

Dispute Resolution and Kahal Kadosh Talmud Torah: Community Forum and Legal Acculturation in Eighteenth-Century Amsterdam

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1 Introduction

This contribution focuses on a little known aspect of Sephardic history: the role of the *kehilla* or community, and its related institutions, as a forum for the settlement of disputes in Amsterdam in the seventeenth and eighteenth centuries. Whereas general depictions of the emergence of the Western diaspora are common in the historical literature of the past decades, in-depth analyses of the functional similarities and dissimilarities of the Sephardic *kehillot* are too rarely conducted.¹ As is well known, the Western Sephardic diaspora communities evolved from shared models into distinctive communal entities through a process of differentiation shaped both by internal and external dynamics. The early seventeenth-century Portuguese *kehillot* on the Elbe and Amstel adopted and adapted the Venetian community model and, in turn, Amsterdam's institutions inspired the London community's 1663 statutes. Further West, rippling influences from the Dutch and English models shaped the New World and Caribbean communities. With each step of this evolution,

1 For a historical introduction to the genesis and development of the Western Sephardic Diaspora, see Yosef Kaplan, "The Sephardim in North-Western Europe and the New World," in *Moreshet Sepharad: The Sephardic Legacy*, ed. Haim Beinart (Jerusalem: Magnes Press, 1992), 240–87; for a comparison of the communal enactments regarding excommunication in Amsterdam and Hamburg, see Yosef Kaplan, "The Place of the *Herem* in the Sephardic Community of Hamburg during the Seventeenth Century," in *Die Sefarden in Hamburg. Zur Geschichte einer Minderheit*, ed. Michael Studemund Halévy (Hamburg: Helmut Buske Verlag, 1994), 63–88; for a topical comparative analysis of communal institutions, see Miriam Bodian, "The Escamot of the Spanish Portuguese Jewish Community of London, 1664," *Michael* 9 (1985): 9–15; and Bodian, "The 'Portuguese' Dowry Societies in Venice and Amsterdam. A Case Study in Communal Differentiation within the Marrano Diaspora," *Italia* 6 (1987): 30–61.

local constraints and opportunities interacted with and influenced these shared socio-religious institutional models.²

Looking at the Portuguese community as a legal forum seems to run counter to the impression that the Dutch and Western Sephardim often resorted to secular legal resources to settle their commercial or family disputes, such as private arbitration and local or superior Dutch courts. Sifting through Amsterdam notarial deeds for documents pertaining to the Portuguese, E.M. Koen has produced numerous instances of notarial deeds of arbitration,³ and several case studies have emphasized the common use of ordinary courts made by the Sephardim.⁴ Without denying the reality of the presence of the Sephardim in these better known legal forums, the purpose of this study is to further our knowledge of community involvement in dispute settlement in Amsterdam while, at the same time, to provide a relevant interpretative framework congruent both with Sephardic history and the legal Dutch context. How important was the Jewish community forum for dispute resolution? How did it function, who resorted to it, and why? How should we interpret the enduring existence of that forum into the eighteenth century? Does it testify to some form of judicial and communal autonomy? Or should the very notion and category of autonomy be revisited or dismissed and a new interpretative framework proposed?

2 These processes feature at the heart of the European Research Council Program led by Professor Yosef Kaplan whom I thank warmly for inviting me twice: in March 2015 for a seminar and in November 2016 for the final conference. The stimulating exchanges with the post doctoral research team, enhanced by everyone's firsthand and utter familiarity with Western Sephardics' mores and lore, left me with fond memories.

3 "Notarial Records Relating to the Portuguese Jews in Amsterdam up to 1639," *Studia Rosenthaliana* (1973–2001).

4 See the references to Jewish cases tried by Dutch courts: Arend H. Huussen, "The Legal Position of the Jews in the Dutch Republic c. 1590–1796," in *Dutch Jewry. Its History and Secular Culture (1500–2000)*, ed. Jonathan Israel and Reinier Salverda (Leiden: Brill, 2002), 37, n. 33; Swetschinski, *Reluctant Cosmopolitans*, chap. 5, 225 ff.; for major cases of litigation between Jewish merchants in the early seventeenth century, Jessica Vance Roitman, *The Same but Different?: Inter-Cultural Trade and the Sephardim* (Leiden: Brill, 2011); for a few cause célèbres, see Leo Fuks, "Litigation among Amsterdam Sephardim in the 17th Century," in *Aspects of Jewish Life in the Netherlands. A Selection from the Writings of Leo Fuks*, ed. Renate G. Fuks-Mansfeld (Assen: Van Gorcum, 1995), 65–80; Oscar Gelderblom mentions the involvement of arbiters in fifty-seven business conflicts between 1602 and 1627 to be found in notarial deeds that survive belonging to Portuguese merchants in Amsterdam, see Oscar Gelderblom, *Cities of Commerce: The Institutional Foundations of International Trade in the Low Countries, 1250–1650* (Princeton, NJ: Princeton University Press, 2013), 106; for general reflections on business practices and litigation, cross and intracultural, see Catia Antunes, "On Cosmopolitanism and Cross-Culturalism: An Enquiry into the Business Practices and Multiple Identities of the Portuguese Merchants of Amsterdam," in *Cosmopolitanism in the Portuguese-Speaking World*, ed. Francisco Betencourt (Leiden: Brill, 2017) 23–39.

This contribution will argue that the forms and scope of the functions of the *kehilla* in dispute settlement in Amsterdam testify to mechanisms of social discipline that, while rooted in Jewish traditions of mediation or arbitration, are best explained within the general context of Dutch self-ruled churches. The issue of dispute settlement may also help shed some light on a paradigm of confessionalization applicable to early modern Jewish societies.

The study presented here originated in my research on community, trade, and family networks in the Sephardic diaspora, which brought to light many forms of intersection between the communal and economic sphere. This led me to investigate further—and to question—the widely held notion that the *kehilla* and its institutions had little to do with economic issues or mercantile matters, that, as Yosef Kaplan phrased it in the introduction to his collection of essays, the community restricted its realm of intervention to the sacred and “conferred almost full autonomy of values in the economic sphere.”⁵ The traditional viewpoint may have stemmed from the fact that few of the community’s ordinances deal directly with mercantile or economic matters, and those that do concern only compliance with Dutch monetary or customs regulations, as emphasized in Daniel Swetchinski’s work.⁶ The facts and analysis presented here challenge the idea that the early process of secularization of the Amsterdam Portuguese community went hand in hand with a segregation of the spheres of communal and of economic life. Dispute settlement is an area where these spheres intersected significantly. A little known cache of documents in the Portuguese community archives in Amsterdam relating to community mediated or arbitrated disputes provided the first trigger to an investigation that was later extended to Hamburg, London, Bordeaux, and Livorno. The broad geographical spectrum spanned by the investigation, which includes *kehillot* developing within political and legal contexts as different as Amsterdam, Hamburg, London, Bordeaux, or *a fortiori* Livorno, where the community court functioned as a first instance Jewish court, may seem unusual in a field still characterized by a monographic or compartmentalized approach. But such a comparative approach produces an analytical toolkit with application beyond the realm of community dispute resolution in the diaspora, providing a useful methodology for understanding the process of transformation of the many functions of the *kehilla*.

5 Yosef Kaplan, *An Alternative Path to Modernity. The Sephardi Diaspora in Western Europe* (Leiden: Brill, 2000), 21.

6 Daniel M. Swetchinski, *Reluctant Cosmopolitans. The Portuguese Jews of Seventeenth-Century Amsterdam* (London: Littman Library of Jewish Civilization, 2000), 184, 218–19.

I will begin by tracing the seventeenth-century history of community regulations and procedures in Amsterdam regarding dispute resolution processes and the issue of taking cases to local Gentile courts. I will then present the community forum and settlement process as it is documented in the corpus of eighteenth-century sources presented below, and will illustrate it with selected cases. Finally, I will propose an interpretation of this data grounded in the double context of Jewish and Dutch traditions and cultures of arbitration, using the approach of legal anthropology.

