austrian Code of Civil Law to build the ritual act (i.e. the handing over of the writ of divorce) into the civil procedure. In Hungary, though the number of Jewish inhabitants was significantly lower than in the other half of the Monarchy and the marriage law did not take note of the writ of divorce, twice as many Jewish divorces were pronounced. The urban concentration of the Hungarian Israelite population and the traditionalism of the masses of eastern Jews, which was more relevant to the Austrian half of the empire, may explain these surprising numbers. This is confirmed by the fact that more (50 percent more) Jewish divorces were registered in Vienna than in Galicia

38 *A Magyar Korona Országainak 1890. és 1891. évi népmozgalma*, 62–63. *A Magyar Korona Országainak 1892. és 1893. évi népmozgalma*, 32–33.

and Bukovina combined, even though the Jewish population of the imperial city was only one sixth or one seventh of the Jewish population of these two provinces. The different divorce rates, furthermore, cannot be attributed to the well-known specificities of married behavior in towns and in the countryside, as in the neighboring Russia, where denominational practices remained fully in force, the rate of Jewish divorces was very high. It is thus likely that, in the case of the Galician Jewry, if one could take ritual divorces into consideration when compiling statistics, a very different pattern would have emerged than the pattern suggested by the Austrian statistics, a pattern which would not strengthen the nostalgic image of undisturbed Jewish family life in the countryside.[39]

The example of Budapest, the Hungarian capital, clearly shows how important the role played by the rapidly developing towns was in the social integration and acculturation of the absorbed Jewish population, including married Jewish couples. According to statistics from the beginning of the century, the ratio of divorces among members of the community of Budapest, which from this point of view was particular active, was two to three times higher than in the countryside.[40] The town–countryside difference would probably be even bigger, even striking, if divorces among couples living in the bigger towns in the countryside which also had significant Jewish populations were also taken into consideration, alongside Budapest (the official statistics do not allow similar calculations). The markedly different rates emphasized above nonetheless do not reflect the allegedly typical stability of Jewish family life in the countryside. Rather, they indicate differences in attitudes towards the use of the civil legal institution, which was met with some suspicion in urban areas but was more vigorously rejected in rural communities.

Sporadic contemporary reports produced in the second half of the nineteenth century on the behavior of married Jewish couples also support this

39 Austrian divorce demographic statistics were published from 1884 onwards: Die Ergebnisse der Civilrechtspflege, 108–20. The further volumes of the series under the same name were published up to 1909, after which the divorce statistics were published in the following handbook: *Oesterreichisches Statistisches Handbuch*. 19. Jahrgang 1910, 30–31. Its further volumes under the same name were published until 1913. One important source on Hungarian divorce statistics from 1900 onwards is *Magyar Statisztikai Évkönyv,* 9. évfolyam, 390–95. The number and trends of Jewish divorces can be traced in the same series until the outbreak of World War I. For the divorce rates of the Jewry in the western part of Russia, see Freeze, "*Jewish Marriage and Divorce,*" 146–59. Dynner, "*Those Who Stayed,*" 305 contends that Freeze has misunderstood the divorce rates among urban Jews because he Freeze fails to take into consideration the fact that divorces among Jews from rural communities took place in towns. For the divorce rates of the Polish provinces of the Russian Empire between 1867 and 1886, see *Department of Commerce and Labor,* 501.

40 Nagy, *"Engesztelhetetlen gyűlölet,"* 62–63, and 493.

interpretation. In 1863, after the regulation of Jewish marriages, the Hungarian authorities called for the opinion of Wolf (Aloys) Meisel, chief rabbi of Pest. Meisel did not deny that there were local difficulties, but he claimed that the situation in rural areas was comparatively hopeless:

> He could not stop giving colorful descriptions of the sorrowful situation of the marriage cases of those who belonged to his faith and of the risky abuses and disorders, which came from all directions overarching and which threatened the overall interests of society. According to him, it is not rare that marriages are held with the full omission of Church services, and the ceremonies are conducted by civilians and in secret, and moreover, he is not even informed of childbirths for the sake of having the circumcision done. This is so common that he cannot take any responsibility for the validity of the records. He also pointed out that if the circumstances in Pest, in the center of the country, are as bad as they are, one must consider how bad they are in rural areas.[41]

