ABSTRACT: The ban of Rabbenu Gershom forbade both polygamy and divorcing a woman against her will. The ban has been seen by historians as a key determinant of the singularity of Ashkenazi Jewish culture. In sixteenth-century Poland there were two main approaches among halakhic scholars towards the ban: one, represented by R. Solomon Luria adhered strictly to the Ashkenazi legal tradition; the second, represented by R. Shalom Shakhna and R. Moses Isserles, was open to other Jewish legal traditions. Is this phenomenon related to the Early Modern Period? And if so, how is it related? My discussion in the workshop shall focus on these questions.

This presentation is for the following text(s):

- Responsa Maharshal No. 14
- Responsa Maharshal No. 65
- Shulkhan Arukh, Glosses by Moses Isserles
Introduction to Maharashal's Responsum no. 14

Elimelekh Westreich

The ban of Rabbenu Gershom forbade both polygamy and divorcing a woman against her will. The ban has been seen by historians as a key determinant of the singularity of Ashkenazi Jewish culture. In sixteenth-century Poland there were two main approaches among halakhic scholars: one, represented by R. Solomon Luria adhered strictly to the Ashkenazi legal tradition; the second, represented by R. Shalom Shakhna and R. Moses Isserles, was open to other Jewish legal traditions. Is this phenomenon related to the Early Modern Period? And if so, how is it related? My discussion in the workshop will focus on these questions.

In the middle ages, Ashkenazi Jewish women enjoyed strong legal protection of their marital status through R. Gershon’s ban (Chadrag), which prohibited marrying a second wife and divorcing a woman against her will. The high status of the enactments was manifested in three areas: (1) their legal basis, which was legislation in the public-criminal area of the law; (2) the rejection of solid grounds on the part of the husband, such as observance of the commandment to be fruitful and multiply or of the levirate commandment, and at times even of a combination of such grounds (as, for example, when the woman was out of her mind and the man did not observe with her the commandment to be fruitful and multiply and could not maintain matrimonial relations); and (3) the procedural area, which specifies the rigid and complicated process required to lift the ban and the sanctions imposed in case it is violated. The prestige and strength that the two enactments enjoyed was the outcome of a long process resulting, among others, from such halachic changes as the decline of the halacha of the rebellious woman, which enabled women to coerce their husbands to divorce them. Ashkenazi Jewish society internalized the enactments very deeply, to the point where bigamist marriage was perceived as living with a legal wife and a prostitute.

Throughout the middle ages, the presence of other traditions in Spain, the Mediterranean basin, and in the East did not pose a threat to the Ashkenazi tradition on its territory. The encounter between the legal traditions of the various communities
always took place on non-Ashkenazi territory. When he served as rabbi of Spain at the first quarter of the fourteen century, Rosh tried to inculcate there the Ashkenazi tradition, directly and indirectly. At this time, in Spain, Rashba was asked by an Ashkenazi scholar to lift Chadrag because of his wife’s insanity, after his request was refused in Ashkenaz. This sage is also the originator of the rumor that Chadrag expired at the end of the fifth millennium (1240), which in time would play an important role in the halachic discussion. A hundred a fifty years later, in a legal debate, Maharil raised the possibility that a man whose wife lost her mind can go to Italy, where Chadrag may be lifted.

Only at the end of the 15th century is there a serious challenge placed before a great Ashkenazi sage, R. Yehuda Mintz, who served as the rabbi of Padua in the Venetian Republic. R. Gershon Bonfazo, the Romaniot rabbi of Corfu, married a second wife because he was not able to perform the commandment to be fruitful and multiply with his first wife, an action that received the approval of the Romaniot R. Eliahu Mizrahi, head of the rabbis in the Ottoman Empire. R. Yehuda Mintz adopted an extreme attitude in preferring Chadrag over the commandment, and banned the Romaniot rabbi for his action. R. Yehuda Mintz based his position on purely Ashkenazi sources as well as on discretion and opinion, but did not address various Sephardic sources that opposed his view. Some decades later, however, a significant change occurred in the community of Ashkenazi rabbis there. R. Meir of Padua, the husband of R. Mintz’s granddaughter and heir to his position at the head of the Padua Yeshiva, rejected the approach that strengthens Chadrag beyond measure, and gave decisive weight to Sephardic sources that reject Chadrag in favor of the commandments.

The Polish extension of the Ashkenazi community, which by the 16th century had risen in quality and quantity above the motherland in Ashkenaz, faced a new reality that reflected the changes occurring at the beginning of the modern era. At this time, the large Jewish centers were growing closer to each other, resulting in a phenomenon of mini-globalization or regionalization. This was reflected in the discussion by Rashal of the first case [Res. Maharshal, Ch. 14] of a member of his community who left his wife in Poland and went to the town of Pleven, in the Ottoman Empire. In this region and around it lived Jews of other communities that, unlike the Ashkenazim, did not grant Chadrag a high legal status. The Romaniots apparently recognized that Chadrag applied to them, but held that it was superseded by commandments such as that to be fruitful and multiply. Moreover, they did not enhance the strength of Chadrag in the areas of enforcement and relief. The Sephardim did not consider themselves to be subject the Chadrag at all, and a tradition existed among them that even with respect to Ashkenazim Chadrag expired at the end of the fifth millennium.

