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## The Ambiguous Legal Status of Russian Jewry in the Reign of Catherine II

A Russian proverb knowingly reminds us that “the law is like a wagon-tongue—whichever way you point it, there it goes.” It is useful to remember this observation when examining the position of the Jews in the nineteenth-century Russian Empire. The legal basis for that position, which was characterized by exclusion and discrimination, has commonly been traced to the period from 1772 to 1796, when Russia’s Jews first entered the empire in large numbers. This study will describe the creation of the legal “wagon-tongue” during the late eighteenth century, and will suggest that the legal precedents cannot be understood by only considering the directions in which the law was later to be pointed. Emphasis will be placed on the initial evolution of an ad hoc body of law, confused, contradictory, and ambiguous, capable of subsequent interpretation and elaboration with either sympathy or hostility.

A study of the legal status of any group is most untrustworthy if it is restricted to a consideration of only the bare outlines presented by law codes and statutes. The danger of misleading conclusions is particularly great when dealing with eighteenth-century Russian legal history. Legal terminology throughout the century was often tentative and vague, and successive enactments were replete with contradictions.<sup>1</sup> It could hardly be otherwise, given the manner in which Russian written law was formulated—that is, with the decrees of the throne, as interpreted by the Senate, undergoing metamorphosis through the administrative decisions of the agents of the empire (usually professional soldiers unschooled in the niceties of the law). Nonetheless, an examination of the manner in which a legal definition of the term “Jew” emerged in Russian jurisprudence under Catherine II can be most instructive when viewed through a judicious reading of the written law.<sup>2</sup>

1. For one example, see Christopher Becker, “*Raznochintsy*: The Development of the Word and of the Concept,” *American Slavic and East European Review*, 18, no. 1 (1959): 63–74.

2. The principal source for this study is the *Polnoe sobranie zakonov Rossiiskoi imperii: Sobranie pervoe*, 46 vols. (St. Petersburg, 1830–43). (Hereafter cited as *PSZ*.)

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Throughout the period under review, Russian jurisprudence found it convenient to consider "Jew" (*zhid* or *evrei*)<sup>3</sup> as a collective legal category, but no successful attempt was ever made to define exactly what attributes made one a member of this collective. In practice there was a tendency to include anyone who held to the religious tenets of Judaism, although we must specifically exclude members of the various "Judaising" religious groups among Russian sectarians. The inadequacy of such a definition derived from and perpetuated the continual ambiguity which marked the dealings of Russian law with the Jews. The resulting confusion, reinforced, in turn, by the ignorance of officials who were charged with the administration of these laws, was an important factor in creating a body of law which contained the seeds of future disabilities. This point should be emphasized, given the stress which existing historiography places on the anti-Semitic motif in the Russian treatment of Jews.<sup>4</sup>

Russian lawmakers were not obliged to devise a body of law to deal with a Jewish population prior to 1772, because before this date Jews were generally forbidden to reside within the borders of the empire.<sup>5</sup> It was the first partition

3. Russian legislators at first used the term *zhid* (in Polish *żyd*), which was already acquiring a pejorative connotation in Russian, although not in Polish. After 1780 it was replaced in legislative enactments by the more polite *evrei*.

4. This is not to deny the real and potent existence of anti-Semitic feeling in Russian history, nor the possibility of anti-Semitic prejudice among some Russian officials. See, for example, the recent survey of Charles J. Halperin, "Judaizers and the Image of the Jew in Medieval Russia: A Polemic Revisited and a Question Posed," *Canadian-American Slavic Studies*, 9 (Summer 1975): 141–55. In my opinion, however, surveys of the period under review have often relied too heavily upon the orientation provided by such classic studies as Simon Dubnow, *History of the Jews in Russia and Poland*, 3 vols. (Philadelphia, 1916–20). Dubnow himself recognized the difficulties created for local administrators by official ignorance and inconsistency (*ibid.*, 1:308). At the same time Dubnow emphasized a long tradition of Russian *religious* anti-Semitism in order to explain any enactment which appeared to him to burden or discriminate against Jews. The result is often a simplistic view of a complex situation. See, for example, *ibid.*, 1: 310, 315, 320, 334, for the period under review. Likewise, Halperin concludes his interesting study of religious and polemical attitudes toward the Jews by observing that "It goes without saying that the roots of the Imperial Russian treatment of the Jews acquired in the Polish partitions lie in the medieval period." Such an unqualified statement is misleading when applied to the entire eighteenth century in Russia. While there is ample evidence of anti-Semitism in partitioned Poland, it was usually encountered on the local level and was thus not really "Russian" in origin at all. Moreover, it was directed against the laws and policies of the Russian government. In my opinion, there is no evidence for characterizing Catherine or her government as motivated primarily by anti-Semitism in the official response to problems created by Jewish settlement in Russia.