2 Early Community Regulations and Dispute Settlement

Tracing the origins and evolution of the *kehilla's* normative production on disputes involving Jewish parties and judicial action constitutes a necessary preliminary.⁷ At the end of the sixteenth century, Portuguese New Christians and Jews had begun to settle in Amsterdam, gaining tacit recognition from the magistrates in 1614 with the acquisition of a burial ground in Oudekerk. The legal framework of their establishment, interaction with Dutch authorities, and gradual organization was best described as “a favourable mixture of explicit restrictions and implicit freedoms,”⁸ and the absence of an overall statute or charter, befitting the Dutch model of a “*tolerance sans édit*.”⁹ During the first decades of the seventeenth century, the Sephardim established three distinct *kehillot*, Beit Yaacov, Neveh Shalom, and Beit Israel, which merged into a united community in 1639, Talmud Torah. In 1632, a twenty-article code relating to dispute-handling was drawn up by the board of the Imposta, which served as a steering committee for the three congregations, and which is the most extensive attempt at regulating internal conflicts and access to courts.¹⁰ The numerous motives that prompted its redaction are described in the preamble: the need to act in defense of the Law in the face of the frequent and sinful resort to local judges, the will to conform to the mores of other Jewish

7 Our own analysis is greatly indebted in this task to Yosef Kaplan's article, “Eighteenth-Century Rulings by the Rabbinical Court of Amsterdam's Community and Their Socio-Historical Significance,” [Hebrew] in *Studies in the History of Dutch Jewry* 5 (1988): 1–54.

8 Swetschinski, *Reluctant Cosmopolitans*, 24, and 12–25 on these and the few legal enactments regarding the Jews.

9 Willem Frijhoff, “La tolérance sans édit: la situation dans les Provinces-Unies,” in *L'acceptation de l'autre. De l'Édit de Nantes à nos jours*, ed. Jean Delumeau (Paris: Fayard, 2000), 86–107.

10 Stadsarchief Amsterdam (hereafter, SAA) 334, 13, fols. 88–91, 15 Kislev 5393 [28 November 1632], large excerpts from this code are quoted in Kaplan, “Eighteenth-Century Rulings,” 2–3. In this case the page numbering is the pencilled one.

communities, relieving the burden imposed on local judges, and avoiding the high expenses incurred in lawsuits, particularly where the parties lacked sufficient knowledge of the language. The last article states that the code be read publicly from the pulpit twice a year, once on “*sabat agadol*,” the Saturday preceding Passover, and once on “*sabat tesuba*,” between Rosh Hashana and Yom Kippur.

Article 1 describes in great detail the stages of the procedure. If a dispute arises between Jews and they cannot reach agreement, the plaintiff appears before the *deputados*, the appointed representatives of the three congregations. The opposing party is then summoned by the relevant *samas* (beadle).¹¹ If the opposing party fails to appear in response to the first summons, a fine of *hu soldo* is imposed. The fine increases to a florin for failure to appear in response to the second summons. After the three unsuccessful summonses, a ruling is made *in absentia*. Anyone who refuses to comply within thirty days is effectively put under ban, which may refer to a minor form of excommunication (“*apartado de todo Israel en todas as enosgas*”).¹²

If both parties appear for the hearing, either can reject *deputados* based on perceived bias due to kinship (article 4). If the *deputados* cannot bring the parties to agreement, they attempt to appoint at least three judges acceptable by the parties. Any party who fails to agree to at least three mutually-acceptable proposed judges within fifteen days is “separated” (banned) from the three communities (article 5). The judges must do their utmost to produce a compromise consistent with the [Jewish] Law as well as with the “*juizo dos jentes*,” which could refer here to the *jus gentium*. Those who do not abide by the compromise face the penalty of “separation.”

Deputados are also responsible for implementing private compromises drawn without their intercession. These private compromises also carry the penalty of “separation” for a defaulting party (article 7). When a party claims lack of sufficient resources to pay the amount required under a fine, compromise or ruling, the *deputados* organize a proclamation in the three congregations, including a call for anybody holding assets belonging to the party to come forward (article 13).

Article 9, fully quoted and translated by Kaplan, is of particular importance for our understanding of the Amsterdam *kehilla* dispute resolution process,

11 The beadle from the congregation in charge at that time of the returns of the *imposta*, a tax on imports and exports.

12 On the vocabulary regarding excommunication, and the often equivalent use of *herem* or *apartar*, see Kaplan, “The Place of the *Herem* in the Sefardic Community of Hamburg during the Seventeenth Century,” 71.

and for comparison with other community regulations. It states that although the *deputados*, or the judges they select, shall decide as much as possible according to Jewish law, and consult with experts knowledgeable about Jewish law, they may also consider “ho estilo mercantile,” mercantile usage when they consider it relevant.¹³

The 1632 code provides that, in general, any Jew who does not follow its procedures, and takes a fellow Jew to a secular court, even when both parties agree to take their dispute to said court, will be separated “da nasao em todas as 3 esnogas” (from all three congregations of the Nation), and will be reunited only upon payment of a heavy fine of twenty florins (article 11). If, despite the ban, a Jew persists in seeking justice or execution outside the fold, the *deputados* will grant permission to the opposing party to defend itself in a court of the realm, but will prohibit all other Jews from testifying for, or helping, the non-compliant party (article 12). However, in cases concerning seizure of property, letters of exchange, insurance matters, or distant courts, the parties may use a Gentile court after obtaining permission from community officials (article 14).

The lengthy and detailed 1632 code contrasts sharply with the extreme brevity of the dispute resolution provisions included in a single article of the 1639 merger agreement that served as the basis for the governance of the united community, Kahal Kadosh Talmud Torah. These stipulations, besides being terse, are also less stringent and ambitious. The merger agreement stipulates that, should a dispute arise between two Jews on an issue other than letters of exchange or seizure, after a summons delivered by the beadle, the parties appear in front of the *Mahamad*, which encourages them to choose judges-arbitrators. If, within eight days, they fail to do so, or, if once chosen, the arbitrators do not achieve their mission, the parties are free to take their case to court. A penalty is implied for those who go to the regular courts without permission.¹⁴

13 Kaplan, “Eighteenth-Century Rulings,” 3.

14 SAA 334–19, Escamoth A (5398–5440), fol. 84 [4 v], article 33 of the merger agreement, 28 veadar 5399 [3 April 1639]: “qualquer yudeo que tenha pertencoins ou duvidas com seu companhejro sobre materia de fazendas como nao seya sobre letras de cambeo e arestos em que adilacao lhe pode peryudicar sera obrigado mandar pelo semas sitalo pera o mamad diente de quem ambos averao de apareser e dito mamad os persuadiria nomem juizes louvados diante de quem porponhao sua cauza e den suas rezoins pera que fasao todo o posivel por acordalos ecompolos em termo de 8 dias e nao consentido as partes en que se lhe dem louvados, ou nao podendo os louvados acordalos ficarao as partes livres pera porcurarem e defenderem sua justiça aonde quizerem e bem lhes paiser e susedendo que algum sem preceder esta deligencia chame a seo companhejro diante da justica se procedera contra elle como pareca.” The merger agreement has been published by Wilhelmina Christina Pieterse, *Daniel Levi de Barrios als geschiedschrijver van de Portugees-Israelietische gemeente te Amsterdam in zijn “Triumpho del governo*

Article 20 of the merger agreement specifies that “*denims*,” an appellation indicating cases bearing a clear relation to Jewish law, will be examined and studied by the salaried *hakhamim* (rabbis) of the community, and if their vote is a tie, the *Mahamad* (the governing body of the community) will decide.¹⁵

Numerous notable and significant changes occurred between the dispute resolution provisions of the 1639 merger agreement and those of the 1632 code. The scope of the self-proclaimed jurisdictional authority of the *kahal* appears much more limited in 1639. In the merger agreement, all matters may be taken to a secular court after a first communal intercession has been attempted, while the 1632 code allows explicitly only time and enforcement-sensitive mercantile issues to be taken there. More strikingly, the merger agreement omits the threat of separation or excommunication, which occupied a prominent place in several articles from the 1632 code, and mentions only a generic “sanction” for litigants who go to court without permission (likely referring to either to a ban or a fine).

