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Arbitration and conflict resolution in the Spanish and Portuguese Jews' Congregation in London in the eighteenth century

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By the mid-eighteenth century, the Spanish and Portuguese Jews' congregation in London numbered about 2,500 people.² Established in the 1660s, this community modelled its rituals, general structure, and administrative mechanisms on the example set by other Sephardi communities in Western Europe, mainly the Talmud Torah congregation of Amsterdam. The similarities between the *ascamot*, or bye-laws, in both communities are manifest. Yet perhaps the most salient similarity was the aspiration to create a community governed by a powerful, centralized, and all-embracing decision-making body of wardens, the Mahamad, which administered the community activities and determined its intra- and extra-community policies aided by a council of *velhos*, or elders (who were, in fact, former members of the Mahamad). The wardens and the elders belonged to the rich merchant minority elite. These individuals sustained the congregation not only by defining its policies but also by providing financial support, by way of a series of pre-set taxes (the *imposta* and the *finta*) paid on fixed terms, as occasionally decided by specific committees formed by members of this elite. The vast majority of the

¹ The research leading to this article has received funding from the European Research Council under the European Union's Seventh Framework Programme (FP/2007–2013)/ERC grant agreement no 295352, 11. This article was written as part of the "Religious and Cultural Changes in the Western Sephardi Diaspora in the Early Modern Period" project at the Hebrew University of Jerusalem under the direction of Professor Yosef Kaplan. I thank the helpful staff of the National Archives of the United Kingdom (NA) and the London Metropolitan Archives (LMA) for facilitating access to relevant materials, as well as the staff of the Central Archives for the History of the Jewish People in Jerusalem (CAHJP). Special thanks go to the Shaar Hashamaim, Spanish and Portuguese Jews' Congregation of London, for its permission to research and copy its archival materials held at the LMA. Finally, I wish to thank Naomi Tadmor, Edgar Samuel and Yosef Kaplan for reading a first draft of the article and for their valuable remarks. My thanks also to the anonymous readers for their helpful suggestions.

² Todd M. Endelman, *The Jews of Britain, 1656 to 2000* (Berkeley, Los Angeles, and London: University of California Press, 2002), 41.

community, however, was made up of poor petty vendors, craftsmen and day labourers, who were often forced to turn to the community authorities to receive supplementary income that would allow them to bring home enough food, clothing, and coal for cooking and for heating. Not a few of the poor members were new arrivals from the Iberian lands or from other communities in northern Africa, Western Europe and the Ottoman Empire. They imposed a heavy burden on the charitable undertakings of the community.³

The Mahamad sought authority over all aspects of communal life and, in many respects, over the private life of its members as well.⁴ This aspiration for pervasive power seems rather out of place when set against the size of the congregation in the first half-century of its existence. Until the last part of the seventeenth century, it never numbered more than five hundred members. How, then, can we account for such “autocratic” ambitions as reflected in the rigorous rules set by the *ascamot*? The model, as noted, was the significantly larger community of Amsterdam. Hence, more than confronting real, palpable challenges that necessitated the disciplining of the members of the newly formed community in London, the *ascamot* reflected the much more general attitude of the Sephardi elites in Western Europe, to which the founders of the congregation largely belonged. This was to establish communities to be ruled by an “absolutist” regime that, *mutatis mutandis*, reflected the centralistic regimes that were emerging in early modern Europe.

This community-building process was accomplished in the English case under particular circumstances. Unlike other cities in Europe where Jews were granted some religious rights and were entitled to a degree of administrative and legal autonomy, in London (as in Amsterdam and Hamburg) no such charter had been granted since the 1290 expulsion decree by Edward I. Nevertheless, the *de facto* presence of a Jewish community in London was recognized in 1664 by Charles II and reaffirmed by later monarchs, such as James II in 1685.⁵ This recognition implied a certain degree of legal autonomy, although it stopped short of officially

3 See Todd M. Endelman, *The Jews of Georgian England 1714–1830: Tradition and Change in a Liberal Society* (Philadelphia: Jewish Publication Society of America, 1979), 167.

4 Lionel D. Barnett, *El Libro de Los Acuerdos, Being the Records and Accompts of the Spanish and Portuguese Synagogue of London, from 1663 to 1681* (Oxford: Oxford University Press, 1931), 4.

5 LMA/4521/A/03/01/001–009, 22 Aug. 1664, quoted also in Albert Montefiore Hyamson, *The Sephardim of England: A History of the Spanish and Portuguese Jewish Community 1492–1951* (London: Methuen, 1951), 37–8; LMA/4521/A/03/01/005, 13 Nov. 1685, Minutes of James II in Council on releasing arrested Jews.

granting it. From the Middle Ages through the early modern period, nearly all the Jewish communities in the Diaspora had attempted to acquire officially recognized administrative and legal autonomy. These communities sought to retain the right to judge and penalize their members by religious courts, in accordance with Jewish law.⁶ By and large, the communities established by Iberian Jews in Western Europe in the seventeenth century featured a Mahamad that held jurisdiction over legal affairs among members of the community.⁷ In some of these communities in the West there was a clear division of authority between the Mahamad and the rabbinical courts, as in Livorno.⁸ In other communities, as in Amsterdam, the Mahamad also referred cases that dealt with issues of an ambiguous nature to the rabbinical courts, whose rulings were returned to the Mahamad for their final approval.⁹ In London, by comparison, the Mahamad sitting as a court of mediation was a purely secular legal instance, which in some cases (especially marital disputes) even took on itself fields that we would normally expect to fall under the jurisdiction of the rabbinical courts.

In this context of legal autonomy, the Sephardi congregation of London presents some unique features, not found in other Sephardi communities in the West. The rabbinical court (Beth Din) in London was left with a narrow range of matters related to obviously religious issues, such as kosher food supervision, some, but not all, aspects of marital relations, and halakhic questions. Rather than establishing a rabbinical court ruled by Jewish law, the community in London established an internal court of mediation, which mirrored in many procedural mechanisms and verdicts the local, English instances of law and, especially, the Court of Requests. In fact, the internal arbitration apparatus of the congregation cannot be fully grasped without understanding the structures and mechanisms of

6 Menachem Alon, *Hamishpat Haivri: Toldotav, Mekorotav, Ekronotav* (Hebrew; Jerusalem: Magnes, 1973), 8.

7 Yosef Haker, "The Borders of Jewish Autonomy: Jewish Self-Judging in the Ottoman Empire in the 16th–18th Centuries", *Transition and Change in Modern Jewish History* (Hebrew; Jerusalem: Zalman Shazar Center for Jewish History, 1988), 352–3.

8 Attilio Milano, "L'Amministrazione della giustizia presso gli ebrei di Livorno nel Sei-Settecento", in *Scritti in Memoria di Leone Carpi*, ed. Daniel Carpi, Attilio Milano, and Alexander Rofe (Jerusalem: Fondazione Sally Mayer, Milano, 1967), 152.

9 Yosef Kaplan, "Eighteenth Century Rulings by the Rabbinical Court of Amsterdam's Community and their Socio-Historical Significance", in *Studies in the History of Dutch Jewry*, ed. Jozeph Michman, vol. 5 (Hebrew; Jerusalem: Institute for Research on Dutch Jewry, 1988), 1–2.

the English legal system and the interaction between the internal court of litigation and the external instances of justice. This is especially true since the Jewish community in London, Sephardi and Ashkenazi alike, were not even a quasi-autonomous corporation or even an officially recognized ecclesiastical entity and had no legal standing in English law. From the legal point of view, then, Jews in England in the eighteenth century enjoyed a similar status to their non-Jewish neighbours.

Mechanisms of arbitration were a common means of settling commercial and civil cases in eighteenth-century England. However, following the model set by other Sephardi communities, it seems that the actual procedures of the internal court of mediation in London had much in common not only with the Court of Requests, but also with other internal legal instances to be found among other religious minorities, such as the Quakers and Huguenots.¹⁰ This was typical of the amorphous legal system that characterized England in the early modern period.¹¹ In fact, voluntary arbitration and out-of-court settlement of disputes was the preferred path. As David Friedman explains, “cases that actually went to trial represent failures, not successes, of the system”.¹² As will be seen, this was exactly the case with the arbitration court of the Mahamad, which as a matter of rule allowed the parties to seek an arrangement at an external court only when it had failed to settle a dispute. More than being a matter of convenience, the participation of the members of the community in the various legal options at hand was also an expression of the process of secularization that this community underwent in the eighteenth century and its integration in English society as described by Todd Endelman.¹³

The role of the Mahamad in London as an internal court of mediation has been almost completely neglected by scholarship. An exception is a short essay written by Edgar Samuel in 2007, in which he presented in general terms the *Livro de Pleitos*, a corpus of legal rulings by the

10 Angus J. L. Winchester, ed., *The Diary of Isaac Fletcher of Underwood, Cumberland, 1756–1781* (Winchester: Cumberland and Westmorland Antiquarian and Archeological Society, 1994), xxiii, xxvii. Andrew Pettegree, *Foreign Protestant Communities in Sixteenth-Century London* (Oxford: Clarendon Press, 1986), 195.

11 J. H. Baker, *An Introduction to English Legal History*, 4th ed. (Bath: Butterworth, 2002), 60.

12 David D. Friedman, “Making Sense of English Law Enforcement in the Eighteenth Century”, *Santa Clara Law Digital Commons* (2 U. Chi. L. Sch. Roundtable 475) (1995): 475–505, esp. 486–7.