It is certainly true that, while the rabbis who lived in the capital tried to adhere to the order of the Court Chancellery that was meant to put an end to the abuses, their colleagues in rural communities barely took note of it. This became clear in 1878, when the authorities launched a case against a Jewish couple, Henrik Brecher and Mária Weisz, who only divorced ritually, and their rabbi, Albert Stern, the rabbi of Újpest, who assisted at both their remarriages. As was soon uncovered, this was not the first time Stern had offered assistance in cases of "bigamy." In the 1870s, he repeatedly wedded men and women who had gotten divorced without the recognition of a court of law. His colleagues in the capital, Sámuel Brill from Pest and Márkus Hirsch from Óbuda, testified that in similar cases, they followed the regulations of the Chancellery. During the case, it turned out that another well-known rabbi from Pest, Sándor Kohn, had already called Stern's attention to the unlawfulness of his activity. Stern, however, offered such a convincing defense that he got off in the end only with a fine. He noted that, in the Jewish communities in the rural parts of the country (he supported his statement with certificates of rabbis from Esztergom, Buda, Kaposvár, Nagykanizsa, Pécs, Sziklós, and Sátoraljaújhely), ritual divorces were considered common. At the sentencing, the proceeding Royal Court of Law of Budapest identified as an extenuating circumstance "the doubts which have emerged in most part of the country concerning the validity of the laws,

41 MNL OL D.189. 15940/1863.

doubts which have been demonstrated by letters submitted by the defendant, in consequence of which the illegitimate divorces which form subject of this case are tacitly being done and are norms in most part of the country."[42]

The waves of the Brecher-case, which again raised the question of Jewish marriages and civil law, went as far as the diet. In the spring of 1880, Pál Mandel, a member of the parliament, made an address at the budget discussion of the House of Commons in which he emphasized the differences between the civil marriage regime in the capital and civil marriage in the rural parts of the country:

> In Budapest, for instance, the regulations of the Chancellery are being followed. In the countryside, almost everywhere, because of the origin and form of the regulation, they claim that it is illegitimate and, moreover, they do not accept it and proceed according to old Jewish law. According to the understanding in Budapest, the marriage suits conducted without respect for the regulation are void, while in rural areas, the same holds true for the marriage suits in Budapest, but the other way around.[43]

Mandel was of Jewish faith himself, and he was a scholar of law and a lawyer by profession. Moreover, he represented an eastern Hungarian electoral district, the citizens of Nyírbátor, which was potentially affected by the problem, and therefore he was certainly not speaking from a position of ignorance nor as someone indifferent to the topic at hand, but rather had reached his conclusion on the basis of his own experience.

One does not find similar communications suggesting the prevalence or the suppression of Jewish ritual divorces after the marriage law came into force, as with the introduction of civil marriage and divorce, "religious acts" lost their legal importance. The changes in the rate of illegitimate children in Budapest

42 The files of the prosecution in the Brecher case have not survived. The antecedents and the early stage of the prosecution are summarized in *Pester Lloyd*, 29 (no. 29) January, 1878. On the defense of the rabbi of Újpest, see Albert Stern, *Védbeszéd, melyet a budapesti k. fenyítő törvényszék előtt, 1878. jan. 28-án mint vádlott a zsidó rituális válás ügyében tartott* (N. p.: 1878). The decision of the court of first instance did not bring the case to an end, as during the appeal at the Royal Court of Budapest, the defendant was sentenced to one year of imprisonment, and only the Curia saved the rabbi by confirming the decision of the court of the first degree. The case was also continuously followed in the Austrian press: "Bigamie." *Die Neuzeit* 1. Februar 1878. Nr. 5. 35. "Ein Ehescheidungs-Prozeß," *Neuigkeits Welt-Blatt* 5. Februar 1878. Nr. 29. [9.] "Auflösung der Juden-Ehen. Eine oberstgerichtliche Entscheidung," *Neuigkeits Welt-Blatt* 18. Oktober 1878. Nr. 241. [9.] "Zur Ehetrennungs-Praxis in Ungarn," *Gerichtshalle* 18. September 1879. Nr. 75. 362–63.

43 *Az 1878. évi október 17-ére hirdetett országgyülés képviselőházának naplója*, 12. kötet, 41–44.

and the rural parts of the country, as synchronic processes, suggest, however, that Jewish resistance to the expansion of state law dragged on for decades. While in Budapest, the illegitimacy rate steadily decrease around the turning of the century (and thus followed the general trend), the illegitimacy rate in rural areas surprisingly kept rising until the outbreak of World War I. Indeed, it rose so much that between 1911 and 1915, the rate of statistically demonstrated illegitimate Jewish births was higher (11.3)[44] in rural areas than it was among Jewish newborns in the metropolis (10.4), which had a population of almost a million inhabitants! It is worth noting again that this change does not indicate an actual increase in the number of illegitimate children, but rather whos an increase in the number of Jewish couples who were included in the civil registries and who, from the point of view of state law, had entered illegal marriages. Presumably, a further symptom of this change came in the wake of the war, when, in accordance with the terms of the Treaty of Trianon, Hungary lost its northeastern territories, where the overwhelming majority of the traditional, eastern Jewish communities lived. The rate of illegitimacy in the rural parts of the country fell dramatically in the period from 1925 to 1932 (2.1), while in the capital, the rate only dropped by half (4.7). It is safe to assume that the change in ritual divorces followed the same tendencies.[45]

Conclusions

As ritual marriages and divorces in most cases left no written evidence behind and never came to the attention of state officials, judges, or statistical officers, historians are essentially unable to trace the formation of stepfamilies through these practices (including stepfamilies which formed after a spouse was widowed and then remarried, but only through a ritual marriage, not a civil marriage). Divorce, however, was probably not a negligible factor in the formation of families even in the period before the long nineteenth century, as divorce rates among the eastern Jewry were extremely high in the long nineteenth century, and even the frequency of divorces among the "civilized" Jewry in Hungary

44 This figure and each of the subsequent figures cited represent the number of children born out of wedlock per 1,000 Jewish inhabitants of the community in question.