Interpreting these differences requires caution and conjecture. One possible interpretation relies on local factors. The less stringent formulation of 1639 may be ascribed to a process of adaptation to the local environment. Kaplan has suggested in his nuanced analysis of the functions of the *herem* that the threat of excommunication was removed from some types of ordinances due to pressure from the community elites or to topical religious trends;¹⁶ it is not

popular” (Amsterdam: Scheltema en Holkema, 1968), 155–167. The initial *ascamot* feature SAA 334–19, Escamoth A, fols. 106–111 [21–26], 22 Tamuz 5399: this second group does not contain a similar article on jurisdiction, and merely mentions that the nation will not incur expenses towards Jews condemned by local judges for offenses). As for the translation of “juizes louvados,” I propose to opt for judges-arbitrators instead of “honorable judges” (Swetschinski, *Reluctant Cosmopolitans*, 226).

15 SAA 334–19, Escamoth A (5398–5440), fol. 81 [3], Pieterse, *Daniel Levi de Barrios*, 160.

16 On the issue of *herem* see Kaplan, *An Alternative Path*, 108–42, 168–195; Kaplan, “Deviance and Excommunication in the Eighteenth Century: A Chapter in the Social History of the Sephardic Community of Amsterdam,” in *Dutch Jewish History: Proceedings of the Fifth Symposium on the History of the Jews in the Netherlands*, ed. Jozeph Michman (Assen: Van Gorcum, 1993), 103–115; Kaplan, “Bans in the Sephardic Community of Amsterdam in the Late Seventeenth Century,” in *Exile and Diaspora: Studies in the History of the Jewish People Presented to Professor Haim Beinart*, ed. A. Mirsky et al. (Jerusalem: Ben Zvi Institute, 1988), 517–40 [Hebrew]; see in particular on the erosion of the threat of excommunication in Amsterdam, Yosef Kaplan, “Confessionalization, Discipline and Religious Authority in the Early Modern Western Sephardic Diaspora,” in *Religious Movements and Transformations in Judaism, Christianity and Islam*, ed. Yohanan Friedmann (Jerusalem: The Israel Academy of Sciences and Humanities, 2016), 90–103; see also Anne Oravetz Albert, “The Rabbi and the Rebels: A Pamphlet on the Herem by Rabbi Isaac Aboab da Fonseca,” *Jewish Quarterly Review* 104 (2014): 171–191.

unreasonable to think that the issue of dispute settlement connected with *herem* may have seemed a sensitive one in a Dutch context where permission to pronounce bans was at that time granted implicitly only, and where the voluntary nature of the community made enforcement of stringent jurisdictional resolutions impossible. As well, one should remember that the first third of the seventeenth century was a period of intense demographic, social change in Amsterdam and of theological and political turmoil. This was the time of boundary setting for such new groups as the Jews, who settled in a climate marked by toleration and defiance from the Reformed clergy.¹⁷ Discretion, adaptation, and pragmatism were the key words during these defining precarious decades.

An alternative line of interpretation relies on conjecture regarding non-local events, far away from the Amstel. Research has shown that early Amsterdam *kehillot* borrowed most of their institutional structure from Italian models, Venice in particular, this imitation being enacted within a context of significant immigration and intense cultural and economic exchanges.¹⁸ Since the communal Jewish records of Venice have been lost, we cannot compare the 1632 code to Venetian ordinances to seek a putative matrix. But various lacunary sources give some basis for conjecture.

In the *Libro Grande*, an Italian translation of the community record book for the years 1607–1624 requested by the Venetian government, we find several key features shared by the 1632 Amsterdam code such as the role of judges-arbitrators and the prominent use of excommunication as a sanction or a deterrent.¹⁹

Moreover, there are reasons to suppose that the Portuguese Jews of Amsterdam received word of the contemporary developments in Venice surrounding the exercise of Jewish community autonomy and autonomous

17 Peter van Rooden, "Jews and Religious Toleration in the Dutch Republic," *Calvinism and Religious Toleration in the Dutch Golden Age*, ed. R. Po-Chia Hsia et al. (Cambridge: Cambridge University Press, 2002), 132–47.

18 Julie-Marthe Cohen, Judith C.E. Belinfante, "The Ponentini and the Portuguese: The Influence of Venetian Jewry on the Portuguese Jews in Amsterdam," in *Het Getto van Venetië—The Ghetto in Venice: Ponentini, Levantini and Tedeschi, 1516–1797*, ed. J.-M. Cohen (The Hague: SDU, 1990), 106–24; Jonathan Israel, "The Jews of Venice and Their Links with Holland and with Dutch Jewry (1600–1710)," *Gli Ebrei e Venezia, secoli XIV–XVIII*, ed. Gaetano Cozzi (Milan: Edizioni Comunita, 1987), 95–116.

19 See David Joshua Malkiel, *A Separate Republic. The Mechanics and Dynamics of Venetian Jewish Self-Government, 1607–1624* (Jerusalem: Magnes Press, 1988), 31 ff.; Malkiel, "The Ghetto Republic," in *The Jews in Early Modern Venice*, ed. Robert C. Davis and Benjamin Ravid (Baltimore: The Johns Hopkins University Press, 2001), 135–42. These features were not specific to Venice, and were to be found elsewhere in Italy, but the Amsterdam-Venice route remains a possible channel of influence.

justice. A theological juriconsult, Gaspar Lonigo, described the Venetian Jewish community of the time as “a republic separated from any other dominion.” In the early 1630s, an internal feud drew the attention of the Venetian Senate toward the community, and the communal record book of the Venetian *kehillot* was confiscated, translated, and examined.²⁰ The affair culminated years of concern among Venetian authorities concerning Jewish self-government and Jewish courts. The *Cattaveri*, a Venetian magistracy that had been granted jurisdiction over the ghetto, denounced the community’s attempt to prohibit its members access to the local courts. While several aspects of the affair remain unclear, we know that the Jewish community attempted to conceal some incriminating ordinances, resulting possibly in the imprisonment of community officials in 1633.²¹ A 1636 charter created limitations on the jurisdictional autonomy of Venetian Jews, required prior permission of authorities for excommunication, and threatened prosecution for violations.²²

It is reasonable to assume that news of these events traveled to Amsterdam, either through correspondence or as a byproduct of mobility. The flow of exchange between Venice and Amsterdam was cardinal in the early years of Sephardic presence in Holland, as shown by the endeavor of a composite group of merchants who applied to Haarlem for privileges in 1604–5. Communal, rabbinical, private, and commercial correspondence circulated abundantly. Assuming news of events in Venice reached Amsterdam, these worrying developments, either independently or in concert with the local factors described above, could explain the differences between the dispute resolution provisions of the 1632 code and those of the 1639 merger agreement.²³ Thus, both local and extra-local processes of influence and adaptation may explain why the first construct of a would-be autonomous justice in Amsterdam was toned down between 1632 and 1639.

Some aspects of the evolution of communal involvement in dispute resolution in Amsterdam up to the early eighteenth century remain unclear. Besides

20 David Joshua Malkiel, “The Tenuous Thread: A Venetian Lawyer’s Apology for Jewish Self-Government in the Seventeenth Century,” *AJS Review* 12 (1987): 223–50, esp. 225–26.

21 A very favorable report was drafted by Fulgenzio Micanzio, the appointed juriconsult, in defense of the Jews and Jewish autonomy, but not published it seems. In his report, Micanzio refutes a series of nine objections that can be made to the *Libro Grande* and the government of the Jews. Objection 8 accuses the Jews to meet as a tribunal, with judicial acts, thus usurping Venetian jurisdiction: see Malkiel, *A Separate Republic*, 51–52.

22 *Ibid.*, 226–32.

23 See for instance the figure of Abraham Aboab (Antonio Faleiro), who had moved from Hamburg to Venice in 1625, who was corresponding assiduously with Hamburg and Amsterdam into the 1640s about the remittance of funds to the Holy Land and the ransom of captives, Israel, “The Jews of Venice,” 107–8.