13 Endelman, *Jews of Georgian England*, 118–19.

Mahamad in its capacity as a court of arbitration.¹⁴ However, a much more comprehensive analysis seems warranted. Such in-depth study will amplify our understanding of the several versions and levels of legal autonomy exercised by the various Sephardi congregations in the West. At the same time, it will enhance our sense of the actual authority of the Mahamad and its role as the entity responsible for the well-being of the members of the community, and it will open a window onto the influences of English society and its legal institutions on the community.

The creation of an inner court of arbitration

The first version of the *ascamot* of London's Sephardi congregation was issued in 1664. Article 25 stipulated the establishment of an internal mechanism for settling disputes between members of the community:

Any person of the *Yehidim* [individuals] of this *Kahal* [congregation] who may have matters of dispute with his fellow on an affair of business, as long as it is not about letters of exchange and detention of goods, wherein delay may be harmful to him, shall be bound to have him summoned by the *Samas* [beadle] before the *Mahamad*, into whose presence they shall both have to come and appear; and the said *Mahamad* shall urge them to take arbitrators before whom they may lay their case and give their reasons, in order that on hearing them they may do all that is in their power to bring them to agreement and concord in eight days; and if the parties should not assent to arbitrators being given to them, or if, though they have them, they should not be able to bring them to agreement, they shall be free to seek and defend their rights before whom they may please; and if it happen that without this effort preceding any one summon his fellow, action shall be taken against him as may seem fit.¹⁵

We can see from the article that the dispute-settling mechanism was established in order to resolve business quarrels between members, making it a tool that could be of benefit mainly to the wealthy members of the congregation. The rationale in this case was not essentially different

14 Edgar Samuel, "The Mahamad as an Arbitration Court", *Jewish Historical Studies: Transactions of the Jewish Historical Society of England* (hereafter, *Transactions*), 41 (2007): 9–30.

15 Barnett, *Libro de Los Acuerdos*, 9–10. I use Barnett's translation but a correction is called for. Barnett's runs: "such as letters of exchange and detention of goods" while the Spanish original refers to "an affair of business, as long as it does not concern letters of exchange and detention of goods": "*como no sea letras de cambio y aresto de effettos*" (my emphases); CAHJP, HM2/990, article 25.

from similar arbitration mechanisms to be found in guilds and in other minority religious communities. This was the preferred course for resolving commercial and other disputes in England in the eighteenth century, thus circumventing the slower and more costly route of adjudication in the courts of the land.¹⁶ The Mahamad's involvement in the legal process was limited at this stage to summoning the litigants to appear before it, and having them agree to nominate arbitrators who would make the necessary effort to arrive at a compromise. A good example of this kind of arbitration mechanism can be seen in a case from 1693, found by Edgar Samuel in the Amsterdam City Archives (PA334/684/50), in which two arbitrators were nominated in order to rule on a dispute between Francisco de Cáseres and Francisco de Córdoba over a sum of 110 guineas.¹⁷

The wardens, then, were not supposed to get involved in the nitty gritty work of the negotiations. The resulting ruling of the arbitrators was not binding. If a compromise was not found, the litigants were free to seek a solution elsewhere. Although not stated in so many words, this meant licence to proceed to the courts of the land. The only obligatory stage was for the litigants to address themselves to the Mahamad before any other legal steps were taken.

Later versions of the *ascamot* reveal a gradual change in the logic and scope of the article, making more central the involvement of the Mahamad in the legal procedure. In the 1693 version, Mahamad members were to make "all the diligences and means possible" to arrive at a compromise between the litigants or, alternatively, to convince them to agree on arbitrators to resolve the dispute. Importantly, while the 1664 version referred specifically to business disputes, this version broadened the scope to "doubts and disagreements", which in fact could imply any kind of disagreement. A rationale was offered in this version for the condition of appealing to the Mahamad prior to any approach to the courts of the land: "and the gentlemen of the Mahamad shall by all ways available strive to adjust the controversies that can cause scandal and profanation of the name of God".¹⁸ Thus we see how disputes between individuals developed into communal concerns. They were perceived as a threat to the well-being of the community and as such, the concern of the Mahamad. "Dirty laundry" was to be kept within the congregational walls, only to be taken

16 Winchester, *Diary of Isaac Fletcher of Underwood*, xxvii.

17 Edgar Samuel, *At the End of the Earth: Essays on the History of the Jews of England and Portugal* (London: Jewish Historical Society of England, 2004), 233–4.

18 LMA/4521/A/01/01/003, *Livro das Ascamos*, 4 Tishry 5454/4 Oct. 1693.

to a court of the land with the express permission of the Mahamad. An important addendum was made in 1700 following a resolution by the elders of the community: if a compromise was not reached between the litigants, the Mahamad was to try to convince them to apply to Din Torah, that is, to agree to be judged by a religious court (not necessarily a rabbinical one) according to Jewish law.¹⁹ This could have meant the formation of an ad hoc religious court whenever agreed between the litigants. However, in 1705, the Mahamad decided to form a permanent religious court in order to judge in accordance with Jewish law between litigants who would agree to resort to this kind of adjudication. This religious court, whose members were to be elected by the Mahamad, was to judge cases in the manner customary in other Diaspora communities. That is, the adjudication was to follow the model of communities in which legal autonomy was translated into the establishment of courts whose terms of reference were halakhic principles.²⁰ This religious court ought not to be confused with the regular rabbinical Beth Din, which dealt with purely religious issues such as kosher food supervision, marital relations, and so on. However important the establishment of such a religious court was, it was seldom used, as will be seen shortly. The secular legal instance of the Mahamad remained the preferred procedure by the vast majority of those community members who opted to use the legal services of the Mahamad.

A further refinement of the *ascama* was issued in 1733, stressing that licence to approach a court of the land was to be made by the Mahamad as an entity. Licence granted by a single member of the Mahamad was not enough. The litigants had to go through the motions as detailed in the *ascama*, and sanctions were to be applied against any member of the Mahamad who unilaterally granted such licence.²¹

The first version of the *ascama* was drafted when the community had just been established, not numbering more than a few tens of members. As indicated earlier, the challenge was more of a theoretical one and in any case, the measures in the 1664 version were sufficient to settle disputes between its few members. By the end of the eighteenth century, the community was much bigger, and its fabric had changed. From a few wealthy merchants it had become a community comprised mainly of

19 Ibid.

20 LMA/4521/A/01/02/001, Orders and Resolutions of the Maamad, Nisan 5438–28 Elul 5484, 29 Shevat 5465/23 Feb. 1705, fol. 52b.

21 LMA/4521/A/01/01/005, Livro das Ascamos A.M. 5493–5535, nf, 23 Elul 5492/ approved 6 Iyar 5493/21 April 1733.

poor people, who had endless petty arguments. The 1784 version of the *ascama* reflects this wider scope of disputes brought to the judgment of the Mahamad. Now it encompassed “doubts and disputes, be it due to offences or insults received or because of debts or differences over accounts”. The role of the Mahamad also was broadened and the sanctions against violators hardened. If in the past the Mahamad would seek for arbitrators to make, or would itself make, the effort to reach a compromise between litigants, now it became its sole responsibility “to see if they can settle that dispute through amicable means”. While the scope of disputes and the responsibility of the Mahamad were enlarged, the rulings still were not binding and when a solution was not reached, the Mahamad was to grant the sides the right to appeal to the courts of the land. In all four versions of the *ascama*, an exemption was made for cases involving letters of exchange or any issue involving serious financial loss, but in the 1784 version this exemption is further stressed.²² These exemptions were evidently convenient for the upper classes of the community, probably those of its members who were regular *finta* and *imposta* payers, the only ones who might find themselves involved in such kind of disputes. By exempting them from the legal procedure at the Mahamad, the community was in fact creating two classes, the rich merchant elite and the poor rank and file members, with at least *de facto*, different internal legal privileges. As will be seen, in most of the cases the wealthier members of the community did not care at all to go through the motions and applied directly to the courts of the land, especially the Chancery Court, without passing through the Mahamad.

All the versions of the *ascama* include the option to apply to the courts of the land in the absence of suitable compromise. In some cases, litigants came to the Mahamad in agreement to request licence to resolve their dispute in court, skipping the arbitration stage within the community.²³ In other cases, defendants did not appear before the Mahamad when summoned, but sent a message through the beadle asking the Mahamad to grant the plaintiff licence to sue the defendant to court.²⁴ Application to court, then, was considered legitimate, provided it was done with the permission of the Mahamad. This is especially so because the

22 LMA/4521/A/01/01/007, Book of Ascama Passed 5545, 1 Tishri 5545/16 Sept. 1784, fols. 40–41.

23 LMA/4521/A/01/21/001, Méndes Monforte v. Rodrigues, 9 Tevet 5506/1 Jan. 1746.

24 LMA/4521/A/01/21/002, Méndes do Valle v. Pinheiro Furtado, 27 Adar a 5537/6 March 1777.

congregation was a voluntarily established organization and Jews were not required to belong to it.²⁵ Therefore, the Mahamad lacked coercive powers to summon members as parties to a suit, or as witnesses. When in June 1773 Joseph Capadoce summoned Benjamin Lara to the court of the Mahamad for a series of debts stemming from a lack of a formal contract between them, the Mahamad agreed to Lara's claim that the case could be settled only by a court that could subpoena witnesses, and since this was not in the power of the Mahamad, licence was given to him to proceed to a general court.²⁶