5. All Jews who refused to be converted to Orthodoxy were expelled from Russia by Empress Elizabeth in 1742 (*PSZ*, vol. 11, no. 8,673, December 2, 1742). The Jews thus expelled were almost entirely residents of Ukrainian border areas. An *ukaz* of 1769 permitted Jews to settle in Novorossia (*PSZ*, vol. 8, no. 13,383, November 16, 1769). Such settlement was never significant, however, and the settlers originally would have come under those statutes which regulated foreign settlements, such as those of the Volga Germans.

of Poland which brought established Jewish communities in Belorussia under Russian rule. Russian law was scarcely equipped with precedent or tradition to regulate the existence of a group of new citizens distinctly heterodox in religion, social organization, and culture, yet dwelling in the heart of the empire. At the same time, Russian legislators were equally ill-prepared to appreciate the unique legal status which the Jews had enjoyed in the Kingdom of Poland. The chief interest of the Polish crown in the Jews—for the kings were the traditional protectors of Polish Jewry—had always been economic. As long as the financial demands placed upon the Jews were conscientiously fulfilled, the central government was prepared to grant the Jewish community substantial rights of autonomous self-government. As a result, in Poland the individual Jewish community, the *kahal*, was largely self-administered, with internally selected communal leaders who oversaw civil and criminal court cases involving only Jews, religious practice and ritual, and economic life. In Poland, to be a “Jew” meant not only to be a member of a specific religious community, but also a member of a distinct legal corporation, with recognized rights and prerogatives. It was with this legal status that Jews entered the Russian Empire.<sup>6</sup>

Russian officials, at first, dealt with the problems related to bringing Polish Jews under Russian dominion by simply maintaining the legal status quo. A decree issued to the inhabitants of the newly established Russian province of Belorussia, over the name of Z. G. Chernyshev, governor general of the new province, singled out the Jews, promising them freedom of religion, the confirmation of their existing property rights, and the continuation of their own courts and tribunals. Significantly, the *kahal* itself was not even mentioned.<sup>7</sup> The Russian government seems to have had very little understanding of exactly what it was confirming and guaranteeing. On future occasions, and as late as 1799, the central government, in the person of the Senate, would admit that it did not know the legal basis upon which the Jews were still exercising important prerogatives, such as the administration of internal justice and civil litigation, in various parts of the empire.<sup>8</sup>

At this time, then, Russian law followed the Polish tradition by envisioning the Jews as a distinct category, defined by religion, and endowed with a vague body of corporate rights. The corporate unity of Russian Jewry in the

6. An extensive survey of Jewish life in Poland from 1100 to 1800 is found in Bernard D. Weinryb, *The Jews of Poland* (Philadelphia, 1973). For a fuller picture of Jewish communal autonomy in Poland, see David B. Teimanas, *L'autonomie des communautés Juives en Pologne aux XVI<sup>e</sup> et XVII<sup>e</sup> siècles* (Paris, 1933). For an excellent account of communal life after the partitions, see Isaac Levitats, *The Jewish Community in Russia, 1772-1844* (New York, 1943).

7. *PSZ*, vol. 19, no. 13,850 (August 16, 1772).

8. *PSZ*, vol. 21, no. 15,436 (June 16, 1782) ; vol. 25, no. 18,889 (March 14, 1799).

1770s is revealed by the tax rates levied upon the Jews. Decrees of 1772 and 1779 assessed all tax-paying Jews at one standard rate, regardless of occupation or social status.<sup>9</sup> Similarly, religion was the determining factor in defining a person as a Jew. An *ukaz* of October 17, 1776, released converts from Judaism from those taxes paid only by Jews, and granted them de facto equality with the Christian counterparts of their own social standing. Converted Jews could enter the merchant class (*kupechestvo*), enroll in a *tsekh* or artisan guild, or even engage in agriculture.<sup>10</sup> The fact that such rights were offered as a reward for conversion suggests that they were forbidden to nonconverted Jews. (In fact, it is not clear whether nonconverted Jews actually sought, or the government actually forbade, the exercise of these prerogatives at this time.) What is significant, however, is that upon conversion to Christianity a person ceased to be a "Jew" in a legal sense.

