EARLY MODERN WORKSHOP: Jewish History Resources

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Expanding Legal Horizons?

Edward Fram, Ben-Gurion University, Israel

**ABSTRACT:** Legal change was not only a result needs to adapt the law to new situations but could be stimulated by new information. New sources were not always accepted and this presentation will attempt to locate the point in time in which acceptance of a large number of new sources took place in the eastern European community of the early modern age.

**This presentation is for the following text(s):**
- Shulhan `arukh
- Siftei Kohen-The Priest's Lips
- Turei Zahab-The Golden Columns

**Edward Fram**

Ben-Gurion University, Israel

Duration: 59:05

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The advent of movable print in the second half of the fifteenth century and the subsequent publication of hundreds of works dealing with almost the full spectrum of Jewish culture offered readers in many geographic settings the opportunity to explore ideas from beyond their traditional cultural frames of reference. For example, the printing of philosophical, mystical, and scientific writings of Sephardic (Spanish) Jewry, often first in the Italian lands from where they were carried into eastern Europe as part of ongoing commercial and cultural exchanges, offered Jews living in sixteenth and seventeenth-century eastern Europe the opportunity to delve into material that they and their predecessors had generally been unfamiliar with when these works remained in manuscript. Biblical commentaries and super commentaries too were published and they contributed to a rethinking of earlier ideas and even an outburst of creativity in commentaries on the medieval biblical commentary of Rabbi Solomon ben Isaac (known by the acronym Rashi) in eastern Europe.

Jewish law (halakah) was another area in which material from the Sephardic world was printed and found its way to eastern Europe. However, law was a relatively conservative endeavor and most Polish rabbis hesitated to embrace works from the Sephardic world. For the most part they continued to rely on traditional Ashkenazic sources, that is works from medieval France and Germany. Writing in mid-sixteenth century Cracow, Rabbi Moses Isserles noted that his contemporaries commonly said that legal rulings were to follow the views of Rabbi Mordecai ben Hillel, Rabbi Israel of Krems (both from the German lands), and Rabbi Jacob ben Asher, author of the fourteenth-century law code the `Arba `ah turim (The Four Columns) who often followed the views of his illustrious father, Rabbi Asher ben Yehiel, yet another Ashkenazic jurist (see Isserles, Darkey Mosheh ha-shalem, H. S. Rosenthal, ed., vol. 1 [Jerusalem, 1979], p. 37 [introduction]). Most Sephardic authorities simply never attained full standing in the legal world of sixteenth-century halakists in Poland.

The tendency to rely on a limited legal library persisted among Polish rabbis well into
the seventeenth century. It was only with the publication of Rabbi Shabbetay ben Me’ir ha-Kohen’s *Siftey kohen* (The Priest’s Lips) in 1646 that the scope of sources used in eastern European halakic parlance was truly opened up. Beyond demonstrating the young author’s acumen for legal analysis, *Siftey kohen*, a running commentary/gloss on Rabbis Joseph Caro and Moses Isserles’s *Shulhan `aruk* (The Set Table; a comprehensive code dealing with all aspects of Jewish law applicable in post-Temple period), is chalk full of references to legal sources from the Sephardic world, including texts from the sixteenth-century Ottoman Empire. Rabbi Shabbetay’s receptiveness to views from beyond the Ashkenazic pale stood in stark contrast to the work of his older contemporary, Rabbi David ben Samuel ha-Levi whose *Turey zahab* (Golden Columns) was published earlier in the same year, on the same text, and in the very same format as *Siftey kohen*. The *Turey zahab* was not without its innovations but it reflected the traditional Ashkenazic legal world; Rabbi Shabbetay embraced all sources of legal information.

Rabbi Shabbetay ben Me’ir’s innovation does not seem to have been emulated, not by his contemporaries and not by his successors. A quantitative survey of citations in legal works from the period shows that it was only in the eighteenth century that Ashkenazic authorities truly broadened their scope. This suggests that changes wrought during the Early Modern Period affected different fields in different ways and that law, or at least Jewish law in eastern Europe, was more insular than other fields of Jewish culture.

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Shulhan `arukh
The Set Table, Yoreh de`ah 19.1
Shulhan `aruk, Yoreh de`ah 19.1
1567

Translated by Edward Fram, Ben-Gurion University, Israel

Shulhan `aruk, Yoreh de`ah\(^1\) 19.1

The base text of Rabbi Joseph Caro’s Shulhan `aruk was first published in Venice in 1565. Rabbi Moses Isserles’s glosses were added to Yoreh de`ah in Cracow in 1570.

Rabbi Joseph Caro: The ritual slaughterer should say the following blessing before performing the act of slaughter: “[Blessed are You, Lord our God, King of the universe], who has sanctified us through His precepts and commanded us regarding ritual slaughter.” And if one slaughtered and (1) did not make the blessing, the act of slaughter is still (A) acceptable.

Gloss of Rabbi Moses Isserles: And if one slaughtered an animal (B) in which there was some doubt regarding its acceptability and there is need of an internal examination of the animal to determine that it is kosher, (2) one should slaughter the animal without making the blessing and, (C) if one finds it to be ritually acceptable, (D) one should then make the blessing on slaughtering, so long as it is not long after the act of slaughtering. And if one slaughters in the slaughterhouse, which is a dirty place, one should recite the blessing at a distance of four ells before entering the slaughterhouse and [from then on] one should not talk until after one performs the act of ritual slaughter.

Endnotes
\(^1\) Rabbi Joseph Caro’s legal code, the Shulhan `aruk, is divided into four main sections. The second such section is entitled Yoreh de`ah and deals with numerous aspects of
Jewish ritual life that are *not* dependent on the calendar cycle (e.g., kosher food, respect for parents, laws of mourning, etc.).

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Shulhan `aruk, Yoreh de`ah 19.1

1567

Prepared by Edward Fram, Ben-Gurion University, Israel

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Siftei Kohen-The Priest's Lips

Yoreh de`ah 19.1

Siftei Kohen

1647

Translated by Edward Fram, Ben-Gurion University, Israel

Shabbetai ben Meir ha-Kohen (1621–1662)

Siftey Kohen (Cracow, 1646)

A. Even if someone purposely did not say the blessing, the meat is still permitted to him. And this is how Rabbis Joseph Caro, Moses Isserles, and Solomon Luria (Yam shel Shelomoh, Hullin 6.1) ruled and this is also implied in the Halakot Gedolot (beg. fol. 126) but Rabbi Joel Sirkes did not rule in this way. Cf. beginning of section 28 [n. 3 in Shabbetai ben Meir’s commentary].

B. And Rabbi Solomon Luria (op. cit. 6.5) ruled according to Rashi’s view that one should make the blessing before slaughtering because even if the animal would be found to be ritually unacceptable, ritual slaughtering removes it from the category of being a carrion [an animal that has died a natural death] (and at the end of this section, Rabbi Isaac ben Meir ha-Kohen’s commentary). And this does not seem to be the view of the Jerusalem Talmud in Berakot (chap. 9) in which it says regarding the blessing on slaughtering that there is a presumption that the intestines are kosher. Cf., Yoreh de`ah 28 n. 26 [in Shabbetai ben Meir’s commentary].

C. And Rabbi Moses Isserles in his Darkey Mosheh cites in the name of Rabbi Israel of Krems on the first chapter of tractate Hullin that, “even when slaughtering a [presumably] kosher animal, if the slaughterer forgot to recite the blessing before slaughtering, the blessing should be said after slaughtering.” And so is found in a few recent slaughtering manuals. And Rabbi Isaac ben Meir ha-Kohen concluded there “that in all precepts, if one did not recite a blessing before performing it, one recites the blessing after doing the precept as is explained in tractate Berakot by Rabbi Isaac ben Moses of Vienna.” And in the first chapter of tractate Berakot, he [Rabbi Isaac ben Moses of
Vienna] wrote as follows: “when one did not recite the blessing before performing the precept one should recite it after performing it and thus one will fulfill his obligation. However, at a meal, when it is prohibited for one to have pleasure without first having blessed, if one transgressed and ate without first making a blessing, since one has now come to the grace after eating, the blessing before the food is superseded [by the grace after the meal and there is nothing to do].” However, this is not Maimonides’ view (Code of Law, Blessings 11.6) who wrote that “if one slaughtered without first reciting a blessing, or for that matter, even if one separated priestly tithes (terumot) and tithes to the Levites (ma ‘aserot) or ritually immersed and did not first recite a blessing, one does not subsequently go back and recite a blessing after doing the precept. And so too in all similar matters.” And Abraham Treves7 in his work Birkat Abraham (end of section one and beginning of section ten) went to great lengths to counter Maimonides’ view with arguments and discourses and his basic point is that if one says that one may not make a blessing after having performed the act, then how is it that we require a convert (see Shulhan `aruk, Yoreh de`ah 268.2) as well as all others who require ritual immersion (cf. 200) and those who do other precepts to bless after having performed the act. And if it is because one could not say the blessing before performing the precept [for whatever reason], then one should not make a blessing at all. And in my humble opinion, all of Treves’s views do not make sense, for we have certainly learned that all blessings except for the Grace After Meals are rabbinical decrees, as is found in tractate Berakot in a number of places as well as in subsequent rabbinic literature. If so, the Rabbis said to say the blessing before performing precepts and not after and they also said regarding converts and cases where the individual is incapable [for technical reasons] of saying the blessing that one should say the blessing after performing the precept. And this is implied in B.T., Berakot 51a where it is said “Ravina said: Therefore, even if one finished eating, one should go back and say the blessing, as is learned in an earlier rabbinic text: ‘One who ritually immersed, when the person emerges from the water, the person should say: “Blessed [are You, Lord our God, King of the universe] who sanctified us through his precepts and commanded us regarding ritual immersion.”’ [The Rabbis responded to Ravina], this is not [a proof because] with respect to ritual immersion the person was incapable [of making the blessing beforehand] but here [on the blessing on food] the person was capable [of making the blessing but] failed to do so and therefore should not [go back] and make the blessing.” It would thus seem that only regarding ritual immersion and instances where one is incapable of making the blessing [did the Rabbis allow one to say the blessing after performing the precept], however, where one is capable of saying the blessing beforehand but did not do so, one may not say the blessing after [performing the precept]. And even though Rabbi Abraham Treves wrote that one might be able to differentiate between blessings over food and those said on performing the precepts, this is not at all certain. Moreover, Ravina himself did not make such a differentiation [between blessings over food and precepts] and we do not see that the Rabbis objected
to him over this point. And this is also implied in the view of Rabbi Jonah Gerondi\(^8\) in his comments on this section in tractate *Berakot*, who wrote that this is the law regarding all other blessings, that one must recite the blessing before performing the act and, if one did not do so, one does not say the blessing thereafter.

And another clear proof of this [that one cannot say the blessing after performing the precept] is that we learn in the beginning of tractate *Pesahim* (7b): “In the study house of Rav they said that all ritual blessings must be said before performing the precept, except for ritual immersion since the person was not [ritually] capable of saying it beforehand. We have also learned this in a tannaitic source, ‘One who immerses and comes up [out of the water], upon coming up one says, “Blessed [are You, Lord our God, King of the universe] who has sanctified us through His precepts and commanded us regarding ritual immersion.”’” What proof can be brought from this tannaitic source? One might say that only one who immersed and came up [can say the blessing afterwards] but ideally this not how it should be done, as Ravina, who explained that this tannaitic source is specifically discussing what to do if one had already immersed, therefore in other precepts too one can say the blessing after performing the act if one forgot to say it before. However, the Talmud certainly thought otherwise, for it would not have cited the reason that the person was not [ritually] capable of making the blessing [if this was not so]. If so, if someone performed a precept and the time for saying the blessing has passed, it has passed. And this is implied in the words of the tosafists\(^9\) in B.T., *Sukkah* 39a and by Rabbi Asher ben Yehiel\(^10\) (*ibid*) who wrote, “if one took the four species\(^11\) in one’s hand without first saying the blessing, one should still recite the blessing. The reason for this must certainly be that one has not yet completed doing the precept for one must still shake the species.” This implies that if one has totally completed fulfilling the precept—and this would be true of all precepts—one does not say the blessing. (And in his work *Nekuddot ha-keseif*,\(^12\) Shabbetai ben Meir deleted from “And another clear proof...” until here. And some gloss there, “and if so, even after having performed the precept one does not say the blessing for since [the opportunity for saying] it has passed, it has passed.”) And also in the rulings of Rabbi Menachem Recanati\(^13\) (no. 72), who cites Rabbi Isaac ben Moses and then Maimonides in his conclusion, implying that he too is of this opinion [i.e., by citing Maimonides last, Recanati signals to the reader his agreement with his view that one cannot say the blessing after having performed the precept]. And so too, Rabbi David Abudraham\(^14\) wrote that Rabbi Zerahiah ha-Levi\(^15\) shared Maimonides’ view [in this matter]. And this would appear to be the view of Rabbi Isaac Alfasi\(^16\) [as cited] in a responsum regarding the blessing said upon circumcision by Rabbi Moses Alashkar\(^17\) in responsum no. 18. Moreover, we know that whenever there is a doubt regarding blessings we are lenient [and do not recite them].

D. Rabbi Mordecai Jaffe\(^18\) wrote that our custom is that when one has an animal and there is a question whether it can ever be kosher, one slaughters a chicken or other fowl before slaughtering the large animal (e.g., cattle) and says the blessing before slaughtering on
the fowl with the intention of including [the ritual slaughtering to be done on] the large animal. And this is what Rabbi Joel Sirkes wrote and it is proper to do so. And so it is written later (28.4) regarding covering the blood of a buffalo. Nevertheless, it is obvious that Rabbi Moses Isserles’s ruling is correct where there is no possibility of slaughtering a fowl.

Endnotes
1 There was some resistance to the publication of Rabbi Shabbetai ben Meir’s work given his young age. His commentary shows great originality and was highly critical of views that he did not agree with. See http://www.jewishencyclopedia.com/view.jsp?artid=525&letter=S.
2 A relative and contemporary of Rabbi Moses Isserles who disagreed with the whole notion of a concise code of Jewish law as exemplified by the Shulhan `aruk. See http://www.jewishencyclopedia.com/view.jsp?artid=627&letter=L.
3 A ninth-century legal work by Rabbi Simon Kayyara that was probably written in Sura (present day Iraq). It was transmitted in two recensions, both of which eventually arrived in medieval Franco-Germany. See http://www.jewishencyclopedia.com/view.jsp?artid=151&letter=K&search=halakot%20gedolot
4 The most important commentator on the Bible and Babylonian Talmud. Rabbi Solomon ben Isaac (known by his acronym, Rashi) was also a respected legalist who lived in Troyes (France) and died in 1105. See http://www.jewishencyclopedia.com/view.jsp?artid=121&letter=R..
5 Author of the Hagahot Ashri, a commentary on Rabbi Asher ben Yehiel’s legal work. Rabbi Israel lived in Austria and died in 1420. See http://www.jewishencyclopedia.com/view.jsp?letter=I&artid=310.
6 One of the outstanding German rabbis of the thirteenth century, he studied in both France and Germany and was the teacher of Rabbi Meir of Rothenburg. See http://www.jewishencyclopedia.com/view.jsp?letter=I&artid=231.
7 A member of a leading French rabbinical family, Treves corresponded with a number of outstanding rabbis who lived around the Mediterranean basin in the sixteenth-century. His work, Birkat Abraham was published in Venice in 1552. See http://www.jewishencyclopedia.com/view.jsp?artid=322&letter=T#1346.
8 Catalonian rabbi famous for his ethical work, his legal commentary on tractate Berakot that is cited here was written by his students and attributed to him. He died in 1263. See http://www.jewishencyclopedia.com/view.jsp?artid=166&letter=G.
9 Tosafot literally means “additions” or “supplements.” The term refers to rabbis in France and Germany from about the mid-twelfth century until the end of the thirteenth century who dealt with legal issues and whose comments on the Talmud were considered additions to the work of Rashi. See http://www.jewishencyclopedia.com/view.jsp?artid=276&letter=T.
The leading student of Rabbi Meir of Rothenburg, he fled Germany and settled in Toledo where he died in 1328. His legal commentary is a standard reference work in both the Ashkenazic and Sephardic legal communities. See http://www.jewishencyclopedia.com/view.jsp?artid=1930&letter=A.

The work was first published in 1677. An editor has added this comment.

Menachem ben Benjamin Recanati (1250–1310) was an important kabbalist who lived in the Italian lands. Almost all of his writings focused on Jewish mysticism but he did write one legal work, his *Pisqey halakot* (Bologna, 1538). On Recanati, see http://www.jewishencyclopedia.com/view.jsp?artid=151&letter=R#402.


Zerahiah ben Isaac ha-Levi Gerondi, a leading Provencal talmudic scholar of the twelfth century, wrote *Sefer ha-me’or*, a critique on Rabbi Isaac Alfasi (see next note) as well as a platform for his own original legal thought. See http://www.jewishencyclopedia.com/view.jsp?artid=108&letter=Z.


A member of the generation that was exiled from Spain, he moved to Tunis, Greece, and later Egypt (1522). He eventually made his way to Jerusalem where he died in 1542. See http://www.jewishencyclopedia.com/view.jsp?artid=1061&letter=A.

A student of Rabbis Isserles and Luria, he wrote a comprehensive code of Jewish law entitled *Lebush Mordecai* that may well have been more popular that the *Shulhan `aruk* in eastern Europe when it was first published in the late sixteenth and early seventeenth centuries. See http://www.jewishencyclopedia.com/view.jsp?artid=136&letter=J&search=Jaffe#469.
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Yoreh de`ah 19.1
Siftei Kohen
1647

Prepared by Edward Fram, Ben-Gurion University, Israel
ה릴וק הז ראה חוגות פ밀וג עליה של"מ" בחיה. ובריכו משמיע מדבריה ח"ו ויינו פ"ג שאכלה שדהו חדו כבל שאר
הברחות שמאברה סעוד טעישיהי אמא לא ביד אפרת ומק"א". (ועד) ראיה בוריה ובריה בפ"ק"ד פסוים (ח"ו
"ע"ו): מב"ר אמרי מברחת כל מברך עליה סעוד טעישיהי תורה ממק"א מבריחה לא ויחו חינה חמא
טבל טעישיהי בברוך אבא"ה טבילה. זא אהת שא מראיה מיברה מבריחה דברייהו דמא קא דאוד טעישיהי
לתכחתלאל וכו' וברידא מברך משיר דיעבד דוקה דאה בשאר פעוט נמי וא לא ברך מימיクロ מברך ח"ו או
ס"ל"ו"ש דאמ אימא דלא אפרידין אפקי נברא ולא ויחי חילחולה. א"כ אפילי ירשב יאני מברך והיאו אתו
הבר משמיע תלדידי מדבריה חתמה פ"למה הנוהל (ח"ו ל"ט א"נ) והזורה שמדכתב דאמ נשל חלובה ביד כל הברך
dפריך לברך, על הפריך הוהין שמטמא מברך א"כ והיאו המוחзо לא נאמרה עידי פ"ק"ד מברכת ד으며 הנהו
אם הנבר ממטמא דלא אありました איני קונכתי מרבר (בברחות כסמュー ומיעוצו וידא דהיאו דע פך, ויס מתחית
אין של"כ אפילי ירשב יאני מברך והיאו אתו ח"ו"ן) ובר pclטסיק רכיב"ו "ש"י""ב"ה נבר ח"ו א"כ א"כ
הברות"ו"ב במדטרה משמיע דהפי פ"ל"ו"נ הרבר וד אברדריס בשע חמאו חכרמה"ו זכט נברת מבריך ח"ו
בששובה גב בברכת חמה שמחייה ח"יו אשילער מתני: פ"ל"ו"נ וודא ח"ו"ל כל ספד ברבח חילקל.
ז מברך ח"ו: חתמה חתמה"ו שאנות חוגרים כסיודים לקדושה דבר שמש בפש פפרホテル תרנגלו ואועי חארא קידוש
ווכותה ח"ו"ל על זה תוכ מבר ח"ו"נ הרבר זכר חحماس זכריה זכט זקו ח نفسها ח"ו סעיף ח"ו"ל=log: כימי חכרמה"ו"ל מידי שול
וה"ל"ב אומת חさまざま ועלות עשה חאור ח"ו:כ

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Commentary of David ben Samuel Ha-Levi (ca. 1586–1667)\(^1\)

*Sefer turey zahab* (Lublin, 1646)

1. This is stated to exclude the view found in the laws of Eldad ha-Dani\(^2\) cited by Mordecai ben Hillel\(^3\) who prohibited meat slaughtered this way [i.e., without a blessing]. And Mordecai ben Hillel wrote in the sixth chapter of tractate *Hullin* in the name of Rabbi Eliezer ben Joel ha-Levi\(^4\) that if someone purposely slaughtered the animal without saying the blessing, that person may not eat from the meat of the animal and they [i.e., the community] would punish [lit., whip] him, however, other people could eat from the meat. And Rabbi Joseph Caro wrote that Moses Maimonides\(^5\) and other authorities disagree with R. Eliezer ben Joel ha-Levi\(^6\). And my teacher and father-in-law of blessed memory, [Rabbi Joel Sirkes\(^7\)], wrote that nevertheless, one should be stringent and fine the ritual slaughterer based on R. Eliezer ben Joel ha-Levi’s view.

2. And some have the custom of slaughtering an animal that does not require an internal inspection at the same time [and they say a blessing over it first] and this is certainly preferable.

**Endnotes**

\(^1\)One of the leading rabbinic scholars of the mid-seventeenth century, his comments on the *Shulhan `aruk* helped make Caro’s work the standard reference work in Jewish law until this day. After studying with his father-in-law, Rabbi Joel Sirkes, in Cracow, he served in the rabbinate in a number of communities including Poznań and Ostrog. See http://www.jewishencyclopedia.com/view.jsp?artid=139&letter=D.

\(^2\)Eldad ha-Dani was a ninth-century traveler who claimed to be from the biblical tribe of Dan. His origins remain a mystery and many thought him to be a charlatan, however,
he transmitted a number of laws regarding ritual slaughtering that were accepted as legitimate sources by medieval Ashkenazic authorities. See http://www.jewishencyclopedia.com/view.jsp?artid=126&letter=E.

3 An outstanding student of Rabbi Meir of Rothenburg, Mordecai wrote a halakic compendium that followed the organization of the Talmud and included rabbinic sources from England, France, and Germany. It is generally simply referred to as “the Mordecai.” He died in 1296. See http://www.jewishencyclopedia.com/view.jsp?artid=772&letter=M.

4 Rabbi Eliezer ben Joel ha-Levi was the great grandfather of Rabbi Mordecai ben Hillel and perhaps the leading rabbinic scholar in German in the twelfth century. See http://www.jewishencyclopedia.com/view.jsp?artid=225&letter=E.

5 The leading rabbinic figure of the Sephardic world through the centuries, he codified the entire corpus of Jewish law in his *Mishneh Torah* (Code of Law). Born in Spain, he fled with his parents to North Africa and later settled in Egypt where he lived for most of his life. He died in 1204. See http://www.jewishencyclopedia.com/view.jsp?artid=905&letter=M.

6 Caro was stating a point of law and not referring to an actual disagreement that took place between the two. Maimonides never saw Rabbi Eliezer ben Joel ha-Levi’s work and is unlikely to have ever heard of it.

7 Polish rabbi who wrote numerous responsa and a comprehensive commentary on the entire corpus of Jewish law applicable in the post-Temple period. He was rabbi of Cracow from 1619 until his death in 1640. See http://www.jewishencyclopedia.com/view.jsp?artid=839&letter=S.
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Sefer turey zahab (Lublin, 1646)

ט"ו ויהי דעו פסק ית

(א) ולא הכרד תחתון כשייח: "לאסף מהלחת אדרד ודינ שבחיתו המרדר כי י下面是 השתיה בוה המרדר חות בצירק

וכחי דב בשם ראביד" דמלל מקום ואושך כב מכויד אסף אָלַל תחתון והי מכנן והי מאה והי מאה ומא תחתון הותלך ב"ז

דרמרבד" מישאר פסוקים חולקיםعلى ראביד" וכתב מורי והותני דמלל מקום ישתה תחתון לחתום להחמיר בראביד".

(ב) ישתהו על מקום ומראביד: ויאש בנה לשתות עומר ושוחטיה שתיה והי עדים טפי.

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

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Abstract: The ban of Rabbi 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

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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 fourteenth 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 halachic 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 poligamy**

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

(Res. Maharshal, 14)

1. פניה אל קהילת פליבנה ור' אליעזר מאניקופול
בנוי הדוריהם ויזכורה נוגלה. והשא觜תות חקוקות על יד רבי פרה בצליל. מפקחתו כלובים בני בד
הדורים وكلечно בצליל. והשא觜תות חקוקות על יד רבי פרה בצליל. מפקחתו כלובים בני בד
כ"ה פליבנה" א"ז מבט Mayıs שטרויה חכמים ויזכורה נוגלה. מפקחתו כלובים בני בד.
הנושאים תוף וחליל. מושלים על ירח נראה בעליל. מוכתרים בנסיונות יופי כליל.
הדורכים כוכב מיעקב ואומר שבט פליליםopez כוכב מיעקב ואומר שבט פליליםopez כלילו.
ולכם יהיה השיר כליל. בפרט אתם הקרובים אל החול.
מהיה חכם שלם.שמו נודע מ SHALL. הוא אחד ממלכי ארקים.
כשמן🎤 תורק, מכלי הורק. המקורתΜא ישראל הזקן. אשר כבוד מנוחתו בהאניך שיאמר 'יודא' בלשון
2. רקע — נסחיית האישות של פליבנה
מצטבר בכנף זה. והמשכילים אותם שלחו כזוהר. כעצם השמים לטהרה.
בראש א둡ו צמח שלום.
להחכם השלם.שמו נודע מ SHALL. הוא אחד ממלכי ארקים.
3. התגובה הראשונה של קהילת פליבנה
ואשריכם גודר שהתרסקויות שליוו אותם ונשא腳 ר' אליעזר מאניקופול, גורם לכל אחת מהן שלחה
אתה מעירון שטח בתריסים וחפים ליה ויאיר להם גל כתריסים וחפים ליה ויאיר להם גל
อลיפק课题ו לא עשה כל תחת ולא אסף על ידי בובא בказан ענירוש בורז קרחה משמיים והניצה את
ה니다ו. והנה כאשר הוא חכם זה לא עשה כל תחת ולא אסף על ידי בובא בказан ענירוש בורז קרחה משמיים
והניצה את הדעת עליהם. והנה כאשר הוא חכם זה לא עשה כל תחת ולא אסף על ידי בובא בказан ענירוש בורז
קרחה משמיים והניעה את הדעת עליהם. והנה כאשר הוא חכם זה לא עשה כל תחת ולא אסף על ידי בובא בказан ענירוש בורז
קרחה משמיים והניעה את הדעת עליהם. והנה כאשר הוא חכם זה לא עשה כל תחת ולא אסף על ידי בובא בказан ענירוש
4. האישות המצות הסכנתה לגרורות במשלות החודשים
והנה בדמו את הנשים ר' ל"ז בשכת שלחת אחורית שלחה להן לפני יד עם פרספקטיבות עיניות וראוי
ובחרה
הדרישת נ舛 שאיבי רבעתה כלכל בכלכל גאלה אוז אולא ששתל מתרחבת מוקדוד גאלה נענה והנה למ"ך" כלך
ולדר נבריאי בתיו הרוחת גאלה איז אולא קולך ואחזו אולא לתרחשו"ו אולא לה紋ון ולﺂושו כלך יתקוע
שמא לא יומל ילא איז לא שופין אהזך יפר רזון ו🏭

.5. זאיא כייא אניאה בפליציאנ סנטק על אשתו בוליאן

אווח זון מתיו נשעוןشعبעה ר. אברומ הולו לכות אשת בפיליבר"א וו חופה הודויין זאיאזינו באפרת מייב ק"שין
על המעשה גאלהrawer נגשה הבכלות והנה לא הישה יבואר שדנוד על מאמץ ישראלי챙י ביא מאמיצים שסרフリー
ול הפרת עריאי שיאי את המעשה ישונויו א"ש זייא"א מכות החף קר בירין חבי חתומ מתיי ה"מ וע
رأיז הקהל שאיא הבכלות התיה בלתך ועליה התייה ולעדני איזאנה

.6. יווח איויאו שיאלא טמשמא"כ ביריק חטליא שיאלא טמשמא

בושמטיא ביבלות העיאיא חאוריאי והקרן גזע ביורי קצב ביגוון נס שיווה על התיה אולא בשופי
ולמעשה אברומ הנכל השחיין עתוי תבנה יאלא צלאו שיריהול יל חפה ק"שין איז איה הוקל גהו איז מיה
תוב נינא א"ו ויא שיחסו במר ילכליל חף ידוחי איזי ושם יאלא חקיהןיקון ושיה ליה出したר ולייף משלא

.7. תאמ אל ייבוריא איויאיו פוליפליא איהו איאו בוליע לולא

1. יעדת מטרופיקה זגורייפ מי דר ישיא זאיאז באיש שיש"ב ת"ה"ה, ומ nuis ר"ב"ז אעיא יבּ
להשלות שארברח א"ו די יעד י SUBSTITUTE 비נוגל לתרתיצים שמל המקדד גאלה ויה אל שילה צאיאז והיה
במאשאב אלא איביצי אל ח_sprite איז אמאז דאורי יקלבבית כל מתאר שחלוא צייא"ש חקור; ו��
הזור חקית שכרות והנה פסיל לעדותו
2. "מ"נ דצל למר מקרא שוחות שוחות מרושע המ.histogramית המאזה בניה בצלע עלורגי פקיק שוחבה
ומודה על ערטייניו בברים אמא תני אליאו אשר לא לפשוההו רוד ס"כ פליציאנ דורותיו وك"ל מ"ו פע איז
ואיזה יאפור ילמסי ילא יש.regex לאר צלאר לזריאו לאר שמה התיהל הלגנברוא א𩽾ות תועיר ש.glide שהוא
goשבד בכר איז מעשה האפשניא לאמ זיואו ידוחו אל הנﯲוחו ו"ד הנייה מיה

.8. שקראן: חים לבר של תאהי איזו פיסול איה חודה:

אף"א לא שמאנה איז סוק סוק יועה ד"ג פי מתיי ד"ג אומני איז מצגר ויימור לברפס לאשיטח שאר ק"ש מקמודס
כשאר אוכיזי יוּד"א אושר ר"ג לא תפששה מקמודס ס"כ איז מفئitulo אשיר תעפששה הנידה ודא ק"ק
הбри"ה על חים תeahי יוצרה אשקניאו חיים לברפס ספירהית

.9. זאיא Киיא חים יאהו פיסול אייאזיו פיסול איה חודה

1. איזוי שיאי סיא בesium ל➫להו מקמוד שגנה איז יעדיו להלדוי ילא איאזיו הפיצוי ליאיאזיו主营业 איזא צי
ואמאז המדהיניו שאיבי ב豬יאלי למיתית שפילנה אפיי"ו מגה יעד להפי חפי דייאיאו בתבנהוה (ק"ו):ב
ב-flash אואיא שושיאו רוד ביני ידריש איז איויאזון יחיא יאמ צייא
2. יעדו מיאזיו שועיאו הילע הילע רוד"ד מ"ו המ"ז לא פקע מגי היאירואר ו"ק
3. א.setPrototypeOf הסחיים איזו הוי יואיזו איהם איז יעד ציאיאור א BroadcastReceiver שעתי תפששה רוד"ד פ"א"ה לא וייהו לייאו
יאארו מיאזיו הילע עילא איויאור

.10. אופמאתי מופקריד על אשקניאו שפילל איזריא יראלא

ויה"א" שמשליט שמשליט שמשליט שמשליט איזריאופקטו איזריאופקטו עי אישה איז"א מושת עי השופי ש屣יו וראתי עליה
והיה יכיה ילא אופמקוד הוריוושיא איזר"א לא איזו הילע מקייא ה"א מיאזיו טעמאו

.11. דיתיים המסרישט שקיבבות איזהו חודה יין שפת ה"אלפימס (1240)
מלולות: "לע" ה"leanor א"דינס פרידה השפוצה פרידה" ב"דה גניזה.
2. דינה אם לפני חמשת ימי בערב נפרדו גברים מביתוتطور את המסרת ולבסוף עלו במזג
הזמן. ה"g" לא עם שיקוף האיש והיו כי נפרדו בשש עשרה אלפים של השיש.
3. דינו של התנ"ך Caleb נחלה מבעד התנ"ך וה说实 בה אתה מה שבדברי הי"ג והלך המשתה.
4. ווי דיבר עם התנ"ך שלח ה"g" לא אלפים ולא שיבוץ בתנ"ך וה مجانيות נמצאות בטבע
משותחת פלישה של שלושית אילא יכולת נבנה" ולדוע ה"ותיר והון שלשת.
5. ויאוחים שלח ה"g" אלפים ולא חוסי בתנ"ך והسمي את הנ運用ית טמון בتحقق השיש.
6. "המ"罰 או בודא התנ"ך ר"ג וניים" ב"א מיתר להescort לע古老 השיש עד קאמנה והשטית
שלא כתוב ה"m"א אחר בודא בתנ"כ ואומר בסיס למסירות שלשלשת ושבוע בתנ"כ.
7. אלפים שלח ה"g"רחיה לא ונה נحفظ ולא חוסי בתנ"כ והسمي את הנ運用ית טמון בتحقق השיש.
וכם תובאם ויהיה蠕 לא ויהיה蠕 לא טמון בتحقق השיש טמון בفحחה להברא בטעות
ב"ד"א אחר בודא התנ"כ.
12. אלו לבר שלח ה"g"א רן א"דינס מתנו כתוב בתנ"כ ושיבוץ בתנ"כ והسمي את הנ運用ית טמון בتحقق השיש.
1. ליידות להרמיז לתנ"ך Başkanא עבר:) RUNNING ליידות הלשון וליידות הלשון והספק מתינו כתוב בתנ"כ
ל"ד"א אחר בודא התנ"כ והسمي את הנ運用ית טמון בتحقق השיש.
2. לא כל רחיה של וחﯛ STREAM וידויים ליידות הלשון והספק מתינו כתוב בתנ"כ
ב"ד"א אחר בודא התנ"כ והسمي את הנ運用ית טמון בتحقق השיש.
3. קמ"ה אבריאים שתנ"כים שכתוב ייסול התנ"כ וודא התנ"כ והسمي את הנ運用ית טמון בتحقق השיש.
驴 תומי מתינו כתוב בתנ"כ והسمي את הנ運用ית טמון בتحقق השיש.
ע"ד תומי מתינו כתוב בתנ"כ והسمي ואת הנ運用ית טמון בتحقق השיש.
13. התחלת הלפתי רב ארמי תכלמוד ושלוחת פופילגיה
14. איים מכל רוח את הרוח את תכלמוד ושלוחת פופילגיה
15. האהנה שמענה כל הפילוג שלהโอוז אחדＮא דאומרים של חומרא מפסוקה הזאת ארבעה די
ועظم מגוון prefixed תכלמוד ושלוחת הופילגיה יהא פסוקה או תכלמוד של חומרא מפסוקה
הוא אכם מהדיע על המאורים של חומרא מפסוקה או תכלמוד של חומרא מפסוקה
וגו לחיות את הרוח את תכלמוד של חומרא מפסוקה או תכלמוד של חומרא מפסוקה.
הלא השניה בא복ה של ראשונה א"פ היה להדין לוף שותה גט לשביתתו וכסהיו להשתת.

הראשה

ב. האבל הרואשות מותרת עעל העבירה מהתן משמרין ב"ך ליתן א"ל לוח אוחות א"ל מרוגן ואב רוגה לולבוק.

באותה הרשות תנהגו ב"ך שםUsingEncoding ייצוג מגדר לידם מlesai חותמה על בצחתו ההופך.

מסקנה: יש_listener ייסר בין בנים אשתות משניות.

ולכן אם המשכילם הבין ובין איש בנות זה למקסום ומתרון "כ" נראית מהתן משמרין משעה מזותי,

ראתה כתובה עד שיתוק עיתות כֶּפֶר שם חתמי עייל ואב יIterations ההנהב ב"ך מזותי ומתרון הפתת כֶּפֶר

פלחות הגדולים ממה ששם מתן להרחבת ולעשות יבש ינכנון י퉁 כתובות וייד תחתון ב"ך שמחה

מלבד דמו והורינגר גונר אוחיכים כתובות על דגמה לחלק ב"ך אשר ייוצר מרשית וכתות כֶּפֶר השלמה.

לור"א.

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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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 enact [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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Shut Maharshal

Maharshal to Shelomo

Prepared by Elimelekh Westreich

(Res. Maharshal, 65) - י"ה (ט"ה)

Sho"a ת מ impover

Sh'ma סימן ס"ה

ShutMaharshal

Maharshal to Shelomo

16 - שלמה הלוי, 16th-17th century

Prepared by Elimelekh Westreich

ב. Sho"a ת מ impover "ל סימן ס"ה - י"ה

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Shœa ת מ impover

Maharshel to Shelomo

65 - שלמה הלוי, 16 - 17শতাব্দী

Prepared by Elimelekh Westreich

Sho"a ת מ impover

Shemah ס"ה

Shut Maharshal

Maharshal to Shelomo

16 - שלמה הלוי, 16th-17th century

Prepared by Elimelekh Westreich

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16 - שלמה הלוי, 16th-17th century

Prepared by Elimelekh Westreich
בר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה מはじめ, המנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה וyahיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית וישמעה דברי, ולאשה שבחבבה בבר אברת בודית הקדחתיה ויהיה בבר עזריאל מנטנוגן שחייתו אשתיתставленית יש...
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. Maharashal, 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 a 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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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.
Takkanot Kahal and the origin of communal structures in a Franconian village community in the 17th century

Stefan Litt, Bar Ilan University, Israel / Karl-Franzens-Universität Graz, Austria,

ABSTRACT: Takkanot Kahal are clearly a phenomenon of early modern Jewry in Europe. Throughout the Ashkenazi world there were four common ways to enact them. By elaborating takkanot, Jewish leaders copied the Gentile custom of creating legal digests in that time, thus adapting the communities to the administrative structures of the early modern state. The short statutes of the community in Ühlfeld, dating from 1688, are a rare example for takkanot enacted in an early stage of the local Jewish history. The text clearly shows the efforts of the author, R. Asher Enslen of Schnaittach, to strengthen the ties in the small Jewish group and thus to found communal institutions. The Yiddish text provides rich information on this process, as well as some insights into the administrative practice, since the takkanot open the earliest Pinkas Kahal of Ühlfeld.

This presentation is for the following text(s):
- Community Statutes of Ühlfeld

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Since God counselled the thoughts of the holy men who settle in Ühlfeld, they accepted [me?] to be over them as their head of the rabbinic court and righteous teacher in order to show them the way in which they shall go. And with its help it will be carried out as they will do and they asked me to make them a pinkas kahal and to write into it a number of sincere regulations and customs, for not having openings without walls in town so that everyone does what he likes etc. Because their will and their inclination are to walk on straight and right paths as the other righteous in Israel do. [...] in their camp and no one will open his mouth again etc. Therefore I nodded my head and fulfilled their sensible words and I enacted to the best of my abilities and I did little since I was chosen from heaven ...?? The above mentioned Asher Enslen, and this comes first:

The first matter is the fear of God. Every head of a household who stays overnight in his house is obliged to go to the synagogue in the next morning in order to pray his prayer with the appropriate intention. Even so there was no quorum one must go in any case to pray in the synagogue, since we are the students of our father Abraham and therefore one is obliged to establish a place for prayer. Moreover, one will pray with greater intention in the synagogue than in his house. There will be a communal official who is obliged to call to the synagogue in the evening and in the morning. Also the children whether they are bar mitzvah or not, shall get used to it. Since they are still few one cannot set a fine for that [i.e. not going to pray in the synagogue]. But for every Torah reading [one was missing] and in case that one was overnight in his house one has to pay half a Batzen for not going to the synagogue in the morning. Regarding their servants who are still minors but bar mitzvah they are also obliged to pay the fine. In case there is a quorum without minors they may go for a walk...
without getting fined. The above mentioned Asher Enslen.

2. One must not talk on secular or trivial topics in the synagogue. Whenever two persons talk to each other in the synagogue [in that way] the Gabbai tzedaka may fine each with two Pfennigs. The above mentioned Asher Enslen.

3. The Gabbaiye tzedaka may be in office month by month both for imposing fines and for providing provision for the journey for the poor, as well as for distributing the pletten. The above mentioned Asher Enslen.

4. The Gabbaim are obliged to count the [numbers] on the legbrett every three months. From the persons who are in arrears they may levy each month a Kopfstueck. They may keep a book about that conscientiously. The above mentioned Asher Enslen.

5. The Gabbaim are entitled to proscribe those who are not willing to pay their taxes. The above mentioned Asher Enslen.

6. If one is proscribed because he did not pay his taxes and says that he has no money [fol. 2 r] or because of other debts, then he does not have to pay a fine up to eight days. If he is proscribed longer than eight days, then he has to pay a fine of one Batzen per day. If he stays in proscription 30 days and does not care, then one has to inform the head of the rabbinic court that he deserved to be banned. Then the head of the rabbinic court may fine him with more than one Batzen according to his bad deeds. Whenever one is proscribed because of stubbornness or a deed that he was not supposed to do and which is not related to arrears, then immediately he must pay one Batzen every day as long as he is proscribed and so on as mentioned above. The above mentioned Asher Enslen.

7. If one is proscribed then no one shall slaughter and examine [meat] for him, also not provide him with meat. He shall not have Torah readings or any other honours in the synagogue. However, he may be part of the quorum. One may have business with him as well. If he remains in proscription for more than eight days and clearly does not care about it, then his wife must not go to the ritual bath. The above mentioned Asher Enslen.

[fol. 2 v]

8. Concerning accusations and encroachments: whenever a Jew goes to the house of a Christian, may it be with livestock, merchandise or without anything, then no other must go to that house. If one enters the house by mistake and does not know about the first, then he has to leave when the first says to him: “go away”, otherwise he will be fined with one Reichstaler. Moreover, when he has encroached [upon the business] or has caused damage to the first, he had not freed himself by paying the one Reichstaler, but the first still has the right to claim his damage in court. The above mentioned Asher Enslen.

9. No one shall course a non-Jew for not having business with or not buying from him. Only if this non-Jew owes him money he [the Jewish merchant] may say to him: “You must pay me because you took another merchant.” And who will violate this will give
half a pound wax. The above mentioned Asher Enslen.

10. Concerning the above mentioned fines the head of a household must accept responsibility for his wife and members of his household. The above mentioned Asher Enslen.

11. If one accuses another or encroaches [upon his business] and there was no Jewish witness for it, then even a non-Jew who was properly interrogated by a judge or his authority, may be reliable for forcing the perpetrator to swear. And if he doesn’t want to swear he shall pay a fine [fol. 3 r] as mentioned above. However, the first will not be limited [by the fine] in his claims and has the right to take him to court. ???? The above mentioned Asher Enslen.

12. We have already decided to threat that no one shall host any guest overnight who is suspicious not to live in good belief, and naturally not to have business with him. Whoever violates this will be treated as one who broke the ban, which means to get fined, punished and humiliated. The Parnassim have the right to demand immediately a bail up to four Reichstaler until he will be taken to court. The above mentioned Asher Enslen.

13. No one shall host a guest with his wife for a certain period even he was an honest man, without permission of the Parnassim. Otherwise there might be complications for the whole community because of him, God forbid! The fine is one Reichstaler, the above mentioned Asher Enslen.

14. The fee for being a godfather is one and a half Kopfstueck and the godmother may give six Kreutzers good money. The above mentioned Asher Enslen.

[fol. 3 v]

15. If a Tzehr wedding is held the bridegroom is obliged to give Notwein, for the first hundred [Gulden dowry] one golden Gulden. And for the second hundred half a Kopfstueck. And for the third hundred and for each hundred more three Batzen good money. One third of the Notwein is for the waiters. The above mentioned Asher Enslen.

16. The fee from bridegrooms for the bahurim or the young persons is for the first hundred [of the dowry] three Batzen good money and thereafter for the second hundred six Kreutzer good money, after that for each hundred one Groschen. The above mentioned Asher Enslen. By decision of the elders of the leadership the above mentioned fee was cancelled and therefore it is my opinion that the bridegroom may not give any fee, confirmed by Asher Enslen, Thursday, 17 Tammuz 5448.

17. The Parnassim have the right to fine someone who did anything that was not according to the rules up to two pounds wax. In matters of their own honour: if anyone harms another in his honour [as Parnas] then they may fine him for their own honour with one pound wax. If they see that anyone did something that would deserve a higher fine than the above mentioned, then they may demand a bail worth the fine up to two Reichstaler, and thereafter, when the issue comes before the head of the rabbinic court, he may fine and punish him according to his deeds. The above mentioned Asher Enslen.
[fol. 4 r]

8. No one must drink unkosher vine, otherwise he must pay a fine of one Reichstaler. In case the perpetrator is the slaughterer and bodek he will be forbidden to continue his work in addition to the above mentioned one Reichstaler. The above mentioned Asher Enslen.

Today, Wednesday, 6 Tammuz 5443 the leadership of Ühlfeld decided with my agreement and the agreement of the Parnas, the honourable Shimon Tispeck that every one who will do any negotiation in this village Ühlfeld will keep one half of the profit for himself, and the other half will go to the community for a holy purpose. This will be kept on for the next ten years from today on. Thereafter it is in the hands of the leadership to change this ordinance according to their will, the time and the needs of the community. Confirmed by the above mentioned Asher Enslen

At the Parnassim’s place was decided that everyone who is going to do negotiation has to inform the Gabbai or the leadership before the end of Shabbat of the same week. If he perpetrates he will give a fine of a quarter [pound?] wax, confirmed by Asher Enslen

On the above mentioned day was also decided that because on the above mentioned day they have in their hands approximately 60 Reichstaler for the building of the synagogue and still they are willing to donate more for bringing it into being with the will of God, they are going] to build a synagogue and to buy the other holy items. Therefore, whenever a stranger comes, who is not from this Holy Community, it may live, in order to live here, he may give twelve Reichstaler for the above mentioned purpose. Since all the residents here will have to pay as well the above mentioned amount each, the leadership has the right to take less from the foreigner according to his situation. In return, the leadership, it may live, is obliged to provide him a seat in the men’s section and a seat in the women’s section. He will receive the first available seat in that time. And whenever a head of a household or his son or his daughter will come here to settle he may not just give two and a half Reichstaler for the leadership’s obligation to provide him with the then first available seat in the men’s section and a seat in the women’s section. The above mentioned Asher Enslen

[fol. 4 v]

Today, Wednesday, 1 Tammuz 5450 agreed the Holy Community here before me, the undersigned, and before the honourable Parnas Shimon Heshekh [?] that one starts to say psalms if there are two [or more] heads of households in the synagogue, and even if the second does not properly respond to the first with verses from the psalms he may say psalms slowly for himself as if others were with him. Whoever does not come to the
synagogue before the Torah-reader finishes the reading of the Torah, will pay a fine of one Batzen, and whoever does not come before the end of az yashir will pay a fine of half a Batzen and on the other regular days he will pay half a Gulden. Asher Enslen, ‘resident’ of the Holy Community of Schnaittach and ‘resident’ here in Ühlfeld

Today, Sunday, 7 Heshvan 5459 agreed the Holy Community here before the Parnas, the leader, the honourable Moshe Gaikel that whenever the elders of the community or the Gabbai Tzedaka will demand a bail from a head of a household or they will demand a fine from him they may go to the rabbinical court to negotiate with him. If appears a case that he owes money then he [the Gabbai Tzedaka] is entitled [to punish him] according to to what is written in the book of the community regulations. Confirmed by Mordekhai Tiesbeck

[fol. 5 r]

When I came here to the Holy Community of Ühlfeld I heard from members of the Holy Community about conflicts between them about the salary of their teacher and cantor. With the agreement of the leadership I have decided that they will proceed for the next three years [as follows]. For one hour learning one golden Gulden, for half an hour half a golden Gulden and for a quarter of an hour according to the asset. And whoever has to learn Mishnayot is obliged to pay for an hour. For Humesh three Batzen. Prayer [for] half an hour. Alphabet [for] a quarter of an hour, and for writing alone [for] half an hour. And for [teaching] the commandments the salary of the teacher and cantor will be half according to Gulden and half according to the asset. All the above has been undertaken with my agreement according to the circumstances of the issue and of the time for the duration of three years from today on, and after three years the issue will come before the head of the rabbinic court who will be in that time. Monday, 2 Tammuz [...] 5454 Menahem Mendel [...] signed in the above mentioned Holy Community

 [... 5454] The members of the Holy Community of Ühlfeld, may God protect them, have built a splendid synagogue. Only few of them talk in the synagogue during the prayer and after it but great anger and dispute came between them concerning the matters of the synagogue, Torah reading and other issues. And there are those who do not listen to their leaders and therefore I spoke and decided with my authority that whoever perpetrates and causes quarrels in the synagogue and does not listen to the voice of the leader or of the Gabbai Tzedaka [will have to pay] a fine of one Reichstaler, half for the ruler and half for the poor fund.
Concerning the Torah readings they may proceed as always was usual that there won’t be men who do not read from the Torah. That means that on the first Shabbat of a month two of those who had no turn in the last month will read and on a Shabbat after a holyday these who read on the holyday will not read again, but those who had no turn on the holyday before,
Menahem Mendel [...]