Now, this policy was not in line with the prevailing approach among other Jewish communities, which was based on Talmudic foundations and which severely prohibited appealing to courts of the land. This latter, widespread approach stemmed from the view of a legal autonomy based on Jewish law, an expression of a unique Jewish religious and national identity. The use of Gentile courts was even likened to apostasy. It was not just a matter of breaking the community rules, but an undermining of its very autonomous existence.²⁷ In Italy, for example, communities that did not gain rights to exercise some degree of legal autonomy opted to build a system through a series of bye-laws that prohibited filing complaints in Gentile courts, and required the litigants to apply to Jewish arbitrators. However, without any palpable punitive or coercive powers, the effectiveness of this mechanism was limited.²⁸

In London, however, it seems that the wardens were well aware of their limited power, and took advantage of the seemingly tolerant approach of the authorities towards their self-appointed autonomous mechanisms, which included this internal voluntary legal system. Rather than struggling against the use of courts of the land by members of the congregation, they restricted themselves to regulating the procedure. From what we can glean from the various versions of the *ascamot*, rather than maintaining a unique Jewish religious and national identity, the wardens mainly sought to avoid scandal, as recommended in 1664 by Charles II.²⁹ This policy underscores the particularity of the English case, especially regarding the relative ease with which licence to go to court was granted. When compared with

25 Endelman, *Jews of Georgian England*, 119.

26 LMA/4521/A/01/21/002, Capadoce v. Lara, 23 Sivan 5533/14 June 1773.

27 Alon, *Hamishpat Haivri*, 13–14.

28 Reuven Bonfil, *Harabanut Beitalia Betkufat Harenaissance* (Hebrew; Jerusalem: Magnes, 1979), 140.

29 See n. 5 above.

the Jewish community of Casale Monferrato in Italy, for example, this singularity stands out, even taking into account certain procedural issues. There, when a compromise was not attained by agreed-on arbitrators, the litigants were obliged to approach the wardens, who were to rule on the case.³⁰ The Mahamad in this case served as a sort of second, appeal instance, while in London the Mahamad served only as a first stage in the conflict-resolution process.

It is to Amsterdam and to other *ex-converso* communities in the West that I now turn in order to understand better the unique features of the London case. The *ascamot* of the united Talmud Torah community of Amsterdam, issued in 1639, include an article establishing an internal mechanism of arbitration. This mechanism was thoroughly examined by Yosef Kaplan.³¹ Disputes between members that required halakhic arbitration were to be brought to the Mahamad, which in its turn would call for a ruling by a rabbinical court (made up of *hahamim*, or scholars, who were employees of the community). If this rabbinical court could not identify a solution to the problem, the Mahamad would itself issue a ruling. The verdicts of the rabbinical court were relayed to the Mahamad for their final approval. Already in 1632, prior to the establishment of the united community, a set of twenty regulations was issued, jointly by the three Sephardi congregations of the city, according to which members of the community embroiled in legal disputes were to address themselves to the wardens. These regulations were issued in order to deal with the widespread phenomenon of members of the community who turned to the municipal legal institutions to settle disputes. According to these regulations, if one of the sides did not appear before the Mahamad when summoned, a fine was levied. After the third summons, the Mahamad would adjudicate the case in the absence of the side that did not appear, and its ruling was to be considered as binding.³²

We also find some similarities to the *ascama* in London. In Amsterdam, the wardens were expected to make an effort to reach a compromise, or to nominate arbitrators to settle the dispute. An important point was that the rulings were to be based, to the fullest extent possible, on Jewish law. The status of the laws of the land or the customary rules between merchants was secondary to the Jewish law and, in any case, rulings could not stand in contradiction to Jewish law. An article was dedicated to the regulation

30 Bonfil, *Harabanut Beitalia*, 149.

31 It is also currently being studied by Evelyne Oliel-Grausz.

32 Kaplan, "Eighteenth Century Rulings", 1-4.

of filing complaints in non-Jewish courts. This move, as in London, was permitted only in cases of letters of exchange, insurance, arrests, and matters of international commerce. However, in Amsterdam, in all these cases too, prior licence by the Mahamad was required.³³ The exclusion of cases of letters of exchange, international contracts, and the like from the obligation to present them to the Mahamad became widespread among both Sephardi and Ashkenazi communities in the eighteenth century, as the volume of commerce increased, along with sophisticated mechanisms of credit and banking. This exclusion was often applied in Ashkenazi communities despite rabbinical opposition.³⁴ As is well known, the supremacy of the Mahamad in the Sephardi communities in the West rendered redundant any potential opposition by the *hahamim*.

Notwithstanding the evident similarities, it is noteworthy that contrary to the weight given to Jewish law in Amsterdam, in London this important factor is completely neglected, relegated only to those cases in which both sides agreed to go to Din Torah. Additionally, the regulation concerning recourse to general courts in Amsterdam was much stricter and applied to specific, well-defined issues, while in London licence was granted whenever the sides did not achieve a compromise. What is more, if we follow to the letter the *ascamot* in London, in cases of letters of exchange and the like, members were permitted to go to court without having first to apply for licence from the Mahamad. In Amsterdam, they had in all cases to pass through the Mahamad's approval stage.³⁵

Another Sephardi centre worthy of attention in this context is Livorno. Unlike in London, here the city authorities had issued a charter, known as the *Livornina*, by the end of the sixteenth century, which among other things granted the Jews legal autonomy to deal with disputes and lawsuits among members of the congregation, excepting criminal cases. These were to remain under the jurisdiction of the city tribunals.³⁶ This right given to the wardens was reflected in the bye-laws of the congregation. A bye-law from 1655 (reconfirmed in 1677) established that no Jew was permitted

33 Ibid.

34 Simcha Assaf, *Batei Ha-Din U-Sidreihem Acharei Chatimat Hatalmud* (Hebrew; Jerusalem, 1924), 24.

35 Oliel-Grausz is currently researching additional sources held at the archives of the Sephardi community in Amsterdam on its internal litigation mechanism. From this additional material it seems that there were more similarities than differences between the internal courts of litigation in both cities. However, in both cases, the mechanisms adapted themselves to the local legal structures.

36 Milano, "L'Amministrazione della giustizia", 135–6.

to approach the city judicial courts, the community court being the only acceptable instance. Adjudications should be made, to the greatest extent possible, in accordance with Jewish law.³⁷ The principal legal term of reference, as in Amsterdam, was the corpus of Jewish law. However, while in Amsterdam the cases were transferred by the Mahamad to a rabbinical court, in Livorno the members of the Mahamad, who were not experts in *halakha* (Jewish law) or in Jewish religious-legal policy, were supposed to adjudicate in accordance with their lay interpretation of the law. The result was that by 1680 the members of the Mahamad, when acting as a court of justice, had *de facto* abandoned the use of Jewish law.³⁸

The use of Jewish law as a legal basis for the rulings of the Mahamad in Livorno caused serious frictions with the rabbinical authorities of the community. These quarrels ended in 1680 with a clear division of responsibilities between the Mahamad, which was to judge mainly in accordance with general legal parameters and merchant custom, and the rabbinical court, which was to judge in accordance with *Din Torah*.³⁹ Again, London presented a different case. The basis was not any specific legal corpus, Jewish or Gentile, and the Mahamad as a court of arbitration did not see itself bound to this or that set of biblical, Talmudic or halakhic principles (and, in fact, to any legal corpus, but rather to common sense).

Avoiding recourse to the Gentile courts was a longstanding policy of the rabbinical authorities in the Diaspora. Wherever possible, the religious leaders of the communities promoted the establishment of internal courts of law, such as courts of arbitration or religious courts that had laymen as judges or arbitrators, even if this meant that the verdicts would be only vaguely based on *halakha*.⁴⁰ This is indeed what happened in the Spanish and Portuguese communities in Western Europe. The wardens had the legal (sometimes, as in London, self-appointed) authority to judge their flock. If needed, they consulted the rabbinical authorities,⁴¹ who as seen, at least in the case of London, had a diverse range of activity but always remained subservient to the Mahamad. This situation was indeed unique for the *ex-converso* communities in Western Europe. In the Ottoman

37 *Ibid.*, 143–4.

38 *Ibid.*, 145, 149.

39 *Ibid.*, 152–3. On the controversy between the Mahamad and the rabbinical authorities in Livorno, see also Shabetai Toaf, “Makhloket Rabbi Yaakov Sasportas U-Parnasei Livorno, ‘Al Hashiput Haotonomi ba’Uma Hayehudit’ belivorno Shnat 5441” (Hebrew), *Sefunot: Studies and Sources on the History of the Jewish Communities in the East* 9 (1965): 169–91.

40 Alon, *Hamishpat Haivri*, 17–18.

41 Haker, “Borders of Jewish Autonomy”, 352–3.

empire the main weight was given to Jewish law whenever a possibility existed to maintain an independent legal institution. In the German lands, whenever an internal Jewish justice system was tolerated, the clearly demarcated areas of jurisdiction within the community strengthened the rabbinical justice system, not as in England and other Sephardi centres in the West, where the rabbinical authorities were clearly secondary to the wardens.⁴²

The rabbinical court

Still, the members of the congregation in London could opt to resolve their disputes in a religious court, a Beth Din. Such an institution, as already noted, was established in 1705, although apparently it was not frequently used. An appeal to Din Torah was optional, but the rules of the Beth Din were clearly delineated by the Mahamad. Apparently, its rulings became binding once this procedure was willingly enjoined by the litigants. The basic legal terms of reference of the Beth Din were to be “Din Torah” (as Jewish law was described in this context), and in addition, “what is customary for its function in the Diaspora of Israel” (*o q’ se estila lhe sua função no galut de Israel*).⁴³ This last addendum is important because it takes into account issues not expressly addressed by religious law, and especially issues related to modern commerce and the like. The reference to what is customary in other communities probably relates to the policy of ruling according to *Din o carob la-Din* (“religious law or close to religious law”), as was customary in other Sephardi centres, such as Livorno.⁴⁴ In other words, when an issue with no corresponding article in Jewish law was being adjudicated, the aim was to issue a ruling that reflected, to the greatest extent possible, the spirit of Jewish law.