These first enactments of the Russian government actually resulted in the strengthening of the traditional, exclusive *kahal* structure. The Russian government, because it was chiefly concerned with the prompt payment of taxes, ordered all Russian Jews to enroll formally in a *kahal*, and such communities were made responsible for the assessment and collection of taxes. All Jews were thus subordinated to the *kahal* authorities. It has been argued that the Russian government, by these actions, saved the *kahal* structure, which was suffering dangerous strains because of class struggles between communal rich and poor, and the religious schism dividing the Rabbinical and Hasidic factions of Judaism in central and eastern Europe.<sup>11</sup>

While the Russian government was initially willing virtually to ignore Russian Jewry by abdicating internal administration to the *kahal*, barely a decade passed before the Jews became a matter of wider concern. Simultaneously, Russian officials began to evolve assumptions and preconceptions that would characterize Russian attitudes toward the Jews well into the next century. The ignorance of these officials, in regard to the political, economic, and social state of Russian Jews, permitted them, in their collective imagination, to create an idealized portrait of Russian Jewry. "The Jews" began to function as a featureless entity which could be utilized as a tool for economic change by swelling the ranks of the urban classes (as perceived in the 1780s), or bur-

9. *PSZ*, vol. 19, no. 13,865: no. 1 (September 13, 1772); vol. 20, no. 14,892 (July 3, 1779).

10. *PSZ*, vol. 20, no. 14,522 (October 17, 1776).

11. Raphael Mahler in *A History of Modern Jewry, 1780-1815* (New York, 1971), emphasizes the decline of the *kahal* and the extent to which it had become a tool of the privileged classes. He argues that communal exploitation was a factor in the rise of the mystical, and socially disruptive, movement of Hasidism (pp. 435-39). Levitats, on the other hand, rejects the common assumption that the rise of Hasidism contributed to the decline of the *kahal* system (*Jewish Community in Russia*, p. 163).

dened with collective guilt for the distress of the rural peasantry (as perceived in the 1790s).<sup>12</sup>

In the second decade of her reign, Catherine II energetically supported efforts to increase and strengthen Russia's urban trade and commercial centers. These efforts were reflected in official attempts to increase the size of the principal urban classes, the *meshchanstvo* and *kupechestvo*.<sup>13</sup> The central government ultimately discovered that individual Jews, by the criteria of both profession and residence, could be numbered among these classes, and officials then began to extrapolate from this fact the wider belief that *all* Jews could be so considered, although such an assumption was a fundamental error.

There were grounds for emphasizing Jewish commercial activities when discussing the Russian middle class. The Jews of Belorussia were engaged in many activities associated with the *kupechestvo* (foreign trade, banking, and so forth) and the *meshchanstvo* (artisan and craft activities). Furthermore, many Jews lived in the major urban centers, such as Vitebsk and Mogilev. (As early as 1776, all Jews had been ordered to enroll on the census books of the nearest municipality.)<sup>14</sup> Thus, in 1780, when some Belorussian Jews requested that they be permitted to enroll in the *kupechestvo* of the Belorussian guberniias of Mogilev and Polotsk, the central government was quick to oblige.<sup>15</sup> To encourage this process the government decreed in 1781 that all Jews so enrolled would be freed from the head tax previously assessed upon all Jews. Instead, they would pay the same tax rates as their Christian counterparts in the *kupechestvo*.<sup>16</sup> This was the first significant break in the prevailing view of the Jews as a unitary legal category, and it represented a noteworthy

12. During the reign of Paul, the central government became convinced that "Jewish exploitation" was the chief cause of the widespread poverty of the Belorussian peasantry, an assumption fostered by the local nobility and by reports of bureaucratic investigators. See S. A. Bershadskii, "Polozhenie o evreiax 1804 goda," *Voskhod*, 15 (January 1895): 82-104; (March 1895): 69-96; (June 1895): 33-63.

13. Any attempt to define these terms provides another demonstration of the ambiguity of Russian legal terminology throughout the eighteenth century. In Catherine's reign, "city society" was divided roughly into these two imprecise categories. The *meshchanstvo* comprised those city residents who had a yearly income of less than 500 rubles and who were engaged in trade or handicrafts in the broadest meaning of these terms. The *meshchane* paid a set head tax and were liable for personal military service. The *kupechestvo*, or "merchants," were defined by an income of more than 500 rubles and, less precisely, by economic activity. This group was further subdivided into three guilds on the basis of income. The *kupty* paid a tax of one percent on declared income, as well as a special levy which freed them from a personal military obligation. See I. Ditiatin, *Ustroistvo i upravlenie gorodov Rossii*, 2 vols. (St. Petersburg, 1875-77), 1: 398-99.

14. *PSZ*, vol. 20, no. 14,522 (October 17, 1776).