EMW - Workshops
EMW 2008
Endnotes

1 Deut. 12, 8.
2 According to Ez. 1, 63.
3 A wedding celebrated by poor Jews.
4 Minimum of vine served at weddings, the term was used among Christians in Germany.
5 From here until the end of the paragraph in a different handwriting.
6 15 July 1688.
7 30 June 1683.
8 5 July 1690.
9 Meaning 'rabbi'.
10 12 October 1698.
11 28 June 1694.

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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

Takkanot Kahal Itfelt

Takkanot Ühlfeld 1683

Source: Pinkas Ühlfeld, CAHJP, N29/19, fol. 1-5

[fol. 1 r]

[...] ייען ויביען כי העיד את רוח אנשי קודש יושבי אילטפֿעלט והן בתים והם עליהם לאב ודולה וצדו והורות להם הדרך אשר ילכו בה ואהבתו יעשה אשר יעשו وبקשו ממני לעשות להם פנקס קהלולה בתקנות והתנהנת' י伊拉וה ולא יעייך תקנות Birliği והם עליהם לאב ודולה וצדו והורות להם הwięו ממני לעשות להם פנקס קהלולה בתקנות והתנהנת' י伊拉וה ולא יעייך תקנותجماعה שרער...

[fol. 1 v]

בכם ונענות להם ואמר לאומיהם דלא הניחו במחנהם ולא יהיה לבעד פיתחון פה לולא' כן עגין איש והם במחנהם ולא הניחו במחנהם ולא יהיה לבעד פיתחון פה לולא' כן עגין איש והם במחנהם ולא הניחו במחנהם ולא יהיה לבעד פיתחון פה לולא' כן עגין איש והם במחנהם ולא הניחו במחנהם ולא יהיה לבעד פיתחון פה לולא' כן עגין איש והם במחנהם ולא הניחו במחנהם ולא יהיה לבעד פיתחון פה לולא' כן עגין איש והם במחנהם ולא הניחו במחנהם ולא יהיה לבעד פיתחון פה לולא' כן עגין איש והם במחנהם ולא הניחו במחנהם ולא יהיה לבעד פיתחון פה לולא' כן עגין איש והם במחנהם ולא הניחו במחנהם ולא יהיה לבעד פיתחון פה לולא' כן עגין איש והם במחנהם ולא הניחו במחנהם ולא יהיה לבעד פיתחון פה לולא' כן עגין איש והם במחנהם ולא הניחו במחנהם ולא יהיה לבעד פיתחון פה לולא' כן עגין איש והם במחנהם ולא הניחו במחנהם ולא יהיה לבעד פיתחון פה לולא' כן עגין איש והם במחנהם ולא הניחו במחנהם ולא יהיה L
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כתיבתสวยอ. א. ר' ישוב לברט, כהן ז"ל ב insistence on full integration of the ה' וה которая כהן ז"ל

doctrine, let be a guide. [1] let be a lesson to all who come after. [1] let them learn and teach, to know and instruct.

the thing and the permission, i heard this. [2] in the afternoon, i heard this, [2] that they took them, who are mentioned in the book. i heard this, [2] that they took them, who are mentioned in the book.

together, a lesson, let be a guide, let be a lesson to all who come after. [1] let them learn and teach, to know and instruct.

[fol. 4 v]

the book, let be a lesson to all who come after. [1] let them learn and teach, to know and instruct.

the book, let be a lesson to all who come after. [1] let them learn and teach, to know and instruct.

[fol. 5 r]

the book, let be a lesson to all who come after. [1] let them learn and teach, to know and instruct.

the book, let be a lesson to all who come after. [1] let them learn and teach, to know and instruct.

Archive: CAHJP, 29/19
Endnotes

1וסבובותיה.
2 Missing text caused by damaged paper.
3 Deut. 12, 8.
4חולו.
5 According to Ez. 16, 63.
6 This word written in larger letters.
7בעלבית.
8ฉบביונת.
9 This word above the row.
10kopfstück (a small coin).
11 Thereafter the word שלמה commencing the next page.
12ишלאם.
13 In the manuscript appear two yod.
14 The meaning of that word on this position remains unclear.
15 Thereafter the word שלמה commencing the next page.
16וכלשים.
17הלילה.
18שיהודה.
19 Above the word three small strokes.
20 From here until the end of the paragrapha later addition in a different handwriting, apparently that of the rabbi Ascher Enslen.
2115 July 1688.
22 Until here the original version, in the following later amendments.
2330 June 1683.
24הפרנס.
25ואחר כך.
26נאום.
27 Addition in different ink.
28אםירצהיהש.
29עליםיה.
30ишלאםמהו.
315 July 1690.
32חתוםמטה.
33 In the manuscript:נאום.
3428 June 1694.
35Illegible signature.
36The rest of the row was filled by the scribe with a line.
37 Deleted: הרמא.
38 ביזמ טוב.
39 This word deleted and written again above the row.

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Challenging Herem in Hamburg, 1732

David Horowitz, Columbia University, USA

ABSTRACT: These documents represent one of the earliest calls for state intervention by the Hamburg authorities into the internal decisions of the bet din. The bet din of the Triple Community of Hamburg-Altona-Wandsbek compelled Joseph Jonas, a resident of Hamburg, to divorce his wife after she was suspected of adultery. When he refused, the chief rabbi and kahal put him and his wife in the ban (herem). Jonas turned to the Hamburg Senate for assistance in reversing the decision and removing himself from the ban. The documents comprise letters from Jonas and the Hamburg kahal in defense of their respective positions as well as the internal Senate records regarding the case.

This presentation is for the following text(s):

- Decree of the Hamburg Senate in Response to Josel Joseph Jonas' Petition
- Letter of Josel Joseph Jonas to the Senate in Hamburg
- Petition of the Jewish Elders of the Ashkenazi Synagogue in Hamburg
- Supplication of Josel Josef Jonas of Hamburg
The following texts, found only in manuscript form in the Senate Collection of the Hamburg State Archive, document a struggle between Joseph Jonas and his wife Rachel and the Hamburg kahal for the Hamburg Senate's sympathies that played out from 1730-1733. Rachel had been suspected of adultery after it was discovered that she carried on a correspondence with another Jewish man and the Chief Rabbi Ezekiel Katzenellenbogen (in office 1714-1749) ruled that she was forbidden to her husband and that he must immediately divorce her. When Jonas, who steadfastly maintained his wife's innocence, refused to comply the kahal put him in the great ban (*herem*). This punishment, the most severe method of coercion available to Jewish authorities, consisted of complete social isolation, whereby Jonas and his wife could not attend synagogue or interact socially or economically with any members of the Jewish community until the banned individual repented of his disobedience.

Jonas turned to the Senate and asked them to intervene on his behalf by ordering the kahal to lift the ban and annul the decision forcing him to divorce his wife. This is the very first case among dozens throughout eighteenth century Hamburg and Altona where individual Jews asked the Senate to intervene in internal Jewish affairs and force the kahal to remove a *herem*.

To understand the case it is important to recognize that the Jewish community of Hamburg was closely bound up with the sister-communities of Altona and Wandsbek, both of which were subject to Danish rule. Since 1671 these three communities were joined in a federation known as the Triple Community of AHU, an acronym formed from the first Hebrew letters in the names Altona, Hamburg and Wandsbek. Each community maintained it's own separate lay Board of Elders (*kahal*) but had common communal policies and shared a chief rabbi and rabbinical court (bet din).

In the eighteenth century Hamburg was a republican city-state and the Senate served as the executive authority but was also responsible for many common judicial functions
before they were transferred to external agencies in the 19th century. Therefore, the fact that Joseph Jonas appealed directly to the Senate is not as unusual as it may seem.

Since the chief rabbi lived across the boarder in Danish Altona, this dispute and others like it testify to the limits of trans-national Jewish communal organization. But more importantly it raises questions about the role of herem in early modern Jewish life and its supposed decline in the modern era.

**Bibliography**


Copyright © 2012 Early Modern Workshop
Supplication of Josel Josef Jonas of Hamburg
Cl. VII lit Hf No. 5 Vol 1c 4
September 8, 1732

Translated by David Horowitz, Columbia University, USA

[Note: All bracketed numbers refer to the original archival pagination]

[13]

1732 8 Sept.

Your Magnificences Highly and Very Noble, Highly Learned, Very Wise, Greatly Well-disposed, Highly Imperious Sirs:

Because I, along with my wife, have already testified in detail for the record a few days ago in the presence of the S.T. [= salvo titulo] the Highly Learned Mr. Amsing, temporary praetor, how I, together with my wife, as a result of the unilateral declaration of the Elders and Notables [ältesten und beysitzenden Gelahrten] of the Ashkenazi nation residing here in Hamburg as well as in Altona, and on account of a false and still unsubstantiated accusation, was put in herem, that is, in the great ban, and our names written on the ban board in the Jewish house of prayer.

[13a]

However, notwithstanding that I not only deposited a mandatory sum of 200 talers with the Elders, but also expended immeasurable effort by means of supplication I will in no manner be freed [from the ban], so the highly unfortunate situation of me and my poor wife forces me, Venerable Magnificences, Great and Highly Imperious Sirs, to recapitulate the incident briefly (for I once again refer [you] to the above-mentioned recorded transcript) and humbly beseech the self-same [Sirs] for the assistance of my Lordship [the Senate of Hamburg]. I report how approximately four years ago my innocent wife, who was said to have carried on a correspondence with another Jew, was falsely accused. However, the the Elders and so-called scholars, Seligmann
[14]

Berend Solomon, Joel Salomon, Nathan Bendix, Marx Carsten Levin, Bendix Magnus, Moses Pollack, Ephraim Samuel Hackseker, with the collusion of their colleagues and of the rabbi in Altona, gave ear to such false and unsubstantiated accusation, and thus demanded that I give my wife a letter of divorce, to which I could in no way consent because I know for certain that I have an honest and virtuous wife. As a result, the Elders and scholars put me and my wife in the herem, that is the great ban. Despite all manner of complaints and requests to the Elders to be freed from this ban, the Elders have nevertheless

[14a]

for two years kept me on tender-hooks. But now the Elders have in the end informed me that if I swear under oath to follow unequivocally the demands of the Elders, the herem or ban would be lifted, a stipulation to which I cannot rationally assent and I beseeching urged another expedient, I was instructed by the Elders in an agreement [reached] here [in Hamburg] to deposit 200 courant talers [with them] and thereupon to await the final decree.¹ When I promptly deposited the money in the hope of thereby being rid of the ban, I was indeed let out of the great ban for three months, after which time I was put in a much more severe ban, in which I have for

[15]

two years stood and unfortunately still stand. Since among the Elders and scholars of my nation neither begging nor pleading is tolerated, rather they are vigorously pushing for the divorce, which I have absolutely no reason [to carry out], and which according to the contents of N. 3 Article 22 of the Jewish Regulation, confirmed by His Imperial Majesty and published by the High Commission on 7 September 1710, to give a bill of divorce or to otherwise end a marriage without the knowledge of the [civil] authorities is gravely forbidden, they also stipulated (together with the entire Hamburg Jewry, portuguese as well as ashkenazi) that this city's jurisdiction remains dominant in civil and criminal matters, thus in such

[15a]

matters they cannot be my judges. As my beseeching request in my name and in the name of my wife arrived to the Venerable Magnificences Highly Learned and Highly Imperious Sirs by means of a highly imperious decree to lift and annul this ban, and to urge the Elders and scholars living here [in Hamburg] to repay the 200 Taler deposit along with interest, to admit me and my wife to the house of worship with the liberties accorded to each and every member of our nation and neither directly nor indirectly to
take revenge on us on account of this matter.

[16]

I, along with my wife, remain in true devotion and obedient persistence. Your Magnificences Highly and Very Noble, Highly Learned, Very Wise Sir, [and] Your Highly Imperious Sirs:

Obedient servant

Josel Josef Jonas
Petitioner, Hamburg 8 Sept 1732

**Endnotes**

1 I have found no record of such earlier agreement in the archival records of the Jewish Community.

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Supplication of Josel Josef Jonas of Hamburg

September 8, 1732

Prepared by David Horowitz, Columbia University, USA

[Note: All bracketed numbers refer to the original archival pagination]

[13]

1732 8 Sept.

Magnifici hoch- und wohledle, hochgelahrte hoch- und wohlweise, grossgeneigte, hochgebietetende Herrn


[13a]

davon aber, ohnerachtet ich nicht nur injungirter massen 200 Rthl bey denen Ältesten deponiret, auch außer dem durch Bitten und Flehen mir unzehliche Mühe gegeben, auf keinerley Art noch Weise befreyet werden mögen, so treibet mich mein und meiner Armen Frauen höchst bedauernswürdiger zustand, Ewr. Magnific. hoch und hochgebietetende Herr. das gantzte factum nur noch mit wenige /weil ich mich nochmahls auf abgedachtes Protocollum referire/ zu recapituliren und dieselbe um hochobrigkeitliche Assistence unterthänigst anzuflehen. berichte dennoch, daß wie vor ohngefehr 4. Jahren meine unschuldige Frau, daß sie nemlich mit einem anderen Juden Briefe gewechselt haben sollte, fälschlich beschuldiget werden wollen, die alhie wohnende Ältesten und so genandte Gelehrte, Seligmann
Berend Solomon, Joel Salomon, Nathan Bendix, Marx Carsten Levin, Bendix Magnus, Moses Pollack, Ephraim Samuel Hackseker, mit Zuzeihung Ihrer mit-Brüder und des Rabbiners in Altona, solcher falschen, und bis diese Stunde noch nicht dargethanen Beschuldigung, Gehör gegeben, und mir daheber zu gemüthet, meiner Frau einen Scheide-Brief zu geben, wozu ich mich aber weil ich gewiß versichert bin, daß ich eine ehrliche und redliche Frau habe, keineswegs entschliessen können, noch wollen, haben gedachte Ältesten und gelehrte mich nebst meiner Frauen in cherem, das ist in den grossen Bann gethan beschwerlichkeiten so dieser mit sich führet auf alle Ahrt und Weise getrachtet deselben los zu werden, haben Supplicati mich dennoch fast


zwey Jahren gestanden und leyder noch stehe. Weil nun bey den Alten und Gelehrten meiner Nation gar kein Flehen noch Bitten statt finden mag, sondern sie hart auf die Ehnscheidung dringen, dazu ich aber gantz und gar keine Ursache habe, selbige auch einhalts N. 3 Art 22 des von Ihro keyserl. majest. confirmirten, un vond er hohen Commission d. 7 Sept 1710 publicirten Juden Relgements, supplicatis N.3 ohne obrigkeitliche Erkänntniß Schiede Briefe zugeben, oder sonsten die Ehe zu trennen, ernstlich verboten ist, gestalten sie auch /nebst der gantzen Judenschafft in Hamburg, so Portugiesische als hochteutscher Nation/ dieser Stadt Jurisdiction, nach wie vor in bürgerlichen und peinlichen Sachen allerdings [untererorsten] bleiben, gefolglich sie bey so gestalten

Sachen meine Richter nicht seyn können; als gelanget an Ewr. Magnific. Magnif. hochw. und hochgebietende Herr meine so wohl proprio als uxorio nomine unterthänigst
flehentliche Bitte durch ein hochgeneigtes Decretum diesen nulliter angelegten Bann
gänzlich aufzuheben und zu annulliren, und die alhie wohnenden Altesten und
gelehrten der hochdeutschen jüdischen Nation dahin anzuhalten, daß sie schuldig und
gehalten seyn müssen, die von mir Deponirte 200 Rthl. nebst denen ausgelassenen
zinsen zu restituiren, zur Schulen, wie auch allen und jeden unserer Nation erlaubten
Freyheiten mich nebst meiner Frauen wiederum zu admittiren, und dieser Sache halber
sich an uns weder directe noch indirecte zu rächen noch

[16]

rächen zu laßen. Der ich niesten nebst meiner Frauen in ernstfällige Devotion und
gehorsam Verharen.


Unterthäniger Knecht
Josel Josef Jonas
Suppl. Hamburg d. 8 Sept 1732

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**Decree of the Hamburg Senate in Response to Josel Joseph Jonas' Petition**

Cl. VII lit Hf No. 5 Vol 1c 4  
**September 22, 1732**

Translated by David Horowitz, Columbia University, USA

[17]

Upon reading out the petition and an examination in the matter of Jessel Joseph Jonas and his wife, in the matter of the divorce carried out by an "alien" rabbi and as concerns what the self-same has pending against the Hamburg Jewish elders, the honorable Senate decrees that the wicked divorce arrogated by the "alien" rabbi, which is an offense against this city as well as against general law, is hereby cancelled and declared in-and-of-itself void and invalid, and that the marriage between the petitioner and his wife is declared abiding and valid. Furthermore the ban, which, because it was promulgated against a Hamburg subject and resident [by someone] in another jurisdiction, was entirely unauthorized, and is hereby lifted. The Elders must admit both spouses into their houses of worship to pray with all related privileges on pain of serious punishment. Also, a similar use of the ban and other such illegal actions in this city in the future will be similarly punished. Incidentally the matter of the 200 Talers paid to the elders shall be referred for further investigation, and the petitioners should have this decree passed on to [the elders] immediately. Decree, Monday 22 Sept, 1732

**Endnotes**

1 Alien because the chief rabbi of the Triple Community of Altona, Hamburg and Wandsbek had his official seat in Altona, which was under Danish control.

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Auf verlesene Supplication und examina in Sachen Jessel Joseph Jonas und dessen Eheweibes, in puncto zwischen ihnen von einem frembden Rabbiner attendirten Ehescheidung und was derselben anhängig entgegen und wieder die hiesigen Juden Aeltesten decretiret E.E. Rath daß die so wohl gegen hiesige Stadt als allgemeinen Gesetze, freventl. von den frembden Rabbiner angemaßte Ehescheidung, als an sich nichtig und ungültig hiemit cassiret und annuliret, daß Eheband hergegen zwischen Supplicanten und sienen Eheweibe für beständig und gültig erklärt, ferner der desfalß allhier in einer Frembd. Jurisdiction bey ihnen Supplicanten als hiesigen Unterthanen und Einwohnern gantz unbefugter angelegten Bann hiemit aufgehoben und den Eltesten diese beyden Eheleute in ihren Schulen zu dem Gottes dienste und allen was dazu gehört, bey ernstund unausbleiblicher Straffe zu admittiren auch der gleichen Anlegung des Bannes und andern solchen illegalen Unternehmungen in dieser Stadt künftig vorzu kommen, injungiret wiedrigenfalß die Bestrafung gegen sie ausdrückl. vorbehalten werde. Ubrigens wird die Sache wegen der den ältesten bey dieser Gelegenheit ausgezahlten 200 Rth zur weiten Untersuchung verwiesen, und sollen Supplicanten dieses Decretum denenseleben so fort insinniren laßen. Decretum Lunae d. 22 Sept 1732
Magnificences Highly Noble, Best, Highly Learned and Very Wise, Highly Imperious and Highly Honorable Sirs:

We have dared humbly to present to the Honorable Magnificences High and Very Wise Sirs in a humble Memorial written this morning these impossibilities, with which the commanded to us is bound up, most humbly to show, as well as in such legal views to request, the removal of a decree which uproots our entire religion. Before, however, we can hope for a favorable response, [we want to point out that] the action against 21 people the day before yesterday was repeated this morning against the same number of people. Now we do not want to be prejudiced (?) that such an action against 21 people will be executed, because in effect there are only nine Elders and the decree of the Honorable Senate refers exclusively to the Elders: this much we must in humble servitude point out, that our overstepping of the [law] ostensibly has no other source than Jacob Isaac's hate and his incorrect allegation. So, although we stand with the Honorable Magnificences Highly and Very Wise Sirs as our authoritative Lordship, and embrace all that carries with it, nevertheless we, if the self-same counts for all of our collective goods, or if we must turn our backs on our own, nevertheless it would be for us equally impossible to abnegate a fundament of our religion as we are lacking in power to move mountains. Now if the Honorable Magnificences High and Very Wise Sirs want to apply to us what the statutes declare regarding laws impossible [to carry out], [namely] *quod hiclicet eorum nulla sit*
obligatio [that they are not any obligation at all], then we must hereby kling to your clemency and graciousness. However, should we unhappily be unable to convince your Honorable Magnificences High and Very Wise Sirs of this moral impossibility, so be it, and with our conscience as our witness, that we disobey our otherwise beloved Lordships for no other reason than that according to our teachings we much obey God even more. Thus, our ruin and our preservation both lie in the hands of your Honorable Magnificences High and Very Wise Sirs; should you favor the first, then we must patiently suffer; should you, however, favor the latter, then we shall accept it thankfully as an act of mercy.

[20]

May God guide the hearts of our Lordships to recognize our innocence and let subside your anger (from which we endeavor to protect our beloved Lordships), and we humbly remain with deepest devotion to Your Honorable Magnificences High and Very Wise Sirs

as true servants

the Elders of the German-Jewish Nation

Petitioners, Hamburg, 26 September

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[21]

Magnificences Highly Noble, Best, Highly Learned and Very Wise, Highly Imperious and Highly Honorable Sirs

The Honorable Magnificences Highly and Very Learned Sirs have not desired to take the slightest legal consideration of our petition humbly filed last Wednesday. It is especially to our not insignificant consternation and insult that yesterday there occurred a seizure [of assets] from all of our Elders and Notables, that with the assistance of several hundred men by means of a cart [Pfandwagen] or by means of a hand-truck (?), and through the many personnel who carried out the actual punishment described in the decree. As hard as this event is in-and-of-itself, and as much as our honor and credit are as a result suffering (at least indirectly),

[21a]

we would nevertheless tread too closely upon the Honorable Magnificences Highly and Very Learned Sirs' renowned equanimity and lawfulness if we ascribed to the execution of this severe action another cause, [namely] that in order to bring about our compliance
with the order given to us the Honorable Magnificences Highly and Very Learned Sirs view the religious impossibility [which we pleaded as an excuse in our previous letter] as illegitimate.²

Now it is difficult in-and-of-itself in matters of religion to describe a religious impossibility to someone not a member of that religion, especially if the matter and the related impossibility concern the authority of the secular government and its superiority. Just as we presuppose that matters of religion and faith are not subject to worldly laws and that the tolerance and reception of members of alien religions self-evidently precludes any coercion in matters of faith, so the Honorable Magnificences Highly and Very Learned Sirs will for the following reasons easily recognize that as long as we are and remain Jews,

[22]

we are no less able to lift the Altona rabbi’s ban against Jacob Isaac than we are able to interact with him as long as the ban lasts.

The latter, namely the rule against interacting with someone in the ban, is a fundamental article of faith of our religion. Therefore as long as a religion is to be tolerated, just as the existence of God cannot be subject to proof nor can [the conception of God] be changed without altering religion entirely, so is it equally impossible that the prohibition on extinguishing a fire on the sabbath [be changed]. So it is also in consideration of the first well-known fact [notorium] that: (1) the ban is not dependent on the Elders but rather the rabbi can pronounce it at his own discretion without consulting anyone else, as now these conditions indicate self-evidently. (2) Also the removal of the ban may only be executed by the person who pronounced it in the first place; or one who finds himself [mistakenly] banned can have the matter researched by another rabbi whose conclusion he must await. (3) The Elders cannot obligate a rabbi to lift a ban by means of an extra-judicial act [via facti] and by force, because they have no power over him.

[22a]

but if something were to occur, it must be bit by bit and [by pre-arrangement], also by means of a regime of repentance according to the Law. (4) Jacob Isaacs was not lacking opportunities for amicable audiences with the rabbi in Altona, we thereby testify before the living God in heaven and earth that we did everything for Jacob Isaac that we would for a beloved brother. There is (5) not the least probability that if it were in our power to somehow remove this ban, then say I: we would then much rather go one step further than risk, out of pure stubbornness or private feelings, arousing the indignation of our otherwise beloved Lordship, risk a much stronger and more severe reaction, and, yes, even risk the closure of our synagogues and the associated suspension of our rights of
worship (indeed, who knows what the further consequences should and would be?). (6)
Such a high and justice-loving Lordship can surely trust, that although it surely stands
in your powers to confiscate our possessions and to forbid the further exercise of our
religion, and even to expel us out of the city

[23]

(God forbid), and we cannot hope or expect from our beloved lordship to endure
everything concerning us, and must tolerate us with patience, we would never betrayed
our religion or do something which is against law or faith, for we steadfastly believe to
possess Revelation from God as long as we unwaveringly remain Jews and are not able
to convert without a cost to our souls. Although (7) it may seem strange to Your High
Lordships that a rabbi and moreover an "alien" can in religious matters command other
Jews living under a separate jurisdiction, nevertheless the Honorable Magnificences
Highly and Very Learned Sirs will easily recognize that it is neither in our power nor are
we to blame, that we cannot alter this point which is unwaveringly observed all over the
world where Jews live. Rather, for this reason even if we didn't want to observe this ban
ourselves, we and the entire community would find ourselves in a severe ban, from
which we might not ever be freed. 3 To cite (8) a few examples, it is well known and
supported by widely circulated correspondence, that a rabbi in the city of Krakow in
Poland,

[23a]

put a wealthy and powerful Jew named Marcus Anspach (a Court Jew in Anspach) in the
ban because he married a women too closely related to him according to our laws.
Although the contemporary Kaiser and His Majesty the King of Prussia dealt
aggressively with [this rabbi], 4 and not only wrote various emphatic letters to His
Majesty the King of Poland, especially announcing the possibility that all Jews would be
driven out of the kingdom, nevertheless the ban of Marcus Anspach could not be lifted
and he remained nound by it.

Now, Magnificences Highly Wise and Merciful Sirs, so many monarchs could not alter
this religious principal, nor force the rabbi (not to mention the powerless Elders) to
remove anything that according to our religion we may not eschew. Were we to betray
this principle, we ourselves would receive a ban. Although it is true (9) that we can
relieve the rabbi of his office at our will whenever his contract expires (and we would be
willing to do so should our Lordship require it), it is important to consider that

[24]

if the rabbi were to travel to a foreign country or were he to have a ban [declaration]
printed, the relaxation of it would be just as difficult, if not impossible, and if such event
came to pass, we testify before God and our High Lordship, that we would be innocent of it and would take no part.

Whether the above is as clear and persuasive as we would wish, we do not know, however we bear witness before God that neither feelings nor other intentions would cause us to omit the truth. Rather it is a true impossibility for us to lift the ban and or for us to interact or associate with someone in the ban, so we cannot believe that such a just and merciful Lordship would obligate us to do something impossible or would punish or damn us for something that is neither in our power nor compatible with our religion.

What finally concerns the decree issued in the case of Jessel Joseph Jonas on the 22nd and issued yesterday in the case of the Elder Seligman Berend Salomon, so not only does the first case of Jacob Isaac relate to the reason of impossibility, it is especially relevant to note that this Jessel Joseph Jonas of his own free will

submitted to the will of another "alien" rabbi in Jerusalem and therefore deposited the 200 talers not with him but with us, as he truthfully admitted. And because it is not our fault but rather Jessel Joseph Jonas' own fault that he submitted to the will of an "alien" rabbi, so we can no more forgive any sin as we or any Jew in the entire world (as long as he remains a Jew) can according to our religion and faith interact with him.

In light of the circumstances outlined above we humbly and most submissively entreat the Honorable, Highly and Very Wise Sirs to rescind the decrees issued in both matters.

We hope for a merciful and just hearing and otherwise remain with full devotion

Honorable, Highly and Very Wise Sirs

deeply submissive servants
the Elders of the Ashkenazi Jewish nation in Hamburg

**Endnotes**

1 meaning of phrase unclear.
2 The logic intended here is unclear.
3 The claim here is that to exonerate Jonas would cause other Jewish authorities in other countries to punish the Triple Community by putting it in some sort of collective ban.
4 Ansbach, since 1806 part of Bavaria, was at the time ruled by the Hohenzollerns of Prussia. This explains why the Prussian authorities intervened in Polish-Jewish affairs
on Marcus Anspach's behalf.

5 This is an entirely separate but similar case that played out simultaneously among the Jews and Senate.
**EARLY MODERN WORKSHOP: Jewish History Resources**

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

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**Petition of the Jewish Elders of the Ashkenazi Synagogue in Hamburg**  
**September 26, 1732**

Prepared by David Horowitz, Columbia University, USA

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[19]

Magnifici hochedle, Beste, hochgelehrte hoch und Wohlweise hochgebetende und hochzuehrende Herren

Wir haben uns erkühnet, und Ew. Magnificences hochund Wohlr. Herr. in einem diesen Morgen eingerichten demühigen Memorial so wohl diejenige Unmöglichkeit, womit des uns anbefohlene verknupfet ist, unterthäniglichen vorzustellen, als auch in solcher rechtlichen Betrachtung die Aufhebung eines unsere gantze religion umkehrenden decreti zu bitten, ehe wir aber darauf noch eine gewürige Resolution hoffen mögen, ist die vorgestriges Tages wieder 21 Persohnen beschehene Execution diesen Morgen wieder eine gleiche Anzahl wieder holet werden. Nun wollen wir zwar nicht berühren, daß sothener Execution wieder 21 Leüte vollstrecket worden, da doch in Effecte nur 9 Ältesten seyn, des Decretum Amplissimi Senatus auch nur restrictive auf die Ältesten lautet, so viel müssen wir aber doch in Unterthänigkeit anzeigen, daß wir die Überschreitung des modi in exequando

[19a]

vermültlich keinen andere Uhrsprung als den Hass des Jacob Isaacs und dessen unrichtige Angabe der zu exequriren Persohn hat, also auch zwar wir unter Ew. Magnificences hoch und Wohlw. harr. als unsere Obrigkeit Gewalt stehen, und alles was derselben gefällt, über uns ergehen laßen müssen, jedoch aber wir, wenn gleiches unsere gesamtte Güter gelten, oder wir des unsrige mit den Rücken ansehen sollten, es dennoch uns eben so unmöglich sey unsere Religion in einen Haupt Puncte zu verleugnen, und etwas dagegen zu handeln oder zu thun, als wenig es in unserm Vermögen stehet Berge zu versetzen. Wollen nun ew. Magnificences hoch und wohl. Herr. desjenige was die Rechte circa impossibilia statuiren, quod hiclicet eorum nulla sit obligatio, auch uns

[20]

Gott aber lenke das Hertz unserer Obern, daß Sie unsere Unschuld erkennen, und ihren Zorn fahren lassen, dem wir unsere liebe Obrigkeit zu fernern gnädigen Beschirmung einzfehlen, und mit tiefster devotion alstets beharen

ew. Magnificences Hoch und Wohlw. Herlichkeiten

so unterthänige als treue Knechte
Als Eltesten der Judenschaft hochdeutscher Nation
Suppl. Hamb. d. 26 Sept

[21]

Magnifici hochedle, Beste hochgelahrte hoch und Wohlweise Hochgebietende und hochzuehrende Herren

ew. Magnificences hoch und wohlw. Herr. haben nicht allein auf unser am nechst abgewichenen Mittwochen ohne eingereichtes demühtiges Supplicatum nicht die geringste rechtliche Reflection zu nehmen beliebet, besondern es ist auch am gestrigen Tage zu unser nicht geringen Bestützte und Beschimpfung mit würklicher Pfandung gegen alle Ältesten als auch Beysitzer dahin verfahren werden, daß unter einen Zulauff von vielen hundert Menschen mittelst des Pfand-Wagens oder statt dessen mittelst einer Larren, und durch die dabey befindliche Zahlreiche Bedienten, die dem decreto einverliebte poen würcklich exequiret und abgeholet worden. So hart nun auch dieses Verfahren an und für sich selbst ist, und so sehr wir auch der unter wenigstens per indirectum an unserer Ehre und dem Credit leiden

[21a]

so würden wir dennoch Ew. Magnif. hoch und Wohlw. herr. weltgepriesenen Equanimitet und preisbahre Rechtsliebe zu wahr treten, wenn wir die Verhengung einer so strengen Execution einer andern Uhrsache zu schreiben, als daß Ew. Magnif. hoch und Wohl weisen Herr. die von uns vorgeschützte Unmöglichkeit umb den an uns ergangenen Befehl eine sonst schuldige Parition zu leisten für affectiret und also für
unbegründet ansehen.

Nun ist es zwar an und für sich selbst eine schwere Sache umb in Sachen der Religion anbetreffend einen andern, der einer solchen Religion nicht zugethan ist eine Unmöglichkeit klärlich vor Augen zu stellen, absonderlich wenn solche Sache und die damit verkundte Unmöglichkeit einen Punct betrifft, wobey die Autorität der Obrigkeit und die deroselben gebührende Superioritet mit interessiret zu seyn scheinet, gleich wie wir aber dieses voraussetzen, daß Religions und Glaubens Sachen den Weltlichen Gesetzen nicht unterwerffen seyn, und daß die Toleranz und Reception frembder Religions Verwandten allen Zwang in Glaubens Sachen von selbst aufheben, also werden auch Ew. Magnificences hoch und Wohlw. herr aus nachfolgenden Gründen nach dero Weißen und gerechten Einsicht leicht von selbstern erkennen, daß so lange wir Juden seyn und bleiben, wir dem Bann womit Jacob Isaac von dem

[22]

Rabbiner in Altona belegt worden, so wenig aufheben als wenig, als lange dieser Bann dauret, mit demselbigen einigen Umgang haben können.

Denn wir das letztere nemlich der verbotene Umgang mit einer in den Bann seynde Persohn am Haupt und Glaubens Articel unserer Religion ist, gefolg. derselbe so lange eine Religion geduldet wird, tanquam primum principium weder eines Beweises Betreff noch auch salva substantia religionis geändert werden kann eben so wenig als der Verboth von ersticken Sabbaths-Feyer, und so weiter, also ist auch in Ansehung des ersteren 1. notorium daß der Bann weder von den Ältesten dependire noch angeleget werde, sonder daß der Rabbiner solches ohne jemanden zu fragen wie er es nach unserer Lehre für recht findet verlange, wie nun bey diese Umständen die Sache von selbstern spricht. 2. Auch die Aufhebung des Bannes von dem der ihn verhänget lediglich dependire oder aber derjenige, der sich dadurch gearriert befinde, durch andere Rabbiner die Uhrsachen des bannes untersuchen lasten, und deren Erkänntniß gewärtigen müsse, also giebet auch. 3. Die Natur der Sachen zu erkennen, daß die Ältesten via facti und durch Zwang einen Rabbiner zu Aufhebung eines Bannes, weil sie keine Gewalt über ihn haben nicht obligiren können, sondern wenn

[22a]

ja etwas geschehen soll, es bittweise und durch Vorspruch, auch mittelst einem von dem der in Bann ist der Lehre gemäß Büsse geschehen müsse. daß wir nun ret. des erstere und so viel an uns ist. 4. Es an gütlichen Verstellungen bey dem Rabbiner in Altona des Jacob Isaacs wegen nicht haben ermangeln lassen, daran diebet uns nicht allein unser Gewissen ein überflüssiges Zeugniss und Bezeugen wir bey dem lebendigen Gott Himmels und der Erden, daß wir des für Jacob Isaac gethan, was wir für einen leib. Bruder thun können, besonders es ist auch 5. Nicht die allergeringste
 Wahrscheinlichkeit verhanden daß wenn es in unserm Vermögen gewesen diesen Bann auf einige Arth und Weyse zu heben, daß sage ich wir so denn viellieber hätten ein übriges thun, als aus blossen Eigensinn oder Privat Effecten uns unserer sonst lieben Obrigkeit fruchtbahnen Indignation, so strenger und schmäliger Execution, ja so gar der angedrehten Zuschliessung unserer Schulen der damit verknüpften Suspension des Exercitu unsers Gottesdienstes, ja wer weiß noch was für ferner suiten hätten exponiren sollen, und noch exponiren würden. Denn so viel kann 6. Eine hohe und Gerichtigkeit liebende Obrigkeit uns wohl zutrauen, daß ob es zwar in dero Mächten stehet, uns unsere Güter zu nehmen, und das fernere Exercitium unserer Religion zu versagen, ja gar aus der Stadt

[23]

hinaus zu treiben, wir dennoch das Gott verhüte, und wir von unserer lieben Obrigkeit nicht hoffen noch vermuhten können, lieber alles über uns ergeben lassen, und mit Gedult ertragen müssen als daß wir unsere Glauben verleugnen, und etwas thun sollten, was wieder die Lehre und den Glauben ist, denn wir festiglich glauben, von Gott empfangen zu haben, und so lange wir Juden bleiben unverbrüchlich und ohne Verlust unserer Seeligkeit nicht übertreten zu können, und obschon 7. es einer hohen Obrigkeit als etwas seltsahmes vorkommen möchte, daß ein Rabbiner und zumahl ein frembder in religions Sachen andere Juden, die unter einer Frembden jurisdiction wohnen, so zu sagen etwas befehlen können, so werden doch Ew. Magnific. hoch und Wohl. herr. leicht von selbsten erkennen, daß es weder in unsern Mächten noch auch also uns zu imputiren sey, daß wir einen Punct nicht ändern können, der in aller Welt wo Juden seyn, heilig und unverbrüchlich nicht allein gehalten wird, sondern [rat.] dessen wir auch wenn wir ihn nicht observiren wollten uns selbst und der gantzen Gemeine einen vielleicht gar nicht zu hebenden Bann exponiren wurden denn umb nur 8. Eines einigen Exempels zu gedencken, so ist bekand auch da es nöhtig wäre, mit denen in dieser Sache passirten weitläufigen Schrifften zu erweisen, daß ein Rabbiner in der Stadt Cracau in Pohlen einen reichen

[23a] und vornehmen Juden Nahmens Marcus Anspach Hoff-Juden in Anspach deswegen, weil er eine nach unsern Gesetzten allzu nah verwandte Persohn geheyrathet, in denn Bann gethan habe, ob nun wohl die derzeit regierende Keyser. und des Königs in Preussen Majestät sich des gedachten Juden mächtigst angenommen desfals nicht allein an des Königes in Pohlen Majestet verschiedene nachdrücklich Schreiben ergeben lassen, besonders auch in eventum alle Juden aus dem Reiche zu vertreiben declarieret, so hat dennoch dadurch der Bann des Marcus Anspachs nicht gehoben werden können, sondern es ist derselbe einen Weg wie den andern darin geblieben. Haben nun Magnifici hochweise und gnädige Herren so viel Monarchen diesen punctum religionis nicht ändern können, noch den Rabbiner zwingen, wie mag den aus ohnmächtigen Ältesten angemuhtet werden etwas zu heben oder zu thun was wir nach unsere Religion und wo
wir dieselbe nicht verläugnen, uns selbst dem Bann exponiren wollen, nicht unterlassen können. Zwar ist so viel 9. Wahr, daß wir dem Rabbiner in Altona ratione unser seine Station wenn die Contract Jahre aus seyn aufsagen könne, und dieses sind wir wenn es die Obrigkeit verlanget zu thun bereit, allein deises ist hiebey zu consideriren, daß wenn so denn der

[R24]

Rabbiner aus Altona in frembde Lande sich begeben oder den Bann drücken lassen sollte, so denn die relaxation desselben umso schwerer wo nicht gar unmöglich würde und sollte solcher Zufall entstehen, so bezeugen wir für Gott und der hohen Obrigkeit, daß wir davon unschuldig seyn und keinen Theil nehmen.

Ob obiges alles so deutlich und überzeugend sey als wir gerne wünschten, wissen wir zwar nicht, dieses aber ist Gott unser Zeuge, daß darunter weder Affecten noch andere Absichten, wir die Erdacht werden mögen verborgen seyn, sondern wir es eine wahre Unmöglichkeit ist, daß wir dem Bann heben, und mit einen in Bann ist, gemeinschaft oder Umgang haben können, also können wir auch nicht glauben, daß eine so gerechte als gnädige Obrigkeit uns ad impossibilia obligiren oder um etwas straffen oder verdammten werde, was weder in unsern Mächten, noch mit unser religion compatibel ist.

Was endlich zum beschuß des in Sachen Jessel Joseph Jonas am 22ten abgegebene und dem Mit-Ältesten Seligman Berend Salomon gestern insinuirt decretum unter uns in selbigen anbefohlene Admission deselben zwar Schälen und so ferner betrifft, so hat nicht allein desselbe Ratione der Unmöglichkeit mit dem ersten Casu des Jacob Isaacs gleich Bewandniß, besonders es ist auch wohl zu bemerken, daß dieser Jessel Joseph Jonas aus freye

[R24a]

Stücken sich dem arbitrio des frambden Rabbiners aus Jerusalem unterwerffen, und desfalls bey ihm nicht aber wie er wieder der Warheit vorgiebet bey uns 200 Rthr deponiret habe. Und da es also nicht unsere sondern des Jessel Hoseph Jonas eigen Schuld ist, daß er sich dem arbitrio eines frembden Rabbiner unterworffen, so können wir ja keine Schuld um so weniger büßen, als nach nunmehr erfolgten Bann, weder wir noch eine Jude auf der gantzen Welt so lange er ein Jude bleibet, nach unserer religion und Glauben mit ihm Umgang haben kann.

Wir ersuchen solchem nach Ew. Magnif. hoch und Wohlw. Herr. demühtig und gehorsamst dasselbe wollen in betracht obiger Umstände die in beyden Sachen abgegebene decreta gnädig und hochgeneigt wiederum aufzuheben, und uns wieder die Unmöglichkeit, und unser Gewissen nicht zu beschweren geruhen.
Wir geträten uns gnädiger und gerechter Erhörung und beharren übrigens mit aller nur ersem devotion destets

Ew. Magnificences hoch und wohl herrlichkeiten
tief gehorsahmste Diener
Der Alten der hiesigem hochdeutschen Judischem Nation

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Letter of Josel Joseph Jonas to the Senate in Hamburg
Cl. VII lit Hf No. 5 Vol 1c 4
October 3, 1732

Translated by David Horowitz, Columbia University, USA

[27]

Magnificences Highly and Very Noble, Best, Highly Learned, Highly and Very Wise, Greatly Well-disposed, Highly Imperious Sirs!

To the Honorable Magnificences, Highly Learned and Highly Imperious Sirs, I express my obedient and submissive thanks along with my wife, for the fact that by means of the enclosed decree (see attachment No. 1) you annulled the divorce which was forced on me and my wife by an "alien" rabbi and declared it null and void. Further, you decreed for the ban laid upon us to be lifted and enjoined upon the Elders that they must admit us to public worship and everything related to it. Now, I had this injunctively issued decree (under (?) the attachment No. 2) immediately sent to the Jewish Elders here in Hamburg in the hope that as subjects of this city's jurisdiction

[27a]

they would obey. But they have not made the slightest attempt to obey, for to my great dismay and disparagement, when on the third and fourth day after the decree was issued I entered the main synagogue, the entire assembled congregation stoop up with great stirring and muttering and set upon me, during which tumult I took blows in the soft part of my sides from the fists of unfamiliar Jews. I was also boxed on the ears and I had to flee because my life was in danger. As the Elders by failing to complying with the clearly expressed directives in the decree, and wickedly opposed our Lordship's punishment, they have also unmistakably brought it about that my co-religionists upon my arrival ran in full confusion and chaos out of the synagogue,
whereby I, in view of the gathered crowd (part Jews and part Christians) am greatly "prostituted" and totally lost my credit (?);\textsuperscript{1} so now the greatest destitution and my extreme poverty force me along with my wife, Honorable Magnificences Highly Noble and Well-Born Sirs, to humbly plead that in your great mercy you deign to uphold your authoritative order as embodied in the decree of the 22nd day of last month and once more to command the Elders that they must comply with the decree within 24 hours or else face the punitive consequences. Otherwise I, along with my wife, remain in all obedience, Honorable Magnificences, Highly Learned and Highly Imperious Sirs,

your obedient servant
Jessel Joseph Jonas
Petition, 3 October, 1732

Endnotes

\textsuperscript{1} The idiom here is obscure, but the next sentence implies that the intended meaning is that he was publicly shamed, which had negative financial consequences.

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Magnifici hoch und wohledle, Beste, hochgelahrte, hoch und wohlweise, grosgeneigte, hochgebietende Herren!

Ew. Magnific. Magnific. hochw. und hochgebeitende herr. erstatte ich nebst meiner Frauen unterthänigst gehorsahmen dank, daß dieslebe, durch beygehendes Decretum sub No. 1 die zwischen mir und meiner Frauen von einem frembden Rabbiner angemaßten Ehescheidung, als an sich nichtig und ungultig, zu cassiren, und zu annulliren etc. auch ferner, den dies fals bey uns angelegten Bann aufzuheben, und den Juden Ältesten zu injungiren, daß diese zu dem Gottesdienst und allem was dazu gehöret uns admittiren sollen, in hohen gnaden geruhre wollen. Nun habe ich zwar dieses wohlabgegebene Decretum, injungirter mussen, so fort [tehte] adj. sub No 2. denen hiesigen Juden Ältesten, in Hoffnung Supplicati, als dieser Stadt Jurisdiction unterworfenes

Unterthanen, würden demselben schuldige Parition geleistet haben insieniren lassen, sie haben aber zur schuldigen Parition nicht die allergeringste Anstalt gemacht, weil mehr habe ich zu meiner großen Bestürzt und Beschimpfung erfahren müssen, daß wie ich mich den dritten und vierten Tag nach abgegebenen Decreto sub No. 1 in der gewöhnlichen Schule eingefunden, die alda versammlete Gemeine mit groster Bewegung und Gemurmel aufgestanden, und sich davon gemacht, bey welchem tummelt ich dann von einigen mir unbekandten Juden mit knäbel Fausten aufs empindlichste in die Seite gestossen, mir auch ins Ohr geraunet worden, ich sollte mich, weil allhier Lebensgefahr vorhanden, bey Zieten reitiriren. Wie nun Supplicati hochbesagtem Decrets, durch Unterlassung der in demselben gantz deutlich
exprimirtten Parition, und im wiedrigen Fall annectirtten hoch=obrigkeitlichen
Bestrafung, sich freventlich opponiret, auch der untrieglichen Vermuhtung nach
veranlasset, daß meine Glaubens genossen, bey meiner Ankunft in voller Confusion und
tumult aus der Schulen geloffen, wodurch ich

[29]
dann, in angesichte vieler versammleten Theils Christen Theils Juden nicht wenig
prostituret und vollends nun allen Credit gebracht bin; so zwinget mich die höchste
nebst meiner Frauen, fusfällig anzuflehen, daß Sie in hohen Gnaden geruhen wollen, so
wohl zu aufrechthaltung dero hochobrigkeitlichen Befehls, als auch zu hochnöhtiger
Gelebung angebogenen Decreti de 22. mens. praet. denen Supplicatis nochmahl
anzubefehlen, daß sie, diesem Decreto innerhalb 24. Stund. pariren, auch aller ferner
Thätlichkeiten bey hoher Strafe sich enthalten sollen. Der ich überigens nebst meiner
Frauen in aller Unterthänigkeit verharre ew. Magnific. Magnific. hoch=und wohl herr
meiner hochgebietenden Herren

unterthuaniger Knecht
Jessel Joseph Jonas
Supp. d. 3 Octobr. 1732

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The Herem as the Source of Authority of the Lay Governing Council

Anne Oravetz Albert, University of Pennsylvania, USA

ABSTRACT: A treatise on the herem composed by Isaac Aboab da Fonseca, the head rabbi of the Spanish and Portuguese Jewish community of Amsterdam. Specifically, this pamphlet defends the authority of the lay leadership council to do so, arguing against unnamed members of the community who are causing scandal by denying that authority.