Yosef Kaplan's abovementioned article on the *beit din's* rulings, the issue has attracted limited historical attention. Kaplan understands the *hakhamim* (rabbis) as being the "*juizes louvados*" (judges-arbitrators) mentioned in the 1639 merger agreement. Swetschinski emphasizes that "There existed little by way of an independent court to adjudicate in communal conflicts, whether between individuals or between *yehidim* (community members) and *parnassim* (community leaders). The records do occasionally refer to a rabbinical court, but its mandate appears to have been limited to strictly religious matters."²⁴ He further mentions two instances of supervised arbitration, as being "entirely voluntarily," in 1641 and 1671.²⁵ Indeed, if we are to draw conclusions from the material found in the normative *compendia* of the community, it seems that few cases were submitted to the mediation or arbitration of the community. I am convinced however that besides the cases referred to the *hakhamim* and to a gradually emerging *beit din*, there were forms of secular mediation or arbitration under the aegis of the community, for which the records did not survive. Reasoning from the absence of documents is a path not easily favored by the historian. As a support for my argument, I will use a rare occurrence of a dispute that does surface in the seventeenth-century community register. In 1641, two brothers, Abram Israel Pereira Chuchon and Isack Israel Pereira, intent on settling a discord regarding their accounts, appear in front of the *Mahamad* in order to take a solemn oath. This case offers a glimpse of the ordinary path of settlement from which they slightly deviate: they have agreed to submit to the arbitration of "*juizes*," i.e., the "judges or arbiters" mentioned in the 1639 regulations (in this case, Daniel de Cassuto and David Salom) and commit to accepting their sentence. The reason explaining their appearance in front of the *Mahamad* (and in the community register) is that they request a solemn oath: the *Hakham* Saul Levi Mortera is summoned to administer the said oath upon the book of Scriptures showing the Ten Commandments.²⁶ Were it not for this unusual request, the case would have gone unheeded, since little communal material has survived from these early years. As for the abovementioned article 20 describing the referral of cases to the rabbis, I think it describes only a fraction of the existing case load, i.e., the issues potentially involving a *din torah*. It cannot be inferred from it that all cases were submitted to the rabbis, or that the latter were automatically the "*juizes louvados*." That article features in the midst of the job description of the community rabbis, and should not be understood as a normative exposition

24 Swetschinski, *Reluctant Cosmopolitans*, 225.

25 *Ibid.*, 227.

26 SAA 334, 19, fol. 101, 4 Ab 5401 [11 July 1641].

regarding jurisdiction. My argument may be summarized in three points: (i) there did exist already in the seventeenth century a community forum for dispute settlement and processes of community arbitration and mediation, the records of which were not preserved, the abovementioned examples and the *beit din* cases being but a part of it; (ii) the normative process has continued to evolve away from the 1639 pattern into the system described below which confers a central role to the *parnassim*; and (iii) it became, at the same time, simpler in terms of procedure and more complex in terms of its relations to local courts.

3 The Communal Forum in the Eighteenth Century: Scope, Practice, Cases

Fast forwarding a few decades, it becomes possible to reconstruct the role of the Amsterdam *kehilla* in intracommunal dispute settlement using a series of untapped registers and bundles which constitute the central corpus of this contribution. It has been argued that communal dispute settlement predates in an organized manner the period discussed here despite the fact that no such sources have been preserved for the seventeenth century. This contention admittedly jars with the exceptional concern for archives consistently displayed by the Talmud Torah community, and to a lesser extent other Sephardic *kehillot*. Our corpus consists of sources consigning submission of disputes of all kinds between local Jews, and consequent mediation, arbitration, or adjudication by the community lay leaders, *parnassim*, sometimes with the assistance of the rabbinical court and sometimes involving local courts in complex patterns of interaction. These sizable sources comprise altogether well over a thousand pages spanning the years between 1710 and 1806. The contents range from the mere mention of summoning two individuals for community arbitration to full accounts of disputes, sometimes court documents and *beit din* decisions.²⁷

These sources fall into two categories. The first one consists in books of summons and resolutions (“*Livro de citações e resoluções*”), covering the period between 1717 to 1816 with an emphasis on the second half of the eighteenth

²⁷ There is no *beit din* register in the archives of Talmud Torah of Amsterdam, no real collection of rulings. From the eighteen cases published by Yosef Kaplan from the first half of the eighteenth century, three are to be found as well in the corpus of sources I present here. *Beit din* rulings are otherwise scattered between the *pinkassim* (community registers), the correspondence, these particular registers, and random locations.

century. These registers, written in Portuguese, contain mostly summons and resolutions about disputes between *yehidim*, but also other items such as adjudication of *matsot* production and of supply contracts for the poor or charity matters such as the admission of indigents. A second category comprises registers or bundles containing cases referred to the *parnassim* by local courts.²⁸

Between the 1639 article on resolving cases, and the practice aimed at dispute settlement that emerges from this abundant documentation, salient changes have occurred. The process of appointing “*juizes louvados*,” which still exists when cases are referred to the *hakhamim*, has been replaced by a rather simple configuration, with the potential litigants coming before the gentlemen of the *Mahamad*. If the latter cannot resolve the dispute, then the parties are allowed to go to (a Gentile) court. A financial penalty remains for those who go to court without permission. A copy of a community resolution found on a loose piece of paper within a file relating to a 1780 case may well illustrate the final stage of the evolution of the procedure, from a failed attempt at imposing compulsory community arbitration in the early seventeenth century to the community deliverance of permission to go to court albeit not without an attempt of settlement:

[N]ao podra nenhù Jahid deste K.K. citar aoutro Jahid em p-a Justiça diante de Eschavins ou outre Tribunal nesta cid[ad]e sem anticipadam[en]te aver pidido licença aoss[en]ho[re]s do M[aha]M[ad]. os quaes nao poden-do ajustar as partes concederao a licença e q[ue]m contravier esta ord[e]m sera condenado em f.6 de pena p[ar]a sedaca.

This resolution embodies continuity and change: the enduring feature is thus that the *Mahamad* grants permission to go to court when no solution is found. The main difference is that the gentlemen of the *Mahamad* have come to handle the disputes themselves; they do not, in general, appoint arbitrators, but they do refer some cases to the *beit din*. They have somehow become default arbitrators or mediators. The basic pattern, with many variations, is therefore a two-stage summons, followed, if the summoned party fails to appear or if the parties do not reach an agreement, by license to litigate in court. Transgressors are fined, six guilders, or sanctioned economically for those depending on the *kehilla* charity.

Such is the basic pattern with many variations. These sources are eloquent both on the fact that in many cases the *parnassim* merely grant permission to

28 They are part of the archives of the Portuguese Community of Amsterdam, SAA 334, 875–880.

go to court after a formal attempt at conciliation, but also on their role in those cases willingly submitted by both parties or in which the defendant responds to the summons. No serial treatment of these sources maybe undertaken since the information about the nature of the dispute is very haphazardly provided. Sometimes we have no more than the mere mention, “se ficou ajustado,” an arrangement was reached, without further details. A very simple case will illustrate this elementary pattern. In 1731 upon the request of Ishac Lopes Dias and Abraham de Paz who appeared in front of the *Mahamad*, Moseh Levy Maduro is summoned, presumably by the beadle upon the pretention that he is indebted to them for a large shipment of cod that they sold him. The two names appear with the mention “1-a [*primeira*] vez.” In this case a tentative settlement is reached, and Maduro is granted three months to repay his debt; if he fails to comply, the plaintiffs will be free to go to court.²⁹ On the same page, a very common type of notation is to be found, indicative of the procedure but not of the nature of the case: Selomo de Rocha assigns the widow of Ishac Cohen Peixotto, “1-a vez, 2-a vez,” after which license [to go to court] is granted in view of the absence of the other party.³⁰

What matters were handled by the *parnassim*? First of all, it is interesting to emphasize that the *parnassim* fulfill a variety of social-economic functions often connected with the settlement of conflicts, such as notarial functions, certificating and witnessing the signature of agreements, the authentication of documents, the cancellation of contracts, the dissolution of partnerships, and the destruction of receipts; they also provide a communal safe for documents.