15. *Ibid.*, no. 14,962 (January 7, 1780).

16. *PSZ*, vol. 21, no. 15,130: no. 1 (March 10, 1781).

attempt on the part of the central government to tolerate and even to encourage the social integration of the Jews into Russian life.

Increasingly, however, the government began to impose a new unitary concept by viewing *all* Jews as urban dwellers, enrolled in the appropriate urban class. But the majority of Russian Jews could not be placed within these classes. They failed to meet the necessary residency requirements, which assumed residence in the municipality. While all Jews were indeed enrolled on the census books of the nearest urban center, they frequently lived in the countryside on the estates of noble landlords, engaging in leaseholding, stewardship, and middleman activities connected with the estates, and with the attached peasant villages. Specifically, they leased out the numerous prerogatives that accrued to a noble estate—for example, the monopolies on the sale of products such as salt, the control of vital resources such as grain mills or fish ponds, and the right to collect tolls on roads. Many Jews leased the important right of distilling alcohol, and often served as village tavernkeepers. (It should be noted, however, that, despite Russian literary stereotypes, not all Jews were tavernkeepers, nor were all tavernkeepers Jews.) To this occupation was joined the ancillary function of village moneylender. None of these pursuits was associated with the customary activities of the Russian *kupechestvo* or *meshchanstvo*.<sup>17</sup> The Russian government, by ignoring these facts, and believing only what it chose to believe about the economic life of Russian Jewry, fostered dangerous misconceptions.

The Jews who actually were eligible responded slowly to the invitation to play a more active role in Russian economic life. The security of the *kahal*, with its familiar court proceedings and system of internal trade monopolies, was not casually traded for the uncertainties of a world dominated by hostile Christian competitors. The situation changed, however, when Catherine's urbanizing reforms, especially the Charter for the Towns with its structure of local representative institutions, made formal entry into the urban classes more practical and worthwhile. As Iulii Hessen has demonstrated, there was a sudden influx of Jews into the institutions of urban self-government.<sup>18</sup> Hessen, a proponent of Jewish integration, saw the moment as a pivotal one: would the Jews now be permitted true equality and full participation in Russian public life, or would their rights be circumscribed and restricted? According to Hessen, the latter development prevailed. The integration of Jews was thwarted by the enmity of a Christian population motivated by economic self-interest

17. For a description of Jewish economic activity see Mark Wischnitzer, *A History of Jewish Crafts and Guilds* (New York, 1965), especially pp. 223–24. Wischnitzer estimates that one third of Poland's Jews were engaged in some form of leaseholding on the eve of the partitions.

18. Iulii Hessen [Gessen], *Istoriia evreiskogo naroda v Rossii*, 2 vols. (Leningrad, 1925–27), 1:57.

and by an inability to tolerate Jews as social equals.<sup>19</sup> In Hessen's view, the local officials deferred to public pressure and unrest by restricting the legal rights of Jews in the electoral assemblies, the most convenient way of preserving the peace.

The factors of discrimination and unequal application of the law cannot be discounted, but at the same time, it is important to note that no consistent policy was adopted by the local administrators who were charged with carrying out governmental reforms. The failure of the Jews to receive the full benefit of the reforms of 1775 and 1785, it can be argued, derived in part from the general ambiguity which obscured Russian urban legislation. This situation is amply demonstrated by the circumstances surrounding the application of the provisions of the Charter for the Towns to Jews.

The Charter for the Towns of 1785 divided Russian urban dwellers into one of six more or less distinct classes on the basis of occupation and/or income, each class having its own special rights and prerogatives. (For example, only *kuptsy* of the first guild could engage in foreign trade, and all members of the *kupechestvo* were exempt from the obligation to provide personal military service; they paid a special tax instead.) The urban judicial body, the Magistracy, composed of members drawn from the different classes, adjudicated commercial litigation. The ability to serve on this body, or at least to influence the selection of its members, was thus an important right for any group of tradesmen. Catherine was unconcerned about the origin of Russia's growing middle class, and she welcomed the economic pursuits of non-Christians, non-Slavs, and foreigners in general. The Charter, therefore, carefully set forth regulations designed to ensure the complete equality of all heterodox peoples in Russian commercial life. For example, heterodox people were permitted to swear court oaths according to their own religious practices. More importantly, the electoral laws were so devised that heterodox people, if settled in sufficient numbers, would receive equal representation on the benches of the Magistracy, and would be judged in their own native languages.<sup>20</sup>

As A. A. Kizevetter has shown, the Charter for the Towns was an eclectic document which drew on a wide variety of existing codes and precedents, both native and foreign. The original drafts of the Charter went through a number of hurried revisions, and the end product was marked by an editorial sloppiness that left numerous points obscure and ambiguous.<sup>21</sup> It is not surprising, then, that Russian Jews were not specifically brought under the provisions of the

19. *Ibid.*, pp. 58–59.