This presentation is for the following text(s):
- Exhortation to those who fear the Lord, not to fall into sin due to lack of understanding of the precepts of his Holy Law.

Anne Oravetz Albert

University of Pennsylvania, USA
Duration: 56:25
At a time when English, French, Spanish, and Dutch pamphleteers and philosophers were hotly contesting the legitimacy of their governments and the role of religious authority in the state, Amsterdam Jews were also engaged in internal debates about the authority of their leaders and the relative preeminence of rabbinic and lay leadership. No lesser figure than Isaac Aboab da Fonseca (1605-1693), the head rabbi of the city’s Spanish and Portuguese Jews, published a treatise in 1680 defending the status quo of the community’s practices regarding the *herem* (excommunication or ban). Strikingly, Aboab argued that the *herem* was not his own prerogative as a rabbi, but rather represented the political rule of the community, and thus was rightly wielded by the lay leadership as its government. Aboab’s treatise opens a window onto political differences among the Amsterdam Sephardim at the time of its composition, including sharp disagreement over the validity of the lay government and the role of the rabbi in communal affairs. It thus reveals an ideological dimension of disputes that are already known to have taken place in the community around this time. In addition, Aboab’s formulation of the Mahamad’s authority is unusually authoritarian, as he suggests that the members of the community irrevocably transferred their political authority over to the Mahamad. The arguments Aboab presents seem to mirror contemporary non-Jewish debates about the social contract and the rights of subjects to rebel against illegitimate or ineffective rulers.

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Exhortation to those who fear the Lord, not to fall into sin due to lack of understanding of the precepts of his Holy Law.

Exortaçaõ, Paraque os tementes do Senhor na observança dos preceitos de sua Sancta Ley, naõ cayaõ em peccado por falta da conviniente inteligencia.

5440 (1679/80)

Translated by Anne Oravetz Albert, University of Pennsylvania, USA

Greetings to those who love Torah, may they not stumble.

EXHORTATION
To those who fear the Lord, not to fall into sin due to lack of understanding of the precepts of his Holy Law.

Composed by the learned Senhor Hakham, Morenu ha-Rav Isaac Aboab, Av Bet Din and Rosh Yeshivah of the holy congregation Talmud Torah.

Printed in Amsterdam, in the house of David Tartas, 5440 [1680]

Prologue to the Reader:
I announce and truly affirm that I do not intend to cause a scandal with this treatise, and I was moved to publish it neither by passion, nor by anything other than love for the individuals and generality of this holy community, and zeal for the sanctity of the Holy Law. I write so that they will not listen to the sycophants who wrap themselves in the mantle of the law in order to exploit it, abusing many with their doctrine. They ought to
follow the example of those in other congregations, who are afraid to hear the name *herem* spoken, and who would rather be insulted with the greatest and most ignominious name than be called ‘banned’ or ‘son of an banned one’.\[1\] May the Lord protect us from such a punishment and bless His people with peace.

**H[akham] I[saac] Aboab**

[3]

Greetings to those who love Torah, may they not stumble. Exhortation to those who fear the Lord, not to fall into sin due to lack of understanding of the precepts of his Holy Law.

Composed by the learned Senhor Hakham, *Morenu ha-Rav* Isaac Aboab, *Av Bet Din* and *Rosh Yeshivah* of the holy congregation Talmud Torah.

“What ends in deed begins in thought”\[2\]: a truly rational statement of the sages, in accordance with which the beginning of this tract must contain its end, which is to disillusion the illusioned, and disabuse the abused. It will show that no power can annul or invalidate the herem that the holy Kahal took upon itself when everyone signed in the presence of the four Hakhamim.\[3\] There is no way to lift the ban on a violator of this herem, aside from the Kahal itself absolving him, which requires at least as many people as the original [4] signers. Even this, though possible, ought not to be done in my opinion, since it goes against the unity and conservation of the Kahal and feeding of the poor.\[4\] We find an example of this in the holy scripture: when six hundred Benjaminites escaped in flight, whereas all the rest perished in the war caused by the concubine of the Levite, Israel repented and tearfully lamented their total extermination of a tribe of Israel (as they thought they had done),\[5\] because they understood the mystery of the number twelve, and feared that the Lord’s divinity would desert them. And they said in Judges 21:7, *What will we do for those who remain to give them wives*, and to try to rebuild this broken stalwart of the fortress of Israel? *Because we swore by the Lord not to give them wives from among our daughters.* It then continues, explaining how they condemned the inhabitants of Jabesh-gilead because they violated the herem by not agreeing to enter into that war with the rest.\[6\] Thus they determined to pass all of them through with a sword, without sparing anyone except [5] the young women who were still in a marriageable state. Once they had these four hundred women to give as wives to the surviving Benjaminites, they asked, “what will we do for the other two hundred?” It is difficult to understand how, in such an urgent case, the very people who created the herem could not dissolve it, freeing themselves up to help these two hundred, but this proves our claim: they could have dissolved it, but to do so would have been wrong without first seeing if the problem could be solved another way, without touching the sacred herem. In the end, they managed to find another solution, giving the rest of the Benjaminites permission to go into the fields and hide in the vineyards on the day when
the virgins of Israel danced and celebrated as part of a festival (the day we call day of the maidens), and take maidens for their wives. They judged that this considerable violence was a lesser evil than violating their herem, even by dissolving it. If that is the case, then good judgment shows there can be no excuse for failing to uphold the herem of our holy Kahal, or for considering trying to dissolve it. Those who would argue it should not be done in ordinary cases of the herem, or in a case of nidui, should avoid it that much more when it is a matter of a mitzvah, imposed for the better observance of the holy law. This can be seen in R. Moshe Gerundense’s Treatise on the Herem, 288. As I already declared this to be the end of this treatise, it seems appropriate at the beginning to define the herem, how far it extends, if it can be revoked, and how. First, we reprove, as R. Gerundense did, that which some congregations do in order to absolve the herem, that the cantor stands on the tevah and says, “Let the herem be dissolved,” by which they understand this to be accomplished. This is incorrect because only the Hakham can dissolve it, or three people in his place, except if the revocation is made with the consent and in the presence of the whole Kahal. Equally incorrect are those who bind themselves together with a herem that they themselves can dissolve. This is proved by our sages, who say that when the tribes sold Joseph they agreed among themselves with a herem that none of them would reveal it to their father. Judah said it was not possible because without Reuben there were only nine of them, an insufficient number, and so they bound themselves together with the Lord. The Blessed God respects the honor of men, and particularly that of those who fear Him, so much that he agreed to be counted among them to create a herem. Eventually Reuben subjected himself to the same obligation, and it is reasonable to think that this would have freed the Lord, as the royal Psalmist says, reveal his words to Jacob (Psalms 1:47). But he did reveal them out of respect for the herem and the honor of the tribes, and this is why they themselves dissolved the herem when they found Joseph alive. Then the holy text says, and the spirit of Jacob his father was resuscitated (Genesis 46:27). Does this mean that it was somehow dead? Yes, the holy scripture does indeed mean to say that he “resuscitated the spirit of Jacob” since the Lord did not speak to him because of the herem, but restored his prophetic power when it was dissolved. When he was named Israel, the Lord suspended his prophecy, to prevent him from asking about Joseph. This is also the meaning of Genesis 37:35, and his father wept for him: Joseph’s father, Jacob, wept for Joseph in the presence of his father, showing that they presume that it not had been revealed to him that Joseph was alive. The Lord could have told him, but to do so he would have had to dissolve the herem that the Tribes had made among themselves. The word “herem” can also mean a curse, since saying “these items are a herem” is the same as consecrating them, and they are treated like gifts for absolution, going to support the activities of the holy temple, or being given to the priests. Thus tradition teaches that when a bet-din decrees that whoever does something will be placed in the herem, it is inviolable, as will be seen below. The herem is different from an oath, because if a man swears in another, it means
nothing unless the party responds by saying ‘amen.’ But if a bet-din or kahal makes an ordinance under punishment of herem, it is valid whether he responds ‘amen’ or not. The same will also be true if he does not accept said herem, or if he is not present, as will be stated below, since the Senate had authority to impose\textsuperscript{10} a herem as it says in Nehemiah 13:25, \textit{And I cursed them...and made them swear by God}. Therefore said herem is incumbent on him and it is the same as if he swore it himself. The same holds true for a city in which all of the inhabitants, or the majority of them,\textsuperscript{9} has made an agreement in the presence of the seven deputies:\textsuperscript{11} if they impose a herem, it obligates the minority to their observance, and such a herem is firm and incontrovertible. Therefore someone from such a city who transgresses it is banned as if he transgressed his own oath, which will penetrate all of his limbs and, as the Prophet Zechariah says in 5:4, \textit{it shall consume them to the last timber and stone}.\textsuperscript{12} Everyone has an obligation to separate himself from this person, and give him only what is necessary for him to live. Whoever does not observe this becomes included in the same herem, and must behave like the banned one, going barefoot like a mourner and all the rest, and no one may profit from the property of the condemned. The least objection to this is cause for ruin, and constitutes a transgression of the letter of the law. This herem is what they claim to be invalid, except in company of ten, which they call a congregation\textsuperscript{13}. They say that, being fewer, the deputies have no authority to impose a herem, but only to swear, each one for himself.\textsuperscript{[10]} If this herem was decreed by the King or Great Senate of Israel in presence of the majority of Israel, then the King or Senate would be able to impose the death penalty on transgressors if they so desired, since they can impose this penalty as they see fit. Scripture shows this in Joshua 7:13, \textit{And the Lord said to Joshua, there is a herem among you Israel}, as the famous Captain, Joshua, had the right to condemn the rebel Akhan to death for committing a sacrilege\textsuperscript{14}. King Saul is another example, as he condemned his son Jonathan for transgressing the herem that he decreed, even though he had achieved such a great and glorious victory when he and his servant alone destroyed the furious Philistine army, as described in the sacred history in I Samuel 14:26.\textsuperscript{15} The High Priest Eleazar did no less when the inhabitants of Jabesh-gilead were killed in the events related to the Levite’s concubine mentioned above, as it is said in Judges 20:5, \textit{For they had made a great oath concerning him who did not come up to the Lord to Mizpah, saying “he shall be put to death.”} Thus it is asked in the name of Rabbi \textsuperscript{[11]} Akiva, why does it say “oath”? Precisely so that you will know that the herem is an oath, and an oath is a herem: the inhabitants of Jabesh-gilead were condemned to death because they did not join the rest of the tribes. In addition, the herem does apply to future generations, just like Joshua’s decree that is mentioned in the text of the herem.\textsuperscript{16} It says in Joshua 6:26, \textit{At that time Joshua pronounced this oath: “Cursed of the Lord be the man who shall undertake to fortify this city of Jericho”}, and this decree continued to be implemented for many years, even until the time of Ahab, as it says in 1 Kings 17:1.\textsuperscript{17}
Now, the main aim of this treatise is exhortation, by which I hope to prevent a great absurdity and reprove a harmful doctrine that has been introduced by malicious souls, and disturbers of the peace. Some subjects who desire liberty follow this man who makes them captive to sin, and brings them to ruin. They do not consider how much they offend God [12] by dividing the Congregation, the glory and happiness of which consists in unity, with the help of His sovereign grace. Since we are directly protected by Him, He may be called our king, and we his beloved vassals, as Moses the prophet luminary expressed in Deuteronomy 33:5, *And he was King in Israel* (‘King’ referring to the Lord God, of course) *when the heads of the people assembled, the tribes of Israel were together [unified]*. What more evidence is required, since experience has also proven the same truth? And yet more is found in the comments of our Sages on the words of the prophet Hosea that are so poorly understood, *unified idols Ephraim abandon* 18 (4:17). They explain in Midrash Rabot (Tractate 41 verse 3) that peace and concord are so beloved by the Lord in His republic that Ephraim should be left alone even though he was full of idolatry, since he was a part of it, and no force or judgment can oppose its unity. Conversely, the same prophet says in 10:2, [13] *Now that their heart has been divided, they will be condemned*: now, justice will be carried out and they will be condemned and punished. This, then, is the crime: some who do not fear God and who presume to know more than they do, argue that when ten individuals separate themselves from the holy congregation, they free themselves from the herem by forming their own congregation. They are blinded by passion, or rather sin, which prevents them from seeing that if this were true (which it isn’t), then the herem would have no value. This does not apply in our case anyway, since our herem stipulates that there cannot be any other synagogue in the city of Amsterdam or its environs, and that no one may assemble a quorum for prayer, except in certain conditions.

Others make another bad argument based on similarly false grounds, preying on the weakness of those who ignore the truth or are ignorant of it. They say that this herem has no value because it was not made with the authority of a Hakham. I deny this, because four Hakhamim were [14] involved in the agreement in question, and also signed. If this argument were true, it would mean that the Kahal does not have enough authority to create a herem on its own, which would invest the Hakham with unchecked authority. King Saul commanded, under pain of herem, that no one eat until the Lord conceded a clear victory to the people of Israel. Jonathan violated the herem without eating, only sucking on a sugar cane and being invigorated by its juice, but his father cast lots over him, and gave the sentence according to the Law, saying in I Samuel 14:45, *Shall Jonathan die?* But the same Prophet says in verse 26, *And the people redeemed Jonathan, and he did not die.* Was he by any chance redeemed with money? No. Then with what? With the authority that the Lord granted to the congregation. And the reason it says this is because it is not the king who makes the people, but the people who make the king. Thus Solomon says in his Proverbs (14:28), *The larger the people, the
greater the glory of its King. Thus the authority of the people can do more than the royal decree, when it contradicts the holy Law as a great absurdity and an insupportable error. The greater error would be to not recognize this, since the Lord punishes both sins and errors, and if errors are great, they indicate great sins, and deserve great punishments.

Those who desire to obscure the truth out of passion or convenience will never lack the means; these go around saying that when one Agreement is broken, the rest lose their force. For example, they say that one of the constitutional articles of the holy Kahal is that an additional council of six people should be elected for the affairs of the Kahal, and since this was one of the founding articles, and it is no longer observed, the rest of them are invalid. They use this to try to remove authority from the Mahamad, but it is the same as the Kahal, and cannot be made or unmade according to the needs of the time. When the rule was instituted, it was to subdue and unify the three congregations, because the Lord must conserve us against the wild winds; but when the cause ends, that which is caused has its end, so it has already been lost from memory, and there are no longer two from each Synagogue. Furthermore, I demonstrate that this agreement is in itself null. It says: ‘...and if at any time the Mahamad sees fit to remove an article from the Agreements, they cannot do it without the six Deputies who are now in place, or those who would then be living, having been called to replace the original six, as those who remain will name replacements for those who have passed away. The Mahamad must obey whatever these six resolve.’ However, they all died and others were not named in their place, so this agreement was undone by its own self. Even if they had continued it, and affairs had not been governed as they should have been (which is not true), bad government cannot remove the value from the herem. Nothing would please the disturbers more than if the breaking of one agreement voided the rest.

Let’s move on to break down another absurdity: they all say what they understand, but not everyone understands what they say. They say that they were not present for, did not sign, and did not approve this herem, and thus it seems to them that it does not obligate them; this is a false doctrine. We say to them, ‘do you not see that the herem of Moses extends throughout the generations?’ and then they justify their argument by pointing out that the Sages say that all souls, embodied or to be embodied in the future, were present for Moses’ herem. I do not deny this because it would be to deny the truth, but I perceive that they claim things that they do not believe, and which do not aid their argument anyway. There are four modes of commentary, literal, allegorical or moral, anagogical, and tropological, but no one denies that the literal comes first. The document that Moses left us, entrusted to the future generations, was a herem that includes those present and absent, and those born and those who are yet to be born. Furthermore, the sages said that Jonathan’s life was in danger without a higher power to save him, even though he was not present for the herem and didn’t know about it. As for those of Jabesh-gilead, I will grant that they knew of the decree given by the high Priest Eleazar in the presence of all the people, but they certainly did not approve
it, because then they clearly would have come. They did not come, which must have been due to ignorance or malice; if malice, they deserved it. But they also could not use ignorance as an excuse, because the force that the Lord granted to the herem is so great that no excuse has power against it. This is why Jonathan did not excuse himself: he knew the herem to be a great good; and Lord, could not tolerate Jonathan’s ignorance, and ordered lots to be cast.

In sum, I was moved to publish this exhortation in order to disabuse those who let themselves be abused for some accursed reason of state; and in order to help the zealous and God-fearing, and keep them from believing such a harmful doctrine. They must not be deluded in their hopes of divine grace, because He laughs at those who are too confident and ungrateful.

Hopefully everyone can agree on this at least, and we ought not to pay too much heed to the disputes that pass between us, because they are not new. The same has happened in other congregations, even if we differ in that they were easy to subdue, whereas we are hard, and stubborn in obedience. It would be a very long affair, and not very intelligible, if we tried to explain everything the sources say about this subject; we will give only a basic summary of their words, and state what we claim will be verified with their authority.

The famous Rabbenu Moses Gerundense told of a congregation that made some decrees with a herem, and some individuals swore in presence of witnesses that they did not accept it, and thus did not submit to these ordinances or herems. It was asked whether such an oath had the power to counter said herems, and he responds: it is known that all congregations have full authority over their yehidim, to order them in their city as did the Great Senate of Israel, as the Prophet Malachi said in 10:11, *He said thus, with the curse, the whole nation is cursed.* He says that the majority is the same as the whole, so violators certainly incur the curse, as it says in the Gemara of Avodah Zarah.

Rabbenu Moses concludes by saying that those who swore shouldn’t have done it and lacked the authority to do it. Anyone who does not follow the congregation violates the herem that the Kahal places. This source does not even mention the Hakham here, proving what I said above, that the authority of the Kahal is greater than all. An even clearer proof is that the same author says that the herem would be stronger if it were done with the approval of the Hakham: we may infer from this that the herem of the Kahal is valid even if it lacks the authority of the Hakham. From the Rishbah it seems that the Mahamad needs the company of the Hakham, because at the end of that which is recounted above, it says in his name: “as long as it is done with the agreement of a respected man.” But this does not contradict the above, because it only deals with the Mahamad, and not the generality. Furthermore, it cannot even be concluded that the Mahamad requires the assistance of the Hakham, because that is based on the interpretation of “respected man” as a Hakham, but this has no basis because he knew very well how to say Hakham, but didn’t. In his wisdom he didn’t want to depart from the term of the Gemara, *adam hashuv*, “respected man.” As I will prove, this term
should be understood as a man who is well esteemed by the inhabitants of the city, serving as Parnas or Deputy. Rabbeni Nissim says the same about the Gemara. 

Thus there can be a respected man deputized over the Kahal without having to be a Sage, and for even more proof it also says “if such a Parnas did not have license,” so that we understand that the Parnas is the “respected man.” Hakham Caro in his Bet Joseph says the same in the name of the cited Rabbeni Nissim: “respected” must be understood as deputized as a Parnas over the congregation. The Tur should also be understood as supporting this interpretation, when he refers to the “great and wise man” and then repeats it, using the phrase “Hakham and governor” to mean the same thing. I agree with this, corroborating it with the following argument: the Gemara only discusses the “respected man” when it gives him the authority to increase the law, saying “man, Hakham or governor”; if this respected man was a Sage, they would say Sage, and if he was a governor, they would say governor. Others would interpret this to mean that it is necessary for him to have both qualities: that he be a sage, and that this sage also be a governor. We must not fall into this error, because it says “sage, or governor,” so that the name of “respected man” can be applied to either one of them. The Rosh affirms this, as does the Hakham Ribi Levi Ibn Habib at length in his 99th responsum, where he says that the sources all generally agree that everything the Mahamad decrees with the participation of the Hakham is most valid and firm. Note that the Rosh is referring to the Mahamad rather than the Kahal, proving our assertion that the Kahal has full authority to impose and revoke a herem without the participation of a Hakham. The only thing that can be brought against this is the authority of Hakham Ribi Joseph Caro, whom we follow in everything. He says, in his Shulkhan Arukh volume 4 chapter 231 verse 28, that the inhabitants of a city have authority in all matters as they see fit, to arrest and punish whoever transgresses their order, and that by virtue of their office the officials can agree among them, that no one work in the day that belongs to his colleague. This is meant to apply in a city where there is no Hakham, but if there is one, the agreement will be null unless it is made with his approval. This seems to contradict what we maintain, suggesting that even the Kahal requires the authority of a Hakham. With all due respect, he is mistaken, as is anyone who thinks that the name “respected man” can only mean Hakham. Rather, as I have said and proven, it means a man, Hakham or not, who is particularly well respected by the inhabitants of the city, so that he is elected by them and charged with the affairs of his city and Kahal. As for the previous question of whether the Kahal in itself has enough authority, they would necessarily argue that it does, since it says that the decree is valid when there is no Hakham, but not when there is one. In other words, the Hakham brings to them the authority that belongs to him by reason and by right, increasing the authority of the Kahal, but its own authority is not lost on account of his absence. This argument proves our point that the authority of the Kahal is greater when accompanied by that of the Hakham, and also the same author in his famous Bet Joseph cites Rabbeni Nissim’s argument that if no one is harmed they may arrange everything among them as they see
fit, meaning without the [24] authority of a Hakham.

Hakham Ribi Moshe Alascar, in responsum 49, treats the entire Tosefta that deals with officials, and explains that when it says that a decree is valid with a “respected man” and void without him, it only refers to officials in particular, and not to the inhabitants of the city, because they can order everything as they see fit, with or without a Hakham. He continues, saying that both Rabbenu Moshe and Bar Cessat agree, and concludes saying that the inhabitants of a city can make their ordinances without requiring a “respected man,” although if they are approved by a bet din it is stronger, empowering them to confiscate the property of transgressors, as the Gemara states, based on Ezra 10:7, and they issued a proclamation in Judah and Jerusalem, to all the sons of the captivity to come together in Jerusalem, and all who did not come in three days according to the decision of the Princes and elders would have [25] his property confiscated and would be removed from the congregation of the captivity, Similarly, the Gemara of Gittim fol. 36, repeated in the Gemara of Yebamoth fol. 89, and more extensively in the Gemara of Mo’ed Katan fol. 16, says, Rabbi Isaac said, that the confiscation of the Senate is a (valid) confiscation: because it says, and he who did not come in three days etc.

Anyone who wants to know more can check the cited author. I offer a distinction to resolve all this, namely that if the Hakham is elected by the Kahal, than the Mahamad requires his company. This resolution has two advantages: first, it could be the intention of those who say “Hakham and governor,” meaning one man who is both Hakham and governor, which is the same as saying the Hakham of the Kahal. Second, it will close the mouths of those who want to obscure the truth, and ground those who desire to observe it with airy and false reasons, since this distinction can also be understood as applying to the Kahal, as was proven.

Now we will address the principal matter, which is most important for the conservation of the holy congregation, augmentation of the holy law, and feeding of the poor, and [26] to be favored by the Lord God with the harmony and unity that He so loves (since it is an occult quality of Israel that He can make them immortal individually, and also as a group, as the Prophet Malachi says in 3:8, Because I am the LORD, I have not changed, nor have you ceased to be the sons of Jacob[26]). Some things that seem insolent are actually grounded in some reason of state, but others, like the case we are dealing with here, lack it completely.

From the beginning of this kahal, it was instituted with the punishment of the herem, which everyone accepted and signed, that there could be no other synagogue in this city or its environs, and men could not assemble to pray in a separate minyan except in the house of a mourner or newlyweds, or by accident. Some, not considering the evil of their actions and the disruption caused by their example, but obstinately persisting in their bad choice because of personal feelings, separate themselves from the community. They should clearly see their error, with the authority of the most famous sources, [27] like a ray of the shining sun of truth breaking apart the fog.

The wise Medina sums it up in the 37th of his oft-consulted responsa, beginning with
some words from the questioner, and perhaps his manner of speaking will work to
subdue some hearts. The Lord God says that we are durable because we are so constant,
and likewise this questioner seems tearful without showing any tears, as he says: “I am a
disgraced and unhappy man, seeing the affliction of an illustrious congregation, that
enjoys glory among the rest of the congregations, a congregation with great charity and
authorities of incorruptible justice, eminent sages, who feed the hungry and quench the
thirst of the thirsty, as the prophet Amos said in 8:1[1], Not hungry for bread, nor
thirsty for water, but rather for hearing the word of the Lord. Nor does the
congregation lack noble subjects from illustrious families, perfect in virtue, and crowned
with the crown of the law as well as science, fame, and glory. Now my eyes are seeing a
thing [28] that they never wanted to see: some subjects are raising themselves up,
profaning the sacred temple, and forming a group, saying, ‘let us make an altar’ (which
is a great sin, and thus appropriate for those who separate themselves from the
generality). They do this without regard for the pious subjects, who try to persuade
them not to, nor for the herem and curses, et cetera. Some change their minds, as it is
not dishonorable to recognize one’s error; others, more sinful, persist in their
impertinence. Some of those who have returned regret their own to maintain the
accord, seeing that it was nothing but discord.”
The author responds by first proving that their oath to separate themselves from the
congregation was not valid. It is stated in the Gemara of Shevu’ot that a man who swore
not to observe a certain mitzvah [29], and then broke his vow in observing it, is free
(deserves no punishment), because his oath cannot replace the first one made on Mount
Sinai. On that basis, the author says that in this case there can be no greater mitzvah
than to maintain the first oath, which obligated subjects to observe the original
agreement made with the herem, which is the same as an oath. Therefore the second
oath is equivalent to swearing not to do a mitzvah, and thus it is not valid. The
author gives other effective proofs, but they do not fit with our case and only in the
preceding does he deal with what could happen when someone tries to make oaths like
this.
In his conclusion, our author says that the same thing happened in the Kahal of Geruz,
and the Kahal of Lisbon, and congregations in the city of Constantinople. In all of these
cases the illustrious Hakhamim agreed with him and his answer, that the separatists
must return to congregate in their Kahal. Like those who give up bad behavior out of
fear of punishment, they were obligated to return to congregate with their brothers, even
though they had sworn not to, because such an oath is not valid. The author says that if
they persisted in their rebellion and would not return, they would be banned (for more
reasons than they try to give, which are all false), and with their return they would be
cured.
They [30] tell me that the herem only includes praying outside of the synagogue with a
minyan, and that they obey, but they want to do it at home (alone). They may well
do this, but they should know that it will be to their detriment, since prayer in the
congregation has great strength and valor, and prayer alone poses great risk, as they say in the Gemara of Berachot on Psalms 102:18, *He turned toward the prayer of the solitary, and did not disapprove of their prayer,* noting that this word פנה *turned* is the same as speculated on: when the Lord God hears a single voice he says, ‘who is this impertinent person who separates himself from my congregation, who runs to cheekiness? Let us see on what his boldness is founded.’ But the Lord never disapproves of the prayer of the general congregation, as the Gemara of Berachot says, every one who has a synagogue in his city, and does not go to pray in it, is considered a bad neighbor. They prove this by the Prophet Jeremiah, who says it in the following manner: *Thus saith the Lord, as for all my evil neighbors, who touch the inheritance which I have caused my people Israel to inherit...* It is inferred from the words of the author that those who are bad neighbors, to the detriment of the house of the Lord, not paying it due regard and not honoring it, they[31] and their sons suffer the captivity. The same prophet continues and corroborates what the Gemara of Berachot says, that the prayer of a man is not heard except in synagogue, understanding נוגים as causing a defect.

Hakham Adraby writes in responsum 39 that they sent a question to him from Salonika, when they suffered various disturbances. The same thing happened among them as among us: they told of some who separated themselves from the kahal, and their great Hakhamim ordered, among other things, that no one might separate from his kahal, nor make a new synagogue beyond those that they already had in that city of Salonika, and they enforced their decree with all the curses and herems. When they consulted the aforementioned author, he responded (in summary) that if they had sworn with greater curses that they had to separate, and if (though it is not the case) this oath were valid, he would differentiate between the oath and the herem, because they would be obligated to observe the oath, but this would not free them from the herem mentioned in the agreement, because it was still in existence. Thus they were still condemned, banned and disgraced before the Lord God, and therefore the[32] congregants in question had to revoke the oath they had made, and return to their congregation, which they did without any scruple.

In responsum 254 he affirms the same, and also in responsum 113, where he draws from Hakham Ribi Moshe Tranyma’s responsum 84. Thus, we enlighten those who do not know the force of the herem, which, as we have said, is so great that in the time of our happiness, and when we possess the kingdom, he who has transgressed it will deserve death—whether it was imposed by the King, or the great Senate of Israel. The arrival of the events we desire is in the hands of the Lord God, even though it may tarry and not come yet. And thus we leave our assertions resolved and proven, with the following conclusions:

First, we have shown the force of the herem, and its stipulations, and that only the Hakham, or three men in his place, can revoke it when imposed on an individual. Second, the authority of the Kahal is so great that it needs no other addition.
Third, the Mahamad has the same authority whether it was elected juridically, that is, 
elected by the Kahal or by the majority [33] of it according to the custom; or when the 
Kahal has given the authority it possesses to the first elected officials, who then pass it 
on to their successors, electing those they find worthy and irreproachable. 
Fourth, when there is a Hakham salaried or elected by the Kahal, whether elected by the 
Kahal or the Mahamad, his participation is required. 
Fifth, the herem has the same value as all those since that of Moshe Rabbenu, which 
applies to all the generations present and future, without being able to claim absence or 
ignorance, because a quality of the subjects does not affect a herem or the virtue that the 
Lord God gave it. 
Sixth, that all who deal with violators of a herem are in the same category, and the same 
stipulations apply to them. 
Seventh, the overall point is to prove our assertion, with cases and examples of similar 
events, that since the unity of our Holy Kahal was constituted with the approval of all 
and signed by all in the presence of its Hakhamim under pain of herem, those who want 
to [34] violate this agreement by separating themselves cannot do it, and no one in the 
world can free them from the punishment they incur through this violation. 
Eighth, as an aside, those who fear the Lord should stop praying at home because they 
are doing themselves harm even if they are not violating the herem. I hope to close this 
weak exhortation by saying we must keep our eyes on the prize and protect the common 
good, for the conservation of the holy kahal, the honor of the Lord God, and the glory of 
His holy law, by which we may be saved and thereby deserve and attain the promised 
era, as the Prophet Isaiah says in 59:20, *He shall come as redeemer, to those who 
repent says the Lord*, [32] may it be in our days, Amen.

Today, 4 Elul 5480 [sic]33


Endnotes

1 Aboab adapts the Hebrew word ‘herem’ into Portuguese as ‘enhermado’ and ‘filho de hum enhermado’. This could be translated as ‘enheremed’ in English but it will be rendered as ‘banned’ here and below.

2 From Lekhah Dodi, a sixteenth-century poem by Rabbi Shlomo Halevi Alkabetz, commonly sung on Shabbat.

3 Aboab is referring to the founding document of the community, the Ascamot, which established that the governing council, or Mahamad, would have the power to impose the herem. This document was signed by all qualifying members of the community when three congregations became one in 1638-9.

4 The “feeding of the poor” is often used as shorthand for the common good of the community.

5 See Judges 19-21 for the whole story, in which “all the children of Israel” find revenge on members of the tribe of Benjamin for a gruesome rape and murder. They vow to shun the Benjaminites, refusing to intermarry with them, and attack the city where the abuse took place. The Benjaminites are routed, losing all of their population except six hundred men who manage to flee. After the battle, the rest of the Israelites panic when they realize that they’ve nearly destroyed an entire tribe: there are only men left, and the other eleven tribes have sworn not to give any of their daughters to Benjaminites as wives. Instead of annulling the oath they themselves had taken, the Israelites resort to extreme and violent measures: they realize that one town, Jabesh-gilead, had not sent any representatives to the gathering where the oath was taken, and therefore was
exempt from it. They send a force to murder all of the inhabitants except for the women in a marriageable state (virgins), who turned out to number 400. These they offer as wives to the Benjaminites, but there still remain 200 men without wives to rebuild the tribe. Finally, they hatch an elaborate scheme to kidnap 200 more maidens from Shiloh at the time of a spring festival, getting around the oath by neither offering their own daughters, nor having the maidens’ fathers offer their daughters willingly.

6 This is in Judges 21:8, but the verse does not contain reference to a herem. It only says that no man from Jabesh-gilead had come up to Mizpah when everyone else had come. But, see 21:1, “Now the men of Israel had sworn in Mizpah, saying: ‘There shall not any of us give his daughter unto Benjamin to wife.’” Below, Aboab makes the connection between a herem and an oath explicit.

7 Apparently he is referring to the rabbinic nidui, which is a sort of lower-level temporary herem, the practice of which had gone out of favor by his time.

8 Aboab seems to be referring to whatever communal dispute led to the writing of the treatise. The 1670s and early 1680s were an extremely contentious time in the Amsterdam Sephardi community, with a number of open conflicts where the herem was imposed, including some where the herem itself was the focus of the disagreement. The evidence from Aboab’s treatise is not enough to identify which particular dispute he was responding to.

9 Nahmanides, Mishpat ha-Herem

10 deitar—literally translated as throw, give, or extend, in the sense of ‘lay down.’ I will translate it as ‘impose’ to match normal English usage.

11 The city Aboab refers to is his own, as the Mahamad that was empowered by the Ascamot consisted of seven officers. Aboab may be intentionally ambiguous in the next sentence as to whether “they” means the inhabitants or the deputies. Later in the treatise, he contradicts other rabbinic sources to suggest that the people lose this authority when they transfer it to a government.


13 “They” are apparently congregants who are trying to create their own community by forming a quorum of their own. The rule they cite is given by Nahmanides (in Mishpat ha-Herem, quoted in Lorberbaum p. 108), and Aboab’s contradiction of it is striking considering his explicit reliance on Nahmanides elsewhere in the passage. Some such incidents actually took place around the time of the treatise’s composition, and records survive of the Mahamad’s attempts to force them back into the community by means of the herem and the external support of the Dutch authorities. See the incidents involving Abraham Barboza and especially Isaac Coutinho described in Yosef Kaplan, "Bans in the Sephardi Community of Amsterdam in the Late Seventeenth Century," in Galut ahar golah: mehkarim be-toldot 'Am Yisrael mugashim lel-Professor Haim Beinart li-melot
lo shiv'im shanah, ed. Aaron Mirsky, Avraham Grossman, and Yosef Kaplan (Jerusalem: Mekhon Ben-Tsvi, 1988)

14 Again, following Nahmanides in Mishpat ha-Herem, quoted in Lorberbaum p. 108.

15 When the troops came to the beehives and found the flow of honey there, no one put his hand to his mouth, for the troops feared the oath. The passage does not use the word “herem.” The actual condemnation is in I Samuel 14:44.


17 This is in the end of 1 Kings 16, at verse 34, not in chapter 17. During his reign, Hiel the Bethelite fortified Jericho. He laid its foundations at the cost of Abiram his first-born, and set its gates in place at the cost of Segub his youngest, in accordance with the words that the Lord had spoken through Joshua son of Nun.

18 This is a direct translation of the difficult Hebrew. JPS interprets it as Ephraim is addicted to images—let him be.

19 JPS: Now that his boughs are broken up, he feels his guilt.

20 JPS: A numerous people is the glory of a king: Without a nation a ruler is ruined.

21 Referring to the Ascamot

22 This refers to Article 42 of the Ascamot, which establishes a board of six representatives that must be consulted when major changes are made to the Ascamot. It was to consist of two deputies from each of the former congregations, to ensure that all three receive fair treatment going forward.

23 This is actually Malachi 3:9, which JPS has as You are suffering under a curse, yet you go on defrauding Me—the whole nation of you.

24 I assume he means the Rashba, Rabbi Shlomo ben Aderet, a disciple of Nahmanides.

25 Homem estimado—Aboab’s direct Portuguese translation of the Hebrew term adam hashuva, which is mentioned in BT Bava Batra 9a (and elsewhere) as a figure whose approval is necessary to validate a communal enactment.

26 Rabbi Jacob ben Asher (1270-1340), the author of the Arba’ah Turim.

27 Aboab shifts from “Hakham” to “Sabio” here, and in the next sentence, to “sage.” I have preserved the distinctions, in case he means to distinguish between the office of Hakham, the status of a Rabbi, and the quality of being wise or learned.

28 Actually Malachi 3:6

29 Or, “commandment.”

30 Now apparently referring again to the rebels of Amsterdam

31 Jeremiah 12:14

32 JPS: He shall come as redeemer to Zion, to those in Jacob who turn back from sin—declares the Lord.

33 It should be 5440, the date given at the beginning of the treatise, which must be the
correct one Aboab died in 5453. Perhaps the error crept in because the Gregorian date was 1680.

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Exortação, Paraque os tementes do Senhor na observança dos preceitos de sua Sancta Ley, naõ cayaõ em peccado por falta da conviniente inteligencia.

Exhortation to those who fear the Lord, not to fall into sin due to lack of understanding of the precepts of his Holy Law.

5440 (1679/80)

Prepared by Anne Oravetz Albert, University of Pennsylvania, USA

Exortação,

Paraque os tementes do Senhor na observança dos preceitos de sua Sancta Ley, naõ cayaõ em peccado por falta da conviniente inteligencia.

Feito pello docto Senhor Haham Moreno A-Rab R. Yshac Aboab Ab-Bet-Din, & Ros-Yesibá do Kahal Kados de Talmud Torah.

Estampado
Em Amsterdam.
Em Caza de
DAVID TARTAS
ANNO 5440.

Prologo a o Lector.

A os que lerem este Tratado advirto, & afirmo com verdade, que nem paxaõ nem
nem hua outra cauza me moveu á tirallo á luz, nem menos escandalisar a ninguem, senaõ o zelo do Sagrado da Ley Sancta, & o affecto amoroso que devo em particular, & em geral á todo Sancto Kahal, possa ser naõ deym ouvidos a Aduladores, que com capa da Ley vendem á mesma Ley; y com sua doutrina tem abuzado a muytos, com que naõ fazem caso do que tanto deviaõ fazer, tomando exemplo das demais Congregas que temem de ouvir nomear o nome de Herem, & antes quizeraõ ser afrontados com o mayor, & mais ignominioso nomem, que chamarle enhermado, ou filho de hum enhermado de que o Señor nos livre de encorrer em semelhante pena: & .A. bendiga a seu povo com paz.

H. Y. ABUAB.

[3]

Exortaçoõ, paraque os tementes do Senhor na observança dos preceitos de sua Sancta Ley naõ cayaõ em peccado, por falta da conviniente inteligencia.

Feito pello doctissimo Senhor Haham Moreno A-Rab R. Yshac Aboab, Ab-Bet-Din, & Ros-Yesibá do Kahal Kados de Talmud Torah.

Sentença de nossos Sabios realmente racional O fim de qualquer acçaõ primeiro precedeu no pensamento. Assi deste papel o branco a que se derige, he o fim seu mesmo fin, & assi deve preceder no principio, que he, desenganar a os enganados, & desabuzar a os abuzados; que o Herem que o Sancto Kahal tomou sobre si em companhia dos quatro Hahamim, por todos firmado, naõ pode haver poder que o possa desfazer nem anullar, & todo o que o transgirir, nemhum remedio tem para deixar de ficar enhermado, eiseito quando o Kahal pello menos com outro tanto nu-

[4] mero dos que firmaraõ, o quizerem absolver, & na minha opiniaõ bem podem, mas naõ o devem fazer, a hua por ser contra a Uniaõ, conservaçoã do Kahal, & alimento dos pobres, quanto pello exemplar que acho na Sagrada Escritura. Livraose fogindo de Binyamin, seis centos homens, por onde parece, queu tudo o demais pereceu, quando na guerra causada por a Concobina do Levita, arependese Ysrael, & com lagrimas lamenta o haver extreminado de todo (segundo julgaraõ) hum tribu de Ysrael; como aquelles que bem entendiaõ o misterio de quanto montava o numero de doze, paraque a Divindade do Senhor jamais os desamparase: & dizem assi em Iuezes capít. 21. vers. 7. Que faremos a os que ficaraõ para lhes dar mulheres, & tornar a edeficar este cahido baluarte da fortaleza de Ysrael; porque nos juramos por .A. de naõ lhes dar mulheres das nossas filhas. Segue entonces dizendo, como cõdenaraõ a os moradores de Yabez Gilhad, porque transgiriraõ o herem,
& não acudirão como os demais a aquela guerra; & assim mandarão sejam todos passados a fio de espada, sem reservar sese de pessoa, esse as donzelas; lá as va em estado de cazar, & forão estas quatro sentas, bem, & os demais duzentos que lhes faremos, que dificuldade he esta em hum cazo tão apertado & tão urgente, os mesmos que consistirão no herem naão o podião absolver, que libres delle naão podião reparar a os duzentos? bem podião, mas se prova o que pretendemos, que podendo, o naão devião fazer sem ver se por outro caminho se podia remediar, sem tocar no sagraido herem, que acharão dandolhes licença fossem a o campo & se emboscassem nas vinhas no dia em que as dozellas de Ysrael festejavao com suas danças & bayles (dia que dizemos das mossas) & que cada qual tomasse hua daquellas moças, de maneira que ainda que violência & naão piquena, julgavao que era menor mal que violar, ainda que com absolvisão a o herem, ora note agora todo o bom juizo, que disculpa pode ter para deixar de encurrir no herem do sancto kahal, nem por pensamento tratar de sua absolvisão, & todos os que desta verdade naão fizerem o cazo devido ainda que o herem fôr por causas ordinarías, porão a o tal em niduy quanto mais se for por causa de misvá, ou feito para melhor observância da sancta Ley, como se pode ver em R. Moseh Gerundense no [6] Tratado do herem 288. supost como deixo dito ser este o fim deste nosso Tratado, me pareceu em primeiro lugar convincente dar noticia do herem para que se saiba a quanto se estende, & se pode absolver, & o como, reprovando primeiro como faz R. Moseh Gerundense Tratado 288. o que usaõ algumas comgregas quando absolvem o herem, que sobe o hazan a Tebah & com dizer está absolto o herem, entendem tem cumprido, porque somente o Haham o pode absolver, o tres pessoas em seu lugar, salvo quando dita absolvisão for feita com consentimento, & em presença de todo o Kahal & o mesmo dos que entre si se ligarão com herem que elles mesmos se podem absolver, comprovado com o que dizem nossos Sabios, quando os Tribos venderão a Yossef acordarão entre si que enemhum delles o descubriria a seu pay com herd, disse Iedudah [sic] naão pode ser porque falta Reuben & naão somos mais de nove, numero naão competente, & para o remediar ajuntarão consigo a o Senhor, & tanto estima Deos Bendito a honra dos homens, & particularmente, a de seus tementes, que consintiu & se compreendeu com elles, veo Reuben & ficou sogeito a mesma obrigação, & com ser assi que pa- [7] recia de rezaõ ficava livre o Senhor, & diz o verso do Real Psalmista Psalmo I [4]7. ver. 19. ותהי רוחו שליעקב תחתיו רוחו שליעקב יבשمه יבשمه & resositou o espírito de Iahacob seu pay, por vintura e estava morto? si, & assi quer dizer o Sagrado texto resositou o espírito de Iahacob, sim resositou, por que, por causa do herem naão se comunicava com elle o Senhor, porem tanto que se absoleu, logo lhe foy restituyda a Prophecia, & assi se deve notar que logo o vay nomeando com o nome de Ysrael, & entendo lhe negou o Senhor a Prophecia opr naão lhe dar lugar a preguntarlle por Iosseph & he o que dizem em Genesis 37. verso 35. יהי ראשו איש ביצי & chorou a elle seu pay, a saber seu pay de Iahacob chorava Iosseph em companhia de
seu pay, porque naõ presumissem que lhe era revelado que estava vivo, porque a elle o podia descobrir o Senhor, de sorte, que o herem que entre si deitaraõ os Tribus elles mesmos o absolverão.

Dilatasse este nome de herem, que he os mesmo [8] que maldiçao, que dizendo hum homem estas fazendas seigaõ herem he o mesmo que se as consagrara, & assi se julga como os demais votos pera sua absolusaõ, & a tal fazenda servia para os consortos do Sagrado Templo, ou se dava a os sacerdotes. Porem quando Bet-Din manda, dizendo quem fizer tal cousa, está posto em herem, que seiga este herem emviolavel, a tradiçao no lo ensina como a diante se verá.

Differe o herem dos juramentos, porque hum homem que aconjurar a outro, sera o mesmo que nada, em quanto a parte naõ responder amen, porem o herem de Bet-Din, ou Kahal, se ordenarem qualquer ordenança com pena de herem, que responda o naõ responda amen, logo fica encorendo, & o mesmo será se o tal naõ aseitasse o dito herem, ou senaõ se achasse presente, como se dirá adiante, visto ter o Senado autoridade para deitar herem, como diz em Nechemia Capitulo 13. verso 25. & maldixeos & os ajuramentey pello Senhor, logo cay sobre elle dito herem & he o mesmo que se elle por si jurara.

Assi mesmo hua cidade cujos moradores acor- [9] daraõ todos, ó a mayor parte delles, em prezencia dos sete Diputados, se deitasse herem, seu herem he valido para obrigar a menor parte a sua observancia, & ó tal herem he firme, & incontravel, assi qualquer da tal cidade, que transgir, fica enhermado como se transgeriria seu proprio juramento, o qual penetrará seus membros, & como diz o Propheta Zechariah cap. 5. vers. 4. E acabará à elle a sua madeira, & a suas pedras.

Todos tem obrigaçaõ de se apartar elle, nem darlhe algum proveito mais que o forçoso para poder viver, & quem assi naõ o observar, fica encorrendo no mesmo herem, & deve observar o mesmo que observa o enhermado, que saõ as circunstancias do lutoso descalsar o çapato, & todo o demais, & naõ se poderá aproveitar da fazenda dos q o condenaraõ, & o que fizer poco cazo do referido he propria causa de sua ruina, & transgire as palavras da ley.

E este herem he que dizem naõ he valido, senaõ em companhia dez, & he o que se chama congraga, & sendo menos naõ tem autoridade para pór em herem, porem jurar si, cada hum por si. [10] E se este herem fosse posto por el Rey ó Senado grande de Ysrael em presença da mayor parte de Ysrael, o que o transgerir merece morte, & esta será à eleiçao do Rey ó Senado, que lha podem dar qual a elles parecer, como consta, & foy o direito que teve o famoso Capitaõ Ieosua contra o preturbador Achan, que o condenou a morte, porque cometeu sacrilegio, Ieosuah capitulo 7. verso 13. E disse o Señor a Ieosuah herem entre tõ Ysrael &tc. & o mesmo sucedeu a o Rey Saul com seu filho Leonatan, que havendo conseguido hua tao grande como gloriosa vitoria, pois só elle com seu moço forao causo do destroç do furioso exercito Philisteo, por aver encurrido no herem que havia deitado seu pay, o condenou como consta pella Sagrada Histoira em Semuel I. cap. 14. vers. 26. & naõ menos o Summo Sacerdote
Elazar, quando no sucesso da concobina do Levita, foram mortos os moradores de Yabes Guilhad, pela causa que diz em Iuezes cap. 20. vers. 5.