The proximity between the centers was manifest in the quality of the communication between them, which took place nearly in real time and on several levels. The constant
correspondence and traffic of messengers between the centers is described in detail in the responsa and integrated in the halachic debate. The connection also produced a strong dependence between the legal work taking place in Poland and the required close cooperation between the legal institutions in the two locations. This phenomenon contains pure elements of private international law intended to enable cooperation between different autonomous legal systems.

The importance of the flow of information in this case is clear, as the challenge to the validity of Chadrag, at least under certain circumstances, is the moving force behind the entire case. This flow seems to have been made possible by an additional factor that appeared at this time, the invention of the printing press. Rashba’s responsa, that had been recently printed, and the printing of the work of R. Yosef Karo and of the books of responsa of such Italian sages as Maharik, Mahari Mintz, and Maharam Padua quickly made public the tradition regarding the expiration of Chadrag and the associated debates. The links made possible by the printing press are even more prominent in the legal work of Rama. In his comments to Shulhan Aruch as well as in his work Darkei Moshe, he expresses positions other than those common in the Ashkenazi tradition, which contributed to the erosion of at least the moral dimension of Chadrag, and from then on the claims concerning its expiration and the preeminence of the commandments became legitimate. However, Rama eventually ruled that Chadrag remains valid and that violators who marry a second wife must be coerced.

The conduct of Rama was similar to that of his great Sephardic colleague, R. Yosef Karo, who also featured in his writings approaches that differed from his own even if he eventually summarized the halacha according to his own views. This approach was radically different from that reflected in the writings and rulings of Rashal, Rama’s Polish colleague. Rashal rejected unequivocally the tradition claiming that Chadrag had expired at the end of the fifth millennium, and criticized Rashba mercilessly. He also went to extremes in the second answer [paragraph 65], and sharpened further the Ashkenazi legal tradition by making Chadrag a nearly absolute legal factor, not to be lifted even in extreme circumstances in which several reasons converge: the insanity of the wife, impossibility to maintain matrimonial relations, and impossibility of observing the commandment to be fruitful and multiply. This tendency was further underscored by the nature of the sources that Rashal quoted in his answer. Unlike Rama, who absorbed the new products of the printing press, Rashal surveyed old Ashkenazi manuscripts and found Raviya’s answer, which had been shelved for four hundred years. This answer became the basis for the opposition to any attempt to lift either component of Chadrag, whatever the reasons of the husband may be.

Eventually, Rama’s method, which was open to changes occurring at the beginning of the modern era and communicated with the important sages of the large center being formed in the Ottoman Empire, was preferred over Rashal’s conservative method that
sought to perpetuate the Ashkenazi halachic past and maintain it in splendid isolation.

**Bibliography**
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1. Appeal to the Pleven community and R. Eliezer fro Nikopol

To the holy community of Pleven... At first I shall greet R. Eliezer the elder who resides in Nikopol [55 km to the north-east of Pleven] and he is the master of the case.

2. Background – Deserting a wife in Poland

I would like to inform you about a wicked case that occurred with one named R. Abraham b. Shlomo Halevi, a member of our community. He was already married to a woman from our town, named Sarah d. of Chaim Halevi... to be with her for their entire life, together with their son that G-d bestowed upon him seven years ago. Despite all this he betrayed the heaven's covenant with his young wife and deserted her, leaving her in poverty. And not only did he fail to fulfill his three duties [which are imposed on the husband, that is food, clothing, and sexual relations], but also mistreated her by marrying another wife.

3. The first reaction of the community of Pleven

Blessed are you the creators of the hedges that prevent Judea and Israel from sinning. You ordered him in advance not to marry her and even not to betroth her unless he divorced her [the first wife] by a valid get, with her consent and without any compulsion. The mentioned Rabbi [R. Eliezer of Nikopol] arranged the get, and the proxy was R. Izhak who came from Eretz Israel bringing maintenance to his home. From him I heard that Rabbi [Eliezer] arranged the get only on condition that the wife agreed to accept it. If she refused, even after being offered payment, the get would be void and the husband would be prohibited from marrying [the second woman] according the ordinance of Rabbenu Gershom, light of the Diaspora, not to divorce one’s wife against her will, especially a wife such as this one, who is fertile and without any defect in her behavior, all the more so that he is not allowed to divorce her without her consent and
without paying the Ketubbah money.

4. The wife agrees to divorce only after payment of the Ketubbah

When the mentioned scholar, R. Izhak, arrived with the get I called the wife and inquired about her position. After a long investigation it became clear that she had no intention of accepting the get unless the husband paid her the Ketubbah money. This scholar told the wife: "My daughter, it is your right, and I have not come to compel you or to tempt you, G-d forbid. Only for your benefit and with your consent, and also there [in Pleven] he will not get a wife unless he divorces you according to your terms.

5. The husband marries another wife in Pleven

After some time it became known that her husband, Avraham Halevi, married a wife in Pleven by Chupa and Kidushin, and the members of our community were shocked how it came that such a villainy was perpetrated in Israel. We were informed by Jews who arrived from your country and told us what happened and that they were present when it occurred. One Jew, named Izka and nicknamed Charfan, a member of our community [in Poland], brought a document signed by me [Rashal] and the leaders of the community, that she [the first wife] had received lawfully a valid get and on this ground they [in Pleven] allowed him to marry her [the second wife].