20. *PSZ*, vol. 22, no. 16,188 (April 21, 1785).

21. Aleksandr A. Kizevetter [Kiesewetter], *Gorodovoe polozhenie Ekateriny II, 1785 g.* (Moscow, 1909). See, for example, the confusion surrounding the terms *meshchanin* and *meshchanstvo*, pp. 35–38, 87. Kizevetter notes that in a number of cases the Charter was so ambiguous and unclear that further legislation was necessary in order to interpret it (p. 321).

Charter until 1786, and that even then uncertainty surrounded the extent to which they enjoyed these rights. Commentators, such as Hessen, have suggested that the legal definition of these rights consistently went against the best interests of the Jews. It is true that Russian officials were not preoccupied with easing the path of the Jews toward civic equality, but it does not necessarily follow that they were motivated primarily by any particular enmity toward the Jews. As a rule, the legal interpretations which dealt with Jewish rights were logical, and efforts were made with some consistency to follow precedent and to enforce the intent of the law. It was the vagueness of the statutes, and the prevailing ignorance about the true nature of Jewish life, that worked most against the interests of the Jews as a group.

The specific inclusion of the Jews under the provisions of the Charter for the Towns grew out of a dispute between the Jews of Belorussia and the new governor general of the area, P. B. Passek, who had succeeded Z. G. Chernyshev in 1782. Passek, a stickler for the letter of the law, had begun to invoke some inconvenient regulations against the Jews. He argued that because all Jews, at government command, were enrolled on the census books of the towns, they should actually reside there. He also ruled that because the law stipulated that only *dvorianstvo* (noblemen) had the right to distill alcoholic beverages, individual nobles could not lease this right to Jews residing on their estates, as was widely done. Representatives of the Jewish *kahals* of Belorussia appealed these decisions to the Senate, adding the additional request that the government permit the continued operation of special communal courts for the adjudication of civil litigation involving only Jews.<sup>22</sup>

As a result of this appeal, the Russian Senate was constrained for the first time to provide a comprehensive definition of the legal status of Russian Jews. The Senate decision was a masterpiece of compromise, but its blend of privileges and disabilities suggests both confusion and pragmatism, rather than any kind of coherent policy regarding the Jews. For example, the Senate found that Passek was overstepping his authority in forbidding the nobility to lease their economic prerogatives to whomever they wished. But if Passek was in error on this point, he was certainly within both the spirit and the letter of the law in demanding that Jews resettle in the urban centers where they were registered. Nonetheless, here again the Senate placated the Jews, noting that the Jews need not be resettled "prematurely," and authorizing passports for Jews who desired to settle temporarily in the countryside.

The request for the continuation of communal Jewish courts derived from influential members of the *kahal*, anxious to preserve their traditional influence. Here the Senate's reply was negative. The Senate ruled that Jews fell under the provisions of the Charter for the Towns—the first official indication that

22. *PSZ*, vol. 22, no. 16,391 (May 7, 1786).



this was indeed the case. Jews did not require a special legal system of their own; they could have recourse to the newly created courts envisioned by the Charter and be judged by compatriots in their own language. The Senate further noted that the Jews were to be elected as judges of the Magistracy, and as members of the *Ratusha* and *City Duma*, "in equal proportion to every other group."<sup>23</sup>

From the perspective of the Jewish community these decisions were surely more than half a loaf. Passek's restrictions had been overturned, and the loss of the special Jewish court system was more than balanced by the specific inclusion of the Jews under the provisions of the Charter for the Towns. The Senate cast a cloud over this victory, however, by its response to one final request by a number of Jewish merchants. Jews had been permitted to enroll in the *kupechestvo* of Belorussia in 1780, and the Senate was now asked by the petitioners to specify that this right extended outside of the two Belorussian guberniias of Mogilev and Polotsk. The Senate ruled that such an extension was not possible without a specific directive from the empress.<sup>24</sup> Although this controversial decision could be viewed, in retrospect, as pointing toward the eventual formation of a Pale of Settlement, and as an indication of Russian hostility toward the Jews, it was, undoubtedly, merely a further reflection of the ambiguity that surrounded the legal status of Jews at this time.