Que o juramento grande foi feito contra aquele que não subisse pello Senhor na Mispá, que morrendo morreria, e assim se melda de nome de Riby. Aqui, pois como! ouve juramento? senão que o herem he juramento, e o juramento he o herem; e assim os moradores de Yabes Guilhad, porque não subiraõ em companhia dos demais Tribus, foram condenados a morte.

Outro, si, o herem se dilata até as futuras gerações; e he o mesmo Decreto de Ieouah, de que se faz menção nos heremot; como assim diz em Yeosuah cap. 6. ver. 26. E conjurou Ieouah dizendo, naquella hora, maldito seja o homem que alevantar, e fabricar esta Cidade, a Ierihó; e seguiu & se cumpriu o seu Decreto dahi a tantos annos, em tempo de Achab, como consta pella Sagrad Historia, Rey. 1. cap. 17. vers. 1.

Ora, suposto que o principal branco de nosso assumpto, he, hua exortaçaõ, que espero com ella evitar hum grande absurdo, reprovar hua perjudicial doctrina, introduzida de animos maliciocos, preturbadores da dezejada paz, trazendo enxonados alguns sogetos dezejosos da liberdade, anhelando o mesmo que os faz cautivos do pecado, pois são causa de desunir a sua Congrega, cuja gloria, & felicidade consiste no contrario, pois então somos assistidos da sua Soberano graça; pois então somos imediatamente delle protegidos; entones se dguna de ser Rey nosso, & nos seus amados vassallos como assi o manifesta o corifeo dos Prophetas Mosseh Deute. cap. 33. vers. 5. E foi Rey em Israël, Rey, que he o Senhor Deos, bem entendido quando estã juntas do pouco as Cabeças, unidos os Tribus de Israël; & que mayor encarecimento, não o sendo senão a mesma verdade, como nos tem mostrado a expiriencia, sentença de nossos Sabios sobre as palavras do Propheta, Ossea cap. 4. vers. 17. Unido idolos Ephraym deyxao; que por estar falto de inteligencia, explicaõ nosso Sabios no Medras Rabot, Trat. 41. vers. 3. notay quam grata he a o Senhor a paz, & concorda na sua Republica, que estando entre si Ephraym, (inda que está cheo de idolatria) unido, deyxallo; porque não ha força que o possa contrastar, nem justiça que o possa condenar; & sendo pello contrario, diz o mesmo Propheta Ossea cap. 10. ver. 2. Dividiuse o seu coraçao, agora serão condenados; agora si, que tera lugar a justiça contra elles, he assi agora sendo condenados, serão castigados.

He este pois o abuso, que alguns presumindo mais do que sabem, & não de tementes de Deos, publicaõ, que quando da Sancta Congrega se apartaõ alguns individuos della, sendo em numero de des, formando Congrega a parte, se libraõ do herem. Contra estes digo, que a paixaõ, ó por melhor dizer, o peccado os sega, não os deixando considerar, que dado cazo não concedido, que assi fosse, logo donde está o valor do herem? & no nosso cazo não melita, porque o herem compreende que não possa haver nesta Cidade de Amsterdam, nem nos seus contornos outra Esnoga nem se podrão ajuntar para rezar
com minyan, senão com as condiçôens nelle referidas.
Daõ outros outra cór, que sendo o fundo falço a cór que lhe daõ, he da mesma calidade, dizem por desuadir a fraqueza dos que ignoraõ a verdade, ou que della se fazem ignorantes, que o tal herem naõ tem valor, respeito de naõ ser feito com authoridade de Haham, couza que eu nego, porque no tal acordo se acharãõ 4. Hahamim, que tam-

mestaõ firmados mas dado cazo que assim fora, naõ tem o Kahal bastante authoridade, & mais para o poder fazer digãõ que naõ; logo lhe darey em cara com hua authoridade que naõ tem replica. Manda o Rey Saul pena de herem, que ninguem coma naquelle dia, the que o Senhor lhes conceda hua assinalada vitoria ao povo de ysrail; transgire Ieonathan o herem sem comer, porque naõ foõ mais, (que chupar hua cana de açucar cujo licor o estava convidando) caya sorte sobre Ieonathan, dá a sentença seu pay conforme a Ley, Semu. I. cap. 14. ver. 45. dizendo Morrendo morrerást Ieonathan, porem diz no mesmo Propheta ver. 26. [sic: 46] E dreedemiraõ o povo a Ieonathan, & naõ morreu; por vintura o redemiraõ com dinheyro? naõ; pois com que? com authoridade que o Senhor lhe concedeu a Congrega; & a rezaõ o está dectando: porque o Rey naõ faz a o povo; o povo si, que faz a o Rey. Assi diz Selomoh nos seus Prover. cap. 14. ver. 28. E quanto maior for o povo, mayor será a gloria de seu Rey. Assi que pode mais a authoridade do povo, que o Real Decreto, inda que ajustado com a Sagrada Ley, [15] grande absurdo, insoportavel erro; mas mayor erro he, naõ conhecer o erro, considerando, que o Senhor quer castigar pecados com erros, & sendo os erros grandes, indicios são de grandes pecados, & naõ menos vaticinios de grandes castigos.
Os que querem por suas paxoems, ou por suas commodidades, escurecer a verdade, nunca lhes faltaõ saídas mais ou menos arriscadas, sayem dizendo, que quando se quebra hua Escamá, as demais perderáõ sua força, & valor. Por comparaçaõ, hua das constituçiôens do Sancto Kahal he, se eligãõ mais seis sojetoõs, para todas as ocurrencias do Sancto Kahal, & sendo esta hua das constituçiôens primeiras, & já naõ se observa, logo estamos libres das demais, demaneira, que querem tirar a authoridade a o Mahamad, que he o mesmo, q o Kaal, que naõ possa fazer, o desfazer, segundo pedir o tempo, & quando isso se instituiu, foi por dar satisfasaõ as tres Congregas, & entaõ unidas, se reduzirãõ nesta, que o Senhor nos ade conservar contra os dezenfreãos ventos: seçou a cauza, seçou o cauzado, pois ya se perderáõ da memoria, & ya naõ averá dous, que poder dizer de cada Esnoga, mais [16] provo, que ditto acordo por si mesmo está nullo diz assi, & se em algum tempo parecer tirar algo delles (dos acordos) o Mahamad naõ o podrá fazer senaõ os seis Diputados que agora os fizemso uniformemente ou daquelles que no tal tempo fossem vivos chamando em praça dos que faltarem outros, que os que se acharem prezentãs, nomearaõ das pessoas, que ouverão sido da Congregaçaõ ou Congregaçoems dos que faltarem, o que os dittoõs seis resolverem de acordo, seguirã: (pois todõs morrerão sem deixar nomeados outros em seu lugar, o ditto acordo por si mesmo está desfeito) & dado cazo que os ouvera, & que naõ se governa (o que naõ he) como se deve: o mau governo, naõ pode tirar o valor a o
herem, & que mais queriaõ os preturbadores? senaõ que com a quebra de hua Escamá, se quebraraõ todas; & somente se deve entender em cazos iguais.
Vamos a o desengano, de outro absurdo; & he: que todos dizem o q entendem, mas naõ todos entendem o que dizem: q elles naõ se acharaõ prezentes, nem firmaraõ o tal herem, & assi o naõ aprovaõ, com o que lhes parece estaõ desobrigados; falça doctrina: & lhe dizemos, naõ vedes, [17] que o herem de Moseh se dilatou athe as ultimas geraçoems entoneçs se valem do que dizem os Sabios que todas as almas se acharaõ prezentes encorporadas & por encorporar, eu o naõ nego porque seria negar a verdade, mas entendo que alegaõ o que naõ creem, nem tem rezaõ de o alegar, suposto seiga a mesma verdade, porque quatro saõ os modos de comentar, Literal, Alegorico, ou Moral; Anagogico, & Tropologico, porem ningem nega que a todos precede o Literal, & este he o documento que na verdade nos deixò Moseh entrudusido pera as futuras geraçoems, a saber, que o herem comprende, a os presentes, & auzentos, a os nacidos, & os que estaõ por nacer, mas demoslo de barato que direiõ de Ieõathan que naõ estando prezente, nem sabendo de nada, esteve sua vida arriscada se o naõ librara maior poder.
Agora vamos a os de Yabes Guilad, quero confesar, & assi o diraõ q tiveraõ noticia do decreto dado do summo Pontifice Elazar em companhia, & prezensa de todo o povo, he luogo certo que o naõ aprovaraõ, porque si fora por elles aprovado, claro está que viriaõ, naõ [18] vieriaõ, o foy ignorancia o foy maldade, se foy ignorancia ignorantemente moreraõ; & se malicia, bem o mereceraõ; & mais naõ lhe havia de valer a ignorancia por disculpa, porque tal he a força que o Senhor concedeu a o herem, que naõ val contra elle nemhua disculpa, nem vemos que Ieõathan se desculpasse, sendo que a tinha bem grande, & quando elle a ignorasse a o Senor lhe era manifesta, & a naõ quis aseitar pois manda deitar sortes.
Assi que esta he a causa que me moveõ a tirar a luz esta exortaçaõ, para desengano dos que por alqua maldita rezaõ de estado se deixaõ abuzar, & para reparo dos zelozos & tementes do Senhor, que naõ os insisseõ taõ prejudicial doctrina, quizerã que os naõ enganasse a esperança da mizericordia devina, porque muitas vezes se zomba daquelles que com sua confiança forem desagradecidos.
Proposto o antecedente, que espero seiga de todos aprobado, naõ nos deve admirar as desordems que passaõ entre nos, porque naõ he novo, o mesmo tem suscedido em outras Congregas, se bem diferimos em que elles eraõ faciles a reduzirse, & nõs duros, & tercos em obedecer. Seria couza dilatada, & naõ menos inteligible se ouveramos de [19] referir o que escrevem os authores, sobre o nosso mesmo sugieito, somente diremos por mayor o rezumo de suas palabras & se vereficará con sua authoridade o que pretendemos.
Prepugeraõ a o famozo Rabenu Moseh Gerundense, hua congrêa que ordena alguns decretos, em pró da Congrega com herem, & alguns particulares juraraõ em prezença de testigos, que elles naõ o aceitavaõ, & assi naõ entravan de diõas das tais ordenanças ou heremoth, preguntasse se tem algum valor o tal juramento, para encontrar dittos heremoth, a o que responde seiga notorio que todas as Congregas tem plena
authority sobre os seos Yehidim, para ordenarem na sua cidade como se fora o Senado Grande de Ysrael, & o Propheta Malachi cap. 10. ver. 11.

Diz assi, com a maldiçaõ vos sois amaldiçoadas a gente toda, dizendo que a mayor parte he o mesmo que o todo, assi os que transgerirem tenhaõ por serto a maldiçaõ, como consta da Guemará de Abodá-zará, & concluye dizendo, que os tais que juraraõ naõ fizerao o que deviaõ, nem tinhao authoridade para o poder fazer, & todos os que naõ seguem o que a Congrega, tropesaõ [20] & encorrem no herem, que pós o Kahal; naõ vemos que dito author fasa mensaõ de Haham, & deve ser como fica ditto, q a authoridade do Kahal he de todas a mayor, & prova mais clara he, o que dis o mesmo author, que serâ mais valioso, se se fez com aprovaçao do Haham, donde se emfire ser valioso o herem do Kahal ainda que lhe falte a authoridade de Haham, y suposto que por Arisbá parece necessita o Mahamad da companhia do Haham porque no fim do asima referido, de seu nome diz assi com tal que seiga com acordo de homem estimado, naõ contradis a o referido, porque elle naõ trata senaõ do Mahamad, mas naõ do geral, & naõ menos o dizer que seiga com acordo de homem estimado, que querem entender ser o mesmo que Haham, & apurado nem a o Mahamad obriga, a asistencia de Haham, porque elle bem sabia dizer Haham, mas como sabio naõ quis sahir do termo da Guemará a qual diz Homem estimado, entendo como se verificará adiante, que he homem de quem os cidadoems fazem estimaçao, & assi declaraõ homem estimado, por Parnás ou Deputado, Rabenu Nissim sobre a mesma Guemará diz desta sorte.

[21] Porem havendo homem estimado deputado sobre o Kahal sem falar em Sabio, & pera mayor verificaçao diz adiante senaõ tomou licença do tal Parnas de maneira que entende que o nome de homem estimado se dá a o Parnas, & assi mesmo o Haham Caro no Bet-Iosseph, de nome do citado Rabenu Nissim, estimado, se deve entender deputado por Parnas sobre a Congrega, & entendo que o Otur sedeu do mesmo, porque havendo dito homem grande y sabio, repite dizendo porem si ouver Haham & governador. Eu o aprovo coroborandoo com o seguinte argumento, se na Guemará naõ trata mais que de Homem estimado donde lhe vejo a autoridade pera acrecentarem dizendo homê e, Haham, ou governador, porque segundo a Guemarâ se o estimado q diz fora Sabio, disseraõ Sabio, se governador, governador, & elles daõ a entender que he necesario concurraõ nele duas calidades, sabio, & q este sabio, seiga governador; a desculpa que podé dar por naõ lhe aplicarmos semelhante descuydo, he que querem dizer sabio, ou governador, pois a qualquer delles se pode aplicar o nome de Homem estimado, & tornando a nosso pronto, [22] Arros assi tambem o afirma, como dilatadamente o Haham Ribi Levy Aben Habib na consulta 99. donde diz semelhantes palavras geralmente acordaõ todos os authores, que tudo o que o Mahamad ordenar em companhia do Haham, he de todo valioso, & firme, donde se deve notar tembem que o citado Arros naõ trata do Kahal, mas si, do Mahamad, com que fica probada nossa pretençaõ, que o Kahal tem plena authoridade pera poder pôr & dispor sem ser necessaria a entercedencia de Haham, somente se pode opõr contra o referido, a authoridade do Haham Ribi Iosseph Caro, a quem em todo segimos, diz assi, No seu
Sulhan Aruch tomo 4. cap. 231. ver. 28. Tem authoridade os moradores de hua Cidade pera por preso em todas as cousas como lhes parecer, & pòrem pena contra o q transgerrir a ordem, & assí mesmo os officiaes podem em quanto a seu officio acordar entre si, que ningem trabalhe no dia que tocar a seu companheiro (& fecha dizendo) o referido se entende em hua Cidade donde naõ hay Haham, porem se o ouver, o acordo será nulo, naõ sendo com sua aprovaçãõ, que parece da entender o contrario, do que sustentamos, a saber, que tambem o Kahal [23] necessita da authoridade de Haham (& Falando com o devido respeito) elle se enganou como se enganaraõ todos os que entenderaõ que o nome de אדמ הישר Homem estimado se entende somente, Haham, naõ sendo senaõ como fica dito, & provado, homem de quem os moradores de sua Cidade fazem particular estimaçãõ delle, seiga ou naõ seiga Haham a quem elegem, pera que se emcarregue das ocurrencias de sua Cidade & Kahal, fora do antecedente, pergunto, tem o Kahal por si bastante authoridade? forçozamente me confeçaráõ que si, pois diz que seguirá o seu acordo, quando naõ ouver Haham, mas naõ quando o ouver, logo como o Haham lhe pode tirar a authoridade que goza de rezaõ & de direyto, com que he forçozo dizer, que com a companhia de Haham se lhe acresenta, mas naõ que por sua causa, a haya de perder, donde por força de este argumento, infrimos o mesmo que pretendemos, que he a authoridade do Kahal, mayor quando for acompanhada com a do Haham, & assí o mesmo author, no seu famozo Beth Iosseph cita a destinçaõ de Rabenu Nissim, diz assi, porem naõ sendo em dano alheho, podem ordenar entre si tudo o que bem lhes parecer, se entende sem autho- [24] ridade de Haham.

E o Haham Ribi Moseh Alascar, na consulta 49. traz por inteiro a Tosaftá, que trata de todos os officiais, & explica que o que diz, que havendo homem estimado, será valiozo o tal acordo, & quando naõ, será nulo, só se refere a os officios ditos, porque he couza particular, porem naõ a o que antecede dos moradores da Cidade, que esses, que haya Haham ou naõ haya, podem ordenar tudo o que lhes parecer, & sigue dizendo, que assí o entendem hum & outro, Rabenu Moseh, & o mesmo afirma Bar Cessat, & concluye dizendo, que os moradores de hua Cidade podem ordenar, suas ordenanças, sem necessitarem de homem estimado, que sendo em companhia de seu Beth-Din, entaõ, he tanto mais valiozo, a tanto que podem confiscar a fazenda, do transgressor, como consta da Guemará, probado por Esrah capitulo 10. verso 7. ויעבירו קול ביהודה וירושלם לול בini השכלה. לעםוkerja וירושלם על אום שלושת הימים联合国 נשים השכלה יישר ויהי והיו בר網站 שלושה השכלה & passarão boz em Ieudah, & Ierusalaym, a todos os filhos do cautiverio para se juntarem a Ierusalaym, & todo o que naõ viesse a os tres dias (segundo) o conselho dos Príncipes & velhos, seiga confiscada [25] sua fazenda, & elle seiga apartado da Congrega do cautiverio, & tanto que na Guemará de Gutim fol. 36. repetido na Guemará de Yebamoth fol. 89. & mais dilatado, na Guemará de Mohet Katan fol. 16. & diz assi, אמר רבי יוחנן בן נחמן מהלך בו חכם שלושת הימים והיו בר網站 שלושה השכלה & dondenos consta, que a confiscaçãõ do Senado he confiscaçãõ: que assí diz & aquelle que naõ vier a os tres dias &ct. E quem quizer mayor clarez, o pode ver no citado author, & em resoluçãõ do referido, se me premita dar hua dinstinçaõ & he que sendo o
Haham eleyto pello Kahal entones necessita o Mahamad de sua companhia, tanto porque possa ser foy essa a intenção dos que dizem Haham, & governador, a saber, quando concurrem nelle ser Haham & governador, que he o mesmo que dizer Haham do Kahal, tanto por tapar a boca a os que querem escurecer a verdade, ou eficionar a os que dezeigaõ observalla com razoems aerias & falças, advertindo, que a destinçaõ asima tampoco se entende, com o Kahal, como fica provado.

Agora trataremos do principal, & mais importante, para conservação da sancta Congrega, & aumento da Sagrada Ley, alimento dos pobres & ter propicio a o Senhor Deos, com a conformidade, & uniaõ que elle tanto ama, sendo hua calidade oculta em Ysrael, que os pode fazer imortal a em individuo, assim como saõ em especie, como disse o Propheta Malachy cap. 3 ver. 8 Que eu .A. naõ me alterey, nem vos filhos de Iahacob naõ vos acabastes. E digo assim hay cousas ainda que parecãõ insolentes, se fundaõ em algua rezaõ de estado, porem hay outras que lhe falta tudo, como sucede no nosso cazo que agora temos entremãõs.

Hum Kahal que desde seus principios foi instituydo com pena de herem que receberaõ sobre si, & firmaraõ todos os que naquelle tempo se acharaõ, que naõ pudesse haver nesta Cidade nem em todos seus contornos outra Esnoga, nem se pudecem ajuntar a rezar com minham, senaõ na casa de lutozo ou de noivos, ou por accidente; & alguns naõ conciderando o mal que para si fazem, & o desconserto que pode causar, com o seu exemplar sem que pertinazmente queiraõ presistir na sua má eleiçaõ, & por payxoems particulares, apartandosse do geral agora veraõ manifestamente seu erro, com a authoridade dos mais famozos authores, veraõ que he o mesmo que hua nevoa facil de desfazer a vista dos contantes rayos do Sol da luzente verdade.

Nas consultas do sciente Medina taõ requestadas consulta 37. direy brevemente o compendio, & resumo com algumas palavras propriaõs do proponente, possa ser que o modo de falar obre, reduzindo alguns coraçãoõs porque suposto que o Senhor Deos diz que somos duros de serviz, he por nossa constancia, mostra o proponente com lagrimas ainda que as naõ vemos, o sentimento devido, dizendo assi, eu sou o homem desgraciado & infelice, vendo a afliçaõ de hua Congrega illustre, por estremo gloriosa, entre as demais Congregas, donde se acha toda a caridade, & cadeiras da incorrubível justica, eminentissimos Sabios, que faraõ a os famintos, & mataõ a sede dos sedentos, Amos ca. 8. v. 1. Naõ famintos de paõ, nem sedentos de aguas, mas sim por ouvir a palavra do Senhor, que assi lhe chama o Propheta, nem faltavaõ nella sujeitos nobres, & de illustre geraçaõ, perfeitos nas virtudes, & naõ menos coroados com a coroa da ley, & da sciencia, fama, & gloria, agora estaõ vendo meus olhos, cousa que naõquizera ver, que se levantaraõ alguns sujeitos profanando o Sagrado Templo, & se acomunaraõ dizendo fassamos altar (grande encarisimento pois assi chama a os que se apartaõ do geral) como fizeraõ sem fazer cazo dos sujeitos pios, que os quizeraõ presuadir, nem do herem & maldiçoems &ct. Alguns tornaraõ sobre si, que naõ he deshonra conhecer o erro & mais sendo tão prejudicial, ouros ainda persistem pretinaces, dos reduzidos hay alguns, que escropulaõ
o haver jurado que haviaõ de sustentar o seu acordo, & naõ era senaõ desacordo. A o que responde o author citado, provando primeiro que o juramento que fizeraõ, que continha ficarem apartados da Congrega naõ tem valor nenhum, consta pella Guemarã de Sebuoth hum homem que jurou de naõ observar tal misvá, & a observou quebrantando seu juramento he libre, por que o seu juramento naõ pode prejudicar a o primeiro feito no Monte de Sinay, & sendo assi diz o mesmo author naõ pode haver major misvá, que sustentar o primeiro juramento, com que se obrigou a observar a dita escamã feita com o herem, que he o mesmo que juramento com que vem a ser o jura-

[29] mento, segundo, jurar de naõ fazer a misvá, & assi naõ he juramento, outras provas tras o author bem eficaces mas como naõ melitaõ com o cazo que a nós nos sucede & somente alegy com o antecedente pello que possa suceder, que ja algum que preceptitado se despenhaõse à fazer semelhantes juramentos.

E vamos a conclusaõ de nosso author que rezolve dizendo o mesmo sucedeu no Kahal de Geruz, & no Kahal de Lisboa, Congregas na Cidade de Constantina, acordando consignuo os illustres Hahamim & com a sentença que se deu, tornaraõ a congregar a seu Kahal, como aquelles que temendo o castigo se retiraraõ do abuzo em que estavaõ, assi que os apartados da Congrega, ficão obrigados (ainda que ajaõ jurado o contrario) tornrarão a congregar com seus Yrmaõs, porque o tal juramento naõ he de valor, & se pertinaces insistirem em sua rebeldia (diz o author) & naõ quizerem reduzirõ saibaõ que estaõ emhermados (por mais cores que procurem dar, porque todas saõ falsas) & com a reducçaõ seraõ curados.

Estou vendo que me dizem que o herem naõ comprende mais que o rezar fora da Esnoga com [30] minham que obedecem, porem querem ficar em suas casas, bem o podem fazer, mais vejaõ que serã a sua custa, pois a oraçaõ em Congrega tem grande força & valor, & sendo só grande risco como dizem na Gemará de Berahoth sobre o verso Psal. 102. ver. 18. ננה אל פילfadeIn ורדה אוה בוה איפילאם Olhou para a oraçaõ do solitario, & naõ despresou delles a sua oraçaõ, notando que este fraze de (פסי) olhou he o mesmo que dizer especulou, quando o Senhor Deus ouve hua só voz diz, quem he este atrevido que se aparta de minha Congrega, corralhe a folha veigamos em que funda o seu atrevimento, mas a oraçaõ da Congrega geral, jamais a despresou o Senhor, fora disto he sentença da Guemará de Berahoth todo aquelle que tem Esnoga em sua Cidade, & naõ vay a orar nella, se estima por vezinho mao, como provaõ pello Propheta Yrmihau que diz na maneira seguinte כה אמר ה על שבני הרעים הנוגעים בנחלה אשר הנחלתי את אמי את ישראל Assi diz o Senhor a todos meus vezinhos maos, os que toçaõ na eredade que fiz eredar a meu povo Ysrael &ct. enfirece das palavras do author que foras de ser vezinho mao, pois poem defeito na caza do Senhor, naõ fazendo cazo della, naõ honrandoõse della, padecer á cautiveiro, elle, [31] & seus filhos, como segue o mesmo Propheta & cororborasse com o que diz na mesma Guemará de Berahoth que naõ he ouvido do homem a oraçaõ senaõ na Esnoga, & entende (וגיסי) ʹq pom defeito.

O Haham Adraby consulta 39. escreve, que se lhe propõs de Selonique, donde se padeciaõ diferentes desconcertos ouve entre elles o mesmo que a nós nos aconteçesse de

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alguns que se apartarão do Kahal, & os Hahamim delles, que nunca podem ser pocos, ordenarão entre outras cousas, que ninguém se possa apartar do seu kahal nem fazerem Esnoga de novo mais daquelas que de presente havia no dito Selonique com todas as maldiçoems & heremoth, & consultandosse com o dito author, respondeu, que direy em summa, que dado caso que os tays ouveissem jurado com maiores maldiçoems que se havia de apartar & dado & naõ concedido, que este juramento seiga valioso, dogo fazendo diferença do juramento, a o herem, que teraõ obrigação observar o por isso se livrão do herem referido, na escamá, porque esse sempre fica no seu ser, com que sempre os tays estão condenados, & assi ficaõ emhermados, & desgraciados, diante do Senhor Deos, pello que resolve que os [32] ditos se ajão de absolver do juramento, que fizerão, & tornando a sua Congrega, ficaõ se nenhum escrupulo. He na consulta 254. afirma o mesmo, & também na consulta 113. assi se enfire do Haham Ribi Moseh Trany na consulta 84. com que damos luz a os que naõ sabem a força do herem, que he tal como fica dito, que no tempo da nossa felissidade & quando posuyamos o reyno merecia morte, o que o trangerisse, sendo posto por el Rey, ou Senado grande de Ysrael, suposto que tudo nos falta fica a cargo do Senhor Deos, sua execução, a qual pode tardar, mais naõ faltar, com que deixamos resolvido, & provado, o que pretendemos com as seguintes concluzoems.

A primeira, he manifestar o valor do herem, & suas circunstancias, & que somente o Haham, ou três homens em seu lugar o podem absolver, quando algum particular encurrir nesse.

Segunda, ser tam grande a authoridade de hum Kahal, que naõ necessita de outro favor.

Terceira, que a mesma authoridade tem o Mahamad quando for eleyto juridicamente, a saber, sendo eleyto pello Kahal, ou pella mayor parte [33] delle donde assi se uza, ou quando o Kahal sedeu da dita sua authoridade & a deu a os primeiros eleitos, paraque elles sucessivamente folsem ellegendo a os que lhes parecerem benemeritos, & naõ reprobada pelo gera.

Quarta, que com tudo havendo Haham assalariado ou eleito pello Kahal, donde eleje o Kahal, ou donde eleje o Mahamad, necessita de ser acompanhado.

Quinto, que o herem tem o mesmo valor, que os demais desde o de Moseh Rabenu, em que obriga a todas as geraçãois presentes & futuras, sem se poder alegar ausencia nem ignorancia, porque a calidade do sujeitos naõ desfaç na do herem, nem na virtude que o Senhor Deos lhe deu.

Sexta, que todos os que tratarem com os transgreçores ficaõ da sua mesma calidade, & obrigados a huas mesmas circunstancias.

Septima, o fim de tudo mostrar o que pretendemos, com casos, & exemplos da mesma calidade sucedidos, que havendose constituydo a uniaõ do nosso Sancto Kahal, com a aprovação de todos, & por todos firmado em companhia de seus Hahamim com pena de herem, que aquelles que se se- [34] pararem contra o acordo, que naõ se podem, nem ninguem no mundo os pode librar da tal pena.

Octava, de caminho advertir, a os que temem a o Senhor, & receaõ cayr em semelhante
rigor, & por naõ transgerir o herem se deixaõ ficar em suas cazas, o mal para si o fazem, & assi que espero seiga esta fraca exortançaõ de se colher o fruto de dezado, & a todos de tanto proveito pera conservaçãõ do Sancto Kahal, honra do Senhor Deos, & gloria de sua Sancta ley, coma qual esperamos salvarnos & merecer & gozar do prometido Siglo, como diz o Propheta Yesayahu cap. 59. ver. 20. & virá redemidor, & pellos que de seus pecados, se reduzem diz o Senhor, que seiga em nossos dias Amen.

Oje 4. de Elul de 5480.

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ABSTRACT: Early modern rulers (or ruling bodies) who chose to readmit Jews in places where they had long been banned were faced with theological dilemmas and practical problems. Although it is true that the principle of freedom of conscience was gaining increasing acceptance, its adherents were rarely clear about whether it could be applied to non-Christians. And while the economic interests of rulers favored the settlement of Jews in their lands, the opposition of guilds and clergy could not be ignored. In these circumstances, a rather striking policy of evasion was adopted - in France, in the Netherlands, and in England. The legal status of the Jews remained formally unclear, while in practice Jews were allowed to establish themselves with unprecedented rights. To illustrate this legal tactic, I will present the Amsterdam Regulations of 1616 concerning the Jews - a rather meager document which constituted the legal basis for Jewish settlement in that city for nearly two centuries.

This presentation is for the following text(s):

- The Regulations for the Jews of Amsterdam (1616)

Miriam Bodian

University of Texas at Austin, USA

Duration: 54:28
INTRODUCTION – REGULATIONS FOR THE JEWS OF AMSTERDAM, 1616

In the 1590s, a trickle of emigrés from Portuguese and Spanish lands (including Antwerp) made their way to the city of Amsterdam in the newly independent Dutch Republic. These emigrés were “New Christians” – descendants of baptized Jews who had lived outwardly as Catholics in Iberian lands. Their religious identity upon their arrival in Amsterdam (as in other places where they spearheaded the resettlement of Jews in western Europe) was initially ambiguous. But by the early years of the seventeenth century they had organized an openly practicing Jewish community, with the implicit consent of the authorities. From this nucleus there developed one of the most powerful Jewish communities in seventeenth-century Europe.

In marked contrast to the Jewish communities of Germanic lands and Italy, where medieval patterns continued to evolve, the Portuguese Jews of Amsterdam were never granted a charter of settlement. They were never officially denied (or granted) freedom of worship. They were not burdened with sweeping economic restrictions or special taxes. The rather meager document presented here constitutes the primary legal instrument that governed their settlement in Amsterdam for almost two centuries. It was issued in 1616 by the burgomasters of Amsterdam as a provisional measure, but was never expanded or revised. It was amended only by an (admittedly significant) regulation of 1632 that denied Amsterdam’s Jews the full rights of burghers. Since the States, or governing body, of the province of Holland decided in 1619 to leave the responsibility for determining the status of the Jews in the hands of the municipalities, the 1616 document oddly became the definitive statement concerning the status of the Jews of Amsterdam.

The regulations appear to have been prompted by complaints from members of the Reformed clergy about a) sexual relations between Portuguese Jews and Christian
women; b) criticisms of Christianity by Portuguese Jews; and c) the conversion of Dutch Christians to Judaism (a rare but scandalous occurrence). There is nothing novel in the prohibition of these behaviors; indeed, they were standard features of Jewry law. What is striking is the absence of hostile rhetoric. The restraint in the prohibition of anti-Christian speech and writing is particularly noteworthy. Portuguese Jews were notorious for their anti-Christian views (indeed these views was integral to their elaboration of Judaism). Yet the regulation prohibiting the public airing of their views entirely lacks the usual references to Jewish “blasphemy,” “impudence,” and the like.

A casual reader might almost overlook the endorsement in these regulations of a municipal council decision made four years earlier. The Jews were “to comport themselves...in all modesty, according to the laws of this country and the specific regulations of this court, and particularly according to the resolution issued to them on May 2, 1612.” In fact, the resolution of 1612, issued under pressure from the Calvinist clergy, not only called for modesty, but prohibited the construction and use of a synagogue. In a maneuver that was to be repeated many times, the municipal council had pacified the clergy by passing the resolution, while quietly subverting it: The building was purchased by a Christian (indeed, a member of the municipal council), and was used, as intended, as a synagogue. The regulations of 1616, like this earlier resolution, served to mollify the Reformed Church authorities and send a message to the Jews to keep a low profile.

The ambiguous, ill-defined status of the Jews of early modern Amsterdam does not lend itself to easy interpretation. Striking parallels can be found in the indeterminate legal status of other communities founded by New Christians and their descendants in southwest France and London. One could argue that the ruling elites of these nations adopted a policy of legal evasion as a means of attracting an important mercantile population while at the same time keeping powerful clerical bodies and guilds at bay. There is a good deal of truth to this. But it is also a grave simplification. The ruling elites of these nations were not free of their own historical anxieties about Jews, and were not always at odds with the clergy. For example, the great jurist Hugo Grotius, asked by the States of Holland to draw up a set of regulations for the Jews in 1615 (his draft regulations were never implemented), recommended a quite restrictive policy with an explicitly conversionist agenda. And although the 1616 regulations granted extraordinary freedoms to the Jews of Amsterdam, these freedoms were not anchored in explicit legal principles.

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Representatives of the Jewish Nation, having been so ordered, were summoned today by the magistrates of the Court, and they arrived in sufficient number. It has been found that some among them exercise very great and unchecked license to visit and converse with the women and daughters of these lands: this not only causes great vexation in this City and its environs, but produces other harmful results. There is no longer any intention of tolerating this, but rather to punish appropriately the offenses that have been committed. And to better warn them [the Jews] and to prevent such excesses in the future, which violate the good governance of this city and the constitution of this same Christian community, they will be admonished not to speak or to write, and to ensure that nothing be spoken or written, which could in any way serve to harm our Christian religion; nor to attempt to entice any Christian person away from our Christian faith or to circumcize such a person; nor to have sexual intercourse with any Christian women or daughters in or out of wedlock, even if they are of ill repute. And [they are] to comport themselves with others, as well as with the good authorities of this city, in all modesty, according to the laws of this country and the specific regulations of this court, and particularly according to the resolution issued to them on May 2, 1612; and [they are] also to distribute this proclamation and warning to everyone of their Nation. It is the intention of the Magistrates of the Court to proceed severely against offenders and violators of the Christian Religion and the good governance of this city, and to administer such justice as circumstances require in accordance with civil law, as well as with public ordinances and decrees. The excuse of ignorance will not be accepted. Moreover, in future, the following form will be used in taking the oath (which will be imposed upon them by the judiciary or by the request of any party), and the oath will be administered accordingly.
Oath

You swear by the Almighty, living God who has created heaven and earth and who has handed down His laws through Moses, to be honest and sincere in your replies to what is asked of you or presented to you here; but if you make a false statement, fully or in part, you will be subjected to all the temporary and eternal curses, plagues, and punishments which the God of Israel visited on Sodom and Gomorrah, as well as on Korach, Dathan and Abiram, and with which He has threatened all those who invoke and use His name frivolously and in vain. So may the Almighty and Omniscient God, Creator of heaven and earth, help or punish you.

[same in Spanish]

And all this [is] provisional until a more specific order is issued by resolution of the High Lords of the States of Holland and West Friesland or by the Magistrates of the Court. Thus confirmed by the Mayors demptis Witsen and Benninck and all the aldermen on November 8, 1616, and announced to the Jewish Nation, in order to regulate them accordingly, on the 17th of the aforesaid month.
Amsterdam Regulations Concerning the Jews (1616)
The Regulations for the Jews of Amsterdam (1616)
1616

Prepared by Miriam Bodian, University of Texas at Austin, USA

Op huyden is by mijne Heeren van den Gerechte die van de Joodsche Natie in competenten getale voor hare E. ontboden en verschenen sijnde aengeseeyt/ Alsoo klaerlick word bevonden/ dat eenige onder haar luyden seer groote ende ongebonde licentie gebruycken in ’t frequenteren en converseren met de vrouwen ende dochteren van dese Landen: daer uyt niet alleen groote ergernissen onder de Gemeente van dese Stad ende al-omme worden gecauseert/ maer oock geschapen zijn andere schadelicke effecten ende inconvenienten te sullen ontstaen; dat men over sulx niet van meeninge is ’t selve langer te gedoogen ende te passeren/ maer de fauten ende delicten al reede gepleegd te doen straffen naer behooren. Ende ten eynde haer voor het toekomende beter mogen wachten ende onthouden van soodanige en andere excessen/ strijende jegens de goede policie van dese Stad ende constitutie van der selver Christelicke Gemeente/ dat syluyden ten over-vloet worden gewaerschout niet te spreken ofte schrijven/ oock sorge te dragen/ dat niet gesproken of geschreven worde, ’t welcke eenigsints soude mogen strecken tot versmadenisse van onse Christelicke Religie; niet te poogen eenig Christen persoon van onse Christelicke Religie af te trekken ofte te besnijden; met geene Christenen vrouwen ofte dochteren in ofte buitven houwelick eenige vleeschelige gemeenschap te hebben/ niet tegenstaende oock de selve van oneerlick leven mochten wesen. En haer voorts so onder den anderen als tegens de goede Gemeente deser Stad te gedragen in alle modestie ende volgens de Placcaten van den Lande en particuliere Keuren van desen Gerechte; oock voornamentlickien volgens sekere Resolutie haerluyden op den 2 May 1612, bekent gemaeckt; mitsgaders alle die van hare Natie van alle ‘t selve advertentie ende waerschouwinge te laten doen; alsoo de meeninge is van mijne Heeren van den Gerechte jegens de contra-venteurs ende violateurs van de Christelicke Religie en goed Policie binnen dese Stad ernstelick te doen procederen ende in conformité van de Civile ende Beschreven Rechten/ mitsgaders publijcke Ordonnantien en Keuren over de selve soodanig Rechte en Justitie te
administreren/ als naer exigentie van saken bevinden sullen te behooren; sonder dat
eenige excuses van ignorantie sullen worden geadmitteert. Sal mede die van de
Joodsche Natie voortaan in ’t doen van den eed (welcken haer of by Sententie
gedefereert ende op-geleyd/ of ten versoeyece van eenige partijen van de selve sal worden
gevordert) het na-volgende Formulier voor-gedragen/ ende den eed daer op af-genomen
worden.

Eed.

Gy sweert by den Almagtigen ende Levendige God/ die Hemel ende Aerde geschapen
heeft/ ende door Mosem sijne Wetten gegeven/ oprecht ende waerachtig te wesen ’t
gene u alhier gevraegt ende voor-gehouden word; en so gy in ’t geheel ofte deel iets
valscheelieke ofte tonrechte verklaira/ dat gy u alle tijdelicke ende eeuwige
vermalerijdingen/ plagen en straffen onderwerpt/ welcke den God Israels over die van
Sodoma ende Gomorra/ oock Corah/ Dathan ende Abiram heeft gesonden/ ende allen
den soodanigen gendreygt/ die sijnen name valscheelick ende lichtvaerdelick aen-roepen
en gebruycken. Soo waerlick helpe ofte straffe u den Almagtigen en Al-wetenden God,
Schepper des Hemels ende der Aerdien.

Vos jurais a Dios todo poderoso y vivo, quien criò el Cielo y la Terra, y dío sus Leyes por
Moysen, ser justo y verdadero lo que aqui se vos pregunta y propone; y si en todo ò en
parte declarais alguna cosa falsa ó injustamente, que Vos os condenais y someteis a
todas las maldiciones, plagas y castigaciones temporales y eternas, que el Dios d’Israël
ha embiado a los de Sodoma y Gomorra, y assi mismo a Corah, Dathan y Abiram, y ha
menaçado a todos los que invocan y usurpan sy nombre falsa y temeramente. Que assy
verdaderamente os ayude ó castique Dios todo poderoso y todo sabidor, Criador del
Cielo y de la Tierra.

Ende dit alles by provisie tot dat by Resolutie van de Ed. Hg. Mo: Heeren Staten van
Holland ende West-vriesland/ ofby mijne Heeren van den Gerechte hier op nader
ende speciaelder ordre sal wesen geraemt. Gearresteert by alle de Burgermeesteren/
ende dien-volgende die van de Joodsche Natie aen-geseyd/ om haer naer deser te
reguleren/ den 17. der voorsz. maend.

From: Hermanus Noordkerk, Handvesten ofte Privilegien ende Octroyen...der Stad
Amstelredam (Amsterdam 1748).

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Under imperial Protection? Jewish Presence on the Imperial Aulic Court in the 16th and 17th Centuries

Barbara Staudinger, Institute for Jewish History in Austria, Austria

ABSTRACT: From the middle ages on Jewish life in the holy roman empire was characterized by their egal status as servants of the imperial chamber (servi camerae, Kammerknechte). Paying taxes to the imperial chamber, the Jews stood under special protection of the Emperor. The so-called Speyrer Jew Privilege (1544) stated the legal framework of the Jewish community of the Empire, prohibiting expulsion, and „unjustified“ acusations of ritual murder and securing undisturbed religious practice, and imperial conduct and protection. But what was this privilege along with other privileges from indiviuals worth in reality? Based on two cases from the Imperial Aulic Court (Reichshofrat) my lecture will focus the implementation of imperial law as well as the opportunities of Jews using the imperial court to push through their right against local authorities.

This presentation is for the following text(s):

- Supplication of Samuel Ullman to Emperor Ferdinand II in case of restitution ct. the Landgraf Wilhelm of Leuchtenberg, s. D.
- Supplication of the Franconian Jews to Emperor Maximilian II in case of a ritual murder accusation, s. D.

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Jewish Presence on the Imperial Aulic Court in the 16th and 17th Centuries

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From the middle ages on, the life of Jews in the Holy Roman Empire was characterized by their legal status as servants of the Imperial Chamber (servi camerae, Kammerknechte). Since they paid taxes directly to the Imperial Chamber, the Jews stood under special protection of the emperor. The so-called Speyrer Jew Privilege of 1544 provided the legal framework for Jewish life in the Empire. It prohibited expulsion and “unjustified“ accusations of ritual murder and secured the undisturbed practice of their religion, imperial conduct and protection. Furthermore, any cases of ritual murder for which well-founded circumstantial evidence and witnesses were produced had to be brought before the emperor. The local authorities were denied jurisdiction in such cases.

Historical research has considered the Speyrer Jew Privilege as “something of a progress” with regard to ritual murder accusations. Although these accusations were not generally prohibited, special proceedings were laid down which were to redirect the jurisdiction from local courts to the Imperial Legal Courts and thus afforded more legal certainty. However, this innovation did not stem from an overall pro-Jewish attitude, but was an attempt to strengthen imperial rights against local and territorial authorities. The emperor as the protector of the Jews was not willing to give up his rights. Especially in the 16th century the emperor tried to forge even closer ties with the Jews by giving them special privileges, both communally and individually, and by having cases involving Jewish rights tried by the Imperial Aulic Court.

Did the Speyrer Jew Privilege really cause a “rationalisation”, or heightened legal security, for Jews? The first case to be discussed involves a ritual murder accusation in the Bishopric of Wurzburg. The background of this accusation was political, as the bishop’s main aim was to weaken the Franconian Imperial Knights. After the expulsion of the Jews from Wurzburg in 1560, no Jews lived within the territory of the bishopric any more, but the territories of the Imperial Knights and neighbouring counties still housed Jews. The accusation of ritual murder gave the prince-bishop a welcomed
opportunity to demand the expulsion of Jews living in the neighbouring territories and counties. His actions were thus an instrument in the basic conflict between princely sovereignty and the autonomy of the Imperial Knights – comparable to the emperor’s attempt to weaken princely power by giving privileges to the Jews.

The Jews’ right to live and trade within the Holy Roman Empire, as supported by the emperor, was increasingly being questioned or denied by territorial and local authorities. This is also evident in the second case, a lawsuit of Samuel Ulmann against his lord, the Landgrave of Leuchtenberg, concerning outstanding debts, confiscation of property, and illegal inprisonment. Samuel, who came from a well known Jewish family of Gunzburg (Swabia), appealed to the Emperor and the Imperial Aulic Court in order to defend himself against injustice and protect his rights against his lord.

These two examples show the difficulties in realizing Jewish rights in the territories and counties of the Holy Roman Empire. While the emperor was interested to protecting the Jews and upholding Jewish rights against local authorities, political considerations often demanded a different course of action in order not to offend those local authorities.

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October 18, 1570

Translated by Barbara Staudinger, Institute for Jewish History in Austria, Austria

Supplication of the Franconian Jews to Emperor Maximilian II. concerning a Ritual murder case, s.d., Haus- Hof- und Staatsarchiv Wien (HHStA), Reichshofrat (RHR), Antiqua 1157, Nr. 4, unfol.

We, the undersigned most humble Jews, are forced to address to Your Imperial Majesty this most humble supplication and complaint. Both Your Imperial Majesty’s Most Enlightened, Mighty and Unconquerable Father and Predecessor, Emperor Ferdinand of the Empire’s most praiseworthy and blessed memory, and Your Imperial Majesty Yourself have most graciously privileged the Jewry of the Empire, besides other favours and privileges, to pass, trade and walk safely and peacefully in and through Franconia. In addition, all persons of high and low standing were seriously and under penalty ordered to leave the Jews in peace and quiet and not to hinder them in any way. In spite of all this, some time ago our Right Reverend Gracious Prince Bishop Friedrich of Wurzburg accused two poor innocent Jewish boys of a murder and arrested them in Wurzburg; prohibited Jews under penalty from entering the town of Wurzburg; and raised the customs and safe conduct fees for Jews in Iphofen and other towns, against the previous custom. Similarly, in His Highness the Bishop’s town Volckach, no Jew’s person or life is safe, but the Jews are being beaten, pelted and insulted. This kind of conduct is then not punished; instead, the mayor answered the complaints by the Jews by saying that he could not help and that they should sue in Wurzburg. On top of this, a citizen of Wurzburg by the name of Hans Schimell, who lives in Unter-Eisensheim, beat and wounded the Jew Abraham of Hirschfeld on his doorstep, against all law. In addition, the Reeve of Wurzburg at Essleben, Valtin Buhlman, recently beat a Jew of
Schwanfeld, who had paid him a huge amount of usury for a small loan, so severely with a baton that he could not move his arm for a long time, and without a cause; when the Jew then claimed the protection of the Imperial law, the reeve answered contemptuously with swear words.

Since, Your Most Gracious Majesty and Lord, all that has been told is true, and since in many other towns in the Bishopric of Wurzburg Jews are daily and against all custom being persecuted and taken advantage of and oppressed, we, on behalf of our brothers the Jews in Franconia and for ourselves, beg Your Imperial Majesty most humbly and urgently to graciously order these actions to stop; to graciously protect us through the Imperial privileges; and to order the previously mentioned Bishop of Wurzburg earnestly in the future to leave us in peace and unhindered as before. In particular, we beg Your Imperial Majesty to award the previously mentioned two culprits, His Highness the Bishop’s servants and subjects, a just penalty including a complete refund of doctors’ fees, compensation, expenses and damages; to stop such violent criminals and others like them; to allow all Jews to pass through and trade in His Highness the Bishop’s province, bishopric and territory; and to permit us to remain under the sovereignty of the Imperial Knights.

We and our brothers the Jews in Franconia are always willing to serve Your Imperial Majesty in most humble obedience and with greatest diligence.

Representatives of the Jewry of the Province Franconia

Attachement:

Memorandum from Bishop Friedrich of Wurzburg to Emperor Maximilian II. concerning a ritual murder case, Wurzburg, October 14, 1570, Haus- Hof- und Staatsarchiv Wien (HHStA), Reichshofrat (RHR), Antiqua 1157, Nr. 4, unfol.

Your Imperial Majesty can at all times be certain of my most humble and diligent services. Most Gracious Emperor and Lord,

I have most humbly and with the appropriate respect received and read three letters from Your Imperial Majesty: the first was issued in Schwabisch Hall, was dated from June 13 and arrived on June 18, while the other two, dated from August 5 and September 26, concerning the Jews Mosse and Gumprechten, were delivered together on October 3.