6. Forging of R. Luria‘s certificate by the husband's messenger

As we heard about this outrage, we went after him and investigated him, a little by pressure and a little by temptation, until he confessed his sin and told us the details. The mentioned Abraham [the husband] had hired him for some hundreds "whites" [a type of coin] to [try to] obtain a document from our community stating that the wife accepted the get – and if not, he should find criminals like himself who would forge a document and sign my name and the name of other people from our community. And so he did and received his payment.

7. Evidence to incriminate the husband

Now we must decide how to judge Abraham who deserted his wife and violated the ban of R. Gershom. Although we cannot prove that Abraham knew about the misdeed and we can argue that he did not send the messenger to act in a false way, but only to bring an authentic document if the wife accepted the get, especially as Yazka [the messenger] was a proven liar and disqualified from testifying. Nevertheless, as he [the messenger] repented, returned the crime money, and confessed his many crimes, who could say that he was not qualified to give evidence?! Moreover, in such a case we split the testimony [of the messenger] and accept only the part that is not related to the witness himself. In any case, he is still considered a single witness whose evidence is not decisive, but there is circumstantial evidence to support it as Abraham [the husband] had betrayed his young wife from the beginning, deserted her, and engaged another woman to marry. And only G-d knows all the secrets, and we leave it at that.
8. In principle, the husband’s *bona fide* does not nullify Chadrag

But even if he [Avraham] had acted *bona fide*, the ban of R. Gershom is still not lifted and he should separate from the wife that he married in your place [Pleven], as I shall prove with G-d’s help. Even if the ban of R. Gershom had not spread to your region but he comes from the countries to which the ban has spread, it is forbidden to adopt a lenient attitude [toward him].

9. Chadrag continues to apply to an Ashkenazi wherever he goes

This cannot be compared with the case of someone who leaves his place and goes to another one without planning to return [in which case he is permitted to follow the customs of the target place]. He [the husband] is obliged to return because his wife is tied to him and relies on him, and he has no right to move her from country to country, not even from a bad environment to a good one, as is written in the Babylonian Talmud, Kethoboth [110b]. This is especially so when both are from the same country and from the same town. Moreover, at the time of their marriage the ban of R. Gershom applied to them and cannot be lifted by itself. This is easy to understand. Therefore, even if the man lived with his [first] wife in your land or in countries to which the ban of R. Gershom had not spread the man would not be allowed to marry another wife as the prohibition had already been applied to him.

10. A precedent from a case of an Askenazi who moved to Eretz Israel

This is what I heard about the case of a scholar from our land who went with his wife to the land of Israel and stayed there a few years. He wanted to marry another wife, and although he was able to support both the sages of the land of Israel did not allow him for the same reason.

11. Denying Rashba’s tradition

What Rashba wrote about having heard that R. Gershom banned only until the end of the 5th millennium (1240 C.E.) and Maharik quoted in Ch. 101, is for us without any base, like a rumor, and it is therefore denied. According to the argument of R. Avigdor, which appears in the book Mordechai Gadol, in a responsum that begins with "I will go to the great ones [and ask] what had R. Gershom enacted..." the reason [for the ban] is relevant today as it was in those days, and there is no ground for distinguishing between the 5th millennium and the 6th.

Another argument. All the Geonim such as Or Zarua in Yevamoth, Mordechai in the name of R. Avigdor Katz in the chapter HaCholetz and also *Smak* wrote that if the brother-in-law [yavam] is married he cannot perform the levirate marriage because of the ban of R. Gershom, even in the opinion of those sages who hold that the levirate commandment takes priority over the chaliza commandment. And all these Geonim
lived in the 6th millennium, as it is well known.

Yet another argument. In most versions of the enactments of R. Gershom, the time [of expiration] is not mentioned at all. On the contrary, in the enactment regarding two wives he wrote: "That it is forbidden to lift [the ban] except with [the consent] of 100 sages from three communities and from three countries. And even then, they should not lift [the ban] unless they find a good reason for doing it." If so, what good reason is there that improves our society [today, so that we can argue that there is no need for the ban]? On the contrary, because of our many sins, the generations have degenerated and are changing for the worse day by day.

And even if you argue that [R. Gershom] banned only until the end of the 5th millennium, and that the reason for the enactment was relevant only until the 5th millennium, who lifted the ban? Is it not the case that we need another court, greater in wisdom and in quorum to lift it? Evidence [to support this argument we find in the verse] “return to your tents,” that even Israel were restricted only for a limited time and although there was a reason for this restrict limitation, it was necessary that another court lift the prohibition. So this is all the more the case here [regarding the ban of R. Gershom]. This may be refuted by claiming that although no time limit was set for abstinence from women, the reason for the abstinence, i.e., the giving of the Torah, did not exist any more, nevertheless another decision by an authorized court was required, as the Tosafist and the Rosh wrote.