This decision did become a legal precedent, however, for it was invoked again during Catherine's reign. In 1790, a similar request from Belorussian Jews (that they be permitted to enroll in the *kupechestvo* of Moscow) was rejected on the strength of the earlier decision. The motivation for this decision was not anti-Semitism, but a desire to protect the interests of the established Moscow merchant guilds, as the debate on the request in the Crown Council makes clear.<sup>25</sup> There was no concept of a Pale of Settlement at this time, and the areas where Jews could legally reside were continually enlarged. Temporary exemptions to the rules were frequently made in order to expedite Jewish commercial activity.<sup>26</sup>

The Senate resolution of 1786 indicates that a sincere effort was being made to expedite Jewish economic activity, even to the extent of bending the law. There was also a tendency to encourage the economic and social integra-

23. *Ibid.*

24. *Ibid.*

25. *Arkhiv gosudarstvennago soveta*, vol. 1, part 2 (St. Petersburg, 1869), pp. 365–68. The desire of the Moscow *kupechestvo* to preserve economic monopolies might be considered at least partially motivated by anti-Semitism (that is, against the Jews as an economic group) if it had been directed only against the Jews. *Kupechestvo* leaders of any urban center, however, customarily opposed the settlement of *any* competitive outsiders, whether Jews, foreigners, or Russian *inogorodnie*.

26. See, for example, *PSZ*, vol. 23, no. 17,006 (December 23, 1791), and no. 17,224 (June 23, 1794).

tion of Jews into Russian life. Did this mean that the Jews were to be treated in exactly the same fashion as all other urban subjects of the empire? The restrictions on Jewish mobility suggest the contrary, although there was a tendency in Russian law, dating back to the *Ulozhenie* of 1649, to discourage the mobility of any city persons.

The contradictions can best be explained by the assumption that the Senate, and the central government in general, had no clear working definition of what the category "Jew" implied. All Jews were to be treated alike, but their collective status vis-à-vis other Russian subjects was unclear. This point becomes even more obvious when we consider the rationale under which the Senate extended the privileges of the Charter for the Towns of the Jews. Citing article 127 of the Charter, the Senate noted that the Jews were to be elected to the offices of urban government "in equal proportion to every other group" (that is, nationality). The citation of article 127 raises problems, however. The article reads in full:

Should there be settled in a town 500 families who are not local citizens or who are foreigners [*poselivshikhsia inogorodnikh ili inostrannykh*] then the City Magistracy may be composed half of Russians and the other half from the foreigners, that is: the number of Russian *Burgomistry* and *Ratmany* shall remain as it is now, and those who are not local citizens or the foreigners may elect the same number and join in them together with the aforesaid and [they are allowed] to judge any matter coming before the City Magistracy, Russians in Russian and foreigners in their own language and likewise for the *tsekhi*.<sup>27</sup>

In citing this article, the Senate clearly had in mind the latter provision which permitted Jews to be judged in their own commercial language, Yiddish. But on what basis was article 127 applicable to the Jews in the first place? Earlier, in article 124, the Charter for the Towns had promised the free exercise of religion to "the heterodox, to those from other towns, and to foreigners [*dozvoliaetsia inovernym, inogorodnim i inostrannym*]. . . ." The three categories can be understood in the following sense: *Inovertsy* would refer to native, non-Orthodox residents of a particular town, a category into which most Belorussian Jews could theoretically be fitted. The *inogorodnie* would be Russian subjects who were living in one particular town but who were registered in another. Although the term *inogorodnii* does not carry either religious or racial overtones, article 124 could quite conceivably have been making reference to non-Orthodox, non-Russian speaking people, perhaps Jews, Tatars, and so forth. Thus it would be necessary to guarantee the rights of such a group, living in the midst of an Orthodox Russian majority. (It should be

27. *PSZ*, vol. 22, no. 16,188 (April 21, 1785). The *tsekhi* were artisan associations somewhat like the Western European guilds.

remembered, however, that the same Senate decree which made reference to article 127 also restricted Jewish mobility, which itself would have worked *against* the appearance of a large number of Jewish *inogorodnie*.) Finally, *inostrantsy* refers to foreigners, that is, persons who were not native or naturalized Russian subjects.