Had I received the other letter from Your Imperial Majesty, which was issued on August 5, earlier, I would not have left it unanswered; therefore, I would like to apologize most humbly to Your Imperial Majesty. In Your letter, Your Imperial Majesty report of the complaints of Mosse and Gumprecht, Jews of Dortzbach; that they had agreed to
interrogation on the subject of the suspicion that had fallen on them concerning the murdered son of a baker; that they wanted to prove their innocence and had named a next person, Ulrich Steurieth of Rinderfeld, as the true culprit; and that they had, for the purpose of the interrogation of witnesses who should prove this person guilty, asked me for letters to the witnesses’ lords. They claim that I had refused them all this and had arranged to delay the proposed voluntary interrogation and immediately proceeded to torture them. In addition, Your Imperial Majesty ordered me in Your third and last Imperial letter, if matters were indeed as in the Jews’ report, and if the alleged culprit who was to be found guilty with the help of the witnesses had indeed been released without bail, to order my secular counsellors and commanders once again to release the Jews on bail and security from their long captivity, or, should I not do so, to inform Your Imperial Majesty of my well-founded and serious reasons.

First, concerning the interrogation offered by the Jews and the proof of their innocence, namely that another person was guilty of the murder, I will not keep from Your Imperial Majesty my true opposing statement on the issue. The lawyers of the captured Jews had originally offered to prove the innocence of the arrested Jews and the fact that someone else, the potter Ulrich Seidenschwantz - who in Your Imperial Majesty’s letter was called Ulrich Steurieth and who at that time had lived in Rinderfeld, but had later moved with his family from there to the hamlet Strut, located in the tithe district Rothingen, under my sovereignty - that this Ulrich Seydenschwantz was the true culprit in the murder of the baker’s son. Besides they ask that I arrest and imprison said culprit; that I allow them to prove the innocence of the incarcerated Jews and that the culprit is said Seidenschwantz; and that I should conduct the interrogation at their expense.

The lawyers insisted on proving this, in spite of some important evidence and causes for suspicion: that the said son of a baker, who comes from Hollenbach under the sovereignty of Hohenloe and was about 12 years old, could only have been murdered and killed by these Jews, because those were present at the site of the murder at the time and no one else had been seen, and not because of money, since he had no more than one and a half batzen (small currency) with him. Since it was found, when the body was inspected, that the veins at the side of the boy’s neck had been slashed but not pierced, it must be concluded (since very little blood was found on the ground at the murder site) that his blood had been diligently collected. In addition, it should be told that on the day after the murder the entire population of the two villages Hollenbach and Alringen (the murder had been committed approximately half way between them in a field) had to gather, and everyone had to touch the corpse of the boy; but there was no sign with anyone. But when, finally, the captured Jews were brought there and had to touch it as well, the corpse visibly began to sweat and bleed, as should have been reported to Your Imperial Majesty. Therefore, according to such evidence and other reports, I had reason enough to subject the arrested Jews to torture. However, in order that their lawyers and friends should not be able to complain about the production of
evidence as had been offered; or that they had been treated unlawfully and against the
custom; and because it is my will that no one, Christians, Jews or heathens, should be
endangered or discriminated against in capital cases involving blood and life; and
because I would not be able to justify such actions before Your Imperial Majesty or even
more before God Almighty at Judgment Day; I sent an oral message to the lawyers of the
Jews through my counsellors and commanders that, if they put in 400 florin bail, they
could try to prove that the alleged culprit had committed the murder; if they were not
able to prove this, however, they should prepare for trial in the bishopric.

Additionally I wanted to report that the aforementioned alleged culprit was arrested and
their witnesses interrogated, as they had themselves offered, at their expense. After they
had been given this message, the Jews offered in the proscribed form and with the
sanction of their lords to take out bail; but then they delayed this and looked for excuses;
also changed their own bail; and one bailsman was not sealed (approved) by his own
lord but by another noble. Because of these delays and dangerous changes, I felt
compelled to arrest the bailsmen as well and to keep them in jail until they handed over
the bail that had already been granted. Therefore I released them after eight days.

The Jews claim in their supplication to Your Imperial Majesty that after the payment of
the bail I had not permitted to release the incarcerated Jews, against whom I had used
even more severe imprisonment and torture thereafter. Additionally that I had, after
releasing those citizens, forbidden them to enter my town Wurzburg und that I had
further incensed against them those with whom they were in ill favour. In all this, Most
Gracious Lord Emperor, the petitioners have reported Your Imperial Majesty untruth
and unreason, for they can never prove that I had with one word promised them that
after the payment of bail the imprisoned suspects would be released, because it is not
appropriate and irresponsible in such an important and suspicious case; neither have I
punished them with more severe incarceration or torture (which was only used with
kindness, by way of threats); neither have I forbidden the citizens to enter my town
Wurzburg. Only the Jews, who had attached themselves to the others and were coming
here nearly daily, I forbid staying here according to previous laws.

Nevertheless, before the bail had been paid and the questions (for the interrogation)
submitted, I had the alleged culprit, Ulrich Seidenschwantz, arrested and incarcerated in
Rottingen. By ordinance from my town Wurzburg, I also caused this man to be seriously
questioned about the murder; but from his statement and protestations of innocence as
well as from the reports I had gathered, one could not conclude that he could be suspect
or guilty of the murder. Therefore, and because he had been incarcerated for some days,
and because the Jews had stretched and delayed the issue themselves with their bail and
their questions, I could not refuse his advocates’ most humble petition to release from
prison, on bail, the one Seidenschwantz, and to let him be with his wife and children, in
order to save the daily mounting costs of incarceration. He is still there now, and there is
no sign that he plans to move in the near future.

But I considered the renewed request by the Jews, who had heard of the release of the alleged culprit, for another interrogation of the same witnesses - in light of the situation and considering the information, evidence and public opinion - not responsible, and therefore their request was not granted. This especially so because the natural father of the murdered son of a baker and the Right Honourable Prince, my dear friend Margrave Georg Friedrich of Brandenburg, as well as the widow, mother and sons of the Count of Hohenloe, under whose sovereignty the baker’s son had been born and raised, earnestly admonished and requested me to execute the law. Therefore the Jews have reported falsely to Your Imperial Majesty that I had planned to take advantage of them in this case, or that I had suppressed the production of the alleged evidence of their innocence. Although I had doubts whether to permit this, in order to avoid misunderstandings, I had those same witnesses properly interrogated on the questions they themselves (the Jews) had submitted, partly here in my office, and the rest by the counsellors of my Lord and friend the Deutschmeister at Mergentheim, by a commissioner who had been appointed by them (the Jews). Since the interrogation done at Mergentheim was only sent to me on the last Saturday in September, the case has rested for a while, but now it has been taken up again and will be deliberated and dealt with properly and lawfully.

Your Imperial Majesty can see from the reasons and causes given in my true report stated above how justly the Jews accuse me before Your Imperial Majesty of endangering and fraud; and how I had not permitted them the production of evidence and interrogation they had offered, because, after I had not permitted them their production of evidence and had not wanted to hear truth and justice, I wanted to proceed with the torture immediately; and how, from June 1st on, the day that they had gone to prison, since when they have been incarcerated without torture up until today, I had not wanted to be rid of the case.

May Your Imperial Majesty realize that, according to the information I got from the Jews and according to the situation, I cannot and do not want to act other than as conforming to the criminal laws of the Holy Roman Empire (of the German Nation) decreed by Your Imperial Majesty and Your Predecessors in the empire, since I must answer to God and to Your Imperial Majesty for my actions. All this I wanted to report truthfully and diligently according to Your Imperial Majesty’s wish, and most humbly and diligently not keep back my answer.

I commend myself most humbly to Your Imperial Majesty,
Date: in my town Wurzburg, October 14, 1570
Friedrich, Bishop at Wurzburg and Duke of Franconia
Supplikation der Judenschaft von Franken an Kaiser Maximilian II. wegen eines Ritualmordvorwurfes
Supplication of the Franconian Jews to Emperor Maximilian II in case of a ritual murder accusation, s. D.
October 18, 1570

Prepared by Barbara Staudinger, Institute for Jewish History in Austria, Austria

Supplikation der Judenschaft von Franken an Kaiser Maximilian II. wegen eines Ritualmordvorwurfes und anderer Vorkommnisse in Franken, s. D., Haus-, Hof- und Staatsarchiv Wien [HHStA], Reichshofrat [RHR], Antiqua 1157, Nr. 4, unfol

geschlagen, geworffen und verhönet; daran auch nicht gefrevelt noch gesundigt, sonder uff der juden beclagen durch den schultheissen inen geantworttet wurde, konne nit helfen, mögen zu Wurzburgkh darumb clagen. Über dieses auch hat neulicher zeidt ein Wurzburgischer ainspenniger zu under Eysenshaim wonhaft, Hanns Schimell genannt, Abraham juden zu Hirschfellt vor seiner haußthur über all recht erbiethend hardt geschlagen und verwundet. Item der Wurzburgisch vogt zu Eßleben, Valtin Buhlman, unlangsten einem juden von Schwanfelldt, welcher ime vogten doch wegen einer geringen vorgestreckhten summe gellts einen vast großen wucher bezahlt gehabt, deromaßen mit einer hauen geschlagen, das er den arm eine langs zeidt nicht bewegen mögen, und solliches one allen gegebne verursachung wider vilfahltig geburlich beruffung zu ksl. rechts hilff, welliches dann er vogt mit ganz schimpflichen wortten verachtet hatt.

Dieweill dann allergnedigister kayser und herr sollichem allem und jeden in wahrheidt wie jetzt erzehlt ist, auch sonsten ahn vielen orten hin und wider im stift Wurzburg die juden sampt und besonder uff eußerst teglich vervolgt, wider alle herkhomen und gebrauch beschwerdt, erstaygert und betrangent werden, alß gelangt ahn e[ur] röm. ksl. Mt. unser im namen und von wegen anderer unserer mitbruder dern juden in Franckhenlanden whonende, auch fur uns selbsten allunderthenegist und flehlichist bitt, die wollen hiebey allergnedigist einsehens und abwendung thuen, unß bey dero miltkayserlich gegebenen privilegien und freyheiten allergnedigist schutzen, handhaben und darauf hocherhanthem bischoven zu Wurzburgk ernstlichen ufferlegen und bevelhen, uns dero hinfuro rhusam und unverhindert wie von alters hero befreuen und gebrauchen zu laßen; insonderhait aber obernannte baide theter irer fstl. Gn. diener und hinderseßen zu gnugsamer gebuernder straff beneben volkhomener erstattung und abtrag dern arzt löhn, schmerzens interesse, costen und schäden zu weysen und anzuhalten. Vor sollichen und dergleichen sträflichen gewaltsamen thater möglich zu sein und denen abzuweren auch die juden in gemain und sonderheit durch irer fstl. Gn. land, stift und gepieth sicher paßieren, wandlen und under dero ritterschaft whonen und pleyben zu laßen, daß wollen und sollen umb e[ur] röm. ksl. Mt. in allunderthenegister schuldiger gehorsame mit hochster gevißenheit zu bedienen wir sampt berurten unsern mitbrudern den juden in Franckhen allezeit begirig und willig sein und erfunden werden.

[...]

Gemayner judischaidt aus dem land zu Franckhen abgeordnete.

attachment:

Bericht von Bischof Friedrich von Würzburg an den Kaiser über die Rechtmäßigkeit der Ritualmordanklage, Würzburg, 1570, Oktober 14, ebd.

[...]

Euer kayserlichen mayestat sind mein allunderthenegiste schuldige und gar geflissene
drey schreiben, das erst, so zu Schwabischen Hall unter dem dato am 13. Junii
außgangen, auf den 18. desselben hernach zukommen und die andern zway, dero data
das ain den 5. Augusti und das letzet den 26. Septembris jungstverschinen weisen,
betreffend Mosse und Gumprechten die juden, so hie in meiner statt Wirtzburg
gefengklich verhaft ligen, bede miteinander auf den 3. dits monats Octobris uberantwurt
worden, welche drey schreiben e[ur] ksl. Mt. halber ich allerunterthenigist mit
schreiben, so den 5. Augusti ausgangen, eher zukommen were, so wolte e[ur] ksl. Mt. ich
auf dasselbig allerunderthenenigst unbeantwort nit gelassen haben, darumb itztvermelter
ursach halber e[ur] ksl. Mt. mich allergnedigst für entschuldigst halten wöllen. Das aber
e[ur] ksl. Mt. in demselben irem andern kayserlichen schreiben einfüren und melden,
wie e[ur] ksl. Mt. uf clag Mosse und Gumpen der juden zu Dertzbach dienern berichtet
worden seyen, das ungeachtet des verdachtz, so aines ermodtert beckenknabens halber
auf sie gefallen, sie sich zu recht genugsam zu purgieren erbitet gemacht, auch zu
außfurung irer unschulde und das ain anderer, Ulrich Steurieth von Rinderfeldt berurtz
mords rechter theter, etzliche zeugen, so derselben lanndarz gesessen, benenent und
dzu deren rechtlichen abhörung, compaßbrieff an ire obrigkeiten gebetten, wölches alles
aber inen von mir abgeschlagen worden und die sachen irer personen halber dahin
gerichtet seien, das solche angebotene purgation gentzlich hindan gesetzt und mit
peinlicher frage gegen inen verfahren werden möchte. Und ferners, da e. ksl. Mt. in dero
drittem und letzem kayserlichem schreiben bevelhen, wofern die sachen der juden
antzaige gemeß beschaffen und derjenig, so für den theter angegeben und durch ernante
zeugen und kundtschaften zubeweisen anerboten, unerwartet derselben kundtschaft
volfürung auf bürgschaft aus verhaft gelassen worden, das ich bey meinen weltlichen
rethen und bevelchhabern nochmals aigentliche verfügung thun, damit sie juden auf
gleichmessige sagtige und bürgschaft irer so langwirigen haft widerumb on lengers
verziehen auch erledigt, oder e[ur] ksl. Mt. gegrundte und erhebliche ursachen
förderlichst zuschreiben solte, wie dann dieselben beede e[ur] ksl. Mt. außgangene
cayserliche schreiben fernern inhalts mit sich pringen thun.
Was nun erstlichs der juden angebotene purgation und beweysung irer berumbten
unschuld, das auch ain anderer der theter des angezogenen mords sey, anlangt, will
e[ur] röm. ksl. Mt. ich zu warhaftigem gegenbericht der sachen allerunderthenenigst nit
verhalten, obwol der gefangennen juden anwelde und sachbefurer sich anfengklichs
gegen mir erboten und angemasst, der verhaften juden unschulde zu recht
genugsmälich darzuthun und zubeweisen, und das ain anderer, nemlich Ulrich
Seidenschwantz, der gleichwol in e[ur] ksl. Mt. schreiben Ulrich Steurieth genent würt,
so seines handtwercks ein Hafner und derselben zeit zu Riderfelt gewonet, nachmals
aber mit heyßlichem wesen alda weg und uf den weyler Strut genant, in meiner obrigkeit
und zenth Rothingen gelegen, verruckt, des an dem beckenknaben begangen mordts
schuldig und der rechte theter were, mit bit, das ich denselben angezeigten theter
greifen, gefänglichen einziehen und daneben sie zu irer angeboten beweisung der
gefangenen juden unschulde, das auch ermelter Seidenschwanzt der theter des mordts
seye, kommen und gelangen und solche kundtschaft uf iren aigen kosten verhören
lassen wölte.
Nachdem aber die gemelten anwelde und sachenfürer so vest und bestendiglich uf ir
fürgeben, dasselbig zugewiesen und warzumachen gleichsam gepocht und in verharrung
blieben sind, ungeachtet allerhand fürgefallener und viler starcker hoher inditien und
argwon, das der vilgemelt beckenknab, so von Hollenbach in Hohenloischer obrigkeit
und seines alters ungeverlich umb die zwelf jar gewesen, allein von disen juden,
sunderlich weil die eben zu der zeit umb und bey dem ort, die that des mords geschehe,
auch sonst niemandts anderst gesehen worden und nit umb gelts willen, nachdem
wissentlich, das er uber anderthalben patzen bey sich nicht gehabt, ermordt und
umbpracht worden sein konne oder mögen. Alldieweil sich in beschehener
besichtigung des todten cörpers warhaftiglich lauter erfunden, das demselben knaben
auf der ainen seiten seines hals fast alle adern nur geschlitzt und nit durchstochen
gewesen, daraus und sonderlich (weil man dessen ortz, da der mord geschehen, an des
ermordten klaider und uf der erden so wenig geplutz, das es neherlich zuspüren
gewesen, befunden) anderst nit zugedencken noch abzunemen ist, dann das sein plut
mit vleis gesammelt und aufgefangen worden sein musse.
Und über das auch wol zuerzelen were, welcher massen des andern tags nach dem mord
die gantzen gemeinden in beden dörfern zu Hollenbach und Alringen (zwischen denen
ungeverlich in mittel des wegs uf dem veld die berürte mordthat geschehen) zusammen
erfordert worden und ein jeder den todten cörper des knabens anruren mussen, aber
gantz ohn, das bey allen denselben ainich warzaichen erscheinen wollen, sonder allein
wie zu allerletzt die gefangenen juden darüber gefürt worden, und auch angreifen
mussen, hat der todt cörpert sichtiglich angefangen allererst von frischen zu schweissen
und pluten, welches e[ur] röm. ksl. Mt. ich anderer gestalt nit dann allein zu bericht der
sachen dannoch allerunderthenigst unvermelt auch nit lassen sollen.
Wiewol ich nun uf solche allerhand bewegliche inditia auch andere eingenommene
bericht und erkundigungen ursachen genugsam gehabt, gegen die verhaften juden mit
strenger ernstlicher frage zuhandlen und verfaren zulassen. Damit aber ire sachenfürer
und freundtschaften sich über die hievor angebotenen und angemosten beweisung mit
fugen nit beschweren, vil weniger beclagen solten, das hierinnen geferden gepraucht
und die gefangenen unverhörter irer kundtschaft wider recht und die pilligkeit übereilet
worden weren, wie dann mein willen und gemuth nit ist, das sie oder andere, sie seien
gleich christen, juden oder haiden, in ainem oder dem andern wege und sonderlich in
peinlichen sachen, da es des menschen plut und leben gilt und betriffet, geferdet,
vernachteilt oder übereilet werden sollten, als mir auch solches gegen e[ur] röm. ksl. Mt.
alls dem obristen haubt zuvorderst auch dem almechtigen Gott am jungsten gericht
schwerlich zuverantworten stunde, so hab ich dennoch inen der juden sachfürern durch
meine rethe und bevelchhabere mündlich vermelden und anzaigen lassen, woferr sie
fur 400 fl. purgschaft thun wurden, die that des mords uff den angezeigten und
benenten theter zuerweisen und beyzubringen, wo sie aber solches nit erweisen wurden,
das gegen rehten in meinem stift gewertig sein wolten.
Allsdann wolte ich bestellung thun lassen, das derselbig angezeugt theter den negsten zu
verhaft pracht, darzu ire kundtschaften ordenlicher weise und uf iren kosten, wie sie sich
hievor selbst erboten und begert hetten, verhort werden solten. Ob nun wol uf solchen
gegebenen bescheid die juden sich zu berurter fürgeschlagener burgschaft auch
dieselben in fürgeschribner form samtlich und unverschaidenlich mit consens und
bewilligung irer herrschaften und unter derselben ufgetruckten insigeln zuverfertigen
und aufrichtig zumachen erboten, so haben doch die gemelten juden hernachmals die
verfertigung solcher burgschaft nit allein selbst zu verlengerung gespilt und darunter
allerley auszug und einreden gesucht, sonder auch letzlich in derselben geferlicher weise
enderung fürgenommen und die bürgschaft uf ire personen gesundert, darzu unter
denselben burgern ainer nit sein herrschaft, sonder anstatt derselben ain andere adels
person sigeln lassen. Umb welcher verlengerung, außzug, stunderung und geferlicher
enderung willen ich verursacht worden, sie burgen gefengklich einziehen zulassen und
so lang in verhaft zu behalten, biß sie die obgemelten burgschaft nach voriger irer
selbstent beinwilligung allerdings verfertigt und übergeben, wie ich sie dann in acht tagen
viderumb erledigen und von staten gelassen habe.
Das aber die juden in irem supplicieren vor e[ur] ksl. Mt. angezeygt und fürgeben, das
ich gegen ufrichtung solcher irer burgschaft nicht bewilliget haben sollte, die gefangenen
juden los zulassen, welche ich doch hernacher mit herterer gefenknus und frage gegen
denselben verfahren, darzu iren burgen nach dero entledigung mein stat Wirtzburg
verbieten lassen und das uf verbitterlich anraitzen irer mißgünstigen die sachen der
gefangenen halber zu noth vil beschwerlichern wegen geraichen möchte etc., an solchem
allem, allergnedigster herr kayser, haben die supplicanten die lautern unwarhait und
ungrund vor e[ur] ksl. Mt. vermeldet und angezeigt. Dann sie niemermehr beybringens
können noch werden; das ich mit ainicem wort inen vertrostung thun lassen nach
urfichtung vilberürter burgschaft die gefangenen juden irer verhaft zuerledigen, wie
dann in ainer so hochwichtigen und vil verdecktigen sachen sich zuthun nit gepurt,
vilweniger verantwortlich, noch das ich sie mit herterer gefengknus und banden jemals
zubeschweren begert und peinliche tortur (dann was allein in der gute und mit
betrohung geschehen) gegen denselben furgenommen habe, eben so wenig auch, das ich
den burgen mein stat Wirtzburg zumeiden je verbieten, sunder allein den andern juden,
so sie an sich gehenchkt und fast teglich hiehero gelaufen, untersagen lassen, vermög
hievoriger außgangener mandaten, sich hinfurdert gedachter meiner statt zuenteussern.
Nichts destoweniger aber und vor verfertigung und ufrichtung obangeregter irer
purgschaft und deren übergebenen weysung articuln hab ich zu befürderung des
handels den oftermelten angezaigten thetern, Ulrichen Seidenschwantzen, greifen und
in mein verhaft zu Röttingen einziehen, auch denselben durch schickung und
verordnung von meiner statt Wirtzburg aus umb des beruchtigten mords willen von
stundan ernstlichen ansprechen und zureden setzen lassen; aber aus seiner aussag und angezeigten unschulde, auch andern eingenommenen berichten in dem wenigsten nit spüren noch erkennen können, das er solches angegebenen mords verdeckt noch schuldig sein kont oder möchte. Derwegen und als er etzliche tag in verhaft gelegen, auch die juden mit der burgschaft und iren weisung articuln die sachen selbst verlengert und aufgehalten, ich uf seiner freundschaft underthenigs ansuchen nit umbgehen konden, zu abschneidung des teglichen uf ime laufenden uncostens ine Seidenschwantz uf burgschaft und widerstellung der gefengknus widerumb zuerledigen und anheimbs zu weib und kindern zulassen, wie er auch noch verhanden ist und mit nichten gespurt worden, das er mitler zeit noch zuvor zuweichen oder fues zuverrucken begegt hatte.

Das aber die juden, so solche des angegeben theters erledigung gehört und vermerckt, nachmals gleichmüssige erledigung auf burgschaft bey mir auch gesucht und begert, hat mir nach gestalt und gelegenheit der sachen auf die gehabten erkundigungen auch abgmelten und andere mer erfundene scheinpapleriche starcke inditia auch allgemeinem geschrayhe und sade nit gebüren noch verantwortlich sein wollen, solchem irem suchen stat zuthun. 

Und solches umb sovil desto merers, weil des ermordten beckenknabens leiblicher vatter, deßgleichen auch neben demselben der hochgeboren fürst, mein besonder lieber herr und freundt marggraf Georg Friderich zu Brandenburg, auch die wittib und graven von Hohenloe mutter und sone, unter welcher herrschaft der beckenknab geborn und erzogen worden, mich umb administration der justitien hochlich und ernstlich ermanet und ersucht haben. Darumb die juden e[ur] röm. ksl. Mt. ininem und dem andern mit ungrund berichtet, das sie jemals in diser sachen zugeferden und zuübereylen begert, nach das inen ir berumbte und angemasste beweisung, die ich gleichwol durch sie verfüren zulassen bedenckens gehabt, aber doch umb weniger mißverstandts und sorglichen betrugs willen derselben anstheils allhie in meiner cantzley und die ubrigen bey meines herrn und freindts des teutschen maisters rethen zu Mergethaim durch einen iren selbst darzu gegebenen und verordneten commissarien uf ire eingegebne weisung articul ordenlicher weise verhören zu lassen, bestallung gethan, aber das Mergethaimisch examen allererst mir uf Sambstag den letzten Septembris jungt anhero überschickt worden und zukommen, doch aus anderen furgefallenen geschichten die sachen bißanhero in ruhe besten plien ist, die aber nunmehr zum förderlichsten für hand genommen und nach erfindung zur gebure und billigkeit gehandelt und erörtert werden solle.

Aus welchem obenerzelten meinem warhaftigen bericht, grund und ursachen e[ur] ksl. Mt. allergnedigist zuerkennen und abzunemmen, mit was fugen die juden mich vor derselben euer ksl. Mt. der geferden und übereylen, das ich auch sie zu irer erbottenen beweisung und purgation nit gelangen noch kommen lassen wollen, beschuldigt und angeben haben, da ich doch, wo ich ir angemaste beweisung nit zuzulassen und der warheit und gerechtigkeit zu steuer überflussig zufahren begert, sonder stracks mit
peinlicher frage vorzufahren gesinnet gewesen, von dem ersten tag Junii jüngstverschienen an, uf welchen sie zu gefengknus kommen und bißdahero ohne peinliche frage in verhafte behalten worden, die sachen gewißlich so lang nit gefeyert haben wolte.
Es sollen aber e. röm. ksl. Mt. sich dessen allergnedigst zu mir versehen, das ich uf obberürte der juden kundtschaften und sunsten nach befindung der sachen anderst nichts handeln noch fürnemen lassen will, dann was e. ksl. Mt. auch derselben vorfahren beschribenen kayserlichen rechten und des heyligen Reichs ufgerichter constitution der peinlichen halßgerichts ordnung gemes und gleich ist, datzu mir vor Gott auch e[ur] ksl. Mt. und der welt zuverantworten steet und sein würt. Welches euer röm. ksl. Mt. auf derselben allergnedigst begern ich zu grundtlichem warhaftigem bericht der sachen und meiner antwort in allerunderthenigster und schuldigster gehorsam nit sollen noch wollen verhalten.
Derselben mich und meinen stift aller unterthengst und zu genaden bevelhende. Datum in meiner statt Wirtzburg den vierzehenden Octobris anno 1570.
[...]
Fridrich bischoff zu Wirtzburg und herzog zu Francken.

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Supplication of Samuel Ullman to Emperor Ferdinand II in case of restitution ct. the Landgraf Wilhelm of Leuchtenberg, s. D.

March 28, 1620

Translated by Barbara Staudinger, Institute for Jewish History in Austria, Austria

Most Gracious Lord. Against my will, I am unfortunately forced to most humbly trouble Your Imperial Majesty with this my supplication, and to beg You, the Highest Authority appointed by God and the Holy Roman Empire, for protection and help, and am obliged to report to you the injury which has been unjustly perpetrated against me by the Right Reverend Prince and Lord, Lord Wilhelm Landgrave of Leuchtenberg, with the most humble request that Your Imperial Majesty may most graciously hear my complaint.

After I had, two years ago and according to the wish of His Gracious Highness the Prince of Leuchtenberg, moved to and established my household at Pfreimbt, under his protection, I lived there for not quite 4 weeks before the judge of Leuchtenberg, on behalf of His Gracious Highness the Prince, approached me for a loan of 50 florin for 2 or 3 days, which I humbly granted. When I later asked for repayment, I was sent to the Office of the Landgrave of Leuchtenberg with a letter, but there I was finally and summarily refused payment. When I reported this to His Gracious Highness the Prince, I was brought before the landgrave’s judge, where I did not receive the desired payment either, but was instead fined, at the command of His Gracious Highness the Prince, 100 florin in penalty, which I was forced to pay.

Second, His Gracious Highness the Prince of Leuchtenberg on various occasions borrowed from me, besides cash, things and all kinds of trade goods (with which I had
been trading), and consequently the outstanding bill amounts to 700 florin.

Third, His Gracious Highness borrowed a few golden bangles worth 28 florin for his maid-servant, Dorothea of Nurnberg, which has not been paid yet.

Fourth, about two years before the death of His Gracious Highness the Prince’s wife, two silver flasks were ordered, in the presence of my wife, from a goldsmith in the Judengasse in Prague, and an amount of old silver paid for them; however, wares for 80 florin were bought from another Jew on credit, and the goldsmith appointed as guarantor and promised more silver for the flasks and speedy payment of the debt. But three years have passed since then, and in spite of the fact that His Gracious Highness the Prince’s wife remained alive for another one and a half years, the goldsmith had to pay the guarantee, and my wife, although she was present at this deal neither as a mediator nor as a guarantor, but only as a servant, was forced to pay 200 florin as payment for the silver that had been entrusted to the goldsmith, which was worth not even 8 florin.

No less, and fifth, at the same time my father-in-law Moyses – now of blessed memory – begged humbly for the gracious remittance of these my penalties, and stated that, since all this had happened before our marriage and did not concern it, and since there should be no quarrel amongst us, he would humbly offer to give His Gracious Highness the Prince 50 florin because of my wife. However, this had no effect; instead, His Gracious Highness the Prince took the 50 florin and nevertheless afterwards had the house of my father-in-law forced open by his former steward Hanns Sigmund of Tieg, his scribes and judges, and two of his town ushers; and on top of this, he had all his locked chests and wardrobes opened, and confiscated all his money, gold and silver, and all the pawns deposited by the Prince and other nobles: rings and jewellery worth more than 500 florin, and in particular a golden memorial coin (Gnadenpfennig) studded with diamonds and rubies belonging to a certain Prince Fohenstrauss, as well as a silver belt weighing 38 lot (weight unit), and a coral rosary with a silver tassel, and a gold ring studded with diamonds that belongs to an orphaned child and for the restitution of which I myself have been begged many times. However, this was not the end of it, but on the same day my father-in-law was called before the town judge at the order of His Gracious Highness the Prince, and, ostensibly because His Gracious Highness the Prince knew that he (my father-in-law) was rich in cash and otherwise, and that without doubt he had removed the majority of his property from his sovereignty to another place, he would have to pay 1000 florin in penalty within eight days. Besides this it was ordered that my father-in-law should, against a deduction of 100 florin, return a pawn belonging to Strinlingen, His Gracious Highness the Prince’s former equerry, which my father-in-law had pawned for 76 florin. In spite of this, my father-in-law had to pay the 1000 florin without the deduction of those 76 florin.
Sixth, when, about three months after the case described above, His Gracious Highness the Prince’s dean sold 100 cords of his own wood both in the neighbouring Electoral Palatinate and in the Landgrave’s territory, without being prohibited by his lord to do so, I myself bought 9 cords of the same. His Honourable Gracious Highness the Prince then fined me 50 florin of penalty under the pretext that the Lord Dean had not been permitted to sell this wood; but all others who had done the same /fol. 131v/ were released.

Seventh, when my father-in-law passed away about half a year ago, His Gracious Highness the Prince prepared to sell the inheritance for himself, against the old custom. When I asked that the inheritance be released, I was told in confidence, through the wife of the steward, that His Gracious Highness the Prince would be willing to release the inheritance in exchange for a gift. I humbly and willingly agreed to this, only I asked to kindly be granted deferment until my brother-in-law had arrived here from Bohemia. Since I was granted the deferment, and since my brother-in-law only arrived in the Holy Week, I delayed the presentation of the gift because of the holidays; but His Gracious Highness the Prince punished me again, called me on the third day of Easter and imposed on me a payment of 1000 florin (to be paid in 8 days), and because of the default 500 florin, and another 500 florin tax on the inheritance of my father-in-law. In spite of the fact that I begged humbly and explained /fol. 132r/ that it was against the old custom and not customary in the entire Holy Roman Empire to have to pay such a great or even a smaller sum to the sovereign lords on account of default, and that concerning the 500 florin His Gracious Highness the Prince had demanded as tax one would have to wait until the amount of the entire inheritance was certain, because without this one could not insist on this sum; and even if it was correct, His Gracious Highness could deduct this tax from the debt which His Gracious Highness had in the inheritance. However, I could not succeed with His Gracious Highness the Prince, instead another 500 florin in penalty were imposed on me, and, in order to affect faster payment, stocks were put up in the garden of his house in the suburbs in the open air, to which I and my brother-in-law, in spite of the fact that the deadline of 8 days had not expired yet and we had another 4 days, were to be tied with hands and feet. Although I was granted three days’ deferment through /fol. 132v/ urgent supplication and great effort, I still had to pay the 1500 florin imposed on me.

Finally, humbly and most importantly, I am not able to keep from Your Imperial and Royal Majesty the fact that a short while ago, when the troops of Mansfeld were moving towards Bohemia through the Electoral Palatinate and the Landgrave of Leuchtenberg’s territory, the Lord Landgrave did not stay here; instead, not only all the Prince’s councilors of the provincial government, but also citizens and subjects in fear tried to save themselves with their children and property, as good as they could. Similarly, I felt obliged to flee and seek safety for myself and my family, as good as possible, all with the
knowledge and permission of the the Princely Landgrave’s councilors of the provincial
government and with an escort provide by the Electoral Palatinate, until the return of
His Gracious Highness of Leuchtenberg. Many distinguished nobles and other persons
had fled from the sovereignty of the Prince of Leuchtenberg to that of Hans Adam of
Sparneck at Toissnitz, a noble of the Electoral Palatinate. However, by the time I and
many others had arrived home, after the troops of Mansfeld had passed through and His
Gracious Highness the Prince of Leuchtenberg had returned, I had already quarrelled
with Sparneck at the court of the Electoral Palatinate – at first out of court – on account
of a pawn that had lost value. Sparneck then threatened that, if I should sue him before
the Gracious Electoral Prince, his sovereign, he would cook my goose and denounce me,
with the help of evidence and witnesses true or false, to His Gracious Highness the
Prince to such and extent that I would throw up my hands in horror /fol. 133v/, and
finally, if this should fail, he would pay me back with his gun. And so it happened that on
my return (may Your Imperial and Royal Majesty hear my supplication), I was obliged
to hear from some townspeople that I had fallen out of grace with His Most Gracious
Highness the Prince. This was manifested by the fact that he (the Landgrave of
Leuchtenberg) cancelled and remitted the debts that the citizens of his territory and
other subjects had with me. Thereafter Sparneck also put his lies into action in the sense
that he claimed that I had insulted the maid-servant of His Gracious Highness the
Prince, Dorothea of Nurnberg, although he will never be able to prove that I had ever
allowed myself to be reduced to such denunciations. Nevertheless His Gracious
Highness the Prince, without even hearing me in this matter, not only had me locked up
in the castle’s tower, but also ordered my wife, my mother-in-law - who is more than 70
years old -, my eight children - one of who is only 3 years old, another 19 months and a
third 12 weeks – and two of my maids to be locked up in the office. My old mother-in-
law, my wife and two daughters were stripped and searched if they had any money or
valuables on their persons. When finally they found only 20 kreutzers with my mother-in-
law, the district judge was supposed to take those off her, but finally let her keep
them on account of her urgent supplication. While I and my family were incarcerated for
31 days, together with two criminals and incurring great costs, the landgrave’s steward,
the judge of Kunreuth and others broke into my house, opened everything and
confiscated gold, money, jewellery, silver and other valuables that had for the most part
been pawns of young lords, nobles and other distinguished persons. On top of that they
confiscated my father-in-law’s register of debts, all letters they could find, and at the
same time his (the landgrave’s) own obligation, all wares and trade goods as well as
linen and clothes worth more than 300 florin. On the same day /fol. 134v/ at midnight,
another 9 persons were sent to the house who took everything that was left, and my
wares were given partly to the maids and partly to His Gracious Highness the Prince’s
maid-servant, who then dressed in them. As if this was not enough, the next day not
only my house, but even my mother-in-law’s house was searched by the town ushers to
check if nothing was hidden there. It is painful to hear that His Gracious Highness the
Prince gave the handsome pawns and jewellery of nobles to His maid-servant, who most disrespectfully wears them up until today. However, this was not the end of it, for His Gracious Highness had me locked up in four different prisons and threatened, if I did not hand over my treasure or what I had hidden, I would be handed over to the executioner and punished with death through hanging. To this I replied regretfully that, as I was incarcerated in the tower prison and due to the fact /fol. 135r/ that all my possessions, my debt registers, pawns and letters as well as my entire property had been taken from me, I could not quickly raise much or even little money from anyone. Even my brother-in-law was brought to me by the town usher, under the pretext that he should advise me on how to raise money, and then forcefully incarcerated in the tower, where men and women who are not related are locked up together, without trial, in a dark and disgusting prison without consideration for their natural modesty, and kept there for three days, as he complained in great pain. In the meanwhile my wife was banished by His Gracious Highness, with her innocent and suckling children, and on top of that it was ordered to withdraw all His Gracious Highness the Prince’s obligations with her, the credit sum of which alone amounted to 3500 florin, and to pay 3000 florin in penalty. /fol. 135v/ Although my wife handed over the requested obligation to His Princely Highness, which he immediately tore up, His Princely Highness was not satisfied with this, but she was forced to calculate the debt including interest of two obligations which I had received against pawns and which His Gracious Highness had taken from my house, but which fell due while I was in prison; this sum His Gracious Highness the Prince confiscated after returning the pawns. Three days later, when I and my mother-in-law were still in prison, His Gracious Highness the Prince’s chamberlain, town judge, usher, messenger and man-servant visited me in prison and showed me a decision that, unless I paid the 3000 florin in cash, a trial date had been set and my execution was to take place in three days’ time. To this I answered, in good conscience and innocently, that I was not aware what and how much money my wife had loaned, but that, if I could speak to her personally, /fol. 136r/ I would ask her to deal with this matter. His Gracious Highness then ordered His judge and two ushers to escort me to the border of the Electoral Palatinate and deported me, without shackles, as I was not a criminal, to the Palatinate, hoping that I could extort more money from my wife. But since nothing was left and I was now in the territory of the Electoral Palatinate, I was graciously granted refuge there up until now.

Most Gracious Emperor, King and Lord, these matters were as told and not otherwise: my brother-in-law, mother-in-law, wife and children were kept in prison by His Honourable Gracious Highness the Prince of Leuchtenberg for up to two years; as I have outlined above point by point (and as can be proven even today), all pawns belonging not to me but to princes, nobles and other distinguished persons were taken from me; and I am now unable to return the pawns that were taken from me by His Gracious Highness the Prince. Consequently, unless Your Imperial and Royal Majesty help me, I,
my wife and my eight children will be reduced to begging and destitution, and neither
my person nor my life will be safe. May therefore reach my most humble, urgent and
submissive supplication Your Imperial and Royal Majesty so that You may, as Most
Enlightened Emperor and Protector of Justice, take to heart the events mentioned
above, and decree that His Gracious Highness the Landgrave not only immediately
return all the confiscated debt registers, pawns, money and fines, wares and trade goods
and all other property, but also pay his own debts; and that I be protected against His
Gracious Highness in the future; and that my old mother-in-law and children, who had
been arrested, be released. Additionally, he (the landgrave) should urge all his other
subjects who owe me money to pay their debts. In order to ensure that His Gracious
Highness the Landgrave obey this decree, I once more most humbly beg that His
Imperial and Royal Majesty may, for the sake of God and His Will, /fol. 137v/ set up a
commission so that I am granted justice in everything, and really receive help; and may
most graciously be considered that not only I, but my parents and ancestors have
resided in the Margraviate Burgau, under the Most Commendable House of Austria, for
more than 100 years, and have always acted irreproachably. In order to be granted
justice, I would like to most humbly call on Your Imperial and Royal Majesty, and to
submit to Your gracious decision, which I hope for most urgently and humbly, and to
Your Most Lordly protection.

Samuel of Gunzburg

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Supplikation von Samuel Ullman aus Günzburg an Kaiser Ferdinand II. wegen Restitution ct. Landgraf Wilhelm zu Leuchtenberg

Supplication of Samuel Ullman to Emperor Ferdinand II in case of restitution ct. the Landgraf Wilhelm of Leuchtenberg, s. D.

March 28, 1620

Prepared by Barbara Staudinger, Institute for Jewish History in Austria, Austria

Allergnedigister herr.

Euer ksl. Mt. mit diesen meinen supplicirn allerunterthenigist zubehelligen werde ich wider meinen willen, zu dero alß von Gott und dem hl. römischen Reich verordneten höchsten obrigkait umb hulf und schuz anzuffliehen und die mir unbillicher weiß zugefügte trangsal wider den durchleüchtigen hochgeboren fursten und herrn, herrn Wilhelm landtgraffen zu Leichtenberg, grafen zu Hauß gehorsamlich fürzutragen getrungen, allerunterthenigist bittendt, euer ksl. Mt. geruhen meine warhafte gravemina allergn. zuvernemen.

richter erfordert, die anmahnung und begehrte restitution allerdings verwiesen, darbey
auch auß ihr fstl. Gn. befelch 100 fl. straff auferlegt und zugleich die 50 fl. fur lehen
inbehalten und solche unzeitige auferlegte strafen von mir notrungenlich entrichtet
worden.

Zum andern haben ihre fstl. Gn. zu Leüchtenberg bey mir kram und allerley
handelswahren (damit ich dann gehandelt) zu unterschiedlichen mahlen neben etlichen
baar fürgeliehenen gelt, so sich auf 700 fl. außweis richtiger rechnung erstrecket,
außgeborget.

Drittens haben hochgedachte ihre fstl. Gn. fur dero bey sich habende dienerin Dorothea
von Nürnberg genannt, ain baar guldene armbänder per 28 fl. außgeborget, so alles biß
dato noch unbezahlt ausstendig verblieben.

Demnach zum vierten weylandt ihre fstl. Gn. gemahlin ungefahr zway jahr vor ihrem
sel. abschaiden zwo silberne flaschen zu Prag bey einem golldtschmidt in dem
judengäßlin beywesendt meines weibs angefrümbet, darauf ettlich alt silber eingeben,
hingegen bey einem juden umb ettlich /fol. 130r/ 80 fl. krahm wahren auf borg
aufgenommen, dagegen ime goldtschmidt zum bürgen und selbst geltner gesezt der
vertröstung mehrer silber zu beförderung der flaschen auch abzahlung der schulden
schleinig nachzuschicken. Ist jedoch solche, ungeachtet ihre fstl. Gn. sel. andenckens
noch anderthalb jar im leben gewesen, alles biß dato nunmehr bey drey ganzen jahren
verblieben, also der goldtschmidt burgenrecht laisten mußen und meinem weib,
ungeachtet sie bey einem oder andern contract weder mittel person noch bürign
worden, sondern gleich ainer dienerin beygewohnet, nichts desto weniger 200 fl. fur
solch dem goldtschmidt vertrauet silber, so nicht 8 fl. wehrt gewesen, iezo in wehrender
meiner ehe strafenweiß auferleget, auch ihr fstl. Gn. notzwanglich bezahlt worden.

Wie nicht weniger fürs funfte eben umb selbige zeit mein schwehr Moyses nunmehr sel.
umb gnedig erlösung solcher strafen auß obgedachten ursachen unterthenig gebeten,
mit vermelden, das solches alles ehe und mann seine tochter zu mir geheuratet
fúrgangen, sie ihres thails im wenigisten nicht betreffen, dahero besorglichen zwischen
mir und ihr widerwertigkeit und unfriedt entstehen möchten, nicht desto weniger 50 fl.
ihr fstl. Gn. /fol. 130v/ wegen meines weibs zugeben sich unterthenig erboten und baar
aufgelegt hat, hat solches gar kein verfanng haben wollen, sonndern haben ihre fstl. Gn.
solche 50 fl. genommen, nichts destoweniger hernach durch seinen gewesten
hoffmaistern Hannß Sigmunden von Tieg, seinen schreibern, landtgräflichen richtern
und zwayen ampt oder statt diernern in meines schwechern hauß fallen, daßelbig nicht
allein verwahren, sondern auch alle seine versperrte kisten und kästen zu öffen
zwingen, daraus all sein schazgelt an goldt und silber zugleich auch alle versetzte fstl.
und adeliche guldene pfandt ring und claimodien über die 500 fl. wehrt, über diß und
besonderlich ainen guldenen mit diamant und rubinen versezten gnadenpfennig, einem
fürstlichen Fohenstraß gehörig, wie nicht weniger ain silberne vergulte gürtel, so 38 lot gewogen, deßgleichen ainen corallnen pater noster oder rosarium, daran ain silberne quasten und ain guldener mit einam diamant versezter ringn ainem pupillen oder waïßen zuständig, umb deßen restitution ich selbsten zum öftern beclagt worden, nemen laßen, und bîßhero alles behalten. Darbey es auch nicht verblieben, sondern ist obgedachter mein schwécher selbigen tag für den stattrichter erfordert, /fol. 131r/ auß fstl. befech angezeigt, wie ihre fstl. Gn. wahres wissens, daß er an baarschaft auch sonst en reich, auch zweifels ohne auß mißtrauen sein furnehmstes vermögen außer der barschaft an frembde ort geflehet hette, derentwegen 1000 fl. straff innerhalb 8 tagen zuerlegen und zugeben auferlegt. Darbey auch diß befohnen worden, weïn mein schwécher aine verseztt pfanndt per 76 fl., so den Strinlingen ihr fstl. Gn. gewesten stallmaistern zuständig, bey handen solches deroselben gegen abzug der 1000 fl. zuzustellen, wie geschehen, aber nichts destoweniger hat mein schwécher die auferlegte 1000 fl. unabgezogen der 76 fl. pfandts unverschuldter sachen gegeben und bezahlen mußen.

Zum sechsten als ihr fstl. Gn. herr dechant ungefähr 3 monat nach oberzehlten fall bey 100 claffter seines aigenen hollzes allenthalben so wohn den benachbarten churpfälzischen alß landtgräfischen ohne ain herrschaftliche inquisition oder verbot verkauft, und ich davon auch 9 claffter an mich keußlichen gebracht, haben mich mehr hochgedachte ihre fstl. Gn. unter dem schein, wie ihme herrn dechant holz zuverkaufen nicht gebührt hette, umb 50 fl. gestraft, dargegen alle andere landtgräfliche /fol. 131v/ frey gelaßen worden.

Ferners zum sibenden alß ungefähr vor ainem halben jahr mein schwécher die schuldt der natur bezahlet und verstorben, haben sich ihr fstl. Gn. wider alt herkommen und gebrauch alle verlassenschaft fur sich selbsten de facto verpettsschieren zulaßen unterfangen, alß ich aber umb relaxation unterthenig gebeten, ist mir durch frau hofmaisterin vertreulich zur antwort erfolget, daß gegen ainer verehrung ihr fstl. Gn. (quod notatur) die relaxation erfolgt werden soll. Darzu ich mich unterthenig und willig erboten, allain darbey gebeten, mir nur so lang mein schwager alß mitterb auß Böhaimb hero gelange, gn. dilation zugeben. Demnach die gebetene dilation gnedig bewilliget, und mein schwager eben in der charwochen ankommen, also ich mit der versprochenen verehrung wegen der heiligen zeit damals hinterhalten, haben ihre fstl. Gn. mich abermals mit unzeitigen strafen zubelegen ursachen gesucht, den dritten Ostertag erfordern und in 8 tagen 1000 fl., wegen inventirens 500 fl., dann wegen meines schwagers erbportion nachsteuer 500 fl., zubezahlen ernstlichen auferlegen laßen. Ob ich nun wohln darwider ganz unterthenig gebeten und furgewendet, /fol. 132r/ wie solches wider alt herkommen und im ganzen römischen Reich nit gewöhnlich oder breuchlich, daß man den landtsfürstlichen herrschaften umb inventirens willen aine solche grosse oder geringere summa zuraichen schuldig, wurden demnach bey gestalt dißes falls ihre fstl. Gn. der auferlegten 500 fl. nachsteuer willen nach noch der zeit, wie
hoch sich das vermögen erstrecken möchte, wißen könndte, ernstlichen zubeharren nicht gemaint sein, auf unverhoffts fall aber ernstlichen beharrens oder mir und meinen miterben nit zuwider, daß so umb die nachsteuer anlanget, von den gegen schuldten damit ihre fstl. Gn. in die erbschaft (so viel alß über 3000 fl. betreffendt), verhaftet, gnedig abgekürzt und einbehalten werden möchte. So hab ich doch bey ihr fstl. Gn. nichts erlangen können, sondern haben mir noch uber solches 500 fl. strafweis auferlegt, auch umb schleinfer bezahlung willen ire fstl. Gn. einen stock in sein hauß in der vorstatt im garten unter freyem himmel mich und meinen schwagern ungeachtet die bestimnte zeit der 8 tagen sich nicht geendet, sondern mir 4 tag geschloßen gewesen, biß die bezahlung wuchlich gelaistet, darinnen mit handen und füssen versperrt zuhalten, aufrichten lassen. Aber mit höchsten /fol. 132v/ flehentlichen bitten, grosser muhe und arbeit 3 tag dilation elranget, alß ich abermals ganz unbillich unverschuldter weiß die auferlegte 1500 fl. laider gelten und bußen mußen.