In any case, I [Rashal] claim that the ban of R. Gershom was also structured in the same way, as it is impossible to say that he wrote explicitly that his enactments would not apply beyond the [beginning of the] 6th millennium. We never found this in his enactments. But we must say that those who claim that the ban was only until the [end of the] 5th millennium had a tradition based on the reasons for the ban, and from these reasons it was deduced that R. Gershom banned only until the end of the 5th millennium. If so, this is similar to the case of abstinence from women at the time of the giving of the Torah, and there is a requirement for a decision by another court.

12. *Bona fide* on the part of the husband does not deny the Ban

We cannot argue in favor of him [the husband] that he married the other wife without against his will, as a result of false evidence which caused him to fail, and that therefore there is no ground for activating the ban of R. Gershom, which was enacted only *ex ante* and not *ex post*. If this were the case, the majority of the sages would not forbid levirate marriage when the brother-in-law [*yavam*] is married, which is also an unwilling situation and *ex post facto*, as it is G-d’s rule and his order to consummate the levirate marriage. nevertheless, the sages wrote that he is forced by the enactment of R. Gershom [not to perform the levirate marriage], and the enactment has the power to overrule it. This is the more so in this case, with the added argument that I wrote above:
he [the husband] is the originator of this difficulty, and there is some circumstantial evidence that he cheated. I also heard [about another case] that someone granted a get according to the rabbi’s instructions and married another wife, and when later a defect was found in the get he had to be separated from his second wife until he granted another valid get. This is even more true in the present case.

13. The Talmudic rule of R. Ami against polygamy

And another argument. In the Talmud [Babylonian Talmud, Yevamoth, 65a] "Rabbi Ami said, the man who married another wife is obliged to divorce her and pay the Kethuba". And even though Rava opposes and says: "A man is permitted to marry some women etc.", and R. Alfasi ruled in according him [Rava] as he is the later, even though he [Alfasi] ruled so only if the husband is able to maintain both, as Alfasi himself wrote. We can also distinguish that Rava allowed only wherever the first wife is infertile and he [the husband] claimed that he wanted to check himself [by marrying another wife], but in other circumstances, nay. So much more here that all this argument do not exist, that also Rava would agree that the husband has to divorce his wife and pay the Kethubah. Yet another argument. In the Talmud [Babylonian Talmud, Yevamoth, 65a], "Rabbi Ami said, the man who married another wife is obliged to divorce her and pay the Ketubba." And although Rava disagrees and says that "a man is permitted to marry several women, etc.", and R. Alfasi ruled according to him [Rava] as he is the later [more recent], although he [Alfasi] ruled so only in case the husband was able to maintain both [wives], as Alfasi himself wrote. We also distinguish that Rava allowed it only when the first wife was infertile and he [the husband] claimed that he wanted to check himself [by marrying another wife], but in other circumstances he did not. So much more here, where all these arguments do not exist, that Rava himself would agree that the husband must divorce his wife and pay the Ketubba.

14. The husband violates his basic matrimonial obligations

The truth is that all this discussion is not needed except to separate him immediately from his [second] wife, for he is sworn from Mount Sinai that he is obliged to [give his wife] maintenance, clothing and sexual relations, which is impossible to provide for both [wives] simultaneously. If so, who is to be denied? Surely the second one, who entered the territory of the first. If so, the decision would have to be to coerce him to grant a get to the second one and to pay her the Kethubah and to return to his first wife. But, the first wife does not demand it, saying that he deserted her, so it is not convenient for her to compel him [to stay with her] unless he freely agrees to do so. If he wishes to stay with the other, she would let him go, but only after she obtains a get with the fulfillment [of his obligation] according to the Kethubah or according to her willing compromise.

15. Conclusion: It is necessary to separate the husband from his second wife

Therefore, you scholars, recognize the truth and the justice of the matter. It seems that
you should separate him from his [second] wife immediately after reading my writing until he remedies the wrong he did, as I wrote above. And should this malicious husband be one of those rebels who refuse to follow the words of their teachers and would not act according to my writing, I am the first to join you in imposing sanctions on him, [and I shall be] like a snake that creeps on the earth and gnaws until he renounces his evil ways.

This is the words of Shlomo Luria.

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Shut Maharshal, Siman 14
Maharshal (Solomon Luria), 16th-17th century
Prepared by Elimelekh Westreich

1. פונית על קהלת פלבנה ור' אליעזר מאניקופול
בני העיר ומורדים הגליל. הורשעו תחתיי היישור לכל. משלים על צד תרמם בבל, מטרים בקברות בין הגליל.
ודרכם מעלים קחק קחק לשכת פלבנה. אבריהם בקברות בין הגליל. מסלולים בקברות בין הגלול.
ק"ק פליבנה" א"ז וברט והנניין.Reporting החותרים רוחצים. מתקרבים וברט. בראר אדיקות שלום. להכחס
הלשון. שמו נודע מנזרות. זכחו קצלי בבל. סlanmış חורף. מלא חורף. המסר כמר"ז" זavored חורץ. יבר בר
פונותיה באנייקופול שואו מרי דובב' ק"ק