The Haham was the head of the Beth Din. Its other members were elected by the elders of the nation. These were to be three members of the community (or more, depending on the gravity of the dispute) considered to be “competent and deserving”. Importantly, according to the *halakha*, a Beth Din can be made up of any three observant, worthy, adult male members of the community. In principle, a rabbinical authority is not

42 Ibid., 364–5. See Andreas Gotzmann, “At Home in Many Worlds? Thoughts about New Concepts in Jewish Legal History”, in *Jahrbuch des Simon Dubnow Instituts*, vol. 2 (Munich: Simon Dubnow Institut Leipzig, 2003), 413–36, esp. 425–6.

43 LMA/4521/A/01/02/001, Orders and Resolutions of the Maamad, Nisan 5438–28 Elul 5484, 29 Shevat 5465/23 Feb. 1705, fol. 52b.

44 Milano, “L’Amministracione della giustizia”, 144.

needed. It seems that the addition of the Haham to the religious court was intended to ensure that the rulings were made with the active participation of at least one person erudite in Jewish law. The Haham functioned as a sort of religious-legal adviser, a duty defined by the *ascamot*. In cases that required more than three “judges”, the members of the Beth Din (not the elders) were to choose the additional members. If the post of Haham was vacant (as was often true in London), the Beth Din itself could issue rulings. This meant, from a practical point of view, that rulings could be issued without proper legal-religious advice. Apart from that, the Haham was to issue halakhic rulings (“declare the *din*”, meaning give his binding opinion on religious matters) whenever enquired of by members of the community. He was also to rule on disputes between members of the community in accordance with Jewish law (“according to *din*”), either when the litigants opted for the Din Torah course or when the case was referred to him by the Mahamad.⁴⁵

In practice, as occurred in other Sephardi communities (such as Amsterdam, as noted), the religious court became a rabbinical court, composed of *hahamim* who were on the payroll of the community. This implied a degree of subordination of the religious authorities to the wardens of the congregation. No orderly records of the Beth Din exist (they either did not survive or, more probably, they were not kept). Yet, from the minutes of the Mahamad and from the records of the legal cases dealt with by it we can gain a fairly clear picture of its areas of activity. Naturally, the Beth Din dealt with purely religious issues: supervision over the slaughtering of beasts and the supply of kosher meat to the community;⁴⁶ legal issues related to matrimony and divorce;⁴⁷ oaths,⁴⁸ and supervision of the religious conduct of members of the congregation (when instructed

45 LMA/4521/A/01/01/006, *Ascamot* as revised by committee appointed 13 and 17 Heshvan 5542/Nov. 1781, fols. 52–53.

46 See Ishac Nieto, *Recopilação de Varias Cartas & Actos Autenticos Concernentes a Bedica Ou Examinação Das Rezes Publicadas, a Fim Que Cada Hum Possa Vir, a Conhecimento Da Verdade* (London [Salonika], 1761); Hyamson, *Sephardim of England*, 182; Evelyne Oliel-Grausz, “Patrocinio and Authority: Assessing the Metropolitan Role of the Portuguese Nation of Amsterdam in the Eighteenth Century”, in *The Dutch Intersection*, ed. Yosef Kaplan (Leiden: Brill, 2008), 149–72, esp. 163.

47 See e.g. CAHJP/HM2/1088, Minutes of the Elders 1784–1795, 12 Tamuz 5555/29 June 1795, fol. 340. Another good example is the unhappy marriage of David Genese and Benvenida Mendoza, on which see below; see LMA/4521/A/01/21/002, *Genese v. Mendoza Genese*, 20 Heshvan 5533–16 November 1772 and 30 Sebat 5533/23 Feb. 1773.

48 See e.g. LMA/4521/A/01/21/002, *Sultan and Zamiro v. Mizrahi*, 12 Tevet 5536/4 Jan. 1776.

to do so by the Mahamad).⁴⁹ It also assisted the Mahamad in approving the publication of books by members of the congregation.⁵⁰

Since no records exist, it is difficult to say whether or not the option of Din Torah was widely chosen. Judging from what we know about the general fabric of the community, most probably it was not. Yet, the Beth Din assisted the court of arbitration of the Mahamad and complemented its activity. In some cases what started as a dispute in the Mahamad was referred either by common agreement or by the decision of the Mahamad to the Beth Din.⁵¹ Some examples will clarify these points.

In May 1789, the wife of Joseph, the son of Mordechai Nunes Martines (the plaintiff), summoned Joseph, the son of Abraham Nunes Martines, her son's father-in-law (the defendant). The plaintiff claimed that the defendant owed her £4 6s and, additionally, that he had defamed her husband. After hearing the case, the Mahamad decided to re-summon both sides, in a month's time. When the claim was originally made, the defendant's daughter was seeking a divorce (*guet*) from the plaintiff's son. Hence, we may assume, the postponement was intended to allow time for the sides themselves to resolve the quarrel. When they reconvened a month later, with no resolution reached, the Mahamad ruled that the defendant would have to pay his debt, but rather than give the money to the plaintiff, he was to deposit the sum into the hands of the Beth Din, which, in turn, would release the sum to the plaintiff once the divorce was granted by the plaintiff's son to the defendant's daughter.⁵² Here we see a medley of interests at stake: divorce, defamation, and debt. Since the main problem seems to have been the refusal by the plaintiff's son to grant a divorce to the defendant's daughter, the whole issue was referred by the Mahamad to the Beth Din, which was responsible for resolving marital disputes. The debt thus went from being an isolated concern to being part of a marital dispute and a means to pressure a husband to release his wife. However, we must remember that even when litigants were referred to the Beth Din, the Mahamad continued to function as the ultimate authority. When in November 1785 the wife of Moseh Cardozo asked the Mahamad to grant her a divorce, the Mahamad referred the case to the Beth Din for their

49 LMA/4521/A/01/02/004, Livro de velhos, 5545/1784, 5555/1795, fol. 286.

50 See e.g. CAHJP/HM2/996, Minutes of the Mahamad, 5554–5563 (1794–1803), 14 Elul 5560/4 Sept. 1800, fol. 286.

51 See e.g. LMA/4521/A/01/21/004, Velasco v. Benatar, 29 Jan. 1794.

52 LMA/4521/A/01/21/003, Nunes Martines v. Nunes Martines, 21 May 1789 and 22 June 1789.

examination and report, implying that the final decision remained in the hands of the Mahamad.⁵³

Marital disputes referred by the Mahamad to the Beth Din could also be related to thorny topics such as adultery or unlawful sexual relations, a frequent phenomenon in eighteenth-century Jewish society in Western Europe,⁵⁴ in which a verdict made according to religious law would be expected. This was the case when on 1 August 1796 Samuel Palache approached the court of the Mahamad after discovering that his wife, whom he had wed only a month and a half earlier, was already six months pregnant.⁵⁵

When the facts could not be properly ascertained, the Mahamad might opt to refer the case to the Beth Din or to the Haham, so that one of the sides could swear to the truthfulness of his or her account. This was the case when on 12 September 1784 Benjamin Habilho da Fonseca (the plaintiff) reclaimed a debt of five pounds “and some shillings” from Selomoh Rodrigues Ribeiro (the defendant). The defendant suggested that in order to substantiate his claim, the plaintiff should take an oath before the Haham. The suggestion was accepted by the plaintiff and approved by the Mahamad; on the same day the plaintiff took the oath, as agreed. A month later, the defendant lodged a complaint before the Mahamad that the plaintiff had filed a lawsuit against him in a court of the land, without having been granted licence by the Mahamad. The plaintiff responded that he gave his oath before the Beth Din as agreed. However, we understand, the defendant still did not pay his debt, leading the plaintiff to file a lawsuit against the defendant in an external court. After hearing both sides, and despite the fact that the plaintiff had gone to court without licence, the Mahamad gave him, *a posteriori*, permission to proceed with the legal process at court.⁵⁶ As emerges from this case, the Beth Din was one of the legal means by which disputes were resolved; however, such a move was not always successful.

We might cautiously add that the oath before the Beth Din was considered by the Mahamad sufficient proof of the truthfulness of a litigant’s affidavit and considered as such by congregation members too:

53 LMA/4521/01/02/002, Minutes of the Mahamad, 1776–1788, 28 Heshvan 5546/1 Nov. 1785.

54 Feiner Shmuel, *The Origins of Jewish Secularization in Eighteenth-Century Europe* (Hebrew; Jerusalem: Zalman Shazar Center for Jewish History, 2011), 98–9.