Next, *parnassim* handled certain categories of disputes. A large part of the cases relates to a generic category involving debts and the recovery of money. Many simple cases give little information about the nature of the debt: in settling the dispute, the *parnassim* decide on the legitimacy of the claim, and often on installment plans for the reimbursement. A second less generic category concerns family-related disputes: cases of contested inheritance, of marital discord sometimes with monetary claims, *ketubah* claims, disputes about the maintenance of widowed mothers or young children, family feuds, often with money at stake. A third category comprises commercial transactions gone afloat (which somehow overlaps with the first category). Of these, a small number of cases involve international trade and traveling merchandise, between North Africa and Holland, as well as letters of exchange, a practice that seems

29 SAA 334 875, fol. 70.

30 Ibid.: “se deu licensa por nao aver paresidos na contraparte.”

to conflict with the community ordinance dating back to the early days of the *kehilla* mentioned earlier which excluded letters of exchange from the scope of the imposed community arbitration. These cases simply illustrate the voluntary dimension of the resort to the community intercession for solving disputes. A fourth category includes a broad spectrum of professional disputes, such as discords in the diamond industry; disputes about apprenticeship or wages; contested ownership of equipment, such as a diamond grinder for instance; disputes arising in the world of brokers about brokerage fees, or in the printing business; disagreement about work contracts between the community and its employees or subcontractors for cheese, meat, and between an emissary from Jerusalem and his assistant.

In contrast then with the original merger agreement of the Portuguese community which stipulated that the plaintiff would have the beadle summon the other party, that the *Mahamad* would encourage them to choose arbitrators, and if they fail to agree they would then be free to take their case to court, in these eighteenth-century situations, the *parnassim* have become the statutory arbiters or mediators in most cases.

Many different patterns of settlement or attempts at settlement and legal itineraries emerge from this corpus, which involve a variety of actors: litigants, lay leaders, rabbis, local courts, sometimes Jewish solicitors. The processes span a spectrum from simple to complex. The most common and simple pattern is one party appearing to have the other party summoned and, after two ineffective summons, getting permission to go to court. When both parties show up voluntarily or after a summons, the role of the *parnassim* in the attempt to reach a solution may take several forms: mediation, arbitration, referral to the *beit din*, which can be analyzed under the halakhic categories of *pesharah*, *brirah*, or *psak*—agreement, arbitral sentence, and rabbinical decision. However, the boundaries between these categories—between mediation and arbitration—are sometimes clear, and sometimes blurred: the parties may reach an agreement with the mediation of the *Mahamad*, which then functions as would a notary, by recording the agreement signed by both parties, or they sometimes explicitly underwrite a submission to the arbitration of the *parnassim*. Often, submissions written by the parties themselves are included in the registers, but this is not always the case. For example, the following appears in a 1736 document signed by Ester, widow of Davi Suzarte, and Mosseh Delgado: “we undersigned by this document submit all our differences to the Gentlemen of the *Mahamad* with full power and authorize them as *boms homems* to decide and draw an agreement on these differences, which decision and agreement we promise to fulfill and observe inviolably as

if they had been passed by the Supreme Court of Holland, submitting to the agreement as of right [...].³¹ Delgado is condemned to repay his debt within six months. My understanding is that even in cases without a similar document indicating the submission of the parties, there is an implicit submission of the parties, in conformity with the *ascamot*; as to the reference to the Supreme Court of Holland, it is probably to be understood as a commitment not to take the case elsewhere, not to appeal it.

In situations involving the reimbursement of debts, when both parties agree to the communal arbitration, the *parnassim* often decide on practical installment plans. In these cases, the *parnassim* provide what can be read as a convenient infrajudicial forum of settlement, an alternative *locus* of dispute resolution that does not involve going to court. But not all parties agree to conform to the local communal modes of mediation and arbitration. In a few cases, involving North African Jews, the parties are not satisfied with the abovementioned pattern and require a halakhic arbitration procedure, by which each party chooses an arbitrator and both arbitrators choose a third one (*zavla*):³² in a document from 1736, Semuel and David Abendalak, possibly having a brotherly feud, sign a compromise in front of the *Mahamad* stipulating that they will appoint two persons who will appoint a third person in order to solve a dispute on business accounts, as “*birurim*,” the (Hebrew word being used here in the Portuguese text, which is uncommon).³³ In this case we see the encounter of different legal cultures within the world of Jewish litigants themselves.

31 “Nos abaixo firmados declaramos pella presentes comprometer aossr-es do Mahamad do KK de TT todas as nossas diferenças, com amplo poder que p. esta otorgamos aditos ssrs como boms homens para decidilas & ajustalas, cuio decisao e ajuste prometimos cumprir e observar inviolavelm-te como se fosse pasado pella Corte Suprema de Holanda, submetendonos ao cumprimento como de direito feito a boa fee em Amsterdam 2 de Janeiro 1736.” SAA 334, 875, fol. 164.

32 The Mishnah (*Sanhedrin* 31) records a dispute between R. Meir and other scholars, the former stating that each party chooses one arbitrator and both choose the third, while the other scholars hold that the two arbitrators choose the third. The scholars sought to lend to arbitration proceedings the appearance of a Jewish court, composed generally of three judges, in contrast with the single arbiter customary under Roman law; see also *Encyclopedia Talmudit* (Jerusalem, 1965), 12: 684–697, s.v. *zavla* [Hebrew].

33 SAA 334, 875, fol. 69: “Semuel Abendalak y David Abendalak. Em 30 de sebat 5496 nos abaixo firmados nos comprometemos pella presente p. intervensao doss-rs do Mahamad, que nomearemos dentro de 8 d. duas pessoas com faculdade q. possam nomear hum terceiro p-a que como berurim difinao nossas contas & ajustem as diferensas q. sobre ellas temos, com todo o poder como se fosse pasado pella Corte Suprema. Em I de Adar declarao oss-rs dittos nomearem p. berurim Jacob Azulay & R. Hiya Cohen. ן דלאק ן דלאק ן דלאק [signatures].”

More complex legal paths involve a referral from local courts to the *parnasim*: in such elaborate cases the *parnasim*'s intervention is but one of the stages in the litigation process. Most of these referrals come from the small claims court, some from the aldermen court, the municipal court of Amsterdam. It maybe useful to recall that the Amsterdam court landscape is quite different from that of other European port cities, for there never was a merchant court in Amsterdam, similar to consular justice in Bordeaux for instance or to the Consoli di Mare in Pisa, and foreign merchants were not granted jurisdictional privileges. Instead, the local court adjudicated on all matters, with the help of subsidiary specialized courts that were created between the end of the sixteenth and the middle of the seventeenth century: the Orphan Chamber (1578), the Insurance Chamber (1598), the commissioners of Small Claims (*kleine zaken*) (1611), the Chamber of Insolvent Estates (1627), and finally the commissioners of Maritime Affairs (1641).³⁴ The so-called small claims court was created at the end of the sixteenth century to relieve the city court, and handled litigation involving up to six hundred guilders during our period, which was obviously not such a small claim.³⁵

Two different patterns of referral may occur: the case may be referred to the *parnasim* only, or to the *parnasim* and then to the rabbinical court, the former always reporting back to the court with the opinion of the *beit din*. The word opinion is chosen with care, since the *beit din* works here as a consultant body, the ultimate sentence being passed by the court at the end of the referral process. Naturally, large numbers of cases escaped the arbitration of the *parnasim*, either because the summoned party refused to appear, or because they were simply not submitted for arbitration and went directly to court or to private arbitration, voluntary or court ordered.

The following case from 1781 provides an illustration of a complex pattern of settlement involving local courts, *parnasim*, and rabbis. Isaac Pretto Henriques has signed an obligation in the amount of 2,200 guilders to Daniel Spinoza and Rachel Chumaceiro, a married couple, and has committed himself to paying it when his mother dies. Now the lenders claim that, besides the original amount, he owes them sixty guilders a year for the five years that have elapsed since the signature of that obligation. The borrowers, who have already started paying some of the requested "interest," claim that it is illegal

34 See Oscar Gelderblom, *Cities of Commerce: The Institutional Foundations of International Trade in the Low Countries, 1250–1650* (Princeton, NJ: Princeton University Press, 2013), 121–26.