Wann dann allergn. kayser, könig und herr die sachen oberzelter maßen also und anderst nicht in höchster warheit beschaffen, dann daß ich mein schwecher, schwager, schwiger, weib und kindern ganz unverschulder weiß von mehrhochgedachter fštL Gn. von Leichtenberg nit allein ohn alle verschuldet in den zwayen Jahren härtiglichen gefängnust worden, sondern auch wie oben von puncten zu puncten wahrhaftig specificirt (auch noch zur stundt alles zuerweisen alle mein hab und gut, benebens und zugleich alle und iede versezte pfandt, so nit mir sondern thals fštL., thals adelichen und andern /fol. 136v/ furnemen personen zuständig, neben den schuldtbuchern, kram

[...]
Samuel jud von Kindsberg.

Archive: HHStA, RHR, Denegata Antiqua 177, fol. 128r-138v.
Jews at the Court of the Kadi
Yaron Ben-Naeh, Hebrew University, Jerusalem, Israel

ABSTRACT: One of the most astonishing phenomena of Jewish life in the Ottoman state is the widespread appeal to the kadi's court - a muslim court. I intend to describe the frequency of this norm, against explicit regulations, and explain the motivation to use the kadi’s services, as well as the reasons for the ban against it. I shall conclude with the social and cultural significance of this practice.

This presentation is for the following text(s):
• Darkei Noam (Pleasant Ways)
• The court records of istanbul

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Ottoman Jewry was an urban society, in which, from the middle of the sixteenth century onward, the numerical and cultural dominance of Jews coming from the Iberian Peninsula was noticeable. Tens of thousands of Jews lived in the large urban centers such as Istanbul and Salonica. The population of medium-sized communities such as Izmir ( Smyrna), Aleppo, Cairo, some Balkan cities and sometimes Jerusalem numbered between one and five thousand. The economic pursuits of the Jews were diverse, constituting part of the fabric of urban life, a fact that influenced both their social structure and their culture. They generally lived within an organizational framework known as a kahal (congregation), the Jewish community in every city comprising several congregations. The congregation was a social framework centered round the synagogue. It was governed by an elected oligarchic leadership which filled many roles, among them relations with the authorities, financial management, and the provision of various services such as a synagogue, a beyt din, a cemetery, education, poor relief, and kosher food.

Up until the nineteenth century Ottoman Jewry was a traditional and a religious society. Judaism and its heritage were central factors in defining individual and group identity and in shaping patterns of behavior and lifestyles for the majority of Jews, at least as they knew and understood it. I would only hint that these were eventually not always absolutely compatible with Jewish religious practice..

**The Kadi and His Court**

The court and the kadi who presided over it were among the most important administrative institutions and offices in the Ottoman cities. Kadis were appointed by the sultan upon the recommendation of the highest religious officials and were in effect civil servants of the Ottoman state. Social connections and a powerful patron were almost absolutely necessary for appointment to an important post and for advancement, and certainly had more weight in the 17th and 18th centuries than seniority and ability. The rank of the post in the hierarchy of religious offices was in accordance
with the importance of the city in which the kadi served, the highest status in the empire accruing to the Sheykh-ul-Islam, the two kazi‘askers (chief military judges, one for the European and the other for the Asiatic provinces), and the kadi of Istanbul. The standing of the kadis was significantly enhanced during the seventeenth century and the network of religious courts took on a more coherent and homogenous shape than in the past. The kadi’s responsibilities were many. As the holder of religious authority and an expert on the şari‘a and the kanun, he served as judge, notary, and supervisor of religious endowments (nazir), and was responsible, by means of the kassam, for the distribution of legacies. As representative of the central government he was, in effect, responsible for administration of the city and was charged with enforcement of the law, division of the tax burden, and its collection. Decrees issued by the central authorities were addressed to the kadi, whose responsibility it was to see that they were copied into his record books, brought to the attention of the populace, and carried out. In administering urban affairs, the kadi was assisted by two officials: the subaşı, who commanded the local police and implemented court rulings, and the muhtesib, whose duty it was to supervise commercial activity in the markets.

The kadi served as an intermediary between the local population and the state. It was through him that petitions and grievances (şikayet) were presented to the sultan and the Grand Vizier, and he was responsible for checking their details. Due to the kadi’s many functions, his court became the venue in which he came into contact with residents of all religious persuasions. When the kadi sat in judgment he was assisted by a permanent staff that included Muslims of unchallenged credibility who would witness court decisions (şuhud-el-hal), a clerk, and a policeman. Important courts also appointed a deputy kadi (the naib) who filled special supervisory and investigative functions on behalf of and by authority of the kadi, and a messenger. The litigants could avail themselves of the services of a representative (vekil) and a translator.

The şari‘a court, which in the heartland of the empire ruled according to the Hanafi school, was an official institution to which almost all subjects of the Ottoman Empire had to turn. Only Europeans whose countries had signed capitulation agreements with the state were exempt, standing trial before their consuls. Even though they suffered from a legally subordinate status, dhimmis did not refrain from turning to the şari‘a court. Their faith and confidence in the court is clear from the fact that they presented various petitions to the kadi. I shall return to that point later.

Those who appealed to the court paid a set fee. The court’s decision or any other formal document sought by the appellant were recorded in the court’s record books (sijil) and a copy was handed to the litigant. Documents issued by the court had validity and value, so the populace often employed them. <In cases in which the court decreed a punishment, its implementation was entrusted to the subaşı. The kanun listed diverse and severe punishments, conforming to the severity of the offense committed and the religion of the accused. Among the best-known physical punishments were flogging and
whipping the soles of the feet, public humiliation, hard labor as an oarsman in the fleet, amputation of limbs, and various methods of execution. In the seventeenth century a variety of frightful physical punishments (siyasat) was as yet in force, but there was also a growing tendency to impose monetary fines. The court’s decision was final and the only way to appeal was by petitioning the Grand Vizier, <whose council (divan) convened on Wednesdays and Fridays>, or the sultan, <whose imperial council (divan-i hümayun or divan-i’ali) sat four times a week>.

**Jews at the Muslim Religious Court**
The autonomous adjudication of Jews in the Ottoman Empire has been extensively discussed by my teacher Joseph Hacker, who has shown that the judicial autonomy of Jewish communities was limited to purely halakhic matters such as laws of matrimony and religious customs, and was conditional upon receipt of permission from the local rulers, for which they apparently paid the rav akçesi, (the annual tax levied for permission to appoint a rabbi). The community lacked any real coercive power, so that appearing in its court and complying with its rulings were solely at the discretion of the litigants. Even when the court applied to the kadi, requesting that he enforce one of its rulings (in an area in which it was permitted to deliver judgment), this was conditional on his willingness to do so, and at times on the ruling’s compatibility with Islamic law. Actually, the Muslim judicial system was not actively forced upon the Jews, nor did the rulers take steps to conduct investigations and checks to ensure that the dayyanim (judges of a religious court) did not overstep the bounds of what was permitted to them. Communal solidarity, relatively comfortable conditions for its existence, and willingness on the part of the authorities to look aside, were what enabled Jews and Christians to engage in intensive judicial activity in areas beyond what was formally permitted to dhimmis. Due to the feeble legal status of the autonomous judicial proceedings, the dayyanim were always susceptible to threats from powerful persons and informers. The kahal and its judges acknowledged the formal superiority of the şaria and Ottoman law, especially in relation to property and money, and refrained—at least openly—from dealing with matters that were formally beyond their own authority. In practice, they endeavored to limit the application of the şaria and Ottoman law to issues of money and property and to widen the area of their own jurisdiction, exploiting the lenient attitude of the state authorities in this matter. Furthermore, the hakhamim endeavored that non-appearance in Gentile courts would be the norm of the day by enacting ordinances and coming out publicly against transgressors of the takkanot against the use of the Shari’a courts.

As I stated above, the local şaria court was intended to serve all Ottoman subjects living or trading within a certain administrative area. Only those holding the status of ‘askeri, in addition to Europeans and their protégées, were exempted from this obligation. The kadi filled several roles, judge and notary, being only two of them. Contact with the kadi and having recourse to his administrative and notary services did not pose a halakhic
problem because it was an accepted rule that “dina de-malkhuta dina” (Aramaic; “the law of the country is binding”). It was only as time passed, bringing with it a proliferation of cases of corruption and forging of documents, that confidence in the Ottoman legal system was undermined and there were some who challenged the validity of documents drawn up in the lower courts.

The sicil records of Istanbul, as well as those of Jerusalem, testify to the constant presence of Jews in Muslim courts, whether for adjudication or for legal registration of the transfer of property, rentals, sureties, monetary arrangements, and so forth. This habit is also reflected in the Responsa literature.

By means of the halakhah and takkanot, the congregational leadership tried to meet the challenge of the şaria court. Ordinances enacted in cities other than Istanbul during the sixteenth and seventeenth centuries forbade turning to non-Jewish courts to adjudicate cases in which both parties were Jewish. These takkanot placed turning to a Gentile court on the same level as informing to the authorities (‘malshinut’, ‘mesirah’) and threatened the transgressor with excommunication and ostracism. The issue of applying to a Muslim court was not limited to Ottoman Jewry alone; the Greek-Orthodox Church in the Balkans contended with the problem in a similar manner, prohibiting its believers to do so and threatening them with excommunication. The leading rabbinical figures of that time considered turning to a Muslim court to be a severe blow to the prestige of Judaism, which claims that it is able to deal with all possible situations and provide Jews with solutions in every sphere. Furthermore, they considered it to be acknowledgment of the truth, power, and superiority of Islam, a state of affairs that paved the way to conversion to Islam. Negation of the principals of Islamic law was less central to their argumentation. Such prohibitions had another motive, though it was not clearly enunciated in writing: since a dayyan in a case dealing with monetary matters received a fee consisting of a certain percentage of the claim, clearly the judges were not happy about renouncing it in favor of the kadi. I guess that the sense of the diminishing power of hahamim is also in the background. Another method of deligitimization was the abovementioned claim about the corruption of the judicial system.

The haskamot enacted during the sixteenth century were not very helpful in preventing Jews from turning to the kadi’s court, and it seems that they were least effective in Istanbul – perhaps because of the more severe supervision of the authorities, and not a specific local trend or inclination. Apparently, the ancient haskamah was not accepted by the Jewish public at large and in fact was relegated to oblivion. The young Jewish community of Izmir, though, was especially prone to turning to the şaria court or to adjudication by foreign consuls. One haskamah prohibited any form of informing to the authorities or reporting inside information, but it was ineffective. In Salonika, evasion of the haskamah was less widespread, perhaps due to the firmness and solidarity of the Jewish community in that city. My primary assumption that the same could be said for small, closely knit communities (e.g. Jerusalem) whose members exhibited a much
greater degree of conformism, doesn’t seem to be correct. The record books of šaria courts in several Ottoman cities support the impression gained from the Hebrew sources about the frequency of Jewish presence in Muslim courts; clearly this was widespread among the Jews as well as diverse Christian sects. The religious leadership was not prepared to compromise with such behavior and continued to censure it, though as far as I recall criticism ended in the late 17th century. It seems that later it was deemed hopeless.

A combination of circumstances can explain why Jews turned to Muslim courts, and why they did this so frequently. First of all, the šaria court was open and available to anyone prepared to pay a certain fee. There was no legal difficulty, such as the special Jewish vow that Jews were forced to take in European courts, and when necessary a Jew vowed on a set of phylacteries or a Torah scroll brought to the court. Secondly, conducting a case in the Muslim court had several advantages when compared with judicial proceedings in the rabbinical court: speedy adjudication—the parties pleaded their cases, the court decided, pronounced its sentence, and had it carried out all in one session, while halakhic requirements sometimes made for lengthy deliberations in the Jewish court; it was relatively easy to “hire” Muslim false witnesses or bribe the judge. Another important advantage was the kadi’s ability to enforce his judgments, compared with the weakness of the autonomous courts, which had to contend with powerful persons in the congregation and those who refused to accept their judgment. In other cases, there were those who exploited to their own good the difference between Islamic and Jewish law. People made their choice on the basis of expediency, preferring personal interests to religious imperatives and the public good. Many of the haskamot prohibiting adjudication in non-Jewish courts specifically referred to laws of inheritance and certain laws of matrimony, two areas in which Jewish women were on much inferior ground than men. Thus, couples which the halakhah prohibited from marrying were wedded in Muslim courts, and there were women who found in the šari’a a way to circumvent limitations placed upon them by the halakhah in certain matters. We find dozens of cases dealing with inheritance in the sijilat. In certain cases, when the dayyanim—who were aware of their limitations—realized that for the public good or justice to be done an appeal to a Muslim court was necessary, they allowed a plaintiff or victim to do so, and even commanded witnesses to appear and give false testimony, against villains or those who “refused to obey the law” (Hebrew term - ‘lo tzayat dinna’, ‘alam’). The right of the Jewish courts to do so was confirmed in those very same ordinances that prohibited individuals from turning to Gentile courts without permission.

In view of the weakness of the Jewish courts and the considerable advantages of adjudication in the šaria courts, we should probably not be surprised by the extent to which Jews applied to the latter but rather by the fact that the kahal’s court continued to be the authoritative body before which presumably most of the plaintiffs brought their cases. Among the reasons we may note: Jewish religious courts were easily accessible, in
contrast to the situation in the Sephardic Diaspora in western Europe or in eastern European communities; the courts were considered a-political institutions that could deal objectively with important issues in the life of a congregation; people were brought up to accept the norm that haskamot should be obeyed; and the relatively great extent of solidarity exhibited by Jewish society.

Turning to a Gentile court seem to have achieved legitimacy and became normative behavior in the consciousness of the public at large as soon as the first half of the 16th century. The frequent voluntary appearance of Jews in the şari'a courts for various purposes is instructive from several aspects. Those frequent appeals to Muslim courts cannot be understood unless we assume that Jews felt secure and expected to receive a fair trial, within the limitations set by the şari'a on dhimmis. This was in contrast, for example, to what was believed by European foreigners. As for the communal or religious spheres, an individual might be prepared to disregard specific haskamot, thus breaching congregational law and undermining community solidarity to further personal interests. This was one of the manifestations of the decline in the affinity of individuals to the kahal and of the increase in the number of criminals and criminal acts of various types, some of which were directed against the kahal. Turning to Muslim courts should be seen as a cultural marker, one that complements information from other sources about deep involvement of Jews in the life of the Ottoman city and close relations with its institutions. Even if we assume that a court translator was present at most sessions involving Jews, this still provides further evidence of the spread of the Turkish language among wider circles in the Jewish public and of some acquaintance with the şaria, the kanun, and Ottoman judicial and administrative procedures.

While the Jewish communities in the major Ottoman cities were aware of how much their autonomous judicial system was unique and would boast about it to foreigners, the hakhamim’s judicial authority was not universally accepted. There is even some evidence of challenging the authority of the religious courts and their judges as part of the wider phenomenon of abasing the Torah and its learners. For some persons, the hakhamim were a thorn in the flesh. They disregarded their decisions and refused to comply with sentences issued against them, at times even expressing outright denial of the judicial authority of the court’s dayyanim and the validity of the halakhah. There were cases in which this deteriorated to informing against the hakham (as with Radbaz in Jerusalem) or the dayyanim, or even to physical attacks against them.

Bibliography

1 Hacker, “Jewish Autonomy,” and more concisely, idem, Hacker, “Spanish Exiles in the Ottoman Empire,” 469–70. On this tax see above, Chapter Four.
2 Hacker, “Chief Rabbinate”; Cohen, Jewish Life, 36-56.
3 For haskamot dealing with this issue, see the subject index of Hacker and Ben-Naeh,

4 See, in exenso, Rossitsa Gradeva, “Orthodox Christians in the Kadi Courts: The Practice of the Sofia Sheriat Court, Seventeenth Century,” Islamic Law and Society 4 (1997): 37–69. For prohibition of local Christians and Europeans against applying to the kadi’s court, see also Goffman, Britons, 51. For Europeans who refrained from appearing in the şaria court, see Masters, Origins, 66–68.

5 Danon, “La Communauté juive de Salonica” (part II): 112–15. The haskamah seems to have been renewed in Istanbul during the late 1550s and also sent to Salonika; see Rozen, In the Mediterranean Routes, 138–43.

6 Palache, Massa Hayyim, §79, 22b.

7 For evidence from Salonika about the negative public attitudes concerning turning to a Muslim court, see Medina, Responsa, vol. 1, sect. Orah Hayyim, §5, 5c; for Belgrade, see Benveniste, Penei Moshe, vol. 2, §57, 103b. For its complete disavowal (in Seres?), see Shlomo haCohen, Responsa, 4 vols. (Salonika–Venice 1586–1730), vol. 2, §144, 103c (Hebrew).

8 While the studies of Amnon Cohen and Haim Gerber point to the presence of Jews in the şaria courts, explicit statements about its scope are found in the Hebrew sources: Mizrahi and Ibn Hayyim, Mayim Amukim, second enumeration, §102, 159d; Eliyahu Ibn Hayyim, Responsa, §58, 92a; Zahalon, Responsa Zahalon haHadashot, §32, 70a; Baruch Kalai, Mekor Baruch (Izmir 1649), §34, 49d (Hebrew). (For testimony that persons who did not comply with the prohibition against turning to Muslim courts did not feel guilty, see Angel, Responsa, §37, 54b.) For a comparison with Christian communities in the Balkans, see Gradeva, “Orthodox Christians”: 68–69.

9 One study maintains that this fee was quite considerable, so that the lower economic classes were less represented among those who availed themselves of the court; see Boğac A. Ergene, “Costs of Court Usage in Seventeenth- and Eighteenth-Century Ottoman Anatolia: Court Fees as Recorded in Estate Inventories,” JESHO 45, no. 1 (2002): 39. This assumption makes the frequent appearance of Jews in the courts even more significant.

10 This was also noted by European travelers who were much impressed by the efficiency of the Ottoman judicial system; see also Haim Gerber, “Sharia, Kanun and Custom in the Ottoman Law: The Court Records of 17th-Century Bursa,” IJTS 2, no. 1 (1981): 144; Uriel Heyd, Studies in Old Ottoman Criminal Law (Oxford 1973), 313.

11 Due to the conditions under which they filled their roles, many kadis tried to amass money in short periods of time and were prepared to pronounce a false judgment in return for a bribe. Gerber, “Sharia, Kanun and Custom”: 147, believes that corruption in
the Ottoman judicial system was less than is usually assumed. The decline in the quality of the Ottoman courts during the seventeenth century, especially in the provinces, played into the hands of the Jewish decisors who used this fact to de-legitimize turning to Gentile courts.

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R. Mordekhai haLevi, Darkei No'am, Venice 1697, Even Ha'ezar, 35, 117b:

"Reuven quarreled with Shimon his father-in-law and they went to the Muslim court and Shimon spent money for bribery and brought false Jewish witnesses and they declared that Reuven divorced his wife in front of them in the Muslim manner in talak tlata [=triple divorce] in which according to their law it is impossible to remarry her unless in an illicit way which is forbidden for us; and with many frauds and bribes that Shimon gave they [=the kadi's court] received and affirmed the testimony of these scoundrels, and then Shimon charged again Reuven his daughter's dowry, and the court ordered him to pay this huge sum of about 3000 gurush and the sum has been written in a hujjet-i sher'iyye. And after all that they came before the beyt din and Shimon told Reuven that if he will divorce his daughter with a valid get he will concede that debt and he would tear the hujjet, but if he won't, he would imprison him and would harass him in any possible way because of this debt, and Shimon was a forceful person that was able to do so. And the members of the beyt din yud bet told them that if Reuven will be reconciled to divorce as long as the hujjet and the obligation will exist, he is considered as divorcing because of ones and under duress, therefore there is no other way but that he shall tear the hujjet, and will write a berat that he paid his debt, otherwise it is not enough, as he might make a copy of the hujjet from the sijil, as they are accustomed to do. Anyhow the beyt din members were worried because of the talak tlata as in the muslims law the husband can not possibly remarry his divorcée unless through a forbidden manner which may not be done. Therefore, even though the ones of the debt and the pesterin Reuven is still not allowed to keep her, so he is still anus (=compelled) in giving the get. But this has been solved of itself, as the woman was pregnant while the talaq has been done, and then she gave birth to a baby boy, and the gentile sages gave a fetva that n a case such as that a woman is allowed to return to her husband because her
birth of a baby boy comes instead of istihlal which according to them allows her remarriage; but now we come back to the ones of the aforementioned hujjet; and some of the decisors advised to list debts and fines on the father of Reuven, by writing a hujjet on the father for a known sum, and it shall be given to a third party, and if after tearing the hujjet written on Reuven he will be willing to divorce, they shall tear the second hujjet as well, but if he shall not want to divorce then the third person shall hand the second hujjet to Shimon and he will be repayed [117c] the other sum which he [Reuven] owed, and that this is not ones for he divorces by his own will, therefore he ordered to act in this manner. And the plaintiff asked wether it is indeed sufficient to remove the ones of the get, or not.

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Publisher: Darkei No'am, Venice 1697, Even Ha'ezir, 35, 117b

R. Mordekhai haLevi, Darkai No'am, Venice 1697, Even Ha'ezir, 35, 117b:

[Text in Hebrew]

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The court records of istanbul
Istanbul sher'iyye sijilleri
1662

Translated by Yaron Ben-Naeh, Hebrew University, Jerusalem, Israel

Hasköy, vol. 3, p. p. 82 «Divorce and Dowry-I»

Poshtire binti Avraham the Jewess who lives in the Kiremitçi Ahmet Çelebi neighborhood in Hasköy, came to the court and sued Bunyamin v. Hanuka the Jew: “The mentioned Binyamin used to be my husband. He divorced me with an Islamic formula of *talak-i selase*, but now he wants to remarry me. I ask you to question him and forbid him to approach me.” After questioning, the mentioned Avraham denied the charge and said: “Three years ago I married to her and our dowry was 100 *riyali guruş*. Two months ago she took her belongings and left the home for her father’s home.” When the mentioned Poshtire was asked to bring evidence for her case, Musa v. Yahuda and Kalef v. Baruh the Jews from the same community offered their testimonies according to which the events took place as the mentioned Poshtire described. After their testimonies were accepted, what happened was registered on 25 Şevval 1072 (12 June 1662).

Hasköy, vol. 3, p. page 83 «Divorce and Dowry-II»

Poshtire binti Avraham the Jewess, who lives in the Kiremitçi Ahmet Çelebi neighborhood in Hasköy, came to the court and sued Bunyamin v. Hanuka the Jew: “The mentioned Bunyamin married to me three years ago, and agreed to pay 100 *guruş* as a delayed dowry. When he divorced me, I sued him to get the money. At the beginning he denied that he had divorced me, but then the court decided in favor of me. However, he has still not paid the money. I request from you to question him”. After questioning, the mentioned Bunyamin accepted that he owed her 100 *guruş*. He was demanded to pay the money to her in full. What happened was registered on 29 Şevval 1072 (16 June 1662).
EARLY MODERN WORKSHOP: Jewish History Resources

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

İstanbul Şeriyeye Sicilleri
İstanbul sher'iyye sijilleri
1662

Prepared by Yaron Ben-Naeh, Hebrew University, Jerusalem, Israel
Archive: İstanbul Müftülüğü Arşivi, Hasköy sijilleri

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Trying Issues: Polish-Lithuanian Jews under Multiple Jurisdictions

Adam Teller, University of Haifa, Israel

ABSTRACT: The texts presented here highlight issues of multiple jurisdiction Jews were subjected to in early modern Poland-Lithuania

This presentation is for the following text(s):
- Privilege for the Jews of Łowów
- Privilege for the Jews of the Przemyśl Region and Rus'

Adam Teller
University of Haifa, Israel
Duration: 57:25

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Privilege for the Jews of Lwów
Przywilej dla Żydów Lwowskich
Marek Matczyński, March 21, 1692

Translated by Adam Teller, University of Haifa, Israel

Lwow, March 21, 1692

Marek Matczyński, the Wojewoda of Ruthenia bestows upon the Jews of Lwow the so-called Wojewoda's Regulations (porządki wojewodziszkie)

Marek of Warzę and Michnow Matczyński, Wojewoda and General of Ruthenia, starosta of Belz, Rubieszow, Grojec, Bracław etc.

I notify everyone who needs to know, in general and individually, and in particular the podwojewoda of Lwow, my representative [namiestnik] now and in the future, that, relating to the ancient laws and customs of my predecessors, I confirm them with this document, and in endorsing the laws, I wish to make the following arrangement:

1. First of all, in order that the salary of the podwojewoda's office remain in good and proper order and that the merchants incur no aggravation on that account, I leave it to the administration of the Lwow community ea cum prae custoditatione seu verius praecautione, [with such guardianship and serious precaution] that they do not dare to take one shilling [dime] more than the instruction I have laid down. Therefore joining my salary from the merchants with what is owed to me from the small towns in my jurisdiction and all the income in general which is to accrue to my treasury from the community, I hereby determine that the community, both urban and suburban, together with the rabbis of Lwow, pay my treasury annually in legal tender four thousand Polish zloty in four installments. The first installment on the festival of John the Baptist, the second on the festival of Saint Michael, the third, the same as above, on Christmas, and the fourth and last in the same way also in the sum of one thousand zloty on the holiday of Saint Gregory. The community must pay my podwojewoda in the [same] order as...
above in installments, one thousand zloty in all, on the understanding that once we have taken the above sums or installments, neither I nor the podwojewoda will have any claim to fish, spices or any other victuals, and neither may my servants - with me or without me - claim [anything] and, of course, no expenses need be made to the podwojewoda or his servants.

2. The elders of both communities having stipulated the elections to the leadership as far as time, custom, and regulations are concerned, and without any impediment from me or the podwojewoda, are to hold the elections in accordance with their rights and customs peaceably and without the slightest hindrance. These elected Jewish elders must try the local Jews of Lwow, both urban and suburban, as well as the foreign [Jews] of the entire Ruthenian wojewodztwo, faithfully and justly in accordance with the old and ancient customs, rights and orders.

3. The podwojewoda and the Judge should take the oath in accordance with the civil law and especially according to the Statutes of the Kingdom, namely Herbur, as is found in those Statutes with the heading, “De Iudaeis”, under pain of nullifying their rulings in the case the oath is not properly taken. This with the express addition that the Judge, present and future, should be chosen from two candidates suggested by the urban and suburban Jewish elders, with one [of those] they like to be chosen for approval and confirmation. In accordance with the ancient laws and regulations of this community, neither the podwojewoda nor the judge may hold any office in the Castle or District Courts, so that the jurisdiction of the wojewodztwo should not suffer legal restrictions through the holding of double offices.

4. My Judge may not try Jewish cases in his residence but only at the legally appointed site by the synagogue. The Jewish elders should sit in court with him and cast their vote according to their [own] understanding in the cases and trials, following the ancient custom and the laws of this community.

5. In as much as it is useful for the party burdened with a heavy sentence to appeal to me from either the podwojewoda's or the Judge's [court], such appeals should not be denied in any case, but on the contrary should be permitted, taking reverent care for my authority. Moreover, so that in each case the writs to the accused are delivered by the under-beadle of the Lwow Jews, I want the accounts of the taking and handing over of the writs to be written in the protocol, under pain of nullifying the case.

6. The Judge needs to hear these Jewish trials only twice a week, that is on Monday for the Jews of the urban [community], and on Thursday [for the Jews] from the suburb; these can be heard – as already mentioned– by their synagogue. This is apart from cases involving guests [i.e. Jews from out of town], which require immediate proceedings without delay. These, however, may be heard, as stated, by the synagogue, on any day except for their festivals.

7. All protocols - past and present - as well as the record books and documents of the Wojewoda's court should be kept locked in a chest in the court chamber; the key to this chest should be [held] by the Judge. I declare that the records of those who testified but
did not sign the *Wojewoda*’s protocol are invalid and of no significance; indeed, such documents must be nullified.

8. There are vagrant Jews, who having no [occupation], get into trickery, i.e. they serve in collecting [the taxes of] szelążne, czopowe and the lease [*arenda*], but collect more than is due. Therefore, in an effort to [ensure] that they do not harm people, [I order that] none of these Jews should dare to serve without the knowledge of the elders, and that the Jewish elders of both communities, the urban and the suburban, ensure that anyone who takes up these services is a man of virtue and not suspicious. In this way, they can recommend him to people that he will not deceive or trick [them] and will carry out his duties with fairness. The penalty [for failing to act properly] is severe, and is put in the hands of the Jewish elders of both communities so that they severely punish those who act wickedly in these matters - without any respect [of person].

9. When a Jew has a case with another Jew, neither the *podwojewoda* nor my Judge should be involved. They should litigate only before the elders as is necessary.

10. In addition, in each case which would require it, examination [*inkwizycja*] should not be forbidden to anyone, just as was stated above, and should retain its excellent and satisfactory value as well as its appropriate reliability according to the ancient and old laws. This I confirm with my authority, approving such rights as were, of old, suitable for both communities, without encroaching upon them in any way. It is my wish that neither now nor in the future should [these rights] be violated by myself, or by the *podwojewoda*, the Judge or my courtiers in any way.

Done in Lwow, on the twenty first day of the month of March of the year 1692.


(Castr. Leop. T. 478 p. 548; T. 518 p. 777; T. 544 p 2605)

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Przywilej dla Żydów Lwowskich
Privilege for the Jews of Lwów
Marek Matczyński, March 21, 1692

Prepared by Adam Teller, University of Haifa, Israel

Nr. 11

Lwów 1692, marca 21.

Marek Matczyński, wojewoda ruski, nadaje żydom lwowskim tak zwane porządki wojewódzkie.

Marek na Warzę i Michnowie Matczyński, wojewoda i generał ziem ruskich, belzki, rubieszowski, grojecki, braclawski etc. starosta.

Wszem wobec i każdemu z osobna komu o tem wiedzieć należy, a osobliwie J. M panu podwojewodzemu lwowskiemu namiestnikowi memu, teraz i na potem będącemu do wiadomości donoszę, iż stosując się do dawnych praw i zwyczajów antecessorów moich tym skryptym one konfirmuję i aprobuuję też prawa, takowy mieć chcę porządek: (§.1.) A naprzód, aby pensya urzędowi wojewódzemu należąca w dobrym i słusznym zostawała porządku, żeby kupcy stąd żądnej nie odnosili agrawacyi, puszczał one w administrację synagodze lwowskiej ea cum praecustoditione scu verius praecautione, aby nad instruktarz mój nie ważyli się więcej ultra ordinationem mego ustanowienia i szeląga jednego brać. Więc przyłączając takową moją od kupców pensyą i do niej od miasteczek mnie należące et in genere wszystkie prowenta, które od synagogi do skarbu mego wchodzici i należeć powinne, tak w tej mierze postanawiam, ażeby synagoga tak miejska jako i przedmiejska z rabinami lwowskimi co rok do tegoż skarbu mojego po złotych cztery tysiące polskich currenti moneta ratami czterema każdemu roku wypłacił, jako to pierwszą ratę złotych tysiąc na święto świętego Jana Chrzciciela, drugą taką razem jako wyżej złotych tysiąc na święto świętego Michała, trzecią zaś similem, ut supra, na Boże Narodzenie, a czwartą i ostatnią podobnym że sposobem także tysiąc złotych na święto świętego Grzegorza. JM. panu zaś podwojewodzemu memu takowy mir jako wyżej ratami wszystkiego złotych tysiąc taż synagoga wyliczyć powinna tą kondycyją, iż po
odebraniu wyż spisanych sum vel rat ani ja sam ani JM. pan podwojewodzy żadnej pretensyi strony ryb, korzeni i innegokolwiek wiktu, tudzież sŁudzy moi nie będa tak przy mnie jako i bezemnie upominać się i owszem żadnego na JM. pana podwojewodzego ani sług unkosztów łożyć.

(§.2.) Jako to tedy obwarowawszy ciz obudwóch zborów starsi elekcyą swoją na starszeństwo podług czasu, zwyczaju i punktów swoich bez wszelkiej przeszkody tak mojej jako i JM. pana podwojewodzego, obierać zgodnie sine quacunque propedictione mają, podług ich praw i zwyczajów. Którzy obrani starsi żydów tak tutejszych miejskich lwowskich i przedmiejskich jako obcych całego województwa ruskiego, obywatelów według starych i dawnych zwyczajów, praw i porządków ich sądzie wieńie i sprawiedliwie będą powinni.

(§.3.) Panowie zaś, JM. Pan podwojewodzy i sĘdzia, mają wykonać według prawa pospolitego i praecipue secundum statuta regni, ut pote Herburt, iuramentum, które znajduje się in iisdem statutis titulo „de iudaeis” a to sub nullitate decretorum przez nich in defectu praestandi iuramenti ferowanych, tego dokładać expresse, iż sĘdzie teraz i na potem zostający ze dwóch kandydatów, których żydów starsi miejscy i przedmiejscy podadzą, jeden do approbaty i konfirmacyi, który się im podoba, ma być obrany. Według zaś praw i porządków dawnych teje synagogi, tak JM. pan podwojewodzy jako i sĘdzia żadnego urzędu grodzkiego ani ziemskiego sie dwojej przemysłu, a to dlatego, ażeby przez dwoistego urzędu wŁadzie jurysdykeya województwa convulsionem prawa nie cierpiła.

(§.4.) Nadto sĘdzia mój nie powinien spraw żydowskich w swojej rezydencyi sądzić, tylko na uprzywilejowaniem miejscu przy szkole, z którym starsi żydzy zasiadać powinni na sądach i według swego rozumu w sprawach i sądach wota wydawać, a to stosując się do starożytnego zwyczaju i prawa teje synagogi.

(§.5.) A in quantum by przydało się, tak od JM. pana podwojewodzego, jako i sĘdziego, parti gravatae od dekretu obciązliwego do mnie apellować, takowe we wszystkich sprawach apellacye nie mogą być denegowane, i owszem omni servata authoritate mea reverenter dopuszczać. Przy tem, aby do każdej sprawy przez podszkolnika żydów lwowskich pozwy stronie obwinionej oddawane były, mieć chcą, których ażeby relacye względem odniesienia i oddania pozwów w protokole zapisywane były, sub nullitate processus waruj to.

(§.6.) Sądzy zaś takowe żydowskie nie powinien pan sĘdzia tylko dwa razy w tydzień sądzić, to jest w poniedziałek żydów miejskich, a we czwartek przedmiejskich, jako się namieniło przy szkołach ich, exceptis causis hospitum, któreby potrzebowane sine mora prędkiej ekspedycyi, te wolno sądzić będzie, jednak, jako się rzeklo, przy szkole, każdego dnia oprócz święta ich.

(§.7.) Protokoły wszystkie tak dawne jako i teraźniejsze, tudzież księgi albo aktu sądów wojewodznych w skrzynce, w sądowej izbie przy szkole w zamkniciu zostawać powinny, od której skrzynki klucz u pana sądziego ma być. Zapisy zaś, który przed aktami zeznawal, a na nich się protokule wojewodzym nie podpisał, żadnego nie mają mieć.
waloru i wagi, deklaruję, owszem nullitatis vitio subiacere takie akta powinny.

(§8.) A że znajdują się lụźni żydzi, którzy nie mając się do niczego, udają się na szarpanię, to jest na usługę szelążnego, czopowego i arendy wybieranie, ale nad to, co im należy, wybierają, więc zabiegając temu, aby krzywdy ludziom nie czynili, żeby się żaden z takowych żydów nie ważył służyć bez wiadomości starszych, a to dlatego, żeby starsi żydowscy obojej synagogi tak miejskiej, jako przedmiejskiej uważali czy ten, który się do tych, jako się rzekło, usług bierze, jest cnotliwy i nie podejrzany, żeby go mogli rekomendować ludziom, żeby onych nie zawiedzić, szarpanić się na usługi szarpaniny, to jest na usługi szarpaniny, czopowego i arendy wybieranie, ale nad to, co im należy, wybierają, więc zabiegając temu, aby krzywdy ludziom nie czynili, żeby się żaden z takowych żydów nie ważył się na usługi szarpaniny, a to pod surowem karaniem, które się starszym żydowscy obojej synagogi w moc daje, aby takowych którzy się niecnotami i z temi rzeczami parali, surowo karali, a to bez żadnego respektu.

(§9.) Do tego, kiedy się trafi, że żyd z żydem będzie miał jakową sprawę, tedy do takowych spraw ani JM. pan podwojowodzzy, ani sędzia mój niema się interesować, tylko przed starszymi jako należny, jeden z drugim rozprawić się ma.

(§10.) Nadto inkwizycya w sprawie każdej, bez której [by] się obejść nie mogło, nie ma być nikomu broniona, similiter jako się wyżej nadmienięto, swoją doskonałą i dostateczną podług starych i dawnych praw, przywilejów wagę swoją i pewnością (sic) należytą miała, powagą moją konfirmując, i w niczem nie naruszając takich praw z dawna synagodze obojej należytych one aprobując, które tak przezemnie, jak przez JM. pana podwojowodzirego, sędziego i dworzanów moich, aby w niczem nie wiołowane były i tak teraz, jako na potem, mieć chcę. Działo się we Lwowie, die vigesima prima mensis martii, anno sescentesimo nonagesimo secundo. Marek Matczyński, wojewoda i generał ziem ruskich. Locus sigilli.

( Castr. Leop. T. 478 p. 548; T. 518 p. 777; T. 544 p 2605. Druk. w rozprawie Dra Schorra: Organizacya żydów etc. str. 87 n.).

Uwaga. Dokumenty nr. 10 i 11 zostały zatwierdzone przez króla Jana III dnia 26 czerwca 1694 ( jak wyżej T. 478, 518, 544), a następnie przez Augusta II dnia 11 października 1697 r. ( jedynie jak wyżej T. 478).

Wojewoda ruski August Czartoryski stwierdza w r. 1732 aktualność obu tych dokumentów, a to w potwierdzeniu Jana III z r. 1694. przyczem jednak na końcu dodaje ważną klauzulę, którą drukujemy( str.12) samą dla siebie, aby nie powtarzać całego tekstu.

Publication: Z. Pazdro, Organizacja i praktyka żydowskich sądów podwojewodziskich w okresie 1740-1772 r. na podstawie lwowskich materiałów archiwalnych, Lwów 1903, pp. 176-79.

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Endnotes
1 W akcie: początków (sic)
Organizacja i praktyka żyd. sądów podwojewodz.
2 Tu następuje błędnie wyraz: „pozwany”, który opuszczamy.

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Privilege for the Jews of the Przemyśl Region and Rus'
Przywilej dla Żydów Ziemi Przemyskiej i Rusi
Stefan Czarniecki, March 17, 1660

Translated by Adam Teller, University of Haifa, Israel

No. 9

Siedliszcze March 17, 1660

Stefan Czarniecki, the Wojewoda of Ruthenia, issues regulations for the Jews of the Przemyśl district and the wojewodztwo of Ruthenia in general

I, Stefan of Czarna Czarniecki, Wojewoda of the Ruthenian lands, general of the army of His Majesty the King, Starosta of Piotrków, Kaniów etc, notify everyone who needs to know, in general and individually, to wit my office of podwojewoda, that I am establishing the following order for Jewish affairs, while confirming the rights previously granted by my predecessors to the Jews residing in the Przemyśl district (ziemia przemyska) and to others who live under my jurisdiction and pertain to my Ruthenian wojewodztwo.

1. First of all, the podwojewoda has the right to hear cases in the Jews' synagogue with the Jewish elders and a scribe; at the same time, a sworn beadle (szkolnik) acting as bailiff must be present at all cases for testimony, which testimony must be valid.
2. Having chosen a scribe, sober and knowledgeable in law, the Jews themselves should recommend him to the podwojewoda.
3. The podwojewoda should not oversee any litigation or try cases without the elders.
4. In the absence of the podwojewoda, the scribe, together with the Jewish elders, should adjudicate cases and daily affairs in the Jews' synagogue. Appeals against their verdicts should be directed to myself rather than to the podwojewoda.
5. For writing appeals six grosz is due to the scribe, and five to the office, for the seal five grosz is due to the podwojewoda, for any decree only five grosz is due, of which two [grosz] ought to go to the podwojewoda, two to the Jewish elders and one to the scribe.
And when the podwojewoda is absent from the disputes, the scribe should take for himself [the payment] for the decree, which should be due to the podwojewoda.

6. Jewish documents or cases with the record books should not be taken out of the synagogue, but should be kept in a chest with my seal and two locks, the key to one of which should be kept by the scribe and to the other by the beadle.

7. The podwojewoda should not himself hold any Jewish records, or accept any registrations or protests, declarations or wound examinations or sequestrations; if any such were accepted [by him], they shall be deemed invalid; rather the Jewish elders should have them inscribed and inserted in the record books kept in the synagogue.

8. In the election of the [community] office and the Jewish elders, whom the Jewish populace, according to custom, elects around their Easter, the podwojewoda has no part, only the Jews themselves.

9. The podwojewoda should try cases twice a week, once on Tuesday and the second time on Thursday. If he has a case between Jews under his jurisdiction and other [Jewish] strangers, he should not adjudicate this case, rather the Jewish elders with the scribe [should do so].

10. The podwojewoda should appoint to the Jewish elders and the Jewish populace a scribe to whom the elders and the populace agree.

11. Nobody is to seal the Jews' synagogue without the order of His Majesty the King, and my permission.

12. When someone wants to summons a Jew, he should take the official seal from the scribe, for which the scribe should receive half a grosz. The [seal] should be given to the beadle in order to summons the Jew at a certain time. For issuing a summons, the beadle should be given half a grosz.

13. When a Jew [who is] summoned by a szkolnik does not present himself at the office, [he] should give a penalty: the podwojewoda [should] be given a pound of pepper as his fine. Should he not present himself a second time, he [should give] a second pound of pepper, and should he not appear a third time – he should give the penalty three times.

14. For putting his seal to an extract or a document five grosz is due to the podwojewoda, as well as five grosz to the scribe for penning [it].

15. If a Jew has a lawsuit with another Jew, [it] should not be adjudicated by the podwojewoda or the scribe (if the Jews have leased the courts from me for that time???) but only those Jews whom the Jewish populace have with willing agreement elected and chosen; there shall be no appeal from them.

16. When a Jew purchases a house or property from another Jew, the registration [of the purchase] should be made only before a Jewish office. For registration, the purchaser should give a pound of pepper to the podwojewoda, twelve grosz to the scribe, twelve to Jewish elders and twelve to the beadle.

17. When a Jew beats or wounds another Jew, he should declare [this] to the beadle and register the wounds; for registering the wounds one grosz is due, and a penalty of a pound of pepper goes to the podwojewoda from the one who inflicted the wound;
neither the podwojewoda nor the scribe will be a part of this court, only the Jewish elders.

18. If a Christian has a case with a Jew over a debt or a beating or some other matter, it should not be adjudicated by the podwojewoda alone but together with the Jewish elders, and the Jewish elders should give their verdicts.

19. And should someone from the Jewish populace disobey the elders in the matter of payments, decrees they have given, or in other issues, the Jewish elders should try him. The podwojewoda must not interfere with their court, nor come to his defence, but on the contrary should cooperate in executing the verdict of the elders.

20. The podwojewoda may not sell or lease his office, [nor may] his successors or heirs.

21. When a Jew gives more than a kopa [sixty grosz] for a loan, he should bring the pawn to the scribe on the very same day and register from whom he received the pawn, for what [amount] it was pawned and what was the agreed interest. For registration [he] should pay the scribe one grosz.

22. A Jew should only hold the pawn or collateral for the loan for a year and six weeks. Once a year and six weeks have passed, the Jew should come to the Jewish office [i.e. the podwojewoda's office] with this pawn and make an official declaration that he has kept it for the purpose of usury for a year and six weeks. There the Jewish office should award him this pawn or collateral for good and he is free do with it whatever he wants. He is free to sell it, spoil it, give it away or put it to the best use [he can]. For this verdict the Jew should give five grosz to the office to have it inscribed in the record book, and one grosz [is due to] the beadle.

23. Jews take such interest as is agreed upon with the person or by the person who gives the pawn. And when the latter says that he pawned [it] with a Jew for a smaller sum or for a lower rate of interest, the Jew should show in the records that the pawn or rather the collateral was given for a greater amount, or [the Jew] should take an oath with which he confirms everything. The person who gave the pawn must pay according to the oath.

24. When someone pawns something with a Jew, and this pawn or collateral is burnt or lost with other items, the Jew should take an oath and this oath will dismiss the Christian.

25. In addition, when a stolen item is found at a Jew's, he should swear that he did not know that this item had been stolen. [This is] except for church items, for which, in so far as they were stolen and sold to the Jews, his oath will not be valid.

26. When a Jew loans something to a Christian and the Christian denies it, the Christian will take an oath and so dismiss the Jew.

27. A Christian should not submit a testimony against a Jew about any issue, only with a second Jew and a Christian; otherwise the testimony should not be allowed.

28. If anyone wants to receive an extract from the record books with appeals, decrees and any other judgements (judicata), the podwojewoda should produce them with no delay.
29. Jews in my wojewodztwo should not be subject to other jurisdictions.
30. The podwojewoda should diligently enforce my authority and his office, barring and protecting them from other jurisdictions and namely [from that] of the castle [grod].
31. That thus and in no other way should be the order of the rights of the Jews of Przemyśl do I, in compliance with the ancient rights bestowed upon them by my predecessors, sign with my own hand next to my seal for better faith and certainty.

This was all done in Siedliszcze on the 10th day of the month March in the year of Our Lord 1660. Stefan Czarniecki, Wojewoda of Ruthenia

Publication: Z. Pazdro, Organizacja i praktyka żydowskich sądów podwojewodzīńskich w okresie 1740-1772 na podstawie lwowskich materjalów archiwalnych, Lwów 1903, pp. 171-75

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Przywilej dla Żydów Ziemi Przemyskiej i Rusi
Privilege for the Jews of the Przemyśl Region and Rus'
Stefan Czarniecki, March 17, 1660

Nr 9
Siedliszcze, 1660, marca 17

Stefan Czarniecki, wojewoda ruski, wydaje przepisy dla żydów ziemi przemyskiej i w ogóle województwa ruskiego.

Stefan na Czarnej Czarniecki, wojewoda ziem ruskich, generał wojsk J. Kr. Mości, piotrkowski, kaniowski etc. starosta, wszem wobec i każdemu z osobna, komu to wiedzieć należy do wiadomości donosząc, a mianowicie urzędowi mojemu podwojewodziemu, iż potwierdzając prawa żydom w ziemi przemyskiej będącym, także i innym do jurysdykcji i do województwa mego ruskiego należącym przez antecessorów moich onym z dawna nadane, takowy porządek spraw żydowskich postanawiam.