55 LMA/4521/A/01/21/004, Palache v. his wife, 1 Aug. 1796.

56 LMA/4521/A/01/21/003, Habilho da Fonseca v. Rodrigues Ribeiro, 12 Sept. and 13 Oct. 1784.

in 1772 Isaac Israel Bernal agreed that if Jacob de Abraham Bernal would be ready to make an oath on a Torah scroll in the presence of the Haham that he did not owe him a sum of two guineas, he would drop his complaint. Jacob Bernal refused to make such an oath and the Mahamad permitted Isaac Israel Bernal to proceed to an external court.⁵⁷

At times, the Beth Din and the Haham were asked to deal with issues that the Mahamad as a court of arbitration did not succeed in resolving. When Josua Habilho Benveniste summoned his son in March 1781 for a debt of more than 14 pounds, the Mahamad came to the conclusion that it could not resolve the dispute and requested that the Haham adjudicate the case.⁵⁸ The rabbinical authority here acted as an additional legal instance. Elsewhere, the Haham was asked by the Mahamad to investigate a case first presented to it, and report its findings to the Mahamad so it could issue a ruling.⁵⁹

Some sensitive issues were dispatched by the Mahamad to the Beth Din, albeit not as a matter of routine. This was the case when Menahem (or Menasseh) Levy Bensusan suspected Moseh Ben Ami of stealing a watch from him.⁶⁰ As this was a criminal offence, we may assume that the decision of the Mahamad to transfer the case to the Beth Din was made in order to solve the problem within the community boundaries. Hence the Beth Din would rule on the issue in accordance with religious law and, perhaps, Ben Ami would be saved the dear consequences of being sued in a court of the land – an option that in theory was open to Bensusan. This case demonstrates the way in which the internal court of arbitration served the effort of the congregation to avoid scandals that could damage the image of the community. However, in cases involving more serious crimes, the Mahamad did not hesitate to refer the case to the courts of the land, since criminal cases were out of its jurisdiction.⁶¹

As can be seen, the Beth Din and the Haham performed diverse roles in the context of the internal court of arbitration. Sometimes they functioned as an additional legal instance, other times as an investigatory tool, and often as a legal tool, such as when litigants were sent to it in order to give oath.

The problematic status of the rabbinical court as a religious authority,

57 LMA/4521/A/01/21/002, Bernal v. Bernal, 20 Heshvan 5533/16 Nov. 1772.

58 LMA/4521/A/01/21/002, Habilho Benveniste v. Habilho Fonseca, 25 Adar 5541/22 March 1781.

59 LMA/4521/A/01/21/002, Baruh v. Bendahan, 27 Iyar 5543/29 May 1783.

60 LMA/4521/A/01/21/004, Bensusan v. Ben Ami, 9 Jan. 1796.

61 See n. 95 below on *Hernandes Dom Fernando v. Romano and Julião*.

and its members as subaltern to the Mahamad and the elders, is well exemplified in the dispute stirred up following some doubts that arose concerning the religious validity of the marriage of Aron Méndes Belisario to E[ster?] Lindo in October 1793. For reasons I will not delve into at the moment, Méndes Belisario addressed the Beth Din in order to receive from it a *pesak* (Jewish legal ruling) regarding the legality of his marriage to Lindo. The members of the Beth Din replied to Belisario that they were ready to give such a ruling, provided they were first permitted to do so by the Mahamad. The Mahamad and the elders discussed the issue and decided that neither custom nor convenience dictated that the Beth Din grant validity of a religious ruling to any decision made by them whenever asked to do so by members of the community. This decision was communicated to the members of the Beth Din, who in turn relayed it to Belisario.

One may wonder why on earth the Beth Din needed the authorization of the wardens to render what was an essentially religious decision. Well, this is exactly what Solomon Mendes Belisario, Aron's brother, had in mind. In a strongly worded letter (in Spanish) to the members of the Beth Din, Solomon Mendes Belisario expressed his disappointment at seeing that the law of God now yielded to the law of humans. Why, he asked, does a religious court not dare to give a religious ruling unless given permission to do so by the wardens? Dispensing the holy law, he further insisted, was an obligation of the Beth Din. Moreover, the brother of the plaintiff questioned the integrity of the members of the Beth Din, since a "Beth Din that refuses to act according to Din Torah, evidently shows that it would not be prudent to expose its actions to the scrutiny of the world". Belisario also threatened that "once we reached [the situation in which] it is not possible to obtain justice according to the divine law, it becomes necessary to apply the law of the land". To that, Belisario added a threat to write to other communities about the intricacies of the case and about the refusal of the Beth Din to give a *pesak*.

The members of the Beth Din took the letter to the Mahamad, expecting that the latter would support them against the "vituperative contempt in which we are daily held for executing [the Mahamad's] orders". A few days later (on 23 October 1793), the elders recommended that the Mahamad stand by the Beth Din members and commit themselves to make every effort to prevent such insulting events in the future. And indeed, a motion was approved to aggravate the sanctions against members of the congregation found guilty of insulting the Haham or any member of the Beth Din. Prior to that decision, another letter was presented to the elders,

this time by the groom himself, Aron Méndes Belisario. The letter was written in English and was addressed to the elders (not to the Beth Din, as had been his brother's). His side of the story was that the reason given to him by the Beth Din members for their refusal to provide him with a *pesak* was that such a ruling could not be provided without the consent of the Mahamad, a consent that was not given (as previously recommended by the elders). Hence, and circumventing the Beth Din, Belisario asked the elders to reconsider their decision, claiming that it was his "right according to the tennets [*sic*] of the Jewish religion" to grant him a ruling as required. Although not as strongly worded as his brother's letter, Aron hinted that if this ruling was not granted, he would see himself free to pursue any other path in order to reach his goal.

Following the receipt of this letter, the elders summoned the members of the Beth Din and asked them again whether according to Din Torah they were obliged to give a *pesak*, as demanded by Aron Méndes Belisario. The answer was that they had no obligation whatsoever to issue a ruling on this case. They then retired from the meeting and the elders voted on and approved a motion to inform Belisario's that his request had been refused.⁶²

The subordination of the Beth Din to the Mahamad and the elders is rather blatant in this case. The Beth Din requested from the Mahamad licence to issue religious rulings by their own initiative, meaning that they were well disciplined as employees of the congregation. Even if in this specific case they resorted to such licence as a means to avoid issuing a ruling, this very course of action signals their subaltern status. Such inferior standing was further accentuated by the members of the Beth Din having been summoned to the elder's meeting not to render an opinion but to inform the elders about the Din Torah position on the issue. Thus, Din Torah appears as a recommendation and not as a binding law, to be taken into account as part of a wider set of considerations. Furthermore, from the brothers' letters as well as from the Beth Din members' reaction, we can infer that the Beth Din, at least at the time of the events, was hardly held in esteem by the congregation. Considering the clear subordination of the Beth Din to the Mahamad, this does not come as a surprise. Aron did not hesitate to circumvent the Beth Din and appeal directly to the elders. Solomon even threatened to shame the Beth Din by disseminating news of the affair to other communities. Moreover, the members of the

62 LMA/4521/A/01/02/004, Livro de velhos, 5545/1784–5555/1795, fols. 287–294.

Beth Din, in their appeal for support from the Mahamad, referred to daily circumstances under which they were insulted and held in contempt because they followed the directives of the Mahamad, hinting at a general state of affairs and not only to the specific case at hand. The end of the eighteenth century, as Albert Hyamson rightly observed, saw the Sephardi community with its ecclesiastical personnel much depleted,⁶³ which is only natural if we bear in mind the general laxity regarding religion that characterized English Jewry in the eighteenth century.⁶⁴

The arbitration mechanism at work

While the decision that disputes between members of the community were to be presented to the Mahamad was approved at the establishment of the congregation in 1664, we can detect systematic activity of the Mahamad as a court of arbitration only from 1721 on, when the cases brought before it started to be kept in a separate register. Before that year, it seems that the Mahamad, by and large, did not concern itself with litigation. Hence we can safely say that the first steps of the court of arbitration were taken in 1721, and even then not as a regular matter.⁶⁵ Edgar Samuel writes that before 1721 the cases brought to the ruling of the Mahamad were recorded in minute books.⁶⁶ From 1664 until 1721, however, only three cases can be found in the minutes.⁶⁷ Bearing in mind the few cases registered in the first years after 1721, we may conclude that before 1721 the Mahamad dealt with hardly any litigation. As noted, until the first decade of the eighteenth century the congregation in London did not number more than five hundred people, most of them wealthy merchants, who in the event of commercial disputes may have applied directly to court, as permitted by the *ascama*. Only from the second decade of the eighteenth century do we see a rapid growth in numbers, mainly of poor Sephardim, which naturally made the demand for a working legal mechanism more acute.

This mechanism was active at least until 1864.⁶⁸ In the first years it was

63 Hyamson, *Sephardim of England*, 220. See also Endelman, *Jews of Georgian England*, 143.

64 As excellently described by Endelman, *Jews of Georgian England*.

65 In contrast, prior to 1721 members of the congregation went to the Chancery Court: see NA/C/9/319/49, *Gómes da Costa v. Henriques Bernall*, 15 Nov. 1698.

66 Samuel, "Mahamad as an Arbitration Court", 10.

67 LMA/4521/A/01/02/001, *Bueno v. Rodrigues* (12 Dec. 1678), *De Leon v. Abendanon* (4 Elul 5454/25 Aug. 1694), and *Mahamad v. Musaphia on the issue of Pestana* (4 Kislev 5467/10 Nov. 1706).

68 The records of the arbitration court are kept in LMA/4521/A/01/21/001–006,

not widely used. In 1721 the Mahamad convened as a court of arbitration only five times and dealt with only five cases. In each of the subsequent years the number of cases never counted more than fifteen (in 1735 and in 1738), and there were several single and sometimes consecutive years in which no sessions or cases are to be found at all (1730–34, 1761–68).⁶⁹ From 1771 onwards we see a regular use of the courts. The peak years were 1783–84. In 1783 the Mahamad convened as an arbitration court twenty-eight times, dealing with 121 cases, and in 1784 there were nineteen sessions during which 128 cases were heard. In the whole of the eighteenth century (the period under research here), a total of 2,307 cases were recorded in 591 sessions.