2. רקע – נישואיו ואתירה שלם

מרות על כלוכו עליה בישה את אחרים будו בונים בתרנגולים שמעה לא. אבריהם שלמה בידה בע差异化 ובלשך שינו את
אותה מפורנס שהלך הבת ימי חלך כי לקח איש של יג הלוחות הさまざま חילוד יובלו.ff בדרכנו
אלוקים קרובים לא שיער כל אדם ולאastic על כל בונים בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגולים שלמה בתרנגול

3. מתוארות היהודים של קהלת פלבנה

אسقوط גוזר דר המשארית נעדרה ושארו שיש מאידך, גוזרeren עלמלתת שללה בקברות אבריהם. ולא אירבד או לא שיפור
הארשאני פוגר בחר התרנגול אלא לאנגלות נדיר וו לוחות והנה מועלים של עמלות יובלו. ה"ז

4. תאריך המגה הסנספנט שליר˃ושברת ש להיותנה בחרה

והנה מבוית התכנית إطلاق על אברהים. איה האישה לוחות בייבי ודר מי שורר להדרכה
5. האירש נרוא אריאב בלפלובב בוקס על אשת פבולי

והדרת נוע ציוע בשיאות לכל קולב ציוע אא אל שמילם פוטריה פקודה ליוד הוה הנה והתקסמה
לדרכו במאנרית דריה תוגנצה בירק אל באתי קולב וואקך אל לפתחות י"א, אלא להבחת והלובתק דלעתך כ
שמך אל יטר כי השא אא ألשרפר אוותיל אפרע ודרח.

6. יוהו אירושי על מוחמה"ו"כ רדיא שחייל שלא מעשה

נהragen הבהוב התואם אתורי וחקנור עוברַד צעיצא בגר судוקיו דוקא בידיקו דוקא לשון דוקא כל דוקא
למענה שראוי אבראה חפץ השאיר את פלאי חפץ השאיר את פלאי חפץ השאיר את פלאי חפץ השאיר את פלאי
תוב התיו א"ל יואיתל בביול ימתון פ伸びי היוד הוה אימא אשכנזייה יוביחי הלבק והתקסמה עוד המזקיני
שמשל.

7. האס יס בידיו אירוהי אללהלסק אל הניש בלסק?

1. עשתה טופריט公園ם עמקוי מיך לירוי שיאו אברם אשת יש"ו"נת"ת"חל"; ומיעל בתー"ור" גאיהם נייר בייר.
הלישה סאברור גו"ל לiciel טעמדא ביסא טוכל ליריחיות שלכ החיה אל שולו וה ForeignKey
ב.LoadSceneה אלא ראיהşı אל החיה אא אמא יאירוט שמשך בין בת之間 אהוית כ"פר" ו"פור" גל"פ ו"פור" גל"פ.
herence חחקנא ושערות ומעסל עלית.

2. "מ"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"גל"ג
בשעון יוהל ומכס, איש ומכס, אשת ומכס, עודו.

"היא לא על כן, אך נזהר / משתמשת ע"ב מ"מ ונזהר," א"ע ג"ד קמ"ו מקרא
מאות ע"ב מ"מ ונזהר יוהל ומכס, אשת ומכס, עודו.

"מאות ע"ב מ"מ ונזהר יוהל ומכס, אשת ומכס, עודו.

"היא לא על כן, אך נזהר.
הלא השניה בא בכרותיה של ראשונה א""פ היה מנוהל לכותב שיטה ועשתה את כתובותיה והרמשות�ם.

ם.ابل הארשונת מותירת על היה באם ולהתמדיה בלא כתבה א""פ לכותב היא א""ל מרצונה או ר Yönetה לדבוק

avax במכירת ראשונה על כתובה רצופה ובעד כתובה של ראשונהovable וכתובה של ראשונהovable

מסקנה 15: יש את הפועל בכול ואשתה השניה

ולכן משכי מבך מפורז מתאידה בשביעית בשתורית


Publisher: The texts were first publisheda hundred years ago and even earlier, and afterwards were fotocopied many times. Part of the texts exist online.

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Res. Maharshal, Ch. 65

**Question: A wife whose menstruation was disrupted**

A man who was married some years and lived together until she was subjected to the rigor of the law and having deteriorated to the point where she saw blood with the occasion of each intercourse and he was prohibited from having intercourse with her. The question is: do we allow the man to divorce her against her will? although R. Gershom’s ban prohibits divorcing [a wife] against her will, in such a case this is permitted because R. Gershom had not issued the ban in order to annul the commandment to be fruitful and multiply. This is not less serious than the case in which the wife became insane that he [the husband] was allowed to divorce her against her will by proxy and deposit her Ketubba so that she receives her get. [The reason for this is] the commandment to be fruitful and multiply, [which applies] even if she may recover and return to sanity. All the more so here, when she has no chance of recovering and returning to live with the man, he is allowed to divorce her against her will.