The failure of article 127 to specifically include within its provisions the term "*inovertsy*," as did article 124, is more than a question of semantics. Without its inclusion, it is possible to conclude that the Jews were subject to the provisions of article 127 because their legal status was that of "foreigners," and not because they had been granted these rights already, as was the case for non-Orthodox Russian subjects to whom article 124 applied. Certainly neither all, nor even most, Russian Jews could be encompassed by the category of "*inogorodni*." This point becomes crucial when viewed with the Senate decision prohibiting Jews from enrolling in the *kupechestvo* and *meshchanstvo* outside of Belorussia. In other words, in spite of assurances to the contrary, the Jews were still considered a separate and special estate. If an individual was indeed a "*kupets*" or a "*meshchanin*" instead of a "Jew," then such an interpretation would be impossible: the person in question would possess the legal right to enroll in *any* urban center in the Russian Empire if he were able to obtain the internal passport required for such a move from the appropriate authorities.

Russian Jews were thus bound by conditions that apparently have no analogy with the treatment of any other group of Russian subjects belonging to the urban classes. The closest similarity would seem to be with the rights of foreigners. The empire was generous in admitting foreigners, and in doing much to facilitate their participation in Russian commercial life. Still, such persons were kept under close and careful supervision by the government, and in order to settle in a particular area, foreigners needed permission from the proper authorities. This fact is demonstrated by a resolution which Catherine herself made in 1785. It dealt, appropriately enough, with people who were not only foreigners (from Mitau in the Polish state), but Jewish foreigners as well. In response to a number of requests for the right to enroll in the urban estates of the city of Riga, Catherine noted that all foreigners, "without distinction of nationality or religion," were allowed to enroll on the lists of Russian towns, "in this city, just as in other cities *where this right is extended*" (emphasis mine).<sup>28</sup> While the Jews seem never to have been formally classed as "foreigners"—with one important exception which will be discussed below—the legal principle that they did not automatically enjoy the rights of other Russians, but acquired them only through special imperial grants, was continually invoked throughout Catherine's reign.

28. *PSZ*, vol. 22, no. 16,146 (February 4, 1785).

The exceptional case, when the Jews were briefly treated as foreigners, occurred early in the next century. In 1802, the Jews of the guberniia of Kamenets-Podolsk petitioned the Senate regarding their lack of representation in the local Magistracies. In the course of their petition they noted that the former military governor of the guberniia had permitted them to occupy one half of the elective class offices in the towns where they were registered on the grounds that, according to article 127 of the Charter for the Towns, such representation was guaranteed to foreigners. After 1802, however, similar interpretations of Jewish electoral rights worked against the rights of Jews.<sup>29</sup> Thus, this particular incident is revealing. It demonstrates how officials, apparently with the best of intentions, could misinterpret the relationship of this ambiguous statute to the Jews. Furthermore, the incident suggests that such misinterpretations did not necessarily work against the interests of the Jews. In this case, for example, an apparent misinterpretation had resulted in the equalization of electoral representation for the Jews of Kamenets-Podolsk.

Two subsequent enactments will enable us to define further the evolving legal status of the Jews under Catherine. The first was a decree of June 23, 1794, which doubled all taxes paid by Jews, and which again placed the Jews, as a group, in a special, distinct category.<sup>30</sup> Another statute, which reinforced this legal unity, was a law of 1794 establishing a set rate of 500 rubles as a recruit tax to be paid by the members of urban society in lieu of furnishing military recruits in person. The law noted that this tax was to be collected from the members of the *kupechestvo* "and from the Jews."<sup>31</sup> Here, again, clarity is lacking. The decree appears to exempt both Gentiles who were *kuptsy* as well as Jews of all social classes. It was, therefore, a privilege extended to the Jewish *meshchane*, because Gentiles of this class were subject to personal

29. S. A. Bershadskii, "Polozhenie o evreiakh," *Voskhod*, 15 (June 1895): 45–55. Hessen notes that, in the reign of Nicholas I, Jews were sometimes forced by local officials to vote with the curiae of foreigners in municipal elections. Far from resulting in the equalization of Jewish representation, however, such decisions were aimed at the reduction of the representation of Jews in urban government (*Istoriia*, 2:50, n. 37).

30. Double taxation had been employed previously in Russian history, most notably by Peter the Great, who imposed such a system on the Old Believers as a revenue producing measure. The origin and motivation of this double tax for Jews remains obscure, and there has been considerable debate surrounding, but not resolving, the question. Dubnow viewed the tax as nothing more than another manifestation of traditional Russian anti-Semitism. A less sympathetic Russian historian, N. N. Golitsyn, in *Istoriia russkago zakonodatel'stva o evreiakh* (St. Petersburg, 1886), argued that Catherine was punishing the Jews for their frequent infringement of the laws regarding settlement and financial life (pp. 139–40). The only contemporary testimony suggests that the tax was levied as a device to encourage Russian Jews to resettle and colonize the distant reaches of Novorossia, where they would be granted an exemption from this (and other) taxes (Hessen, *Istoriia*, 1:83–86). In my opinion, all of these interpretations are, to some extent, inadequate.