35 At the beginning of the eighteenth century, a sailor in Amsterdam earned a monthly salary of approximately fifteen guilders a month.

interest according to Jewish law (*ribit*); the lenders object to that definition, asserting that it is not a loan but rather a sort of life annuity since it was connected to the life of the borrower's mother. Reconstructed from the documents emanating from the the kahal—the *beit din* sentence and the report from the *parnassim* to the small claims court—the legal path develops as follows: the case is submitted to a local court, the court of small claims (*kleine zaken*), and that court refers it to the Portuguese *parnassim*. They try to bring the parties to an agreement, and when that does not work, they refer the case to a *beit din* of five. A *beit din* of five decides that it is indeed a loan, a case of outright *ribit* (forbidden interest), and that whatever has been payed already as interest has to be reimbursed. Their sentence is sent back to the court.³⁶ Judging from the scarce documentation we have on that case, the forum of first choice for the borrowing couple was not the community but the local court. The global amount of the loan exceeds the limits of the said court, but the sum at stake is lower here, since the disagreement only bears on interest. The intervention of the *parnassim* and of the *beit din* happens as one of the stages of the original legal procedure. Once involved, the *parnassim* attempt at serving as an alternative forum for settlement by trying to bring the parties to agree, and therefore terminate the legal action by their mediation. Interestingly, the case refers to a distinctive normative system, the Mosaic law, on which the *parnassim* and subsequently the *din*, are called upon.

4 The Community as a Legal Resource: Categories of Interpretation and Contextualization

The brief presentation of the corpus and the few examples developed attest to a significant function of mediation, arbitration, and adjudication activity of the Portuguese community, adding a novel dimension to our previous understanding of its dynamics. The analysis of that role can be conducted along several frameworks of historical interpretation.

The category most naturally conjured up and most easily associated with pre-emancipation Jewish communities is the notion of autonomy. Yosef Kaplan emphasizes that over the course of the seventeenth century the authorities acknowledged the autonomous rights of the Jewish communities (both

36 SAA 334, 880, fols. 58–60. The *beit din* sentence is dated 5 Tamuz 5541 [28 June 1781], and signed by Shelomo Shalem, Yehuda Piza, Moshe de Shemuel Yisrael, Moshe Rodrigues Lopes, Abraham son of David Fidanque.

Ashkenazic and Sephardic) and their full authority upon their members.³⁷ At the same time, since the community was but a voluntary association and not a compulsory corporate entity (like the Bordeaux Nation for instance), the *de facto* authority was curbed. What precisely did that autonomy imply? Huussen, describing a complex picture of some form of autonomy that went together with the interference of the authorities in the internal affairs of the group, formulates the idea that “the Jews were autonomous—more than any other second-rate group of inhabitants of the Republic, such as the Roman Catholics and the Protestant dissenters—but not independent”; a separate group subject to a few restrictions and enjoying special exemptions, but also recognized as enjoying the ordinary status of subject and inhabitant of the Republic (1657).³⁸ The most comprehensive, though concise, discussion of the nature of the autonomy enjoyed by Amsterdam Jews is to be found in Swetschinski,³⁹ who notes that in the absence of historical precedents to Jewish presence in Amsterdam and of a charter, there was “obscurity surrounding the degree of autonomy exercised by the Jewish community.”⁴⁰ The main issues about which that degree of autonomy was tested and measured were the use of *herem* and the authority of the *Mahamad* in a series of matrimonial disputes, which led to sometimes contradictory sentences and statements by the local and superior courts and by the municipal authorities, revealing the difficulty for the burgomasters themselves in formulating a clear cut policy. The clearest statement was the one formulated by the representatives of the Burgomasters of Amsterdam with the States of Holland in May 1683 in which they supported the use of excommunication noting the “freedoms, rights and prerogatives” enjoyed by the Jews, including “the exercise of synagogal [or church] discipline [that] has always been one of the most important.”⁴¹ The area of exercise of autonomy was thus defined by the notion of “Church affairs,” church discipline, and was explicitly foreign to any notion of judicial autonomy. There was no corporate judicial autonomy that could be compared with the autonomy bestowed upon Italian *kehillot*, even when setting aside the

37 Yosef Kaplan, “Mokum’ and ‘Mediene’: Jewish Autonomy in the Dutch Republic,” [Hebrew] in *Kehal Yisrael. Jewish Self-Rule Through the Ages*, vol. 2, *The Middle Ages and Early Modern Period*, ed. Avraham Grossman and Yosef Kaplan (Jerusalem: The Zalman Shazar Center, Jerusalem, 2004), 324–25.

38 Huussen, “The Legal Position,” 35–38.

39 Swetschinski, *Reluctant Cosmopolitans*, 15–20.

40 *Ibid.*, 15.

41 *Ibid.*, 16.

exceptional case of Livorno, or upon Ottoman Jewry.⁴² From the point of view of the communal institutions, as mentioned above, there was however a normative propensity of the Amsterdam *kehilla* to try and encompass or supervise intra Jewish conflicts.

It seems that despite its prevalent use, the traditional notion of autonomy may not be the most relevant framework of interpretation to understand the involvement of the community and the existence of an internal forum of dispute settlement. An alternative and more fruitful interpretation calls for a reflection upon the notions of legal cultures, legal acculturation, and their relevance to the early modern Jewish world. The field had been relinquished to jurists or specialists of halakha, but of late it has been reclaimed by historians, and the renewed interest in Jews and the judiciary garnered much attention, indicating a “judicial turn” in Jewish studies.⁴³

The analysis of these litigation patterns is best achieved through the approach of legal anthropology, shifting from the description of legal institutions to a focus on the “use of justice”⁴⁴ from bottom up, with the idea that the role of judicial and infrajudicial institutions is also determined and modeled by those who use it. The complexity of these paths to settlement comes from the fact that resorting to a judicial forum is sometimes only part of a strategy to achieve some form of settlement, whether in court or out of court. Early

42 Attilio Milano, “L’amministrazione della giustizia presso gli ebrei di Livorno nel Seicentocento,” in *Scritti in memoria di Leone Carpi*, ed. Daniel Carpi et al. (Jerusalem: Sally Meyer Foundation, 1967), 133–64; Renzo Toaff, *La Nazione ebrea a Livorno e a Pisa (1591–1700)* (Florence: Olschki, 1990), 205–39; on the Ottoman Empire, see the important article of Joseph Hacker, who reassesses critically the scope of *de facto* judicial autonomy, “Jewish Autonomy in the Ottoman Empire, Its Scope and Limits: Jewish Courts from the Sixteenth to the Eighteenth Centuries,” in *The Jews of the Ottoman Empire*, ed. Avigdor Levy (Princeton, NJ: Darwin Press/Institute of Turkish Studies, 1994), 165 ff.

43 Among the most important publications related to this “judicial turn,” see Jay R. Berkovitz, *Protocols of Justice. The Pinkas of the Metz Rabbinic Court* (Leiden: Brill, 2014), 2 vols.; Edward Fram, *A Window on Their World: The Court Diary of Rabbi Hayyim Gundersheim, Frankfurt Am Main 1773–1794* (Cincinnati: Hebrew Union College Press, 2012); Verena Kasper-Marienberg, “Vor Euer Kayserlichen Mayestät Justiz-Thron: die Frankfurter jüdische Gemeinde am Reichshofrat in josephinischer Zeit (1765–1790)” (Innsbruck: StudienVerlag, 2012); A. Gotzmann, “At Home in Many Worlds? Thoughts about New Concepts in Jewish Legal History,” *Jahrbuch des Simon-Dubnow-Instituts* (2003): 413–36; Jessica Marglin, *Across Legal Lines. Jews and Muslims in Modern Morocco* (New Haven: Yale University Press, 2016).