In comparison, in the years 1670–1709, a period of nearly forty years, the wardens in Livorno dealt with 5,666 cases, an average of 142 cases per year. In London the average was almost thirty cases per year for a period of almost eighty years (1721–99). Although the data from Livorno is from an earlier period than the one analysed in this article, the numbers can provide an idea of the magnitude of the use of the court. The number of Sephardim in Livorno was not much bigger than that of London (about 3,000 in Livorno, about 2,500 in London), but in Livorno, it seems, the arbitration court of the community was used much more widely.⁷⁰

As a rule, the court convened immediately after the weekly meeting of the Mahamad. In the first years the court sessions took place at the beginning of the Hebrew month (Rosh Hodesh). In later years the rate was approximately every two weeks. The sessions were held at the synagogue building, where the offices of the Mahamad were located.⁷¹ The court was made up of three members of the Mahamad. If for some reason three members were not available, complementary “judges” from the elders were called to sit in court. As can be seen, the court met regularly and throughout the whole year. Furthermore, this was a service provided gratis. The option to go to an external court was far less attractive. Not only did a fee have to be paid, but courts met only for four (multiple-day) sessions

comprising six volumes in which a brief abstract of cases and rulings are inscribed. There is no volume for 1830–36, which seems to have been lost. As a rule, during the eighteenth century the records were kept in Portuguese with a few in English. In the early nineteenth century the records start to be kept in English.

69 Most probably these are not years for which the records were lost. The gaps are found in single volumes with the last record of a year immediately followed by the first record of the next.

70 Milano, “L’Amministrazione della giustizia”, 156.

71 See LMA/4521/A/01/21/002, *Fernandes v. Nunes de Lara*, 27 Elul 5533/15 Sept. 1773.

during specific periods throughout the year. It could take up to two years until a case was heard in a court of common law.⁷² As against this, at the court of the Mahamad one could resolve a dispute almost immediately and in a quite efficient way, without the complications that recourse to an external court could entail. At this stage we already can see that besides being a control tool of the Mahamad over the congregation and a device to “avoid scandal”, the court was first and foremost a service provided for the benefit of the congregation. I will discuss this point at length in a separate article.

It should also be remembered that in the seventeenth century the aldermen of the City of London were often hostile to Jews, which made it unsafe for Jews to rely on the London Magistrates Courts.⁷³ By the late eighteenth century, English courts were much more trustworthy in this respect. Still, stealing was often punished by hanging and sometimes by transportation, making even more attractive the court of the Mahamad.

When a dispute arose between community members, they could agree to come to the arbitration court. Often, the plaintiff would ask the beadle of the congregation to summon the defendant. Generally speaking, both sides appeared on the date accorded. However, in not a few cases, one of the parties, usually the defendant, did not show. Non-attendance was expected to occasion a written or oral excuse, to be delivered through the beadle. Such excuses varied. For instance, some excuses offered very little explanation.⁷⁴ In other cases the litigant stated that he or she was busy with merchandise or at work, or even was out of the city or abroad.⁷⁵ Health problems were often recruited to explain non-attendance.⁷⁶ And, in some cases, the litigant simply refused to come.⁷⁷ Most of the excuses were

72 Baker, *Introduction to English Legal History*, 66.

73 Cecil Roth, *A History of the Jews in England* (Oxford: Clarendon Press, 1941), 191.

74 See e.g. LMA/4521/A/01/21/002, Porto v. Belisario, 28 Kislev 5537/9 Dec. 1776; Méndes do Valle v. Pinheiro Furtado, 28 Shvat 5537/5 Feb. 1777; Boltibol and Israel v. Sultan, 28 Shvat 5537/5 Feb. 1777.

75 See e.g. LMA/4521/A/01/21/003, Tedesquy v. Bernal, 26 Nisan 5545/6 April 1785; LMA/4521/A/01/21/004, Ish Yemini v. Belisario, 28 Tishrey 5558/18 Oct. 1797; LMA/4521/A/01/21/002, Núnes Martines v. Vaz Martines, 28 Yiar 5538/25 May 1778; LMA/4521/A/01/21/002, Núnes Martines v. Habilho Fonseca, 26 Shvat 5543/29 Jan. 1783.

76 See e.g. LMA/4521/A/01/21/003, Caneo v. Cohen, 28 Heshvan 5547/18 Nov. 1786; LMA/4521/A/01/21/003, Fonseca v. Baruh, 26 Iyar 5547/14 May 1787; LMA/4521/A/01/21/004, Levy v. da Costa, 26 Tamuz 5557/20 July 1797; LMA/4521/A/01/21/002, Henriques v. García, 26 Tevet 5538/25 Jan. 1778.

77 See e.g. LMA/4521/A/01/21/003, Belilo v. Álvares, 27 Shvat 5546/26 Jan. 1786.

accepted but there were exceptions too.⁷⁸ In general, whenever one of the parties did not attend for a first time (even if no excuse was provided), the Mahamad postponed the hearing for the next session. If one of the parties did not show up on the second summons, the Mahamad gave the plaintiff licence to proceed to a court of the land, almost without exception.⁷⁹ Contrary to what was stipulated in the *ascama*, non-attendance, with few exceptions, was not punished with any kind of pecuniary or other sanction. Here the advantages of the arbitration court of the community in comparison with the Court of Requests are obvious. In the Court of Requests non-attendance without a satisfactory excuse could end in the imprisonment of the defendant.⁸⁰ What is more, the two-call procedure, which was used by the Court of Requests and seemingly adopted by the Mahamad, was discontinued at some point in the late 1770s (The summoning form used by the Court of Requests in the late 1770s has a note stipulating that contrary to what was previously customary, the summoned have to come on the date stated in the form since a second court day is no longer allowed⁸¹), while it continued to be used by the Mahamad in subsequent years as well.

Yet, non-attendance was widespread. In approximately a third of the cases in the period 1721–99 one of the sides did not appear. In some years more than half the summonses were ignored by one of the sides (including first and second calls). Lacking any enforcement measures, the Mahamad was left to hope that both sides would show up. Its only leverage was the policy of almost automatically granting licence to go to court to the plaintiff if the defendant did not show up at court at the second summons. The high level of non-attendance is indicative of the limited practical and moral sway held by the Mahamad over its members. As long as litigants found it convenient, they went to the communal arbitration court. If, however, their interests dictated such, they resolved their disputes at the Court of Requests or at any other court (such as the Chancery Court) without taking into account the Mahamad. In any case, the two-call

78 See e.g. LMA/4521/A/01/21/003, *Alvarengo Franco v. Sanguinetti*, 28 Av 5549/20 Aug. 1789.

79 During 1788 (5548) there were several cases in which the litigants were summoned three times and not two, as customary: LMA/4521/A/01/21/003, *Sarfaty v. Álvares*, 27 Tevet/7 Jan.; *Mendoza v. Nunes Martines*, 11 Adar/20 March; *Shanon v. Cohen*, 25 Tamuz/21 July 1788; *Paz de Leon v. Soares*, 25 Tamuz/27 July.

80 David Deady Keane, *Courts of Requests, their Jurisdiction and Powers* (London: Shaw & Sons, 1845).

81 See LMA/CLA/038/03/002, unbound sheet; LMA/CLA/038/02/7, unbound sheet.

procedure among Sephardi communities was unique to London, probably because it mirrored English practice.⁸²

Once convened, the court functioned as a typical alternative dispute resolution mechanism. Each of the litigants presented his or her case and, with few exceptions, no solicitors were involved in the process.⁸³ If needed, witnesses were called. These could be called at the initiative of one or both of the sides, or summoned by the wardens.⁸⁴ Interestingly, non-Jews could be brought as witnesses too.⁸⁵

The role of witnesses is well illustrated in the case of *Rodrigues v. Bendahan*. Apparently, both litigants were butchers. An argument arose between the two regarding a parcel of meat that Rodrigues prepared for one Benjamin Lindo, probably a regular client of Bendahan.⁸⁶ In the course of the argument, Rodrigues received a blow to his neck. However, he did not know who had delivered the blow. Witnesses were brought. The first testified that he was in Rodrigues's cellar at the time of the brawl and saw "Abendahan's men" striking Rodrigues and his wife. But another witness testified that he saw contestation but that no blows were exchanged. Rodrigues then promised to bring more witnesses, which he did a couple of days later. Hannah Hart (an Ashkenazi) testified seeing Bendahan hitting Rodrigues with a stick, a claim confirmed by two additional witnesses. Other witnesses appeared, this time testifying for Bendahan, among them several non-Jews. John Lacey was also present at the event. He saw the confusion but could not confirm that Bendahan was the one who had hit Rodrigues. John Brown saw some blows but could not tell who was responsible for them. James Oseland claimed the blows were given on the stairs of the cellar but not by Bendahan, and Hy Marks saw no stick at all. This was confirmed by Israel Cohen, who, in his words, was present

82 On the measures used by other communities and in earlier times in order to coerce defendants who did not want to cooperate with the inner legal procedure, see Assaf, *Batei Ha-Din*, 25–34. On the number of summons to court in the English legal system in the eighteenth century see Baker, *Introduction to English Legal History*, 65. Regarding Amsterdam, Oliel-Grausz's research shows that there too a multiple summoning procedure existed.