**1. The case of the Italian student whose wife became insane**

Although divorcing a woman against her will in case of insanity is obvious to you, this is not my position. here is a copy of what I wrote some time ago about a case that occurred at a place where scholars gathered. A young scholar arrived from Italy to this kingdom to study in the Yeshivot here. His wife had become insane in his country some years earlier. After studying about two years, the matchmaker offered him a woman and he agreed. But the father of the virgin and her relatives opposed it until he obtained permission from our rabbis that he was allowed to marry another wife. And he was brave as a lion and quick as a gazelle to fulfill the requirements [of the father and of the relatives], and asked our rabbis to permit him to divorce [his Italian wife] and marry another.
2. The position of Rashal in the case of the Italian student

I refused to agree with them but I did not oppose them either, as I had no halachic arguments with which to contradict their position, as their argument was that R. Gershom, the light of the Diaspora, did not enacted [his ban] in order to annul the commandment to be fruitful and multiply. And they [the rabbis] allowed him to deposit a get with a proxy so that if she returned to sanity she would receive the get and her Ketubba. After the deed was done it was done [and we can not change it], but my conscience nagged me. And some years later I searched in the big book of Ravia and found that the great sages had forbidden [this action] in practice [in the case of the insane], and here are their responsa...

3. Ravia absolutely prohibited lifting R. Gershom's ban

We briefly answered R. Simcha about the insane wife. We inform our teacher about [another] case, that of R. Shmuel b. Azriel of Mainz, whose wife was insane like the wife about whom you wrote us. And he [R. Shmuel b. Azriel] and his father came to the synod of the communities and several times cancelled the prayers because of canceling the commandment to be fruitful and multiply, and he demanded to lift the ban of R. Gershom. And they [the rabbis of the synod] refused to lift the ban and argued that it is better to loose one soul and not to cause a breakdown for the coming generations. He also went to Bonn, and there also the rabbis refused to lift the ban. Similarly in the current case, we are wary of lifting the ban, especially because in the case [of R. Shmuel b. Azriel] there were rumors about concealed relations [between R. Shmuel b. Azriel and another woman] and even so they refused to grant permission.

4. The position of Rashal in the case of the insane wife

And from now on my [Rashal] opinion is to forbid him even post factum to divorce her by a proxy who holds the get and the Ketubba until she may recover. All the more so if he divorces her [directly] with the wife receiving the get, even if she were able to keep the get and check it, but she is unable to keep herself [from men] even if she has a father or a brother [to keep her]. And this is also the case [the divorce is not valid] of a wife who is at times sane and at times not.

Moreover I say that even in case that the wife is at times entirely sane and agrees to receive the get, and her relatives also agree, it is forbidden to divorce her without permission of the court, which would verify the truth of the facts, i.e., that she would be kept from looseness. But without their [the court’s] consent, I decline to allow the husband to marry another wife even if she [the first wife] was entirely sane at the time of receiving the get.

5. Menstruation disorder is not a ground for lifting the ban

You assume that it is absolutely legitimate to divorce an insane wife because you heard the case of the young scholar [from Italy], and I did not oppose it at the time. But from
now on my opinion is to forbid it. Similarly in the case [of menstruation disorder] you asked me about, I have no power to lift the ban and permit divorcing her against her will, as we can argue that his field was swept away. Even though, the sages in this town, has to put in effort and try to attract her so that she would agree to receive willingly the Get.

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EARLY MODERN WORKSHOP: Jewish History Resources

Volume 5: Law: Continuity and Change in the Early Modern Period, 2008, Yeshiva University, New York, NY

Shut Maharshal
Maharshal
16th-17th century
Shemah Le-Derova, 16

Prepared by Elimelekh Westreich

(Res. Maharshal, 65) - ס"ת ס"ה

ט"תMaharshal
ט"ת Maharshal

Shemah Le-Derova, 16

1. המקרה של התלמיד מיטליא
2. עמדת המהרש"ל
3. תשובה ראב"ד

EMW -Workshops

EMW 2008
בר חיריאMariam ממקבילה שתרצה鋆窕ה контורה בכרך, 찾아/Error ושהיא השכבה עביוอา ואמיר בוודא הקווירות והיה
מגלה פיליוון מבינו פריו והרבה פנו ויהיה מבקט התחרות מזג האשה ומקום עגל ורא עזה ול
ואמר מוטב הלפסיד פשאוח מלבושה קילוק לדורות הבהמות עם לובן בלא או והגייל לא חוסר המילים התער
ולכן יראנו גם אתנו להכמים פ"' צא קילוק או כ ידי מלאים בינו הקל,نظم' ברי אפי' כי לא התייר ל
השכבה עד נתקת האמה "אאמ"אה התשובה" וי יכל מתכוננו לזרע אתהﭭ מה שיא פספס או ספור ובוועת הveal.
ניגט גם נמצאת לשכבה על ממון לברורף שחיי פוניטה או בנみて השילוק בינתיות...4.
עמדתו המגובשת של המהרשא" לבעניין התרת חדר ג
באה אישה שנשתתכה.
והנה מה שדמית בעיניך,שהיתר גמור הוא לגרש כאן TextInput שראינו איך ששמעת
המעשהשהיתרו להאי צורבא מדרבנן מטעם שהחרשתי בעת האשה,אבל מעתה והלאה דועתי לאוסר,החדר,היום אפי' ג
ולגרשה בעח"כדאימר נסתחפה שדיהו ומראוי לחכמים שבאותו עיר שיגעו בעניין ומיצאו מקום למשתתפת אשתה שלמה ואחרי ציפורה/בדצתי ותרתוכה הא Yaşריה שלבדים חבר שהילוק לוח"א.
5.어서 ישנה השבוך מהוורודת ההדרו — אפי מחיירם או מחר"ג
והנה מה שדמית כאבריקיה שיתוףお得 גוזה לחרס ייס שגייתא וה EITHER ששתיה להיא הזברה מדו
מטעמ שחייתות vat ביב שיתוף האלמדינה עסוי לائهم דעתי לאוסר,גי בנйти שלשלא ואץ כביי עזה ור"ג גלרים
EARLY MODERN WORKSHOP: Jewish History Resources