(§.1.) Naprzód pan podwojewodzy ma prawo sędzić w szkole żydowskiej z żydami starszymi i pisarzem, przyczem szkolnik przysięży jako woźny przy wszystkich sprawach ma być obecnym dla świadectwa, którego świadectwo ma być ważne.

(§.2.) Pisarza sami żydowie statecznego w prawie umiejętnego obrawszy, panu podwojewodzemu go zalecić mają.

(§.3.) Nie ma pan podwojewodzy nic odprawować sam ani sędzić bez starszych.

(§.4.) W niebytności pana podwojewodzkiego pisarz z starszymi żydowskimi w szkole żydowskiej powinni sądy i sprawy potoczné odprawować, a od dekretu ich apelacyja zarazem do mnie samego ma wychodzić, a nie do pana podwojewodzego.

(§.5.) Od pisania apelacyji pisarzowi groszy sześć, urzędowi pięć, od pieczęci pięć panu podwojewodzemu, od wszelakiego dekretu tylko groszy pięć przychodzi, z których mają iść dwa grosze panu podwojewodzemu, starszym żydom dwa, pisarzowi jeden. A gdy pana podwojewodzkiego przy sporach nie będzie, tedy pisarz ma brać sobie od dekretu, coby na podwojewodzkiego przyjść miało.

(§.6.) Akta albo sprawy żydowskie z księgami nie mają być z szkoły wynoszone, ale mają
być chowane w skrzyni z pieczęcią moją, do której zamki dwa, do jednego klucz pisarz, a do drugiego szkolnik mają trzymać przy sobie.

(§.7.) A pan podwojewodzi książ przy sobie żydowskich trzymać nie powinien ani żadnych zapisów, protestacji, manifestacji, obdukcji, ran ani aresztów przyjmować nie ma, które luboby przyjęte były, takowe nie mają być ważne, ale je znowu starsi żydowscy zapisować i w księżyc w szkole będące inserować mają.

(§.8.) Do obierania urzędu i starszych żydowskich, których gdy według zwyczaju około Wielkiej Nocy swej pospólstwo żydowskie obiera, do tych obierania pan podwojewodzi należeć nie ma, tylko sami żydowie.

(§.9.) W tydzień dwa razy pan podwojewodzi sądzić powinien, raz we wtorek, drugi raz we czwartek. Pan podwojewodzi gdyby miał sprawę jaką z żydami juryzdykcyj w swojej podległym i innymi postronnymi, tej sprawy nie ma sam sądzić, ale starsi żydowscy z pisarzem.

(§.10.) Pisarza też pan podwojewodzi takowego starszym żydowskim i wszystkiemu pospólstwu podać ma, na którego starszyżydowie z pisarzem.

(§.11.) Szkoły żydowskiej nikt pieczęć nie ma oprócz z rozkazania Jego Króla Mości, a za wolą moją.

(§.12.) Żyda gdy kto chce pozwać, ma wziąć pieczęć u pisarza urzędu, za którą przyjedzie pisarzowi pół grosza, ta ma być dana szkolnikowi, aby żyda pozwał na pewny czas. Od pozwania dać szkolnikowi pół grosza.

(§.13.) Gdy żyd przez szkolnika pozwany nie staje do urzędu, popadać ma winę: panu powowjedzemu funt pieprzu pana podwojewodzkiego winy; gdy nie stanie drugi raz, drugi funt pieprzu; a nie stanie li trzeci raz, popadać ma winy trzy razy.

(§.14.) Od pieczętowania ekstraktu albo akcyze panu podwojewodzemu groszy pięć, a pisarzowi od pisania także pięć groszy.

(§.15.) Żyda, kiedy dom albo majątkę jaką leżąącą u drugiego żyda kupi, nie ma być zapis jeno przed urzędem żydowskim. Ten który kupuje od zapisu powinien dać panu podwojewodzemu funt pieprzu, pisarzowi dwanaście groszy, starszym żydowskim dwanaście, szkolnikowi dwanaście.

(§.16.) Żyda, kiedy dom albo majątek jaką leżącą u drugiego żyda kupi, nie ma być zapis jeno przed urzędem żydowskim. Ten który kupuje od zapisu powinien dać panu podwojewodzemu funt pieprzu, pisarzowi dwanaście groszy, starszym żydowskim dwanaście, szkolnikowi dwanaście.

(§.17.) Gdy żyda zbije albo zrani szkolnikowi się powinien oświadczyć, rany zapisać, od zapisania ran grosz, a panu podwojewodzemu winy funt pieprzu od tego przyjedzie, który zrani, i do tych jednak sądów pan podwojewodzi ani pisarz jego należeć nie ma, jeno sami starsi żydowie.

(§.18.) Chrześcijanin gdyby miał sprawę jaką z żydem lubo o dług lubo o pobiciu, albo też o jaka rzecz inną, takowej pan podwojewodzi sądzić sam nie ma, ale z starszymi żydowskim i już starsi żydowie wota swoje maja podawać.

(§.19.) A jeżeliby z pospólstwa żyd który nieposłusznym był starszym swoim tak w
składkach, jako nakazanych dekretach i innych sprawach, tedy starsi żydzi mają go sądzić, a podwojewodzi sądowi ich przeszkadzać nie ma, ani go bronić, ale i owszem ma być do egzekucyi według affektyacji starszych żydowskich pomocnym.

(S.20.) Urzędu swego pan podwojewództwa to jest podwojewództwa ani przedawać ani arendować nie ma, także i po nim następcy albo sukcesorowie.

(S.21.) Na zastawę, gdy żyd da więcej co nad kopę, powinien do pisarza ten fant przynieść tego dnia i dać napisać od kogo by miał ten fant, w czemby zastawiony był i po czemu lichwy ujedna. Od zapisu grosz jeden pisarzowi.

(S.22.) Fantu albo zastawy nie powinien żyd przy sobie w lichwie trzymać, tylko rok i sześć niedziel. A gdy rok i sześć niedziel wyniedzie, powinien ten żyd przyjść od urzędu żydowskiego z tym fantem i pokazać go ma urzędownie, iż go trzymał w lichwie rok i sześć niedziel. Tamże urząd żydowski ma jemu ten fant albo zastaw na wieczne czasy przysądzić, z którym ma mu być wolno poczynać co będzie chciał, wolno mu go sprzedać, zepsować, darować, zastawić i jako najlepszem pożytkowi swemu obrócić. A od przysądzienia tego fantu ma żyd dać urzędowi groszy pięć, aby w księgi wpisano, a szkolnikowi grosz.

(S.23.) Lichwę żydowie biorą takową, jaką sobie zjedna z tym albo u tego, który daje zastaw. A gdzieby powiedział ten, który zastawił, że w mniejszej sumie i w mniejszej lichwie zastaw albo fant u żyda zastawił, tedy ma to żyd aktami pokazać iż w sumie większej ta zastawa albo raczej fant zastawiony jest, albo też przysięgą żyda ma tego potwierdzić, za którą ma uchodzić wszystkiego, a ten, który fant zastawił ma według przysięgi zapłacić.

(S.24.) Gdy kto co żydowi zastawi, a ta rzecz albo fant z inszemi by rzeczami zgorzała albo zgineła, tedy żyd ma przysądzić, a tą przysięgą zbedzie chrześcijanina.

(S.25.) Także gdy u żyda zastanie rzecz kradzioną, żyd ma przysądzić jako nie wiedział, że ta rzecz była kradziona, oprócz rzeczy kościelnych, in quantum by się znalazły skradzione, a żydom poprzedane, nie ma być ważne odprzysiędzenie się żydowskie.

(S.26.) Kiedy żyd chrześcijaninowi czego pożyczy, a chrześcijanin by się k’temu nie znał, przysięgą na to chrześcijanin, żyda zbedzie.

(S.27.) O wszelką rzecz niedoświadczyc się chrześcijanin na żyda, jedno drugim żydem a chrześcijaninem, ani ma być inaksie świadectwo dopuszczone

(S.28.) Apelacye, dekreta i insze wszelkie iudicata, jeżeliby ekstraktem z książ kto chciał wyjąć, aby bez wszelkiego omieszkania pan podwojewody każdemu affektującemu człowiekiem onę wydawał.

(S.29.) Żydowie w województwie mojem będący innym jurysdykcyom podlegać nie mają

(S.30.) Pan podwojewody z pilnością powagi mojej i urzędu swego przestrzegać i onych zastępować i bronić od innych jurysdykcyjnych, mianowicie grodowych, powinien.

(S.31.) A iż takowy a nie inaksy był porządek w prawach żydów przemyskich, tedy ja przymyłając się do dawnych praw, onym przez antecessorów moich nadanych, też prawa ich stwierdzam i dla lepszej wiary i pewności przy pieczęci mojej ręką się moją podpisuję. Działo się to w Siedliszu die decima septima miesiąca marca, roku pańskiego 1660-go.
Stefan Czarniecki wojewoda ruski.


Uwaga: Kopia powyższego aktu znajduje się także w Arch. m. Przemyśla T. 290 p. 329 n., a sporządzona jest na podstawie niniejszej oblaty w aktach ziemskich przemyskich, którą wpisano jednak również nie z oryginału, lecz z oblaty w aktach podwojewodzińskich przemyskich.

Publication: Z. Pazdro, Organizacja i praktyka żydowskich sądów podwojewodziskich w okresie 1740-1772 r. na podstawie lwowskich materiałów archiwalnych, Lwów 1903, pp. 171-75.

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Endnotes

1 Podkreślone tu wyrazy spowodowały nas do wydrukowania niniejszego dokumentu, który właściwie wydanym został dla żydów przemyskich, lecz widocznie obowiązywał w całem województwie.

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When the Indelible Sacrament of Baptism Met Mercantile Raison d'Etat

Benjamin Ravid, Brandeis University, USA

ABSTRACT: In theory, under almost all circumstances, once a Jew had been baptized, s/he became a Christian and any relapse constituted heresy and was liable to severe punishment, often by death. However, in the mid-sixteenth century the Papacy adopted a far more lenient policy out of considerations of commercial raison d' état and invited New Christian merchants to assume Judaism in Ancona with assurance of complete freedom from any persecution. At the same time, Venice expelled all Marranos from the city and forbade them to return. The papal attitude changed with the Counter-Reformation and former New Christians who had reverted to Judaism in Ancona were burned at the stake. However, slightly later in a step that was followed by the Medici for Pisa-Livorno, the Venetian government invited New Christians to settle in Venice freely on the condition that they assumed Judaism and resided in the ghetto as Jews and assured them that their past conduct would not be investigated. In justification, among other arguments the Venetians pointed out that since Popes had once granted such permissions, it could not be claimed that they were forbidden by canon law. An examination of select passages from the documents preserved regarding the issuing of the first charter of the Levantine and Ponentine merchants in Venice in 1589, the two opening passages of the second charter in 1598, and a consulto of the Venetian consultore in iure Paolo Sarpi will illustrate the ideological background and practical manifestations of the new attitude toward New Christians assuming Judaism and their resulting legal status, which can be seen as one of the harbingers of a new attitude of European states toward Jews determined by economic considerations of raison d’état rather than by religious concerns.

This presentation is for the following text(s):
- Paolo Sarpi, the Venetian Consultore in Iure, on the case of Simon Gomez
- The Expulsion of the Marranos From Venice
- The First Charter of the Levantine and Ponentine Jewish Merchants of Venice
- The Second Charter of the Levantine and Ponentine Jewish Merchants of Venice
Notes: Italy

In the following consulto of 1616, the great Venetian consultore in iure, Fra Paolo Sarpi, who defended the Venetian government against attacks from the Papacy and on another occasion argued that “the Marranos cannot be subjected to the office of the inquisition, having received a safe conduct enabling them to come and live with their families in the Dominion and leave at their pleasure, with their possessions living in the ghetto and wearing the yellow hat, and to exercise their rites and ceremonies without hindrance and this permission was granted to them for the public benefit of Christianity, so that they should not carry so much wealth and needed industriousness to the lands of the Turks” explains why for various different reasons the Venetian government could not move against a New Christian who had reverted with his two minor children to Judaism in Venice.

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Paolo Sarpi, the Venetian Consultore in iure, on the case of Simon Gomez
Processo di Simon Gomez
Paolo Sarpi, 1616

Translated by Benjamin Ravid, Brandeis University, USA

Notes: Italy


Most Serene Doge, the denunciation given to the office of the Inquisition of the city of Pisa by Carl di Romulo against Simon Gomez, Portuguese Jew, presently living in the ghetto of this city and sent to this office of the Inquisition [in Venice] and presented by the illustrious Assistenti to Your Serenity [the Doge] and seen by us by his commandment, in substance relates that the denouncer knew in the past the said Simon, that he had been living as a Christian in the city of Pisa, and in it he had two sons who had also been baptized - then, finding himself in Venice around the beginning of last September, the denouncer had seen him wearing a red hat professing to be a Jew and denounced him for the unburdening of his own conscience and for the benefit of the children, urging that the matter be dealt with quickly. Regarding this denunciation, we reverently point out that Pope Julius III in 1552 allowed Portuguese Jews to be able to live in Ancona and other cities of the Papal States with their wives and children and to observe their religion even if in other times they had lived as Christians, prohibiting the Inquisitors to proceed against them. And on 27 July 1589 the Most Serene Republic
allowed the same people to reside with their families in the ghetto of this city, and living
without scandal, with the security of not being able to be investigated even if under
other rulers they had lived in another manner. This concession, having the previous
example given by the Apostolic See, cannot be revoked in on any account. Previously,
when Pope Clement VIII spoke on this matter in 1602, he was told that he was capable
of understanding the good reasons that compelled the observance of the faith given, as
also occurred in that pontificate on 15 July 1608. Therefore, it is right that having
decided that the Portuguese Jews who come in this city with their wives and families,
living in the ghetto, wearing the red hat, and not causing scandal, cannot be investigated
concerning their life in other states, both for the keeping of the word given for legitimate
reasons as also because contravening privileges once granted not only would be a lack of
the faith given, but also would open the door to a result of innumerable troubles and
place all that nation into confusion without any benefit resulting. Only one case can
occur to be excepted, that is when the husband compels the wife or the father the
children to live as Jews against their will, in which case it would be a service to God to
give them their freedom, but regarding the two children of Simon Gomez we are not in
such a case because the older is only three years old and the younger only one, as
appears from the present document, therefore being minors there is no doubt that they
can be forced [by their parents – BR]. We will not omit to observe to observe that the
denouncer who, seeing the Jew in Venice around the beginning of September,
considered that he should be denounced, was obliged to come to the office [of the
Inquisition] of this city which very well knows what should be done in its jurisdiction for
the benefit of religion and not go to Pisa to make the denunciation as soon as he arrived,
as he did on the following 7 October with such affectation and request of a fast
resolution, and that Father Inquisitor should still have had consideration to receive it
since it had not been committed in his jurisdiction and was by a denouncer who by not
having said anything in Venice which was the place to do so but in Pisa as soon as he
returned, showed that he had some bad intention. It is usual that an inquisitor receives a
denunciation against an absent person because of a crime committed in his jurisdiction
or by a denouncer who could not present himself to the judges of the matter [in the
place where the crime was committed], but if it would be permitted that he who sees or
hated in Venice something that did not please him, disregarding the offices of that city
goes out of the state to make a denunciation to an inquisitor, and the office of that city
be compelled to proceed, it would be not only to agree to receive laws from others,
something most detrimental, but also would open the door to the entry of an infinity of
very bad consequences, which can be very well known to the most prudent judgment of
Your Most Illustrious Excellency. In conclusion, our respectful conclusion would be that
the most Illustrious Assistenti respond that if Simon Gomez, a Portuguese Jew living in
the ghetto, has given or will give any scandal or really has committed or will commit any
offense in this State, he should be severely castigated by the magistrates, but to
investigate against him regarding things that occurred in other states would be to
subvert the privileges that for most just and necessary reasons were granted many
decades earlier by the Republic as also by other religious rulers to that nation, that
cannot be violated without breaking the word, and so we think it of justice, submitting
all to the highest wisdom of Your Serenity, GRATIE etc.

[Your] most humble and devoted servant, Fra Paolo of Venice
17 December 1616

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EARLY MODERN WORKSHOP: Jewish History Resources

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Processo di Simon Gomez
Paolo Sarpi, the Venetian Consultore in Iure, on the case of Simon Gomez
Paolo Sarpi, 1616

Prepared by Benjamin Ravid, Brandeis University, USA

Notes: Italy

Paolo Sarpi, the Venetian Consultore in Iure, on the case of Simon Gomez, 1616


Serenissimo principe. La denoncia data nell’ufficio dell’Inquisizione della città di Pisa da Carlo di Romulo contra Simon Gomez hebreo portughese habitante al presente nel ghetto di questa città, mandata a quest’ufficio dell’Inquisizione et dalli illustissimi signori assistenti presentata all Serenità Vostra et da noi veduta per suo commandamento, in sostanza contiene che il denonciante ha consociato per i tempi passati il detto Simone, che è vissuto da christiano nella città di Pisa et in quella ha havuto due figliuole che sono anco stato battezzate, poi, ritrovandosi in Venezia circa il principio di Settembre prossimo passato, l’ha veduto con capel rosso facendo professione di hebreo, il che denoncia per scarico della conscientia sua et per beneficio delle figliuole, essortando ad accellerare la provisione. Sopra la qual denoncia diremo riverentemente che la papa Giulio terzo del 1552 concesse alli Hebrei portughesi di poter habitar in Ancona et altre terre dello stato ecclesiastico essi con le loro mogli et figliuoli et osservar la loro religione ancora che in altri tempi havessero vissuto christianamente, prohibendo alli inquisitori di proceder contro di loro. Et dalla serenissima Republica del 1589, 27 luglio, fu concesso alli medesmi di habitar con le proprie famiglie nel ghetto di questa città vivendo senza scandolo con sicurezza di non poter esser ricercati, quantonque sotto altri principi havessero vissuto in altra maniera, la qual concessione, havendo l’esempio precedente dato dalla Sede Apostolica, non può esser ripresa in alcun conto, anzi che havendo parlato papa Clemente ottavo di questa materia in 1602, fu per deliberazione dell’eccellentissimo Senato dell’s 12 ottobre risposto a qual pontefice
et reso capace delle buone ragioni che constringono ad osservar la fede data, il che ancora occorse in questo pontificato del 1608, 18 giugno. Per il che conviene haver per deciso che contra li Hebrei portughesi che vengono in questa città con le loro mogli et figli è giusta cosa che, vivendo in ghetto et portando il capello rosso, ne dando scandolo, non possi esser inquisito sopra la vita tenuta da loro in altri dominii così per mantenimento della parola data per cause legtimate come anco perché, contravenendo alli privilegii una volta concessi, non solo sarebbe un mancar della fede data, ma un aprir porta ad una consequenza d'inconvenienti innumerabili et metter confusione in tutta quella natione senza però che che ne seguise alcun bene. Un solo caso potrebbe occorrer da esser eccettuato, cioè quando il marito costringesse la moglie over il padre li figlioli a viver nell'Hebraismo contra la loro volontà, nel quale sarebbe servitio di Dio renderli la loro libertà, ma per conto delle due figlie di Simon Gomez non siamo in questo caso poiché la maggiore ha finito solo 3 anni et la minore solo un anno, come per le fede presente appare, laonde essendo in età infantile non si può far dubio che possino esser sforzate. Non resteremo di aggiogner riverentemente che il denonciante, qual vedde l'hebreo in Venetia circa il principio di settembre, se reputava che dovesse esser denonciato, era tenuto comparir all’officio di questa città, che molto ben sa quello che per servitio della religione si debba fare nella giurisdittione sua et non andar a Pisa a far la denoncia apena gionto, come fece a 7 ottobre seguente con tanta affettatione et instanza dipresta provisione et quel padre inquisitor doveva ancor haver risguardo a riceverla sopra cosa non commessa sotto la giurisdittione sua et da un denonciante, che dal non haver detto cosa alcuna in Venetia dove era il luoco di farlo, ma in Pisa, apena ritornato, mostra che havesse qualche cattiva intentione. Si costuma che un inquisitor receva denoncia contra persona assente per delitto commesso nella sua giurisdittione overo da denonciante che non possa presentarsi al giudice del reo, ma quando fosse permesso che chi vede odo in Venetia cosa che non li piace potesse, tralasciato l’officii di questa città, andar fuori dello Stato da un inquisitore a farne denoncia et sopra quella l’officio di questa città fosse constretto proceder, sarebbe non solo consentir che ricevesse leggi da gl’altri, cosa preijudicialissima, ma anco sarebbe aprir una porta all’ingresso d’infinità di pessime consequenze, le quali possono esser molto più conosciute dal prudentissimo giudicio di vostre eccellenze illustissime. Per conclusione il nostro riverente parer sarebbe che dalli illustriissimi signori assistenti fosse risposto che se Simon Gomez, hebreo portughese habitante nel ghetto, haverà dato o darà scandolo alcuno o veramente haverà commesso o commetterà qualche fallo in questa Dominio, sarà alla magistrati castigato severamente, ma l’inquisir contra lui delle cose avvenute negl’altri dominii sarebbe un sovvertir li privilegii che per giustissime et necessarie cause sono concessi già molte decenne d’anni dalla Repubblica come anco altrove da altri prncipi religiosi a quella natione, li quali non si possono violare senza mancar della parola et tanto noi stimiamo che sia di giustitia, sottomettendo il tutto alla somma sapienza di Vostra Serenità. Gratie et cetera.
Humilissimo et devotissimo servitor fra’ Paulo di Venetia.

7 dicembre 1616

**Publisher:** Pier Cesare Ioly Zorattini, Processi del S. Uffizio di Venezia contro ebrei e giudaizzanti, 14 vols. (Florence, 1980-1999), 13: 317-319

**Archive:** Archivio dello Stato di Venezia, Consultore in iure, filza 22, cc. 384r-v

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Expelling Marranos from Venice

Benjamin Ravid, Brandeis University, USA

In 1550, the Venetian government decided to reenact its legislation of 1497 expelling “Marranos” from Venice. Any who stayed in the city or later returned to it were subject to confiscation of their property and spending two years rowing in chains at the oars in Venetian ships. Also, any Venetians who had any contact with them were to incur the same punishment. This led some Venetian merchants to complain to the government that they were very disturbed because they did not know which of their trading partners were Marranos. The Venetian government realized that its legislation was too draconic and in its place two less harsh alternative motions were presented in the Senate in its place, with the more lenient one passing on the third ballot.

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The Expulsion of the Marranos From Venice
Espulsione dei Marrani da Venezia
July-August, 1550

Translated by Benjamin Ravid, Brandeis University, USA


Although on November 13, 1497 this Christian council wisely legislated that the Marranos, faithless people without religion and so hostile to God, be banished from our state and all association and contact with our subjects was taken away from them under grave penalties as contained in that law which is now read, nevertheless, it seems that notwithstanding that legislation, the number of these Marranos has increased both in this city and in our towns and places, so that it is necessary for the honor of the Divine Majesty and also for the benefit of our affairs to renew so useful and holy a provision in order that this infectious kind of people be kept away from our state. Therefore, confirming completely the said law of 1497, which is to be observed and carried out, it is to be proclaimed publicly in this city and outside it in each of our towns and places on land and sea that these Marranos are to depart from our state within two months without any excuse, under pain of confiscation of all their property and serving two years at the oars in chains. They may not return here in any way at any time, subject to the same penalty. Any noble, citizen or citizen or subject of ours who after that time will be found to have had or to have any business, relations or intelligence with any of the above-mentioned Marranos will immediately incur the same penalty, which is immediately to be carried out irremissibly, without any pardon, remission or compensation. And the implementation of the present legislation is to be entrusted to
the magistracy of our Censors (except however always for the authority and prerogative of our Avogadori di Comun), who under oath and subject to penalty of five hundred ducats each irremissibly [...] And the same benefit is to be given to those who denounce to the Rectors outside our city those Marranos who, after the two months have expired, dare secretly or openly to dwell in our state or those who have any contact with them. This law is to be promulgated on the steps of San Marco and Rialto and sent to each of our Rectors on land and at sea, and even included in their commission and it cannot be suspended, revoked or altered or in any way interpreted, except by a motion introduced in this Council by all the ministers of our College with all in attendance and passed by a five-sixth majority with at least one hundred and fifty in attendance.

In favor 146
Against 25
Abstain 24

B

Senate legislation of 22 August 1550

Under Venetian parliamentary procedure, for a motion to pass, the number of positive votes had to exceed the combined total of the negative votes and abstentions, and similarly for it to be rejected, the total of negative votes had to exceed the combined total of of positive votes and abstentions. In other words, a clear majority of positive or negatives votes was required, and if none resulted on the first ballot, the motion was voted upon again. If after a few more ballots no majority resulted, then the motion was left pending. Also, it was possible for a second or third "countermotion" to be simultaneously introduced, and for either to pass, a clear majority of positive votes was needed; otherwise, additional rounds of balloting would take place. In the following case, on the first ballot, the main motion received 79 positive votes, 11 negative votes and 14 abstentions, while the second received 97 positive votes; thus neither obtained the majority needed. The second ballot was no more decisive, 81-xx-17-99. Thereupon, only the second motion, which had received more positive votes, was introduced, and it passed easily, 132-27-19.

It was resolved in this Council on the eighth of the past month that the Marranos are to leave our state by the end of two months and never return here again, under pain of confiscation of all their property and serving two years in the galleys, and those nobles, citizens or subject of ours who after that time are found to have business, contact or intelligence with any of those Marranos are to be subject to the same punishment. Because of this, many citizens and merchants of the circle of the Rialto of all nations came to us and related that they find themselves in great confusion because of that law, as is learned from the document now read, not knowing who are or are not Marranos,
and also fearing that all Marranos with whom they trade, even if they live in foreign countries, are included in this law, and because of this, very great confusion resulted, and therefore they have requested a suitable remedy. Thus, so that one can determine the truth of what is above stated and so that one can carry out the above law of July 8 in such a manner that the merchants are free of the fear in which they find themselves and know how to conduct themselves in trading,

Let our Censors be required, within the period of six months, which cannot be extended for any reason, to act so that they, together with the ordinary Investigators of Heresy, make a diligent investigation of those who are called Marranos, and if they are judged to be Marranos, then carry out whatever implementation shall appear appropriate against them, but the contracts they made up to now with our citizens and merchants are to be valid and binding. As far as the merchants and other subjects of ours who trade with those who are called Marranos who do not live in this city or in the lands of our state, since one cannot know whether they are judged to be Marranos or not, and since one had in mind only those who lived in our city and state, therefore, let it be resolved that they are not to be subject to the above legislation as is appropriate. But if they want to do business with those Marranos or other foreigners, they are obliged to pay all the duties and taxes that foreigners pay and that those would pay were they in this city, subject to all the penalties in our laws.

In favor 79 81
Against 11 --
Abstain 14 17

From the memorandum of the merchants of the circle of the Rialto which has now been read, this Council has heard that which they have set forth and request. And since it is proper to free those merchants from the fear in which they say they find themselves so that they can continue freely in their trade, by authority of this Council let it be declared that our said merchants, nobles, citizens and subjects are not to be liable to any penalty for the contracts made up to now and those they will make in the future with the Marranos who are presently found in this city, as also with others living outside our state, but they may negotiate, do business and correspond with them and send each other their goods and merchandise freely and securely, no more and no less than they could do before the above law of the eighth of the past month, since it was not the intention of that law to prohibit our subjects to trade with the Marranos who are and will be in other lands and states, but only to prohibit those Marranos from coming to live and lurk/settle/anidarsi in this city and state in accordance with the holy laws of our most wise and religious forefathers.

In favor 97 99
This motion was proposed again, by itself, and the vote was

In favor 132
Against 27
Abstain 19
Espulsione dei Marrani da Venezia
The Expulsion of the Marranos From Venice
July-August, 1550

Prepared by Benjamin Ravid, Brandeis University, USA


Accorchè fino del 1497 a xii di novembre fosse per questo consiglio Christiana, et saviamente deliberatolo, che i Marani, gente infidele, senza religione, et tanto inimical al Signor Dio, fossero scacciati dal stato nostro, et levato loro del tutto il consortio et conversatione de Cittadini et sudditi nostri, sotto grave pene come nel parte di quell tempo hora letta si contiene. Non di meno pare, che non ostante tal deliberatione, sia cresciuto in modo si in questa città come nelle Terre et luoghi nostri, il numero de detti marani, che è neccesario per honore della divina Maestà et anco per beneficio delle cose nostre renovare così utile et santa provisione di maniera che questa contagiosa sorte di homini sia tenuta lontana del stato nostro, però

L’anderà parte, che confermando in omnibus la parte predetta del 1497, la qual sia osservata et eseguita, si debba publice proclamar, così in questa città come fuori in ciascuna delle terre et luoghi nostri, terrestrì et maritime, che essi marani debbano fra termine de mesi doi partire, senza escusatione alcuna, dal stato nostro, sotto pena di confiscatione de tutti i loro beni et di servire doi anni al remo in cadenna. Ne possino sotto la medesima pena ritornarvi quovismodo in alcun tempo. Quelli veramente dei nobili, cittadini o sudditi nostri, che passato detto tempo fossero ritrovati, che havessero otenessero comertio, pratica o intelligentia alcuna con alcuno delli marani sopradetti incorrino immediate nella intessa pena, la quale contra gli inobedienti sia immediate essequita irremissibilmente, senza che li possa esser fatta gratia, don, remission o recompenso alcuna. Et la essecuzione della presente parte, salvo però l’auttorità et
libertà delle Avogadori nostro di Commune sia commessa all’ufficio di Censori nostri, i quali sotto debito di sagramento et in pena de ducati cinquecento per uno [...] siano tenuti farla osservare inviolabilmente [...] et il medesimo beneficio conseguir debbano li denoncianti alli Rettori de fuori, quei marani, che spirato il termine delli doi mesi ardissereo occulta o palesimente habitare nelle Terre nostre overo coloro che havessero alcuna intelligentia con essi. Ne se possi questa parte, da essere publicata sopra le scale di San Marco et Rialto et mandata a ciascuno delli Rettori nostri, così da Terra come da Mar, et etiam posta nelle loro Commissioni, suspendere, revocare, o alterar seu quoismodo interpretar salvo che per parte posta in questo consiglio per tutti i ordini del collegio nostro redotti insiene al numero perfetto, et prese con li cinque sesti, da 150 in su.

Da parte 146
De non 25 Lecta Collegio v Julii 1550
Non synceri 24

B

MDL Die xxii Augusti

Fu preso in questo Consiglio a viii del mese passato, che li Marani devesseno fra termine de mesi doi partire del stato nostro et non ci tornar più, sotto pena di confiscatione de tutti li loro beni, et di servire doi anni in galea, et che all’istessa pena fusseno sottoposti quei nobili, cittadini o sudditi nostri che passato detto tempo fussero trovati haver comerto, pratica o intelligentia con alcuno d’essi Marani. Per il che comparsi alla presentia nostra alcuni Cittadini et mercadanti de chercio de Rialto d’ogni natione, ne hanno esposto attrovarsi in molta confusione per causa della sopradetta parte, come dalla scrittura hora letta si ha inteso, non sapendo quali siano o non siano Marani, dubitando ancora che sotto questa parte siano compresi tutti li marani che con loro negotiassero, se bene fusseno habitanti in terre aliene, et che per questa causa li venghino levati infiniti garbugli. Et però ne hanno ricercato di opportune rimidio, onde acciò che si venga in cognizione per la verità di quanto è sopradetto et che si possi dar’esecutione alla sopradetta parte de viii lugliuo passato, si che detti mercadanti siano liberati dal suspetto nel quale si attrovano, sapendo come governarsi nel negotiare,

L’anderà parte, che sia commesso alli censori nostri, che fra termine de mesi sei, il qual termine non si possi prorogare per modo alcuno, debbino operar, che per li Inquisitori ordinarii sopra le heresia con la presente prò, et assistentia de loro censori sia fatta diligente inquisitione de quelli che sono nominati Marani, et giudicati che sarano per tali, si debba far quella esecutione contra di loro che alla giustitia parerà, dichiarando che li contratti fatti fin’ hora per quelli, che sono nominati marani con li Cittadini et mercadanti nostri siano siano validi et fermi. Quanto veramente alli mercadanti et altri
sudditi che negotiasseno con quelli che sono noinati Marani che non habitano in questa città o nelle Terre del Dominio nostro, non si potendo saper se sono giudicati o non giudicati marani, ne havendoso havuto in considerationi altri che li habitanti in questa città et Dominio nostro, sia preso che questi non s’intendano essere sottoposti alla sopradetta deliberatione, come e ben conveniente. Ma volendo far le facende de detti Marani overo de altri forestieri, siano obligati pagare tutti li dacii et gravesse come pagano forestieri et come pagariano questi tali se fosseno in questa Città, sotto le pene contenute nelle leggi nostre.

De parte + 79 81  
De non 11  L. C. die 18 agosoto 1550  
Non synceri 14 17

Per la scrittura di mercadanti di cerchio di Rialto hora letta, questo consiglio ha inteso quello che hanno esposto et quello che rechiedono. Et essendo conveniente liberare essi mercadanti dal sospetto nel quale dicono trovarsi, acciòche possano continuare liberamente nei traffichi loro.
L’anderà parte, che per autorità di questo Consiglio sia dichiarito che li predetti mercadanti, nobili, cittadini et sudditi nostri, per i contratti fatti fin’hora et che facessero nell’avenire con li marani che al presente si trovano in questa città come etiam altri habitanti fuori del Dominio nostro, non siano sottoposti a pena alcuna, ma possano negotiare, contrattar, et haver corrispondentia insieme, et mandarsi l’una parte all’altra le robbe et mercantie loro, libera et sicurmente, ne più ne meno come potevano fare avanti la sopradetta parte di viii del mese passato, non essendo stata intentione della detta parte di prohibire a nostri i traffichi con i marani che sono et serano in terre et Dominii alieni, ma solamente di prohibire ad essi marani il venir ad habitare et annidarsi in questa città et nel nostro Domino, secondo le sante deliberationi d’i sapientissimi et religiosissimi progenitori nostri.

De scontro 97 99

Die xxix augusti

Posita fuit iterum suprascripta pars, per ultrascriptos dominos sapientes, sine alio scontro et fuerunt

Da parte + 132 De non 27 non sinceri 19

Publisher: Kaufmann, “Die Vetreibung der Marranen aus Venedig im Jahre 1550,” Jewish Quarterly Review, o.s., 13 (1900–1901): 525-530

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Introduction to The First Charter of the Levantine and Ponentine Jewish Merchants of Venice

Benjamin Ravid, Brandeis University, USA

Notes: Italy

Starting in 1577, the former Portuguese New Christian Daniel Rodriga urged the Venetian government to grant the status of Venetian subjects to “Jews” from Spain and Portugal so that they could reside in Venice and the Venetian state and bolster its international maritime commerce which was being increasingly adversely affected by the ships of England, France, Spain and Holland that were both sailing directly to the Indies to acquire merchandise as well as competing with the Venetians in the ports of the Eastern Mediterranean for the decreasing share of Eastern goods still arriving there. The right to engage in trade between Venice and the Levant had since at least the fourteenth century been restricted to Venetians and eventually also reciprocally extended to Ottoman subjects, while all foreigners who sought it were required to reside in Venice continuously and pay taxes for twenty-five years. Accordingly, granting the privilege also to former New Christians who reverted to Judaism immediately after they arrived in Venice was a revolutionary step from both the commercial and religious perspectives. Frequently, Rodriga referred to these individuals as “Ponentine Jews,” a term that he may have coined, parallel to the term “Levantine Jews,” in order not to refer explicitly to their New Christian, Converso and probably also Marrano background. Here, he did not, probably for the sake of clarity as to for whom he was seeking privileges, but the Venetian government understandably changed the terminology. By 1589, it was so concerned by the decline in its maritime commerce that it was willing to disregard the supposedly indelible sacrament of baptism and to allow New Christian merchants to assume Judaism freely rather than to modify its commercial policy and open up the Levant trade to all Westerners.

As for the Levantine Jews, while they could engage legally in trade between the Levant and Venice, they were not supposed to bring their families with them nor to reside in the city for over a year, so Rodriga sought for them the right to reside legally in Venice freely
with their families.

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The First Charter of the Levantine and Ponentine Jewish Merchants of Venice
La Prima Condotta degli Mercanti Ebrei Levantini e Ponentini di Venezia
July 27, 1589

Translated by Benjamin Ravid, Brandeis University, USA

Notes: Italy

ASV, Senato, mar, filza 104, July 27, 1589

A

We, the deputies of the Levantine, Spanish and other Jewish merchants living in this city with our families having authorized many many times that Daniel Rodriga, our Consul and brother, go to the feet of Your Serenity and request of you in our name the confirmation of some of our privileges, seeing that up to now nothing has been decided, therefore we subjects are now coming to the feet of Your Sublimity and humbly request of you that you deign to approve them so that we can finally provide for our affairs and not be in this continuous trouble of spirit, as a result of which, being freed, in addition to being in perpetual debt and receiving it as a most singular favor of the great kindness and munificence of your Serenity, it will also turn out to be in your service, since we will attend with a most calm spirit to the business of merchandise, from which no little benefit will result to the customs of Your Serenity,....

B
Most Serene Doge, Most Illustrious Signoria

The desire that I, Daniel Rodriga, most humble and SUISCERATISSIMO servant of Your Serenity, have always had of being in your service, as one can clearly ascertain from my many undertakings until now, has already induced me to make my brother Jacob with his son-in-law and ten other families of our relatives and friends come to live in this most illustrious city. The same desire, continuing in me more ardently than ever, has induced me now to come to your feet and supplicate you humbly that, since I intend to bring a further greater number of families and increase your customs, both in this city as in Spalato [Split], you will deign to do me the favor of granting me the privileges and clauses that I present to you herewith, both for those merchants who already are here as well as for those whom I will bring again to live both in this city and in Spalato, where I desire that Your Serenity will deign to build a ghetto for their habitation according to the model that I am similarly presenting, with that payment of rent that will be considered appropriate, so that being in the same position as those in Venice, in addition to more easily establishing the scala [of Spalato], which will redound to the greatest benefit of Your Serenity, they will also aid me in this desire of mine, and I will receive all as a singular favor of the great benignity and munificence of Your Serenity and as partial compensation for my services.

C

Clauses of the privileges presented to Your Serenity by Daniel Rodriga in the name of the Levantine, Spanish and other Jewish merchants living in Venice, with their families.

First, all the said merchants may live securely with their persons, family, merchandise and possessions without any danger or molestation, both in this city as in any other city and place of this most Serene Dominion, both by sea as by land, coming staying and leaving as they wish without any impediment being able to be made to them. They will be able to trade freely on the eastern and western side of the Adriatic as do all Venetian citizens to whom they are to be equal in the payment of the customs duties, and presently the traveling Levantine Jews.

Second, the above merchants descended of Jewish origin of whatever nation, can live securely in their religion without being investigated by any office or magistrate, either religious or lay, even if in other places they have lived under other garb and religion, but after coming to this state, they can freely live as Jews, and always practice their rites, precepts and ceremonies and maintain their synagogues in accordance with the laws of Moses and according to the custom of the Jewish religion. And in case that for any incident or reason, it should not please this Most Serene Dominion that they should reside longer in its state, these merchants can leave it freely with their families, merchandise and possessions, without any hindrance. And they are to be given the
convenience of small ships, boats, wagons, horses, and other things necessary with the lawful and ordinary payments in order to be able to go wherever it most pleases them, without any reprisals being made of their persons, merchandise or possessions under any pretense or accusation, it being declared afterward that in such case of expulsion, they are to be advised eighteen months in advance of their departure and also to be paid first by all of whom they are creditors.

D.

27 June 1589

Most Illustrious and Excellent Signori

The supplication of Daniel Rodriga and the document presented by him in the name of the Levantine, Spanish and other merchants living in this city contain very serious matters, which have at other times been questioned by the responses of our predecessors. Because of the state of trade at present on account of the changes in the affairs of the world, we think that since it is now different, the request is both estimable and useful, and therefore worthy of being accepted. For there is no doubt that the trade of this city, which is its main support, is strengthened by the gathering of persons, who with their business can increase its commerce by coming to live here and making it their domicile and homeland. However, if they were not given the security of life and property and some other specific advantages and privileges, they could take another course to some other parts, which would not be refused to them, as the experience of past events demonstrates to us, with the gathering of so many who, exiled from Spain, went to the Levant because they were not admitted to these parts, and took their very substantial capital to those areas, augmenting the trade of others to the grave detriment of this city, for those reasons and considerations that can be well-known to Your Excellency. For these reasons therefore (since Your Excellency orders us, Savii alla Mercanzia, to state our opinion on the things proposed) in reverent execution of your order, we state that in general we approve the request made, changed however in its details as below. And although with the inclusion of the Spanish and other supplicating Jews, it appears that the privilege is greatly broadened, this does not, however, cause any greater detriment or harm than that which now results from their freedom to be able to pass into Turkish lands and from there to this city to enjoy, as they do now, the benefits of the law under the name of Levantine Turkish subjects.

Starting with the document [of Rodriga], we say that as far as the first paragraph is concerned, removing the words beginning “on the eastern and western side of the Adriatic” to that part which says “as do all Venetian citizens to whom they are to be equal in the payment of the customs duties, as do presently the traveling Levantine Jews”, we believe that the rest is acceptable.
As for the second [clause], its contents are reasonable but a matter, however, that is up to the most prudent judgment of Your Excellency. And in that stipulation of words “no reprisals being made of their persons, merchandise or possessions under any pretense or accusation etc.” it is absolutely intended regarding that which appertains to religion and inquisition, so that under the generality of those words no other case be included, as similarly in that other part where it says that “also to be paid first by all of whom they are creditors,” those words are not obligatory but only a declaration that they are to be judged and assisted promptly by the authorities, to which Rodriga himself agrees, affirming that such was the sense and intention of all the above words.

And to conclude this matter, we believe that it would be good to admit to the narrated things only those who with their business and their own wealth can bring benefit to the customs and commerce of this city, and therefore it is to be explicitly stated that no Jew of any nation is to be admitted to the above benefit unless he be first admitted by their community, as they seek in the fourth clause, and approved by four of the five of our magistracy, with all the other Jews not approved by our office to be excluded from the benefits, without, however, prejudice to the traveling Levantines.

From [our] office on 26 June 1589

ser Thomaso Moresini

ser Alviser Priuli

ser Gierolemo Capello

the others absent.

E

The Opening of the Charter of 1589

The circumstances of the present times give cause to this Council to open the way to those who have the desire to come to dwell in this city and in our state, both for mercantile commerce as well as for the increase that is to be desired in the guilds of the city, for those reasons which can be contemplated by everyone. Accordingly, since Our Serenity has been requested in the name of some Levantine and Ponentine Jews now residing in other jurisdictions to admit them into this city and into our Dominion with those terms that shall be considered suitable to enable them to dwell securely in the said city and the Venetian Dominions,

let it be resolved that for the coming ten years, safe-conduct is to be granted to any Levantine or Ponentine merchant to be able to come to dwell in this city of ours with his
family, to reside and to do business freely, wearing the yellow hat of the Jews, and making his residence in the Ghetto Nuovo with the other Jews, in which they may observe their rites, precepts and ceremonies and maintain synagogues according to their custom, secure for that time in not being molested on account of religion by any magistracy.

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La Prima Condotta degli Mercanti Ebrei Levantini e Ponentini di Venezia
The First Charter of the Levantine and Ponentine Jewish Merchants of Venice
July 27, 1589

Prepared by Benjamin Ravid, Brandeis University, USA

Notes: Italy

ASV, Senato, mar, filza 104, July 27, 1589

A

Havendo noi deputati degli ebrei mercanti levantini spagnoli et altri habitanti in questa illustissima città con le nostre famiglie, procurato diverse et diverse volte, che Daniel Rodriga, console et fratello nostro, venghi a' piedi di Vostra Serenità et la supplichi a nome nostro per la confirmatione d'alcuni nostri privilegii, vedendo che fin'hora non si è concluso cosa alcuna; però venimo hora noi sudetti a' piedi di Vostra Sublimità et humilmente la supplicamo, che si degni farlo spedire, acciò possiamo finalmente proveder alle cose nostre, et non star in questo continuo travaglio d'animo, dal quale, essendo liberati, oltre che ne restaremos con obligo perpetuo, et lo riceveremo a gratia singolarissima dalla molta bontà et munificenza di Vostra Serenità, tornarà ancho in servitio suo, perchè attenderemo con l'animo più quieto alli negocii delle mercantie, per le quali non ne riuscirà picolo beneficio alli datii di Vostra Serenità in buona gratia, della quale humilmente si raccomandiamo.

B

Serenissimo Prencipe, illustissima Signoria

Il desiderio ch'io Daniel Rodriga, humilissimo et suisceratisso servo di Vostra Serenità, ho havuto sempre del servitio suo, come da molte mie operationi fin'hora si può chiaramente comprendere m'indusse già a far opera, che Giacob, mio fratello, con suo
genero, et dieci altre famiglie de parenti et amici nostri venissero ad habitar in questa illustrißima città. Il medesimo desiderio, continuando in me più ardente che mai, mi ha indotto hora di venir a’ piedi suoi, et supplicarla humilmente, che, dessignando io di condur altro maggior numero di famiglie, et accrescer li suoi datii, così in questa città, come in Spalatro, si degni farmi gratia di concedermi li privileggi et capitoli che le appresento con questa mia, così per quelli che già vi sono, come per quelli che condurò di novo ad habitar così in questa città, come in Spalatro, ove desiderarei, che Vostra Serenità si degnasse far loro fabricar un ghetto per loro habitacione, secondo il modello che medesimanente presento, con quel pagamento d'affitto che sarà conosciuto esser conveniente, perché, essendo poi questi corrispondenti a quelli di Venetia, oltre che si farà più facilmente la scala, et ridunderà in grandissimo beneficio di Vostra Serenità aiutaranno ancho me in questo mio desiderio, et il tutto riceverò per gratia singolare dalla molta benignita et munificenza di Vostra Serenità et per ricompensa in parte deli meriti miei.

C

Capitoli dei privilegii presentati a' piedi di Sua Serenità da Daniel Rodriga per nome degli ebrei mercanti levantini spagnole et altri habitanti in Venetia, con le loro famiglie.

Prima. Che tutti li mercanti possino sicuramente vivere con le loro persone, famiglie, mercantie et facoltà senza alcun pericolo nò molestia, così in questa città di Venetia, come in qualsivoglia altra città et luogo di questo serenissimo Dominio, così per mar, come per terra, venendo, stando e partendo, il che sia in arbitrio loro, senza potergli esser fatto impedimento alcuno, potendo essi navigar liberamente, così sopravento come sottovento, come fanno li cittadini venetiani allì quali in ogni tempo siano pari nelli pagamenti di datii, sì come fano al presente gli ebrei levantini viandanti.

2. Che li sopradetti mercanti descendenti di stirpe ebrea, sia di che natione esser si voglia, possano sicuramente viver nella loro religione, senza poter esser inquisiti da qualsivoglia officio o magistrato, così ecclesiastico come secolare, quando ancho in altro luogo havessero vivuto sotto altro habito et religione, ma dopo venuti in questo stado, possino liberamente viver da ebrei, et usar sempre et far li loro riti, precetti, ceremonie et tener le sue sinagoghe conformi alla legge di Moisè, et secondo l’uso della religion ebrea. Et in caso che, per qualsivoglia accidente o rispetto, non piacesse a questo serenissimo Dominio che habitassero più nel suo stado, possano essi mercanti con le loro famiglie, mercantie et facoltà partirsene liberamente, et senza impedimento di sorta alcuna, dovendo però esser loro data commodità de' vasselli, barche, carri, cavalli et altre cose necesarie, con li pagamenti lici et ordinarii per poter andar dove più a loro piacesse, non potendo in alcun modo, nè sotto qualsivoglia pretensione o accusatione esser fatto represaglia delle loro persone, mercantie o facoltà; dechiarandosi apppresso che, nel caso sudetto di licentiarli, sia loro intimato 18 mesi prima da sua partita,
facendoli ancho prima pagare da tutti quelli, de' quali andassero creditori.