83 See e.g. LMA/4521/A/01/21/002, *Pereira v. Franco*, 5 Kislev/11 Nov. and 12 Kislev 5543/18 Nov. 1782.

84 LMA/4521/A/01/21/003, *Nunes Martines v. Sagui*, 15 Av 5546/9 Aug. 1786; *Jonah v. Finzi*, 28 Nisan 5547/16 April 1787; *Cardoso v. Méndes*, 26 Heshvan 5540/26 Nov. 1788; LMA/4521/A/01/21/004, *Moyal v. Ben Zeraf*, 28 Tishrey 5558/18 Oct. 1797.

85 LMA/4521/A/01/21/003, *Finzi v. Sebola*, 27 Elul 5550/6 Sept. 1790. See also the following case.

86 My thanks to Edgar Samuel for his help in the interpretation of this case.

from the first to the last of the quarrel. The wardens cross-examined some of the witnesses and queried them in order to clarify the event, especially regarding the precise location of the brawl. It seems that the court was not able to determine who was to blame for the violent affair, so it sent both sides home, recommending that they “make it up together” by the next session of the court.⁸⁷

Frequently the rulings were postponed for a later session and the sides were required to bring proof of their claims, such as receipts or account books.⁸⁸ The wardens, who acted as judges, had no legal training. Neither were they experts in Jewish or in common law. Hence the verdicts handed down were not based on any kind of legal corpus but rather on common sense and decency, as was the rule at the Courts of Requests as well.⁸⁹ Generally speaking, the rulings had an advisory character, so both sides had to agree to implement them. As seen earlier, if a ruling was not accepted by one of the parties, licence was given to proceed to court.⁹⁰ If a ruling was not fulfilled, the party affected could return to the wardens and complain. In these cases, licence was generally granted to proceed to a court of the land.⁹¹

Areas of jurisdictional action

The original aim of the creation of the arbitration mechanism was to resolve small business disputes between members of the community, along the lines of the Court of Requests and the County Court.⁹² However, the wardens rapidly found themselves settling arguments on the most varied range of matters: financial, business, and property disputes; employer–employee relationships; familial and marital conflicts; neighbours’ relations, defamation, and minor cases of non-criminal violence. Todd Endelman claims that since Jews in England had full access to state courts, they only turned to their own religious courts to settle cases

87 LMA/4521/A/01/21/002, *Rodrigues v. Abendahan*, 25 Shvat/18 Feb. and 30 Shvat 5533/23 Feb. 1773.

88 See e.g. LMA/4521/A/01/21/002, *Massias v. Belisario*, 28 Nisan 5541/23 April 1781.

89 *Deady Keane, Courts of Requests*, 49.

90 See e.g. LMA/4521/A/01/21/002, *Hasan v. Sarfaty*, 23 Kislev 5542/10 Dec. 1781; LMA/4521/A/01/21/004, *Benjamin v. Asseo*, 27 Sivan 5558/11 June 1798.

91 See e.g. LMA/4521/A/01/21/003, *Costa Andrade v. Rodrigues*, 24 Adar 5547/22 March 1787; LMA/4521/A/01/21/004, *Benjamin v. Cortisos*, 28 Shvat 5557/23 Feb. 1797; LMA/4521/A/01/21/002, *Cohen v. Ladesma*, 30 Tishrey 5534/17 Oct. 1773.

92 *Baker, Introduction to English Legal History*, 24.

involving marriage, divorce, and *kashrut* and that in most civil matters they went to the courts of the realm.⁹³ While Endelman is correct in pointing to the weakness of the rabbinical court, he neglects the considerable volume of activity of the arbitration court of the Mahamad, which seems to have been a popular and integral part of conflict resolution practice among Sephardi Jews in London.

Compared to the judicial instances that the general public in England had at their disposal during the eighteenth century, the arbitration court of the Mahamad comprised all the fields covered by the Court of Requests, the Summary Courts, the Hearing Courts, and in a lesser degree the Chancery Court. With the exception of the formal Chancery Court, which depended on the Crown, the procedures of the Mahamad as an arbitration court were similar to those of the other English legal instances, characterized by their “rather administrative informality, their semi-private nature, their fluidity and flexibility and their tendency to become forums of negotiation and mediation rather than of formal prosecution.”⁹⁴

However, some fields remained out of bounds. The most obvious was the criminal area. When Abraham Hernandez Dom Fernando accused Judith Romano and Sarah Hernandez Julião of stealing from him, the wardens referred the case to a court of the land, explaining that this was a “matter of major crime” (*couza de crime mayor*), hence not under the jurisdiction of the Mahamad.⁹⁵ Another area that was not covered by the wardens in their capacity as an arbitration court concerned offences against the Mahamad or infractions of *ascamot* by members of the congregation. These were handled by the Mahamad, not as a legal instance but as the congregation’s supreme authority. Members, however, could sue the Mahamad or more frequently other communal institutions such as charity fraternities, in financial disputes and the like. On these occasions, which were few (only two per cent of the cases from 1721 to 1799), the case was indeed handled by the Mahamad as a court of arbitration. In these cases, the Mahamad tended to rule for the fraternity.⁹⁶

93 Endelman, *Jews of Georgian England*, 142.

94 Peter King, *Crime, Justice, and Discretion in England 1740–1820* (Oxford: Oxford University Press, 2000), 83–4.

95 LMA/4521/A/01/21/002, Hernandez Dom Fernando v. Romano and Julião, 26 Nisan 5542/10 April 1782.

96 See e.g. LMA/4521/A/01/21/002, Costa Andrade v. Nunes Lara, 27 Tevet 5547/17 Jan. 1787; LMA/4521/A/01/21/003, Cohen de Corsica v. Gomes Soares, 26 Adar 5550/11 March 1790.

Lei de terra (law of the land)

On 29 June 1780, Benjamin Habilho da Fonseca lodged a complaint at the court of the Mahamad against Isaac Saguy for a debt of more than four pounds. In December of that year, an arrangement was reached according to which the debt was to be returned in installments. Six months passed and Saguy did not pay, so Fonseca, without licence, filed a lawsuit at the Court of Requests. When on March 1781 the case was about to be heard by the Court of Requests, Saguy submitted a complaint at the court of the Mahamad against Fonseca, for summoning him without licence. Fonseca was ordered by the Mahamad to discontinue the procedure at court and, several days later, both parties were summoned to the Mahamad, where a new arrangement was agreed.⁹⁷ It took nine months to resolve the dispute. This case affords a good sense of how the community used both the internal communal court and the courts of the land to resolve their disagreements.

In about twenty per cent of the cases the Mahamad opted to allow the litigants to proceed to an external court (all the courts of the realm at hand). These were, as a rule, the Court of Requests for small sums (originally the Court was authorized to hear cases on small debts not exceeding forty shillings; in the late eighteenth century the sum was raised to not more than ten pounds) and the Chancery Court for more significant cases. The Mahamad did not specify to which courts the litigants could proceed. Such a decision was considered beyond their purview, and was to be made in accordance with the laws of the country. The propensity of the Mahamad to allow the use of external courts is of course indicative of its constraints. Voluntary organization that it was, the Mahamad could wield only limited leverage over the congregation; hence, it understood the importance of flexibility. This was a well-known and longstanding problem among Jewish communities that enjoyed a certain level of legal autonomy. The authority of the community over its members was founded on the premise that it was voluntarily accepted by its members, who could always opt out of the community, leaving a plaintiff, for example, with no alternative but to address him- or herself to the courts of the realm. As early as the ninth century, a rabbinical ruling, which was reaffirmed in the twelfth by Maimonides, permitted litigants to go to a court of the

97 LMA/4521/A/01/21/002, Habilho de Fonseca v. Saguy, 26 Sivan 5540/29 June 1780; LMA/CLA/038/03/003, Court of Requests, Summon Book, 1780–1781, Fonseca v. Saguy, 16 Dec. 1780; LMA/4521/A/01/21/002, Saguy v. Habilho de Fonseca, 16 Adar/13 March and 25 Adar 5541/22 March 1781.

land if one of the sides refused to participate in the internal legal procedure (among Ashkenazi communities, despite the strict prohibition to go to non-Jewish courts, it was understood by the seventeenth century that this was a lost battle).⁹⁸ In the case of the Mahamad in London, members of the community were permitted to approach the courts of the land for reasons unrelated to Maimonides's ruling, as will be shown.

This flexibility did not imply that the members of the London congregation always, if at all, cared to go through the motions and receive licence from the Mahamad to go to an external court. On the contrary, many, if not most members, belonging to all the social strata of the community, went directly to external courts, not bothering to receive first licence from the Mahamad. Unfortunately, the court records for London during this period are incomplete so reliable statistics are not available. However, the records that have survived for the second half of the eighteenth century show a significant participation of members of the community in legal processes at the Court of Requests and at the Chancery Court.⁹⁹ We find in the records of the court of the Mahamad many complaints against members of the congregation who went to court without licence. Surprisingly, however, no sanctions are to be found in cases where both litigants went to court without first requesting licence to do so.¹⁰⁰

It seems that the unwritten rule was as follows: if both sides to a dispute agreed a priori to solve their problem at an external court, the Mahamad did not involve itself in the process (in all likelihood, it did not even know when such agreements were made). If, however, one of the sides made a unilateral move to court, then the other side (the defendant, generally), could file a complaint at the court of the Mahamad. Still, in these cases as well, the reaction of the Mahamad was mild. This fact can help explain the numerous appeals made without licence to the Court of Requests and to the Chancery Court.

98 Alon, *Hamishpat Haivri*, 15. For a full discussion on the refusal to come to the community's inner court, see also Assaf, *Batei Ha-Din*, 25–34; for the Ashkenazi, see Moshe Frank, *Kehilot Ashkenaz Ubatei Dineihen* (Hebrew; Tel Aviv: Dvir, 1937), 117–23.