Volume 5: Law: Continuity and Change in the Early Modern Period, 2008, Yeshiva University, New York, NY

Introduction to Shulchan Aruch and Hagahoth Remu, Even Ha-Ezer, 1:10

Elimelech (Melech) Westreich, Tel Aviv University Law School, Israel

The Legal Status of the Wife in Ashkenazi Jewish Legal Tradition: Continuity and Change in the Sixteenth Century

Elimelech Westreich

The ban of Rabbenu Gershom forbade both polygamy and divorcing a woman against her will. The ban has been seen by historians as a key determinant of the singularity of Ashkenazi Jewish culture. In sixteenth-century Poland there were two main approaches among halakhic scholars: one, represented by R. Solomon Luria adhered strictly to the Ashkenazi legal tradition; the second, represented by R. Shalom Shakhna and R. Moses Isserles, was open to other Jewish legal traditions. Is this phenomenon related to the Early Modern Period? And if so, how is it related? My discussion in the workshop will focus on these questions.

In the middle ages, Ashkenazi Jewish women enjoyed strong legal protection of their marital status through R. Gershon’s ban (Chadrag), which prohibited marrying a second wife and divorcing a woman against her will. The high status of the enactments was manifested in three areas: (1) their legal basis, which was legislation in the public-criminal area of the law; (2) the rejection of solid grounds on the part of the husband, such as observance of the commandment to be fruitful and multiply or of the levirate commandment, and at times even of a combination of such grounds (as, for example, when the woman was out of her mind and the man did not observe with her the commandment to be fruitful and multiply and could not maintain matrimonial relations); and (3) the procedural area, which specifies the rigid and complicated process required to lift the ban and the sanctions imposed in case it is violated. The prestige and strength that the two enactments enjoyed was the outcome of a long process resulting, among others, from such halachic changes as the decline of the halacha of the rebellious woman, which enabled women to coerce their husbands to
divorce them. Ashkenazi Jewish society internalized the enactments very deeply, to the point where bigamist marriage was perceived as living with a legal wife and a prostitute. Throughout the middle ages, the presence of other traditions in Spain, the Mediterranean basin, and in the East did not pose a threat to the Ashkenazi tradition on its territory. The encounter between the legal traditions of the various communities always took place on non-Ashkenazi territory. When he served as rabbi of Spain at the first quarter of the fourteen century, Rosh tried to inculcate there the Ashkenazi tradition, directly and indirectly. At this time, in Spain, Rashba was asked by an Ashkenazi scholar to lift Chadrag because of his wife’s insanity, after his request was refused in Ashkenaz. This sage is also the originator of the rumor that Chadrag expired at the end of the fifth millennium (1240), which in time would play an important role in the halachic discussion. A hundred a fifty years later, in a legal debate, Maharil raised the possibility that a man whose wife lost her mind can go to Italy, where Chadrag may be lifted.

Only at the end of the 15th century is there a serious challenge placed before a great Ashkenazi sage, R. Yehuda Mintz, who served as the rabbi of Padua in the Venetian Republic. R. Gershon Bonfazo, the Romaniot rabbi of Corfu, married a second wife because he was not able to perform the commandment to be fruitful and multiply with his first wife, an action that received the approval of the Romaniot R. Eliahu Mizrahi, head of the rabbis in the Ottoman Empire. R. Yehuda Mintz adopted an extreme attitude in preferring Chadrag over the commandment, and banned the Romaniot rabbi for his action. R. Yehuda Mintz based his position on purely Ashkenazi sources as well as on discretion and opinion, but did not address various Sephardic sources that opposed his view. Some decades later, however, a significant change occurred in the community of Ashkenazi rabbis there. R. Meir of Padua, the husband of R. Mintz’s granddaughter and heir to his position at the head of the Padua Yeshiva, rejected the approach that strengthens Chadrag beyond measure, and gave decisive weight to Sephardic sources that reject Chadrag in favor of the commandments.

The Polish extension of the Ashkenazi community, which by the 16th century had risen in quality and quantity above the motherland in Ashkenaz, faced a new reality that reflected the changes occurring at the beginning of the modern era. At this time, the large Jewish centers were growing closer to each other, resulting in a phenomenon of mini-globalization or regionalization. This was reflected in the discussion by Rashal of the first case [Res. Maharshal, Ch. 14] of a member of his community who left his wife in Poland and went to the town of Pleven, in the Ottoman Empire. In this region and around it lived Jews of other communities that, unlike the Ashkenazim, did not grant Chadrag a high legal status. The Romaniots apparently recognized that Chadrag applied to them, but held that it was superseded by commandments such as that to be fruitful and multiply. Moreover, they did not enhance the strength of Chadrag in the areas of enforcement and relief. The Sephardim did not consider themselves to be subject the Chadrag at all, and a tradition existed among them that even with respect to
Ashkenazim Chadrag expired at the end of the fifth millennium. The proximity between the centers was manifest in the quality of the communication between them, which took place nearly in real time and on several levels. The constant correspondence and traffic of messengers between the centers is described in detail in the responsa and integrated in the halachic debate. The connection also produced a strong dependence between the legal work taking place in Poland and the required close cooperation between the legal institutions in the two locations. This phenomenon contains pure elements of private international law intended to enable cooperation between different autonomous legal systems.