44 See for the notion of “use of justice,” Martin Dinges, “The Uses of Justice as a Form of Social Control in Early Modern Europe,” in *Social Control in Europe, 1500–1800*, ed. Herman Roodenburg (Columbus: Ohio State University Press, 2004), 159–75, and John Jordan, “Rethinking Disputes and Settlements: How Historians Can Use Legal Anthropology,” in *Cultures of Conflict Resolution in Early Modern Europe*, ed. Stephen Cummins and Laura Kounine (London: Routledge, 2016), 17–50.

modern societies can be characterized by environments of legal pluralism, which can be simply defined as the existence of more than one legal order or legal system in a given society. For a given contentious situation, various options for settlement were available, some involving litigation, some not. Jewish socio-religious institutions and legal systems added yet further options, and community arbitration or mediation should be understood as part of a wider spectrum of legal pluralism. A vast array of options was thus open to the Jews of Amsterdam, and elsewhere. For a non-judicial settlement, they could choose private arbitration, using a notary, sometimes resorting to the *kahal* officials for notarial type functions. For an infrajudicial settlement, they could resort to semi formal forms of arbitration such as the community *parnassim*, or forums that verged on the infrajudicial, such as the small claims court (*kleine zaken*). Other infrajudicial forums of settlement existed that were not available for Jews, such as guilds. For a judicial settlement, Jews could access the ordinary and extraordinary courts, and they made regular use of the Court and of the Supreme Court of Holland, often, but not exclusively, in intercultural circumstances.⁴⁵

The notion of “legal pluralism” casts no magical light on our understanding, and it is of limited analytical use unless broken up into subnotions and categories. The 1781 Pretto/Chumaceiro interest case related above can conveniently illustrate that idea. If the parties had gone from the *parnassim* to the local court, it could have indicated a situation of jurisdictional legal. But because the only jurisdiction at work was the small claims court, it should be more relevantly described as normative legal pluralism, the coexistence of systems of norms within the same society or group. This case could be read as an instance of “norm-shopping” rather than “court-shopping” since the plaintiff invokes in front of a secular court the Mosaic law forbidding interest between fellow Jews. Of course, in this case as in many others, it is also plausible that the resort to Jewish law halfway through the payment of the debt is but a strategy to get a better settlement.

45 A.J.B. Sirks, “The Supreme Court of Holland and Zeeland Judging Cases in the Early Eighteenth Century,” in *Judges and Judging in the History of the Common Law and Civil Law: From Antiquity to Modern Times*, ed. Paul Brand and Joshua Getzler (Cambridge: Cambridge University Press, 2012), 234–56. On the Jews and the Supreme Court in Holland and the States General, see the cases analyzed in Jessica Roitman, “A Flock of Wolves Instead of Sheep: The Dutch West India Company, Conflict Resolution, and the Jewish Community of Curaçao in the Eighteenth century,” in *The Jews in the Caribbean*, ed. Jane S. Gerber (London: Littman Library of Jewish Civilization, 2014), 85–105; Cátia Antunes, Jessica Roitman, “A War of Words: Sephardic Merchants, (Inter)National Incidents, and Litigation in the Dutch Republic, 1580–1640,” *Jewish Culture and History* 16 (2015): 24–44.

Because of the possible interplay between legal systems, Jewish and non-Jewish, and sometimes local and extra local Jews had more legal options than other groups.⁴⁶ But it is difficult to ascertain whether the Jews did more “court hopping” and “court shopping” in hope of better settlements than their contemporaries.

In Amsterdam, the concerns voiced in the early 1632 regulations regarding the ignorance of the local language hardly seem a relevant motive in the second half of the eighteenth century, and it would appear that potential litigants lacked none of the needed skills for navigating the system. In Livorno, where the issue of jurisdiction always occupied a central place in the life and the politics of the *kehilla*, proclamations were often made from the pulpit about community regulations, and about proper and improper ways to seek justice and address the authorities, and public readings fostered indirectly some form of legal acculturation and education. The register of the Livorno community contains a number of deliberations enjoining the reading of legal enactments in public, from the *teba* (pulpit) at the synagogue, usually on the Sabbath, and sometimes on issues somewhat technical.⁴⁷

How is the relatively widespread use of intra-community arbitration to be understood in a city where the community is ultimately a voluntary association? As a third and final line of interpretation, it seems that these situations may be best understood within the context of a strong local culture of arbitration, which has been well studied recently.⁴⁸ It is noteworthy that the small claims court also commonly referred numerous cases to the arbitration of “*goede mannen*,” *boni homines*, specialized by profession, thus requesting a form of professional peer arbitration,⁴⁹ It could be argued that the Portuguese community was here used as a particular forum of arbitration, among others, by the civil courts. In that sense, the community arbitration, as well as the judicial referrals to the *parnassim*, would point to a process of acculturation to the

46 Diasporic or mobile Sephardim added still to this potential interplay between legal systems: an inheritance dispute from Bayonne, brought before the Amsterdam *parnassim*, invoked local Bayonese customs, Dutch law, and Jewish law.

47 Livorno, ACEL Deliberaçoims do governo, 1715–25, fols. 4–5: a proclamation is read to remind the merchants featuring on the list from which the additional judges for the court of appeal of the *massari* that they cannot default when they are summoned.

48 Aries van Meeteren, *Op hoop van akkoord: instrumenteel forumgebruik bij geschilbeslechting in Leiden in de zeventiende eeuw* (*In Hope of Agreement. Use of Forums for Dispute Settlements in Seventeenth-Century Leiden*) (Hilversum: Uitgeverij Verloren, 2006), 236–270.

49 See for instance the “*Register van Goede mannen*,” in which Jews are listed as arbitrators for professional areas such as Spanish or Gibraltar trade (SAA 5061, 818, for the year 1704).

Dutch culture of arbitration within a segmented society, which converges with Jewish traditions or fantasies of autonomy.

Stepping away from the supposedly self-explanatory and often taken for granted framework of *ancien regime* “autonomy,” the role of the *kehilla* in dispute settlement has to be reexamined within the context of a Dutch society segmented in a variety of self-ruled churches, a segmentation that is a powerful instrument of social control through church discipline. In many ways, the role of the *parnassim* may be read as a Jewish version of church discipline, and it should be compared to similar forms of social control exercised by other Dutch churches, such as the consistories of the Reformed church of Amsterdam analyzed by Roodenburg.⁵⁰ One of the most convincing comparisons is with the Mennonite practice as it appears from fairly recent research conducted on the largest Mennonite church in Amsterdam and its discipline records between the seventeenth to mid-eighteenth century.⁵¹ In line with Roodenburg’s work on the Dutch Reformed church, Osborne depicts the mechanisms of surveillance set up by and for the Mennonites, the horizontal forces of honor and shame, and the visits paid by the Elders to the home of the congregants, the faults sanctioned often relating to a combination of religious sins and departure from societal norms, as was often the case in Sephardic congregations.⁵² The consistory of the English Reformed church in Amsterdam, studied by Alice Clare Carter, or the Lutheran church studied by Estié, played similar functions.⁵³ Alice Clare Carter shows how the Begynhof consistory of the English reformed church in the seventeenth century directly intervened to settle business disputes between its members, providing arbiters, ensuring the payment of a debt, or settling disputes between masters and apprentices.

These studies revolve around the notion of disciplining of a religious group, and enforcing social control through arbitration in a variety of domains,

50 Herman Roodenburg, *Onder censuur: de kerkelijke tucht in de gereformeerde gemeente van Amsterdam, 1578–1700* (Hilversum: Verloren, 1990); Roodenburg, “Social Control Viewed from Below: New Perspectives,” in *Social Control in Europe, 1500–1800*, ed. Herman Roodenburg and Pieter Spierenburg (Columbus: Ohio State University Press, 2004), 145–158.

51 Troy Osborne, “Mennonites and Social Discipline in Dutch Golden Age” (PhD diss., University of Minnesota, 2007).

52 *Ibid.*, 50–52.