45 According to the data of Dezső Laky, the raw illegitimate Jewish child birth index in the countryside shows the following trend: between 1896 and 1900, 3.6 and 2.4; between 1901 and 1905, 2.9 and 2.7; between 1906 and 1910, 1.2 and 3.1, and between 1911 and 1915, 1.9 and 3. Laky, *A törvénytelen gyermekek,* 242.

permanently exceeded that among Christians. It again can only be assumed that this transitional period, which was full of legal conflicts and administrative confusion, came to an end sooner among Jews who lived in towns (in the case of Jews living in Budapest, it had probably come to an end by the beginning of the twentieth century) and decades later in the Jewish communities of the countryside. Indeed, as it was the Jewish communities in the Hungarian countryside which were almost completely destroyed in the Holocaust, these practices may only have come to an end with the annihilation of these communities.

One could contend that this is only a minor issue of relevance only to the history of a smaller ethnic group, or rather a religious group, and it did not affect the conduct of the Christian majority when it came to marriage and divorce. This may be partially true, but one should keep in mind that in Eastern Europe, the size (proportional and absolute) of the Jewish population was not negligible (in Hungary the 911,227 Jewish citizens who were registered in 1910 formed 5 percent of the population),[46] and therefore the problem cannot be dismissed as irrelevant. Conflicts concerning Church norms were part of everyday life, and the customs of Christian communities and the expanding state law influenced attitudes and practices concerning marriage, divorce, and family life in other cases as well. One need merely consider the tough resistance of the Catholic church, which in Hungary formed the majority of the population and had the most political influence, to the introduction of the civil institution of divorce, in the wake of which many Catholic husbands and wives preferred, after their marriages had fallen apart, to live with new partners in relationships which were illegitimate in the eyes of both the state and the Church rather than actually use the new civil institution to break their marriages. Though the parties in question may have considered their unlawful relationships real marriages and may have raised the children born of these unions whom they were compelled to introduce into the registers as illegitimate. As they did not seek divorce in the civil courts, they could do little more than wait for the uncertain, legally risky situation to come to an end when the spouse with whom they were still legally married died. Instances of "cohabitation," which became increasingly common over the course of the nineteenth century, and in particular this special type of relationship (a relationship between a couple which could never enjoy the recognition of the Church or the state because the bond of marriage had not been dissolved) remain largely invisible to the historian because of a lack

46 *A Magyar Szent Korona Országainak 1910. évi népszámlálása*, 162–65.

of sources, similarly to the unregistered ritual Jewish marriages, divorces, and remarriages.

In the case of the Jewry, it is particularly clear how the expanding state and its offices (the government, the courts, the statistics bureaus) started to wield power over the definition of family. Rabbis and the communities in question no longer defined what sorts of partnerships could legally be considered "families" (and what sorts could not), as this role had been wrested from them by the state. The state decided which "bonds" would be regarded as marriages, and the state keep records of these bonds. And it was the state, furthermore, which then decided, whether a child would be considered legitimate or not. Only a marriage which had been entered in accordance with the laws of the state could be broken up legally, and if they sought to remarry, men and women who had gotten divorced had to remarry in accordance with the laws of the state if they wanted to found a new family and ensure that any children born of their new union would be regarded as legitimate. Ritual marriages were considered "cohabitation," and the children born of them were illegitimate. Ritual divorces were regarded as non-existent by the state, and ritual remarriages again were merely considered instances of "cohabitation." If a Jewish couple entered a marriage which, from the point of view of state law, was legal but the husband and wife then divorced according to religious ritual, they were behaving in a manner that did not conform to and was not recognized by civil law, and this entailed various risks (including questions pertaining to marital properties, alimony, and the enforceability of inheritance claims). If one of the two spouses were then to enter a new marriage, this was considered a crime. The situation was complicated by the fact that, until the introduction of the institution of civil marriage, a "ritual marriage" was recognized by the state as a "Church" marriage if it were done in a manner that corresponded with the laws in force. With the introduction of civil marriage and the consequent legal irrelevance of "Church" acts, the state took control over the formation of families for good. What is very clear in all this is simply the process whereby the "modern family" came into being.

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