31. *PSZ*, vol. 23, no. 17,249 (September 7, 1794).

military service. (Article 99 of the Charter for the Towns exempted only the *kupechestvo* from this military service.) Ultimately the Senate was forced to clarify this decree, and, in 1796, it specified that both the Jewish *kupechestvo* and *meshchanstvo* were to pay the recruit tax in lieu of service.<sup>32</sup> For our purposes, the importance of these decrees is that they again established a unified system of taxation for Jews since all Jews were theoretically enrolled in the urban estates. It should be noted in addition, however, that the motivation of the law did not reflect favorably upon the Jews. Rather, it probably derived from the assumption, common at that time in Western Europe as well, that the Jews could not be trusted to serve with loyalty or efficiency in the armed services. In any event, this enactment was the last significant legal decision relating to the Jews during the reign of Catherine II.

In summary, this study has argued that the formulation of a distinct legal status for the Jews by the Russian state under Catherine II was not influenced solely by anti-Semitic calculations, but also by a pervasive ignorance about, and apathy toward, the Jews. During this period the legal position of the Jews evolved steadily in specific directions, either through the acquisition of greater knowledge by the government or, more frequently, through the modification of existing misconceptions. Three principal periods of development may be identified in this evolutionary process.

The first period, from 1772 to 1780, witnessed the attempt of the Russian government, motivated by considerations of public order and financial continuity, to confirm and continue the existing "Polish" legal status of the Jews. This period was marked by the continued exercise of extensive prerogatives of religious, cultural, economic, and political autonomy by the local Jewish communities. The power of these bodies was actually strengthened by the Russian state when it imposed a standard tax on all Jews, regardless of class, and ordered that these taxes be paid through the community, to which every Jew was thereafter obliged to belong.

From 1781 to 1790 the state reversed its previous policy and attempted to end the de facto segregation of Russian Jewry. Specifically, an attempt was made to integrate Jews economically into one or another of the existing Russian estates. What actually resulted was a system of dual citizenship for Russia's Jewish subjects. On the one hand, when enrolled in the appropriate estate, they enjoyed complete legal equality with their Gentile counterparts. Local governors, at the behest of the central government, intervened on several occasions to ensure that Jews were permitted full exercise of their rights under the Charter for the Towns. On the other hand, unlike other Russian subjects, the Jews were forbidden to utilize their rights in a region of the empire without the specific consent of the ruler. (The tendency of the Russian state to restrict

32. *Ibid.*, no. 17,432 (January 21, 1796).

the mobility of all classes of society does, however, long antedate such restrictions upon the Jews.) As a result of this principle, it is not clear on what specific legal basis the Jews enjoyed the rights which they did exercise. This ambiguity permitted what has often appeared to historical observers as capricious interpretations of the law by local administrators, who were frequently far removed from the capital and the forces moving the central government.

The period from 1791 to 1796 can be said to represent the failure of the initial attempt at integration. The state now resisted the dispersion of the Jews into the existing estates and, without actually abolishing the legal integration already under way, began to reimpose a corporate legal unity upon the Jews, as represented, for example, by the enactment of the double tax. This tax provides a good example of the blend of old and new legal tendencies: Jewish members of different estates paid tax rates which differed from one another but, in common, all paid double the rate for their particular estate. Similarly, all Jews were uniformly exempted from personal military service.

Given the confusing and uncertain growth of Russian law applicable to the Jews from 1772 to 1796, it is understandable that the law as it finally took shape could be pointed in many different directions. The mildly inconvenient residence restrictions of Catherine's time were transformed into a discriminatory and onerous Pale of Settlement, with restrictions placed on where Jews could live, or how they could earn a living. The subsequent evolution of the law was based on either the inconsistent use of existing precedents, or on the creation of legal innovations. This was to be the dubious, if unintended, legacy for the Jews from their first quarter century under Russian rule.<sup>33</sup>

33. Since the completion of this study an article by Professor Richard Pipes, entitled "Catherine II and the Jews: The Origins of the Pale of Settlement," has appeared in *Soviet Jewish Affairs*, 5, no. 2 (1975): 3–20. Surveying much the same material as my article, Professor Pipes also argues for the existence of a benevolent attitude on the part of Catherine's government in the treatment of the Jews. He characterizes Catherine's policy as "ahead of anything done on behalf of Jews in Western Europe at this time." Professor Pipes's article emphasizes the role played by popular resistance—rather than legal confusion—in the undermining of the intent of Catherine's policies.