53 Paul Estié, *Het Vluchtige bestaan van de eerste Nederlandse Lutherse gemeente: Antwerpen 1566–1567* (Amsterdam, Rodopi, 1986); Estié, *Van afgescheiden gemeente tot kerkgenootschap: geschiedenis van de Hersteld Evangelisch-Luthers in Amsterdam, 1791–1836* (Hilversum: Verloren, 2007).

including economic matters such as wages, contracts, or bankruptcies.⁵⁴ Departing from the original paradigm of confessionalization in which church and state worked closely together in shaping the life and beliefs of early modern men and women of three main Christian creeds in what could be called a vertical process of confessionalization, these mechanisms of social discipline depict, on the contrary, a horizontal process of confessionalization in which local churches play a similar role as that played by the State. As Kaplan has emphasized in his seminal article on confessionalization and the early modern Sephardic diaspora, that paradigm allows for a new approach to the notions of community building and group discipline.⁵⁵ The Calvinist “disciplinary revolution from below” finds a Jewish echo in the mechanisms of social controls implemented by the *parnassim*, with the *parnassim* functioning like the consistory and the church Elders of the Dutch reformed church.⁵⁶ Within this comparative and contextualized approach, the Sephardic community forum of arbitration or mediation fits into the local pattern of church discipline exercised both by the majority consistories and by the minority churches.

This analysis allows us to describe the role of the Portuguese nation in the settlement of disputes as that of a self-ruled church, or sometimes even an aspiring self-ruled church, implementing an infrajudicial forum of settlement. That forum is embedded in the local court system by a process of mutual legal acculturation, a combination of a strong local and Jewish culture of arbitration, shaped here by the institutional predominance of the *Mahamad*. When examined within the local Dutch context, the Portuguese community settlement of disputes exhibits the following distinctive features. In terms of a processual-centered perspective, it is an infrajudiciary forum, a Jewish court of small claims of sorts, which aims at reaching a settlement in order to prevent litigation, often catering to claimants who are of modest means. In terms of a norm-centered perspective, it is embedded in the city’s legal culture and system of arbitration. Finally, it offers a mechanism of peacemaking and social discipline through which Kahal Kadosh Talmud Torah acts as a self-ruled

54 There are important differences though: unlike the consistories of the English Reformed Church, or unlike well-known Quaker practices, the Jewish community did not ostracize bankrupt merchants or exercise moral control over merchant practices.

55 Yosef Kaplan, “Between Christianity and Judaism in Early Modern Europe: The Confessionalization Process of the Western Sephardic Diaspora,” in *Judaism, Christianity and Islam in the Course of History: Exchange and Conflicts*, ed. Lothar Gall, Dietmar Willoweit (Munich: Oldenbourg Wissenschaftsverlag, 2011), 331–40.

56 Philip Gorski, *The Disciplinary Revolution. Calvinism and the Rise of the Early Modern State in Europe* (Chicago: University of Chicago Press, 2003), 55–59.

church that resembles the many other self-ruled churches of this multiconfessional port city.

There is no denying that the activity of mediation and arbitration implemented by the Sephardic nation was modelled by Dutch legal culture, in form and meaning. However, just like caring for the poor was at the same time the enactment of a religious mandate and the fulfillment of a civic duty incumbent upon all local and minority churches,⁵⁷ so was the peace making and dispute settling. Beyond legal acculturation, it was, concomitantly, the implementation of Jewish traditions of mediation and arbitration and a social control mechanism shared by the many self-ruled churches, that developed instruments of social discipline to keep their members in rank.

As a conclusion, a few comparative remarks will be formulated about the various *loci* of the Sephardic diaspora on the role of the *kehilla* and its related institutions in dispute settlement.

First, it should be emphasized that there is no correlation between the existence and acknowledgement of the *kehilla* as a corporate entity on the one hand, and jurisdictional privileges or even a strong measure of internal arbitration on the other, as is shown with the case of Bordeaux or even Bayonne: traces of the *parnassim* settling disputes are extant, but they are fleeting, not very present, independently of the lacunary state of the documentation. The apparent weakness of community sponsored arbitration finds its explanation first in the fact that community life and institutions remained semi-clandestine until the early eighteenth century (the official Jewish community was not officially acknowledged until 1723), and in the fact that Jews commonly resorted to the merchant court, which answered the need of merchants for a summary and expeditive justice, and to notarial arbitration.⁵⁸ In southwestern France, legal culture and resources combine with a very distinctive historical context to explain the limited scope of internal mediation or arbitration.

Second, the existence of a charter and of privileges does not necessarily imply jurisdictional autonomy, just as their absence, like in London and

57 On the comparison with Mennonites, the governance of the group and the handling of its poor, with the distinction of the deserving poor, see Mary Sprunger, "Mennonites and Sectarian Poor Relief in Golden-Age Amsterdam," in *The Reformation of Charity. The Secular and the Religious in Early Modern Poor Relief*, ed. Peter Saffley (Leiden: Brill, 2003), 151–53.

58 Pierre Damas, *Histoire de la juridiction consulaire de Bordeaux* (Bordeaux: impr. de Delmas, 1947); for an enlightening approach to Paris consular court, see Amalia D. Kessler, *A Revolution in Commerce. The Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France* (New Haven: Yale University Press, 2007).

Amsterdam where the communities are essentially voluntary associations, does not necessarily imply the absence of a forum of dispute settlement.

Third, the historian should not be abused by the apparent institutional similarities of the Sephardic *kehillot* whose legal functions cannot be understood without a precise knowledge of the local legal environment and culture. Similar practices and similar institutions call for different historical interpretations, as appears from a comparison between Hamburg, London, and Amsterdam. When reading the *pleitos* and the *citações* of the Amsterdam *kehilla*, the procedure, the vocabulary, the conceptual framework often feels almost identical.⁵⁹ And yet, the historical interpretation that is called for is thoroughly different. The activity of the London *parnassim* cannot be understood without special reference to English harsh legislation on debts;⁶⁰ it is an alternative forum disconnected from the local courts, to be understood within an English legal context and culture which sees the multiplication of justices of peace, of courts of conscience or requests.⁶¹

Fourth, one major criteria for the interpretation of the role of the *kehilla* in conflict resolution is whether its activity is articulated to local courts and institutions, or if it is what I call “embedded justice”. This is not the case for the London community of Shaar Hashamayim, it’s partly the case for Hamburg’s Beit Israel where the arbitral sentences passed have the full force of corporate arbitral sentences that can be executed by the local tribunals, and it’s partly the case for Amsterdam where as suggested, the Portuguese *kehilla* functions as a self-ruled church implementing mechanisms of social discipline and at the same time embedded in the local court structure and culture of arbitration. Even in Livorno, despite the extent of the jurisdictional privileges granted to the Jews, the court of the *massari* (community leaders, equivalent to the *parnassim*) is anything but an autonomous court; its a Tuscan Jewish court fully *embedded* in the Tuscan legal architecture, and the *massari* are often but one stage only in the litigation process.

59 It is part of our current work in progress on dispute resolution and the *kehilla* institution, “Entre juif et juif.”

60 Lamar M. Hill, “Extreme Detriment’: Failed Credit and the Narration of Indebtedness in the Jacobean Court of Requests,” in *Law and Authority in Early Modern England. Essays Presented to Thomas Garden Barnes*, ed. Buchanan Sharp and Mark Charles Fissel (Newark: University of Delaware Press, 2007), 136–56.

61 On London, and the courts of requests for the recovery of small debts that develop during the eighteenth and nineteenth century, William Hutton, *The Court of Request* (Edinburgh: William and Robert Chambers, 1840); Michelle Slatter, “The Norwich Court of Requests. A Tradition Continued,” in *Custom, Courts and Counsel. Selected Papers of the 6th Legal British History Conference*, ed. K.R. Kiralfi, Michelle Slatter, and Roger Virgoe (London: Routledge 2014), 97–107, in particular 105, n. 2.

Notions of legal acculturation and interpenetration of legal cultures are far more relevant interpretative tools for conflict resolution in the early modern Jewish world than notions of autonomy. Autonomy may be useful as a depiction of a communal fantasy, or a historical fantasy of Jewish history seen as a self-enclosed autarchic entity, but not as a relevant interpretative category.

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