3.
4.
5.

D

1589, a 27 zugno

Ilustrissimi et eccellentissimi signori

La supplica de Daniel Rodriga et la scrittura presentata da lui per nome de' mercanti levantini, spagnoli, et altri habitanti in questa città, contengono per se stessa materia molto grave, la quale, come fu altre fiate posta in dubio per le risposte de' nostri precessori, così dalla riuscita di negotii, dall'occasione di presenti tempi per le rivoluzioni delle cose del mondo, stimiamo che, havendo ella al presente presa altra forma, sii la richiesta fatta altrotanto stimabile quanto utile, et perciò degna d'esser abbreviata: perchè non è dubio che il traffico di questa città, principal sostentamento di essa, prende forza dal concorso di persone, che, co'l negotio et commodità, possono accrescer il suo commercio, le quali come co'l venirvi ad habitar se la costituiranno loro domicilio et patria naturale, così quando non fosse ad essi aperta la strada principale della sicurtà delle loro vite et robbe, et da qualche altro particolar avantagio et privilegio, potrebbero prender altro indirizzo da qualche parte, che non sarà loro recusato, come ci lo dimostra l'esperienza delle cose passate, co'l concorso di tanti che, usciti dalla Spagna et andati in Levante, per non haver trovato in queste parti recapito, hanno portato i loro grossissimi capitali in quelle bande con aggrandimento di negotii d'altri et grave interesse di questa città, per quei rispetti et considerazioni che possono esser ben noti alle Eccellentie Vostre. Da questi fondamenti dunque (poichè commandano le eccellentie vostre che noi savii alla mercantia habbiamo, sopra le cose proposte, a dir la nostra opinione) noi per riverente essecutione di lor'ordine diciamo, che nell'universale approbiamo la richiesta fatta, regolata però nel suo particolare come qui sotto appare. Et sebene con l'inclusione de' spagnoli et altri hebrei supplicanti par che si dilatti molto il privilegio, non apporta però questo nessun pregiudicio o nocemento maggiore di quello, che si riceve hora dalla libertà che hanno i medesimi di poter passar nel paese turchesco, et di là a questa città per godere, come fanno al presente, sotto nome de' sudditi turcheschi levantini, il beneficio della legge.

Prendendo noi dunque principio dalla scrittura diciamo che quanto al primo capitolo, levate tutte le parole che principiano, “così sopravento come sottovento etcetera” sino a quella parte che dice “sì come fanno anco li hebrei levantini viandanti” crediamo che nel resto sia admissibile.

Al secondo la continentia di esso è ragionevole, ma parte però che spetta al
prudentissimo giudicio delle Eccelentie Vostre et in quella condizione di parole “non potendo in alcun modo nè sotto qualsivoglia pretentione, nè accusatione, esser fatto represaglia etcetera” si doverà intender assolutamente per quello che appartiene alla religione et inquisitione, acciochè, sotto la generalità di quelle parole, non sii abbrazzato qualsivoglia altro caso, come medesimamente in quell’altra parte dove dice “facendoli anco prima pagare di tutti li suoi debitori” non hanno quelle parole ad esser obligatorie, ma per sola dechiaratione di esser giudicati et suffragati dalla giustitia espetitamente, alla qual nostra opinione concorre l’istesso Rodriga, affermando che tale vuol esser il senso et intentione di tutte le parole sopradette.

Il terzo
Il quarto
Il quinto
Et per conclusione di questo negotio, stimando noi che non sii bene admetter al privilegio delle cose narrate, se non quelli che possono co'l negotio et con le proprie facultà apportar beneficio et ai dati et commercio di questa città, però doverà esser espressamente dechiarato che nessun hebreo di qual nattione se sii debbi esser descritto al beneficio sudetto, se non sarà prima adcesso dalla università loro, come nel quarto capitolo ricercano, et approbató con quattro balle delli cinque del magistrato nostro, dovendo tutto lo resto de' hebrei non approbati dall’offitio esser esclusi dalle cose narrate, senza pregiudicio però de' privilegii de' levantini viandanti.

Dall'officio a 26 zugno 1589

ser Thomaso Moresini, alla mercantia ser Alvise Priuli, alla mercantia
ser Gierolemo Capello, alla mercantia
ab. alii

E

Le occasioni de' presenti tempi dano materia a questo consiglio di aprire la strada a quelli che hanno desiderio di venir ad habitar in questa città et nel Dominio nostro, così per il commercio mercantile, come per l'augumento che si deve desiderare nelle arti della città, per quelli rispetti che da cadauno possono esser considerati. Onde, essendo richiesta la Serenità Nostra per nome de alcuni hebrei levantini et ponentini hora habitanti in aliene iuridittioni a volerli admetter in essa città et nel Dominio nostro con quelli capitoli, che saranno stimati convenienti per poter habitate sicuramente in detta città et Dominio veneto.

L'anderà parte che per anni dieci prossimi venturi, sia concesso salvocondotto a
qualsunque hebreo mercante levantino et ponentino di poter venir ad habitar in questa città nostra con le loro famiglie, star, et in essa praticar liberamente, portando la sessa, overo la baretta zalla da hebrei, et facendo la sua habitacione nel ghetto nuovo con li altri hebrei, nel quale possano usar et far li loro ritti, precetti, cerimonie et tenere sinagoghe, secondo l'uso loro, sicuri per detto tempo di non esser molestati per causa di religione da qualsivoglia magistrato.

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11 1589, 27 luglio, lecta Collegio

13 Archive: Archivio dello Stato di Venezia, Senato, mar, filza 104, July 27, 1589

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Notes: Italy

The Venetian government deemed the charter of 1589 a success and consequently re-issued it in a slightly revised version for another ten years by the vote of 94-6-16.
The Second Charter of the Levantine and Ponentine Jewish Merchants of Venice
La Seconda Condotta degli Mercanti Ebrei Levantini e Ponentini di Venezia
October 6, 1598

Translated by Benjamin Ravid, Brandeis University, USA

Notes: Italy


ASV, Senato, terra, reg. 68, 94r-95v, and filza 148, 6 October 1598.

At this time, even greater are the reasons that at other times induced this Council to permit the dwelling of the Levantine and Ponentine Jewish merchants in this city and their trade in the places of our state, principally for mercantile trade that is so important for the public service, as well can be considered by everyone with their prudence. Therefore, it now being near the time stipulated by the legislation in this matter of 27 July 1589, and Daniel Rodriga, the Consul of that Nation having made in their name the request that has just been heard,

As also the Cinque Savii alla Mercanzia counsel, let for the next following ten years a safe-conduct be granted to any Levantine or Ponentine Jewish merchant to be able to come to this our city to reside with their family and to stay and to trade freely in it, wearing the yellow baretta of the Jews and dwelling in the Ghetto Nuovo, in which they may observe their rites, precepts and ceremonies and maintain synagogues according to their custom, secure for that time of not being molested on account of religion by any magistracy and if at the end of the ten years they are not given notice, they may continue still in this privilege for another two years, during which there will then be made that decision that will seem appropriate to this Council..
La Seconda Condotta degli Mercanti Ebrei Levantini e Ponentini di Venezia
The Second Charter of the Levantine and Ponentine Jewish Merchants of Venice
October 6, 1598

Prepared by Benjamin Ravid, Brandeis University, USA

Notes: Italy

The Opening Clauses of the Second Charter of the Levantine and Ponentine Jewish Merchants of Venice, 1598

ASV, Senato, terra, reg. 68, cc. 94r-95v, and filza 148, 6 October 1598.

Sono a questo tempo ancor maggior le cause che mossero altre volte questo Consiglio a permetter l'habitatione de mercanti hebrei levantini e ponentini in questa città, et la pratica loro nellli luoghi del stato nostro per occasion principalmente della negoii di mercantia tanto importanti al publico servitio, quanto da cadauno per sua prudentia puo esser benissimo considerato, onde essendo vicino hor mai il tempo statuito dalla deliberation in questo proposito de 27 luglio 1589, et essendosi per Daniel Rodriga hebreo consolo di detta natione fatta per nome loro l'istanza che si e inteso

L'anderà parte, che si come consigliano anco li Cinque Savi alla Mercantia, sia concesso per anni dieci prossimi venturi salvocondotto a qualunque hebreo mercante levantino et ponentino di poter venir in questa nostra città ad habitar con le loro famiglie, et stare, et in essa praticar liberamente, portando la sessa overo la beretta gialla da hebrei, et facendo la sua habitatione nel ghetto nuovo, nel quale possano usar, et far li loro riti, precetti et ceremonie et tener sinagoghe, secondo l'uso loro, sicuri per detto tempo di non esser molestati per causa di religione da qualsi voglia Magistrato, et non essendogli nel fine delli anni dieci intimata la disdetta, possano continuar ancora in questo privilegio per altri anni dui, nelli quali sia fatta poi quella deliberatione, che parera a questo Consiglio.
Archive: Archivio dello Stato di Venezia, Senato, terra, reg. 68, cc. 94r-95v, and filza 148, 6 October 1598

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The Jews and Ius Commune

Kenneth Stow, Haifa University, Israel

**ABSTRACT:** From the sixteenth through eighteenth centuries, there was a gradually increasing integration of Jews into systems of ius commune, loosely, the law of the land, but actually a legal tradition based on Roman law, which subsumed local law, usually called ius proprium. The integration might be purely theoretical or in fact, as certainly occurred in the papal state and it seems elsewhere in Italy, too. This legal integration prepared the way for the major legal upheaval worked by the French Revolution. The implications are many. The details mostly unresearched. The Tractatus de Iudaeis of Giuseppe Sessa (Turin, 1713) is the fullest introduction to the issues. The Tract on Jews of Giuseppe Sessa is a watershed text. It lauds the medieval restrictions on Jews, perceives them in the most negative theological terms, yet equally anticipates full Jewish participation as citizens of a state, living under the identical laws as do others. The tradition of Jews as cives, citizens, actually began in the ancient world, but was properly resurrected only in the early fourteenth century in the writings of the major legal scholar Bartolus. The passage from Bartolus to full emancipation, however, took four centuries. The special worth of Sessa’s tract is that writing in 1716, he was on the edge, looking backward and forward simultaneously, intimating, but never quite reaching. We see in him, therefore, the final resistance to the passage from the restricted Jew, living in a confessional state, where religion determines politics, to the Jew made a fully fledged citizen in a deconfessionalized, modern, post-emancipatory civil unit, where the secular government determines the state’s direction.

This presentation is for the following text(s):

- Tract on the Jews

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The \textit{Tractatus de Iudaeis} of Giuseppe Sessa is a fundamental text in understanding the passage of the Jews to modernity, certainly the passage from medieval legal restriction to Emancipation. Usually, Emancipation is described as the result of changing attitudes toward society and state, as well as toward the Jews themselves. Emancipation’s root is sought in theories of toleration—tolerance would be more precise, since toleration, from the Latin \textit{tolerare}, means simply privileges, as opposed to restrictions, \textit{gravamina}. In fact, “tolerance,” as we understand the term, meaning full acceptance, not the grudging one in writers like Locke, is actually based heavily on the thinking of dissenters in Colonial New England, who wanted nothing to do with the established Congregationalist Church, but, rather, to be allowed to worship and educate their children as they chose. It was they, therefore, who were major protagonists in the battle to separate Church from State.

One finds these doctrines clearly in the writing of Roger Williams, who argued that since we cannot know what God thought, we have no right to proclaim our own religion as true and that of our fellow, which differs, as false, and, hence, we may not discriminate legally either. Ironically, Williams was following the lead of the Jewish physician David de Pomis, who in the later 16th century, had said the same thing. However, de Pomis also linked the free practice of religion to total equality in law. In 1786, Thomas Jefferson would put the idea succinctly, saying nobody should be restricted [legally] because of religion, but none is to be privileged either. Addressing the legal, indeed, the constitutional, ramifications of this thing, George Washington said that equal rights in law depend on persons being good citizens. Writing to the Jews of Newport RI in 1790, the subtext, which was right on the surface, to be sure, was that one’s religious confession is irrelevant in defining either citizenship or legal rights. The state had been secularized—I think we do better by saying “deconfessionalized”—and the issue of Jews observing the laws of the state and enjoying those laws’ full benefits was simply—by definition, if you will—assumed, taken for granted, as, in fact, practice in the United States (on the federal level, at least) confirmed.
Yet the deconfessionalized” state which offered these rights, a.k.a. in Europe as Emancipation, was not only, or even so much, an ideological development. It was much more the product of hundreds of years of legal and constitutional evolution, one of whose principal characteristics was the increasing reliance on concepts of citizenship embodied by the *ius commune*, namely, Roman law as that law, developed and was interpreted and ever more widely applied. That law provided that Jews were *cives* and that they should live by its ells in all matters. These, as Sessa makes clear many times extended from benefits to obligations, privilege and restriction. In theory, therefore, the civil state Washington attributed to Jews pre-existed. Formal emancipation was irrelevant. Did not the law already confer upon Jews full civil rights?

It, of course, did not, and what Washington was saying—and to no small extent Sessa, too, as we shall see—was really new. The Roman state itself in late Antiquity was a confessionalized one, which allowed the introduction of restrictive laws regarding Jews, despite its conferral upon them of the status of *cives*. Already then, there was a clash between the concept of all living under the same law as opposed to special privilege for those of a particular [read: Christian] confession. Ending this distinction, and granting legal (and constitutional) parity for all, meant ending religious privilege—in particular, the privilege of Christians as opposed to the limitations placed on Jews, i.e., through the deconfessionalization of the state. Alternately, one could eliminate dissidence, that is, with respect to Jews, by eliminating them, through conversion, expulsion, or, of course, violence. History has witnessed all three.

The last state to expel Jews entirely was Spain. Its neighbor Portugal resolved the conundrum through massive forced conversion. One state did seek true legal parity, albeit in combination with conversion, and, of all states, was that of the popes. Attempts at mass conversion began about 1555 (the groundwork was being laid since about 1513) with the establishment of the Roman ghetto, which was conceived of as a conversionary device. But the results were meager. No more than about ten Jews a year converted. To increase the number of conversions, a new path was taken, and it was here that one finds the paradox that forwarded the parity-conversion model. Conversion was to be pressed by punctilious observance of the law, which meant the Jews’ full inclusion in the system of *ius commune*.

The operative word is full. Jews in Italy were always governed by *ius commune*, once a community was founded. However, that law always had made room for Jewish law, where the two were not in conflict, allowing a good deal of de facto Jewish self-governance (the term autonomy is misleading). The popes now did everything they could to weaken this concept of legal condominium. The goal was to weaken the Jewish Community by denuding it of power, using the argument that *ius commune* negated Jewish communal power, which it does. More insidiously—I choose the word with
care—one particular tenet of ius commune, that of *patria potestas*, was to be reinterpreted, indeed, perverted, to make the effective kidnapping and forced conversion of Jewish children perfectly legal. Anticipating what the state itself would do formally in Italy only in the twentieth century, it transferred this right to any relative who would “offer” a child for baptism, allowing the state (the Papal one, not the later Italian one, of course) to sequestrate children, in fact, even to sequestrate pregnant Jewish women, so that their children would be seized and baptized at birth. Years ago, Steven Rowan pointed out that the basis for this action was in the thought of the legist Ulrich Zasius, at the end of the fifteenth century, and in this action, as Rowan correctly saw it, one finds a foundation of the modern state in terms of the powers it has successfully exerted in the field of direct power over citizens, including especially in matters of wardship.

The results, for Rome’s Jews, needless to add, were fearsome, although they were not cataclysmic. At the same time, legists began to reflect ever more on the ultimate implications of full inclusion in the system of *ius commune*. These implications were drawn in the United States and, of course, in France in 1791. The Jewish Community did loose all powers of effective self-governance, Indeed, one can make a very good case that many of those promoting the full absorption of Jews into the system of ius commune were doing so not to privilege Jews, but to keep them on an extremely short leash. For example, A whole German school of *Judenrechtswissenschaft*, whose Latin writings were known in Italy, was saying the same: *Atque coram Christiano Judice agere et conveniri debent. . . ut iudaei legibus propriis uti prohibentur . . . legisbusque Romanis vivere compellantur*. Portentously, as we shall see, this law, *ius commune*, was to be decisive even regarding Jewish marriage: *sed secundum jura et leges Romanas matrimonia contrahant*.

This is really what happened in France, regardless of it being called Emancipation. Yet, in return, Jews did became citizens in a state which did not discriminate against them based on confession. In Central Europe, the drama was more complex, but it, too, climaxed in Emancipation by about 1860—one so distasteful to so many, however, that it was cancelled after only 70 years.

Perhaps nowhere is the conundrum of the deconfessionalizing state and its legal implications for Jews more apparent than in the Tract of Giuseppe Sessa. His work is anything but transparent or devoid of internal contradiction. Sometimes, it looks medieval, sometimes it looks truly hostile to Jews. At others, it seems to point to the Jews’ legal situation as a model for an emerging secularized, deconfessionalized modern state. In 1716, when his book was published, Sessa had reached—just as his work symbolizes—a watershed. I now bring nineteen examples (I-XIX) that illustrate the quandaries Sessa had to face.
EARLY MODERN WORKSHOP: Jewish History Resources

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Tract on the Jews

Tractatus de iudaeis

1713

Translated by Kenneth Stow, Haifa University, Israel

Tractatus de Iudaeis, Giuseppe Sessa
Turin 1716

Selections with Translation,
Kenneth Stow

1. Chap. II

p. 4. Jews are part of the citizenry and the civic body where they live . . . and in our Patria (Savoy) by virtue of the privileges accorded them on 15 December 1603 by Carlo Emmanuele I . . . as this is expressly seen. And they are bound by all the statues, whether favorable or burdensome, so that what is allowed or prohibited to others as individuals or in a group or organization is to be considered as permitted or prohibited to Jews, wherever they live. They enjoy the same immunities conceded to others, apart from those which pertain to the spiritual—internal—realm, for [otherwise] Jews are citizens in all matters, whether in the hateful and onerous or the grant of privilege or rights. This [rule] applies to all the laws, statutes, and indults and customs that now in force.

Proof of this is that a jailed Jewish debtor's expenses have to be paid by the creditor.

2. Chap. III

p. 6. It is a question whether the privileges given them should be called odious or favorable, and speaking unequivocally [I say that] it is an absolute rule that privileges which are repugnant to ius commune must be considered odious, lest the neglect of one affect the other . . . ; those [privileges] which should be understood as diminishing ius
countryside, known by the name of special law . . . are said to be privileges that weaken law.

3. Chap. XV

p. 41. How to handle the problem when princes ignore that Jews originating from Spain and Portugal were surely baptized at one point and then reneged. Here he cites de Suannis, Part III, chap. 2, paragraph 5.

To wash themselves anew in what the Jews called idiomatically in Latin purification, and to shave the head with pumice, as Eymerich notes in his Directorium . . . and the unfortunate recidivists [read: apostates] are led to running water [nails to the quick, and the rubbing of sand over the entire body following venerable custom], where, hair shaved, too, they are asked if they wish Tevila, that is the bath or laver of flowing water, and should they respond positively, the master of the ceremony says: baal tesuva, meaning, to return to a state of sin . . . And they [those rejudaising] exclaimed Blessed God who has commanded us to be sanctified in this water and bath of Tevila. I heard this from converts to the Catholic faith. [Sessa adds that to stop them from seducing Christians to Judaism, Nicholas IV introduced Turbato Corde and he notes Oldradus, cons. 36.]

4. Chap. XVII

p. 48. Jews use Dintorà to regulate rents, specifically, the Taqqanah of R. Tam on housing, which then becomes the ius cazagà of Italian ghettos. Admittedly, making the house into a hyptotheca [something pledged or mortgaged] removes the house from the control of the owner. The approval of Jews living by this rabbinic, decision, de quo nihil reperitur in Pentateucho dispositum (that is, it is a law whose sanctioning means recognizing the rabbinic jurisdiction Christian theologians and legists had been deprecating, and worse, since the thirteenth century) is found in a decision of the Roman Rota of 20 November 1609 (which Sessa appends). However—and this is the news—when Jews do not live in a ghetto (as in Turin prior to 2 August 1679), they have full rights:

When Jews are not confined to a ghetto and have the legal capacity to possess property as full owners, or goods, then all [the laws] apply concerning neighborhoods or consortia, the same as Christians. For Jews are citizens and empowered by all the
statutes and privileges pertaining to the former, even those based on equity and the 
II, 2, 6.

5. Chap. XXI

p. 64. Jews are not slaves, certainly not because of the Passion, or as [might appear] 
from the canon etsi iudaeos in the Decretals, which would mean they do not have their 
children in the power. Rather, if Jews are subservient to princes [in all civil matters, 
etc.] it is as citizens, whence, there is no question that rejecting the contrary opinion, 
their children are under their power (patria potestas) [albeit this right obligates Jewish 
parents to feed, dower, and leave legacies even to children who have converted. Ricciulo, 
de iure pers.. 2, 29, 1; Pignatel. Cons. 14.

6. Chap. XXIV

p. 77. No inheritance to the Comunità. Jews should enjoy the legal capacity to 
have institutions and inheritances, whether from a last will or whether a blood relative 
has died intestate, and even if the relative had become a Christian. [However,] it is 
unacceptable that Jews should inherit anything from unrelated Christians if the legacy is 
to the Jews’ Community or to their Collegium—to which nothing may be left by a 
Christian, as in Justinian’s Code, 1,9,1 and in the Decretals in the Title de Iudaeis, the 
second law beginning iudaei. Indeed, a Christian leaving anything as a legacy to the 
Università or Collegium of the Jews is excommunicate after his (her) death; Gratian, 
Decretum, Distinction 24, question 2, and de Susannis [de Iudaeis] 2,5,23. This is 
because legacies to a base person are unsustainable . . . [and we have already said Jews 
are] vile, and notorious, certainly compared to Christians [as shown because of 
limitations on the testimony they are permitted to give].

7. Chap. XXVI

p. 81. Jews use ius commune in court and in making wills. They use Mosaic 
Law only for circumcision, marriage, ritual, and ceremonials. Thus Sessa; 
but not everyone was so clear. Ricciulo, for one, said Jews must use ius 
commune without exception (he also was a strong supporter of the Casa dei 
cathecumeni and of “kidnapping” offered children); and see too Peter 
Cuneus, de Republ. Hebr. 1, 6.

If the Jews have a custom or statute that has been properly approved allowing them to 
devolve property according to Mosaic law, this should be followed. In Mantova, the 
custom is that they inherit not following ius commune, but by the rules of the Old
Testament.

**8. Chap. XXVI**

*p. 88. As Ricciulo points out, the dowry is to ensure:*

The dowry, as Ricciulo points out, is to ensure [the birth of] children. But this motivation fails in the case of the Jews, who infest the towns of Christians, . . . and thus the Republic of Cunaeus speaks of them not multiplying. C. Boralevi, *Introduzione a P. Cunaeus, De Republica Hebraeorum*, Firenze 1996, pp. VII-LXVII. *

**9. Chap. XXXIII**

*p. 107, Among the Jews, marriage may not be designated a sacrament, but a simple contract. [Their marriages though] are valid, although they are not indissoluble as among Christians [for marriage is the figure of God’s assumption of the flesh, which Jews deny, and, therefore, any] litigation [about the] validity of marriage, as well as matters pertaining to divorce, should be carried on only before a secular Christian judge. For their marriage contracts are strictly secular [lit., temporal]. Hence, in contracting marriage, the matter is clear: Jews are bound by Mosaic, not civil law. De Luca, *Disc. 15*, 3. [as the matter is regulated by] i.nemo, C. 1, 9.*

**10. Chap. XXXIV**

*p. 111. The conversion of only one spouse:*

If the wife of one who has converted refuses to convert, even after every effort has been made, she should be left in her infidelity. But under no circumstances should the [converted] husband give her a writ of divorce following Jewish law. Should he do so, he is to be punished for Judaizing. Nor should he cohabit with this wife because of the danger of the subversion of the faith and of blasphemy. What should be safeguarded is that the husband must remain faithful to her should this wife ever become a Christian. Pigna. Consult. 14, n. 215.

**11. Chap. XXXIV**

*p. 115. Who judges Jews? *Antiqua improbitas* of Gregory XIII says that when an ecclesiastical crime has been committed, it is the Inquisition. Otherwise:*

[the judge is ecclesiastic; and, indeed, it is up to *ius commune* to establish the penalties for adultery or usury, which is always a civil judge’s competence].

Otherwise, offenses violating laws of sexual behavior [lit, delicts of the flesh] are handled by a lay judge. Indeed, we note that if it is a question of the validity or nullity of
a marriage between two Jews, or that a divorce is sought by reason of adultery or cruelty, it is never an ecclesiastical judge, but a secular one who has the competency in the matter. After all, a Jewish marriage contract is truly temporal and pertains to secular jurisdiction, . . . However, if one of the spouses converts, then we are speaking of a case between a Jew and a Christian in which the plaintiff must make his petition in the forum of the defendant. Hence, should an infidel seek a divorce, or an annulment, he must convocate the believer in an ecclesiastical court. If, on the other hand, the plaintiff is the believer, he must convocate the defendant before a secular judge, who is his, the infidel’s, proper judge . . . The opinion of de Susannis is just wrong, who gives competence to a lay judge only when the marital dispute is incidental to a dispute between two Jews, whereas if the marital issue is the principal one he says the judge is to be ecclesiastic. This, however, is just as we confuted de Susannis (I,11,9) on the subject of usury in chapter 4, above [that an ecclesiastic judge might be left to decide whether a contract was usurious, but the actual case comes up before a secular judge].

12. Chap. XXXV

p. 117. Indeed, among Jews I have never seen anyone who does not labor in some art or commerce . . . such as the ones in which Jews customarily engage [if he wishes to have food] to eat. This begins as soon as childhood is over, for Jews without a special permit have no right to own fixed property (from which they can provide for themselves). They meet their needs strictly from their own endeavors. [must earn their keep, as says De Luca, de alien., et contr. prohib. disc 60, n. 10].

13. Chap. XXXVII

p. 122. Sessa wonders why Jews practice such acts as being receivers of stolen goods. He had just spoken of Jewish industriousness, but here, he introduces the example of one Emanuel Bacchi, who was hanged for this crime. He is perplexed and thus adds:

These things thus show us that at least by legal presumption, Jews are harmful, thieves, and detrimental [lit., pernicious] to the Christian Republic, . . . so that Christians insulting Jews should never be punished.

14. Chap. XXXVIII

p. 126. On the subject of closing Jews inside houses—within ghetto—on feast days. He objects:

Since not all Jews possess appropriate quarters, not the least because of their poverty as well as the limited size of their homes, they are forced actually to live in their workrooms or shops, in the lower floors of their residences, or right next to public ways and the
heavily divided spaces of these buildings, in which they cook and do everything else
needed for domestic activity . . .

15. Chap. XL

p. 134, on blasphemy. We know that in Modena, blasphemy was punished
directly by the Inquisition. However, not so, according to Sessa: who says it
is to be punished by a secular judge, He limits the Inquisition to purely
ecclesiastical crimes and heresy.

It is the common opinion of the doctors [of law] that the proper judge in a case of
blasphemy should be an inquisitorial one if the Jew is guilty of what is normally called
heresy (he does not define how this could be, but one assumes he means such things as
denying God, as Nicholas Eymerich established in 1378). An ecclesiastic judge also has
jurisdiction if the crime is wholly ecclesiastic. Blasphemy however pertains to both
(mixed) jurisdictions, which [both] should prevent it. Indeed, in Piedmont, it is the
secular judge who has jurisdiction here. More, should an ecclesiastical judge take first
cognition, and the penalty he inflicts is too light to suit the crime, then a lay judge may
punish [the offender] a second time. In Piedmont, cases of a “mixed forum” regarding
Jews are handled, in practice, by the Conservatore and his Vice Conservatori; the same
applies in the Kingdom of Naples, the rule being that in a mixed forum, ecclesiastic
judges have no jurisdiction over laymen. The clear deduction, therefore, is that in cases
of blasphemy by Jews, they are to be punished by lay, not ecclesiastic judges. Guido and
Marq. de Susannis II, 9, 5. At in hac patria in causis mixti fori quoad Judaeos, statutum
legitur ex Regio memoriali 27 Junii 1617. ad cap. 4, cognitionem ad Conservatorem
generalem et eius Vice-Conservatores pertinere privative; et ita practicari in Regno
Neapolitano, quod in delictis mixti fori Iudices Ecclesiastici non exerceant
jurisdictionem contra laicos, et sic non detur locus praeventioni testator Baiar. Ad Car.
Par blasphemia 17 . . . Sed de hoc superfluum est disceptare dum Iudaei blasphemantes
debent puniri per Iudicem laicum, et non per Ecclesiasticum [yet if lay judge does not
act, then, indeed an ecclesiastic one may intervene].

16. Chap. XLIII

p. 143-144. Since Jesus, lex mosaica fuit penitus extincta ac amisit vim obligandi.
Hence, Jews retain powers only in ceremonial matters, meaning rabbinical
power depends on princes or the Jews’ conservatore generale, who, for
instance, decides whether excommunication may be used.

Jews are deemed totally to lack powers of jurisdiction; . . . how much the more, then,
should the decisions [lauda] of Jewish arbiters not be carried out, as in the Code C.1,9,8
and reiterated by de Susannis 2,6,23. . . . [Hence], with respect to the decisions of
Jewish arbiters, it was decided that the party/ies may always appeal of the Conservatore
Generalis

17. Chap. XLV

p. 147. [Jews have arbiters], for among the Jews when their laws differ from [those of] ius commune, this [law] must be the basis [for decisions and action], rather than ius commune or Roman law, as Calderini says in his consilia nos. 2 and 10, depending on the nature of the case and its circumstances, as Ricciulo says (on whom see below). Thus should there be a case related in one way or another to succession to male and female children from an intestate Jewish parent, the question will have to be decided according to Mosaic law, not ius commune or Roman law, so that the successionary custom [of Jews] will be preserved just as it must also be when the matter is one of the statute excluding a daughter of a Jew [in favor of] male siblings, as I said above.

18. Chap. XLIX

p. 157. Time and again Jews are summoned to court on their Sabbath. [Jews protest in vain—(actually Roman law exempts them)] since they are in fact subject to the laws of the Christians (not Christian law; note). Jewish law, it appears, is observed with respect to “ceremonies,” ius cazagà, matrimony, divorce, and inheritance.

19. Chap. LXIV

p. 262. Judaeorum gentem ubique peculiares habere Judices, a Magistratu tamen Christiano constitutos apparat ex his quae tradit Matth. De Afflicits dec. Neap. n. 32
This refers to the Conservatore, who has full powers in just about everything, including the primary jurisdiction over Jews. Cases in court begin with him. Sessa, himself the vice conservatore, notes the privileges of 1603, 1616, and 1626, now abrogated by that of 1667. In the earlier privileges,

p. 267 Jews always have special justices appointed over them, as Matthew de Afflicits explains. [These, like the Conservatore have seen their powers increase]. In earlier privileges, Jews were forced to choose arbiters and obey rabbinical sentences with no hope of appeal or to acquiesce according to Jewish rites and laws. [Under the new privilege, there is] appeal, which is made to the Conservatore.

Segre, Jews in Piedmont, Privilege of 1667, #2322 vol.2, p. 1156, par. 42:
l’autorità de rabini si limita alla decisione delle differenze cerimoniali dalle sentenze dei quali, come dal laudo degli arbitri, si farà l’appellazione al conservatore in caso d’aggravio, al qual conservatore spetterà la cognizione di tutte le altre cause e dalle sentenze del conservatore si dovrà apppellar al senato.
Text of 1616, #1952 vol. 2 p. 951, fu tra loro fatto parte a dover in ogni loro differenze elegger arbitri . . . da quali non si possa dimandar appellatione, ne revisione alcuna.

Text of 1603, #1761, 2:859, possano . . . haver ricorso da loro rabini a quali si da ogni autorità necessaria per decidere tra loro, si in questo [banking matters] come in ogni altre cause loro, conforme alle loro leggi.
Tractatus de iudaeis
Tract on the Jews
1713

Prepared by Kenneth Stow, Haifa University, Israel

Tractatus de Iudaeis, Giuseppe Sessa
Turin 1716

Selections with Translation,
Kenneth Stow

1. Chap. II

p. 4. Ideo dicendum est, eos dici de populo et corpore civitatis ubi commorantur . . . et in Patria nostra ex privilegiis concessis sub 15 Decembris 1603 a Carlo Emanuele I . . . inter cetera id expresse decernitur et ligantur generaliter omnibus Statutis sive commodum, sive onus afferentibus (refs to De Luca and Surd.) ubi quod concessa, aut prohibita alicui populo, vel universitati censentur concessa, vel prohibita Judaeis ibi habitantibus et gaudere immunitate aliis concessa (Gratian) et exceptis iis quae concernunt forum spirituale, seu internum, Hebraeos dici in omnibus Cives, tam in odiosis et onerosis, quam etiam in favorabilibus et privilegiatis, et ideoque sub legibus, statutis, et consuetudinibus aut indultis contineri firmat; de Luca.

2. Chap. III

p. 6. Sed quaestionis est, an privilegia eisdem concessa dicantur odiosa vel favorabilia: et conclusive loquendo, absolute tenendum est in iis (privilegiis) que repugnant iuri communi odiosa esse reputanda, nec trahenda vel extendenda de uno casu ad alium . . . eaque sunt intelligenda quominus iuri communi derogent cum dicantur esse iuris extraordinarii . . . ideo dicuntur privilegia qui privat legem . . .
3. Chap. XV

p. 41. How to handle the problem when princes ignore that Jews originating from Spain and Portugal were surely baptized at one point and then reneged. Here he cites de Suannis, Part III, chap. 2, paragraph 5.

... de novo lavare (after baptism and after circumcision) quo Hebrei vocant idiomate latino purificationem et cum pumice caput radere ac ut refert Eijmeric direct. inq., p.2, q.44 ac infelices recidivi ad annem ducuntur iuxta antiqui moris consuetudinem et interrogati, an agere velint Tevila, idest in balneum, aut lavacrum influentis aquae ingredi? ubi respondeant affirmative caeremoniarum Prefectus ait, baal tesuva, idest regredere a statu peccati [then they are stripped, nails cut to the quick, rolled in sand, as if to roll of the oil of Chrism]. . . sicque rasorum capitater in amneam merguntur exclamantes Benedictus sis Dom. Rex Coelorum cur praecipisti super hanc aquam et Balneo Tevila nos sanctificare. [Then they go back to their original name and promise to observe the law and blaspheme Christ]. . id quoque sic fieri audivi a quibusdam Hebraeis ad fidem catholicam conversos . . [Sessa adds that to stop them from seducing Christians to Judaism, Nicholas IV introduced Turbato Corde and he notes Oldradus, cons. 36.]

4. Chap. XVII

p. 48. Jews use Dintorà to regulate rents, specifically, the Taqqanah of R. Tam on housing, which then becomes the ius cazagà of Italian ghettos. Admittedly, making the house into a hyptotheca [something pledged or mortgaged] removes the house from the control of the owner. The approval of Jews living by this rabbinic, decision, de quo nihil reperitur in Pentateucho dispositum (that is, it is a law whose sanctioning means recognizing the rabbinic jurisdiction Christian theologians and legists had been deprecating, and worse, since the thirteenth century) is found in a decision of the Roman Rota of 20 November 1609 (which Sessa appends). However—and this is the news—when Jews do not live in a ghetto (as in Turin prior to 2 August 1679), they have full rights:

Verum quidem est, quod in Hebraeis non restrictis intra Ghettum, atque capacibus possidendi in proprietatem et dominium verum, et absolutum, domos, vel bona, tunc procedunt omnia, quae de retractu vicinitatis, vel consortii disposita reperiuntur quoad Christianos, cum reputentur Cives, atque Civium statutis et privilegiis potiantur etiam

5. Chap. XXI

p. 64. patria potestas. [Jews not true servi as some say] per passionem D.N.I.Christi [which] factos esse servos Principum, c. etsi Judaeos, de Iud., unde filios Iudaeorum in potestate parentum minime esse tenendum sit. [Rather Jews are subservient to princes] quae sunt civium Romanorum; Marq. III, 4, 10.. Ex quo deducitur quod filii Jjudaeorum spreta opinione contrarium tenentium sunt in postestate parentum; Ricciulo, de iure pers.. 2, 29, 1; Pignatel. Cons. 14.

6. Chap. XXIV

p. 77. No inheritance to the Comunità. Iudaei . . . sint capaces institutionum et haereditatum tam ex testamento, quam ab intestate respectu consanguineorum, qui ad fidem converse sint . . . Non est tamen ferendum quod aliquid capere possint a Christianis penitus extraneis si ageretur de relictio universitati hebraeorum, vel eorum Collegio, cui nihil prorsus per Christianum reliqui potest [as] C.1,9,1 et cap. Iudaei, el 2, X. de iud. Imo Christianus quidpiam legans Universitati sive Collegio Hebraeorum excommunicaretur post mortem 24. q.2; de Susannnis 2,5,23 cum relict a turpi personae non sustineatur ....[and we have already said Jews are] personas viles et infames comparative ad Christianos [chap. 18, supra]

7. Chap. XXVI

p. 81. Jews use ius commune in court and in making wills. They use Mosaic Law only for circumcision, marriage, ritual, and ceremonials. Thus Sessa; but not everyone was so clear. Ricciulo, for one, said Jews must use ius commune without exception (he also was a strong supporter of the Casa dei cathecumeni and of “kidnapping” offered children); and see too Peter Cuneus, de Republ. Hebr. 1, 6.

Si tamen inter Judaeeos adesset consuetudo vel statutum legitime approbatum, eorum sucessiones deferens juxta legem Mosacium ea essent servanda, et consuetudinem adesse in Patria Mantuana succedendi non ex dispositione juris communis, sed veteris testamenti.
8. Chap. XXVI

p. 88. As Ricciulo points out, the dowry is to ensure:


9. Chap. XXXIII

p. 107. Inter Judaeos matrimoniam non dicitur Sacramentum, sed simplex contractus. Ricciulo, *De pers. 2,3,11.* [Their marriages are, however] verum, . . . non tamen est ratum et indissolubile sicut inter Christianos. [This is because Jews deny the assumption of God of human form, and, therefore, any] lite inter ipsos mora de initi matrimonii validitate , aut circa divorium celebrandum conspicimus solem Judicem secularem esse competentem, , cum is contractus sit mere temporalis [De Susannis had spoken of an ecclesiastical court]. Unde in matrimonio contrahendo lege Mosaica et non civili ligari Judaeos certissimi iuris est. De Luca, *Disc. 15, 3.* [as the matter is regulated by] l .nemo, C. 1, 9.

10. Chap. XXXIV

p. 111. The conversion of only one spouse: Si tamen uxor conversi ad fidem venire noluerit post omnem adhibitam diligentiam, dimitti debet in eius infidelitate obdurata; sed cavendum est ne vir ei unquam libellum repudii, secundam legem Mosaicam, tradat, quia id faciens puniretur tamquam judaizans, nec cum ea posset cohabitare propter periculum subservionis fidei et blaspheme; quod etiam servandum est, si uxor converteretur ad fidem et vir permanerit fidelis. Pigna. Consult. 14, n. 215.

11. Chap. XXXIV

p. 115. Who judges Jews? *Antiqua improbitas* of Gregory XIII says that when an ecclesiastical crime has been committed, it is the Inquisition. Otherwise:

. . . ad iudicem laicum cognitionem delictorum carnis, immo videmus quod si quaestio
sit inter iudaeos de validitate aut nullitate matrimonii aut quod petatur divortium ratione adulterii vel sevitiae (is this a hint such would be valid causes among Christians, too?) nullo modo iudex ecclesiasticus, sed secularis tantum iudex est competens, et adeundus quia is [jewish marriage] contractus est meri temporalis et jurisdictionis secularis, . . . ac si alter coniugum ad fidem redierit et sic agitur inter Christianum et Iudaeum vel e contra, actor debet sequi forum rei, ac proinde, si infidelis agat ad divortium, vel ad nullitatem matrimonii, debet convenire fidelem coram iudice ecclesiastico, qui in causa matrimonii est iudex fidelium. Si vero fidelis est actor, debet infidelem convenire coram iudice seculari, qui est eius iudice ut iuridice . . . . [Indeed] inepta est opinio, seu distinctio, quam facit Marq. de Susannis (II,6,17) ubi dicit Iudicem laicum esse competentem, si quaestio matrimonii agatur inter Iudaeos incidenter, secus si principaliter sit intentata, quo casu dicit esse ventilandum coram judice Ecclesiastico, cuius partes tuendo etiam firmavit supra cap. 4, n. 6, quod Iudaei in materia usuararum subijciantur Iudici Ecclesiastico, quo ibi non immerito confutavimus.

[the judge is ecclesiastic; and, indeed, it is up to ius commune to establish the penalties for adultery or usury, which is always a civil judge’s competence].

12. Chap. XXXV

p. 117. Sed quia inter Judaeos neminem unquam ex eis vidi qui non laboret (si vult manducare) et in aliqua arte vel mercature . . . quas exercent Judaei, vix expleta infantia se se non exerceant, dum Judaei ob incapacitatem possidendi bona stabilia (nisi ex privilegio) et necessitatem vivendis ex solis industriis [must earn their keep, as says De Luca, de alien., et contr. prohib. disc 60, n. 10].

13. Chap. XXXVII

p. 122. Sessa wonders why Jews practice such acts as being receivers of stolen goods. He had just spoken of Jewish industriousness, but here, he introduces the example of one Emanuel Bacchi, who was hanged for this crime. He is perplexed and thus adds:

Unde ex iis videretur dicendum saltem presumptione iuris Iudaeos esse malos, fures, et Reipublicate Christianae perniciosos, . . . Et consequenter nullatenus puniendo esse Christianos injuria verbali afficientes Iudaeos.

These things thus show us that at least by legal presumption, Jews are harmful, thieves, and detrimental [lit., pernicious] to the Christian Republic, . . . so that Christians insulting Jews should never be punished.
14. Chap. XXXVIII

p. 126. On the subject of closing Jews inside houses—within ghetto—on feast days. He objects: quia cum non omnes Hebraei cubicula possideant attenta, non minus eorum paupertate, quam habitationum angustia, cum habitare cogantur in eorum officinis et sagariis existentibus in solario inferiori domuum hospitalis, sive iuxta vias publicas, et curtes dictarum aedium in quibus coquinam facium et omnia ad usum rei familiaris necessaria exercent . . .

15. Chap. XL

p. 134, on blasphemy. We know that in Modena, blasphemy was punished directly by the Inquisition. However, not so, according to Sessa: who says it is to be punished by a secular judge, He limits the Inquisition to purely ecclesiastical crimes and heresy.

Quis denique sit Judaeorum Iudex competens in hoc blasphemiae crimine, communis est DD. [doctores] distinctio, quod si Judaeus delinquat in iis, quae haeresim sapiant inter Christianos, tunc cognitio, et punitio ad Inquisitorem pertineat, sin autem extra hunc casum delictum committatur in aliquo criminum omnino Ecclesiasticorum, de quibus in c. cum sit generale, de foro compet, tunc cognoscat Ordinarius Ecclesiasticus. [Fully secular crimes pertain of course to a secular forum] . . . Verum cum crimen blasphemiae sit mixti fori, locum esse praeventioni tenent . . . et quod in Patria nostra Pedemontana Iudex laicus cognoscat de hoc blasphemiae delicto testatur in puncto Guid. Papa Gratianopolitanus . . . Sed si Judex Ecclesiasticus praeveniendo puniverit quidem, sed leviter, ac poena gravitati delicti non adequata non prohibetur Iudex secularis iterum punire . . . Guido and Marq. de Susannis II, 9, 5. At in hac patria in causis mixti fori quoad Judaeos, statutum legitur ex Regio memoriali 27 Junii 1617. ad cap. 4, cognitionem ad Conservatorem generalem et eius Vice-Conservatores pertinere privative, et ita practicari in Regno Neapolitano, quod in delictis mixti fori Iudices Ecclesiastici non exerceant jurisdictionem contra laicos, et sic non detur locus praeventioni testator Baiar. Ad Car. Par blasphemia 17 . . . Sed de hoc superfluum est disceptare dum Iudaei blasphemantes debent puniri per Iudicem laicum, et non per Ecclesiasticum [yet if lay judge does not act, then, indeed an ecclesiastic one may intervene].

16. Chap. XLIII

p. 143-144. Since Jesus, lex mosaica fuit penitus extincta ac amisit vim obligandi.
Hence, Jews retain powers only in ceremonial matters, meaning rabbinical power depends on princes or the Jews’ conservatore generale, who, for instance, decides whether excommunication may be used.

... dicantur carere totaliter iurisdictione ... a fortiori dicendum nec lauda Iudaeorum habere executionem paratum C.1,9,8 and de Susannis 2,6,23 ... Prout ab arbitrorum Iudaeorum laudis sancitum fuerit posse appellari ad conservatorem generalem.

17. Chap. XLV

p. 147. [Jews have arbiters] quod inter Hebraeos quando eorum iura differunt a iure communi, illud inspiciendum sit, et non ius commune vel Romanorum, ut defendit Calderini, cons. 2 & 10. [However, there are many issues that are treated] iuxta casuum diversitates et circumstantias [following Ricciulo. Thus] si agaretur de controversia tangente, seu pertinente ad successionem filii masculi et foemini ab intestate delatam a genitore Iudaeo, questio ab arbitris dirimenda foret iuxta ius Mosaicum, neglecto iure communi aut Romanorum, si ita ferret consuetudo succedendi prout idem servandum esset si agaretur de exclusenda vigore statute filia(m) Iudaei per fratres Iudaeos, ut alibi dixi.

18. Chap. XLIX

p. 157. Quotidie accidit die Sabbati [Judaei] conveniuntur in judicio. [Jews protest, but usually without success, since they] subijciantur legibus Christianorum; [with exceptions] servatur ius mosaicum ut puta in ceremonialibus, iure kazagà, matrimoniis, et quandoque repudiis vel successionibus [as these apply to Jews alone].

19. Chap. LXIV

p. 262. Iudaeorum gentem ubique peculiares habere Judices, a Magistratu tamen Christiano constitutos apparat ex his quae tradit Matth. De Afflictis dec. Neap. n. 32
This refers to the Conservatore, who has full powers in just about everything, including the primary jurisdiction over Jews. Cases in court begin with him. Sessa, himself the vice conservatore, notes the privileges of 1603, 1616, and 1626, now abrogated by that of 1667. In the earlier privileges,

p. 267 ... Hebrei in eorum controversiis arbitros eligere cogerentur, et Rabbinorum sententiis absque ulla appellationibus spe, aut medio aquiescere iuxta ritus Hebraicos ac eorum leges. ... [Under current privileges] a laudo arbitrorum prout a sententiis
Rabbinorum appellationis devolvatur ad Conservatore generale.

**Segre, Jews in Piedmont, Privilege of 1667, #2322** vol.2, p. 1156, par. 42: l’autorità de rabini si limita alla decisione delle differenze cerimoniali dalle sentenze dei quali, come dal laudo delli arbitri, si *farà l’appellazione al conservatore in caso d’aggravio*, al qual conservatore spetterà la cognizione di tutte le altre cause e dalle sentenze del conservatore si dovrà appellar al senato.

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**Text of 1603**, #1761, 2:859, possano . . . haver ricorso da loro rabini a quali si da ogni autorità necessaria per decidere tra loro, si in questo [banking matters] come in ogni altre cause loro, conforme alle loro leggi.

**Publisher:** The book was completed in 1713/4, published in 1717 in 1600 copies. It is readily available, awful to read. See Renata Segre, The Jews in Piedmont, doc. no. 2582 for information.

**Archive:** in such libraries as Columbia, Jewish National Library, Jerusalem

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