The importance of the flow of information in this case is clear, as the challenge to the validity of Chadrag, at least under certain circumstances, is the moving force behind the entire case. This flow seems to have been made possible by an additional factor that appeared at this time, the invention of the printing press. Rashba’s responsa, that had been recently printed, and the printing of the work of R. Yosef Karo and of the books of responsa of such Italian sages as Maharik, Mahari Mintz, and Maharam Padua quickly made public the tradition regarding the expiration of Chadrag and the associated debates. The links made possible by the printing press are even more prominent in the legal work of Rama. In his comments to Shulhan Aruch as well as in his work Darkei Moshe, he expresses positions other than those common in the Ashkenazi tradition, which contributed to the erosion of at least the moral dimension of Chadrag, and from then on the claims concerning its expiration and the preeminence of the commandments became legitimate. However, Rama eventually ruled that Chadrag remains valid and that violators who marry a second wife must be coerced.

The conduct of Rama was similar to that of his great Sephardic colleague, R. Yosef Karo, who also featured in his writings approaches that differed from his own even if he eventually summarized the halacha according to his own views. This approach was radically different from that reflected in the writings and rulings of Rashal, Rama’s Polish colleague. Rashal rejected unequivocally the tradition claiming that Chadrag had expired at the end of the fifth millennium, and criticized Rashba mercilessly. He also went to extremes in the second answer [paragraph 65], and sharpened further the Ashkenazi legal tradition by making Chadrag a nearly absolute legal factor, not to be lifted even in extreme circumstances in which several reasons converge: the insanity of the wife, impossibility to maintain matrimonial relations, and impossibility of observing the commandment to be fruitful and multiply. This tendency was further underscored by the nature of the sources that Rashal quoted in his answer. Unlike Rama, who absorbed the new products of the printing press, Rashal surveyed old Ashkenazi manuscripts and found Raviya’s answer, which had been shelved for four hundred years. This answer became the basis for the opposition to any attempt to lift either component of Chadrag, whatever the reasons of the husband may be. Eventually, Rama’s method, which was open to changes occurring at the beginning of the modern era and communicated with the important sages of the large center being
formed in the Ottoman Empire, was preferred over Rashal’s conservative method that sought to perpetuate the Ashkenazi halachic past and maintain it in splendid isolation.

**Bibliography**

Additional reading:

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R. Gershom banned a man who married bigamously, but in a case of a levirate marriage [yevamah] he did not ban, and neither did he in the case of a betrothed woman.

1. Gloss ha-Remu: If he refuses to marry [the betrothed] but wants to divorce her. The rule applies in case a commandment is not observed, like the case of a man who stayed with his wife for ten years and she has not given birth. But there are sages who oppose this and maintain that the ban of R. Gershom is valid also if the commandment is not observed and even in the case of a levirate marriage, and he [the husband] must perform halitza [to his brother's widow]. But, if the first wife is not divorceable, as in the case that she has become insane or she is obliged to be divorced but refuses to receive the get, we can be lenient and allow him to marry another wife, all the more so if she is betrothed but refuses to marry him or to divorce him.

2. And his enactment had not spread to all the countries. 
Gloss ha-Remu Precisely in places in which we know [positively] that the enactment had not spread, but probably it is the usage in every place. See Yoreh Deah, Ch. 228, if he moved from a place where the custom was strict to one where it was applied leniently.

3. And he did not ban but until the end of the fifth millennium.
Gloss ha-Remu: In all these countries the enactment and the custom are still valid, people do not marry bigamously, and [the authorities] use banishment and ban to coerce those who married bigamously to divorce one of them. Some sages say that in these days it is not allowed to coerce [by banishment] a man who violated the ban of R. Gershom, as the fifth millennium has ended, but we do not conduct ourselves according to this view. Some sages say that a man whose wife converted grants the get to another [as her proxy] and is permitted to marry another, and this is the usage in some places. But in places in which there is no a specific custom [and a requirement to deposit a get] there is no need for strictness and it is permitted to marry another without divorcing the first wife.

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Volume 5: Law: Continuity and Change in the Early Modern Period, 2008, Yeshiva University, New York, NY

Shulhan Arukh, HaGahoth ha-Rama
Moses Isserles, 2nd half of the 16th century, 1st half of the 17th century

Prepared by Elimelech (Melech) Westreich, Tel Aviv University Law School, Israel

(Shulchan Aruch and Hagahoth Remu, Even Ha-Ezer, 1:10 )

Publisher: The texts were first published a hundred years ago and even earlier, and afterwards were fotocopied many times. Part of the texts exist online.

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