99 For the Court of Requests see e.g. LMA/CLA/038/02/004, *Moravia v. Cohen*, 5 May 1762; LMA/CLA/038/02/005, *Rodrigues v. Suarez*, 19 Sept. 1772; *Levy v. Mendoza*, 12 July 1777; LMA/CLA/038/02/009, *Shannon v. Jessurun*, 12 June 1783. For the Chancery Court see e.g. NA/C/12/1911/74, *Rodrigues v. Namias*, 17 Feb. 1762; NA/C/11/2108/41, *Robles v. Paiba et al.*, 23 March 1746; NA/C/11/698/22, *Cortisos v. da Costa*, 1729 (first document).

100 See e.g. LMA/4521/A01/21/002, *Ximenes v. Franco*, 5 Sivan 5543/5 June 1783; *Nunes Martines v. Romano*, 24 Sivan 5535/22 June 1775; *Formento v. Genese*, 14 Tamuz 5536/1 July 1776; LMA/4521/A/01/21/003, *Habilho v. Boltibol*, 26 Elul 5544/12 Sept. 1784.

Mahamad members were careful not to render any decision that might stand in opposition to a decision made by a court of the realm, and in some cases they even updated the external courts about their internal cases. When the Mahamad decided to allow Samuel Santillana and Jacob Palache to continue with their dispute at court, the beadle was ordered to appear in court and relate the hearing that took place within the community boundaries.¹⁰¹ This also indicates that hearings held at the arbitration court of the congregation were regarded as valid procedures by the courts of the realm. In not a few cases, when a complaint had already been filed at a court, the court of the Mahamad allowed the process to continue.¹⁰² For example, Abraham Baruh summoned to the court of the Mahamad Ester Lacour for several disputes. However, since the issue was already being dealt with by the Court of Conscience (another name for the Court of Requests), the Mahamad “did not find it wise to deal with the case.”¹⁰³ When considered fair and possible, plaintiffs were asked to suspend their complaint at the courts of the land.¹⁰⁴ Yet, there were cases in which the Mahamad even permitted creditors to initiate an arrest procedure against debtors.¹⁰⁵ Licence to proceed to court might be granted conditionally, if the ruling of the court of the Mahamad was not fulfilled. In these cases no further permission was needed and, on non-fulfilment, the plaintiff could automatically proceed to an external court.¹⁰⁶

Thus, the Mahamad did not object to appeals to the courts of the realm. On the contrary, this appears to be one of the paths it adopted to promote conflict resolution. What is more, at the Chancery Court we find members of the Mahamad as parties to legal processes, either as individuals or even as representing the communal institution.¹⁰⁷ However, sometimes the

101 LMA/4521/A/01/21/003, Santillana v. Palache, 14 Tishrey 5548/26 Sept. 1787.

102 See e.g. LMA/4521/A/01/21/003, Núnes Martines v. Habilho, 9 Kislev 5551/14 Nov. 1790; Mendes Chumaceiro v. Cardoso, 25 Av 5551/25 Aug. 1791; Núnes Martines v. Albo, 8 Yiar 5552/30 April 1792.

103 LMA/4521/A/01/21/003, Baruh v. Lacour, 27 Elul 5550/6 Sept. 1790.

104 LMA/4521/A/01/21/003, Arobas v. Martines, 28 Tamuz 5546/24 July 1786; Rodrigues Habilho v. Habilho, 15 Av 5546/9 Aug. 1786; da Costa v. Rodrigues, 28 Tevet 5550/13 Jan. 1790.

105 LMA/4521/A/01/21/001, Bensancho v. Halfon, Levy, Machado and Lópes de Oliveira, 7 Tamuz 5498/25 June 1738.

106 See e.g. LMA/4521/A/01/21/001, de Leao v. Ramos, 4 Sivan 5485/16 May 1725; LMA/4521/A/01/21/002, Cortisos v. Hesquiau, 27 Heshvan 5533/23 Nov. 1772; LMA/4521/A/01/21/003, Leon v. García, 28 Nisan 5550/12 April 1790; LMA/4521/A/01/21/003, Leon v. Valentin, 2 Elul 5550/12 Aug. 1790.

107 See e.g. NA/C/11/668/66, da Costa Alvarenga v. de Paiba, Fernandes et al., Oct.

Mahamad could not tolerate members' independent legal procedures. When in August 1783 Moseh Spenco and Joseph Uzily unsuccessfully summoned the Mahamad to the Lord Mayor's Court, they were ordered to request publicly the Mahamad's forgiveness, standing at the *tebah* of the synagogue between the afternoon and evening prayers.¹⁰⁸ This was no minor humiliation, but such sanctions enabled the wardens to preserve their prestige.

Additionally, the Court of Requests had, as a rule, four to six Jewish brokers officially registered as facilitators that would assist members of the community at court. There were generally two Ashkenazim and two Sephardim, always appearing on the last rows of the list of brokers, notwithstanding the alphabetical order in which the rest of it was rendered, marking them as "specialists" in affairs related to the members of the Jewish community.¹⁰⁹ The Sephardim were always of the rich merchant elite of the congregation, frequently former or future members of the Mahamad.¹¹⁰ This state of affairs only reinforces the assessment that in London the legal autonomy of the Sephardi community was not part of a separate identity-building effort, but a practical tool at the service of the community members, well coordinated with external courts. Simply put, it was an additional – albeit unofficial – legal institution to which the members could turn to find solutions to their disputes in a cheaper and more efficient way. In this, the activities of the arbitration court of the congregation and its interaction with the courts of the realm reinforce Edelman's description of the poor rank and file members of the congregation as an integral segment of English society from the socio-economic perspective, dealing with the same challenges, interests and vicissitudes.¹¹¹

As mentioned before, not infrequently, the Court of Requests was approached without licence. Nonetheless, in many cases the procedure was duly followed. Let us consider a typical case. On 6 September 1779, the widow of Isaac Carcas was granted licence to proceed to court against

1725. Echoes of the case can be found in the minutes of the Mahamad as well; see LMA/4521/A/01/01/001, 27 March 1724 and 2 Jan. 1726.

108 LMA/4521/01/02/002, 26 Av 5543/24 Aug. 1783, fol. 211.

109 On the brokers functions see Deady Keane, *Courts of Requests*, 100.

110 LMA/CLA/038/03/002, Court of Requests, Summons Book, 1779–1780; LMA/CLA/038/03/004, Court of Requests, Summons Book, 1781–1782; LMA/CLA/038/03/005, Court of Requests, Summons Book, 1782–1783; LMA/CLA/038/03/006, Court of Requests, Summons Book, 1783–1784; LMA/CLA/038/03/008, Court of Requests, Summons Book, 1785–1786.

111 Edelman, *Jews of Georgian England*.

Judah Boltibol, and two days later they appeared at the Court of Requests.¹¹² Some litigants were less straightforward. Perhaps fearing a negative response from the Mahamad or in order to have all the loose ends tied, they appealed for licence only after they actually addressed the Court of Requests. Gabriel Taitasach and David Aboab appeared at the Court of Requests on 13 June 1795.¹¹³ However, Taitasach had requested licence from the Mahamad only two days later. The same happened in the case of Simson Genese against Isaac de Castro.¹¹⁴

Unlike the Court of Requests, where we find the poor of the community seeking justice for their petty affairs, some with the licence of the Mahamad, most without, at the Chancery Court we meet the upper class of the community. The few cases in which we see wealthy members of the congregation at the arbitration courts of the Mahamad is when they were creditors of small sums owed to them by poor members of the congregation. If the sum was not significant, wealthy members also took their cases to the court of the Mahamad. Hananel Méndes de Acosta, for example, was a rich merchant who also let some apartments to congregation members, and was warden of the charity fraternity Maasim Tobim. We find him in 1765 at the Chancery Court in a major financial dispute with Joseph Salvador, the director of the British East India Company and member of one of the most prominent Anglo-Sephardi families. Years later Méndes de Acosta appears at the Mahamad's arbitration court, represented by Abraham Julião, reclaiming a tiny sum (for him, at least) of seven shillings.¹¹⁵

Although the procedures at the court of the Mahamad were far simpler and faster, the upper classes preferred the royal instances of law.¹¹⁶ No petty disputes are to be found here, but litigation worth tens of thousands of pounds, stock shares, securities, and annuities; cases involving

112 LMA/4521/A/01/21/002, Carcas v. Boltibol, 27 Kislev 5540/6 Dec. 1779, and LMA/CLA/038/02/007, Court of Requests, City of London, Accounts 1784–1785, Carcas v. Bottibol, 8 Dec. 1779, fol. 61.

113 LMA/CLA/038/03/013, Court of Requests, Summons Book 1795–1796, Taitasach v. Aboab, 13 June 1795; LMA/4521/A/01/21/004, Taitasach v. Aboab, 28 Sivan 5555/15 June 1795.

114 LMA/CLA/038/03/013, Court of Requests, Summons Book 1795–1796, Genese v. de Castro, 9 Jan. 1796; LMA/4521/A/01/21/004, Genese v. de Castro, 29 Tevet 5556/9 Jan. 1796.

115 NA/C/12/2058/12a, Méndes de Acosta v. Salvador, April 1765; LMA/4521/A/01/21/002, Méndes de Acosta v. Finse, 26 Iyar 5540/ 31 May 1780.

116 Compare the simple procedures described here with those at the Court of Chancery described by G. Radcliffe and G. Cross, *The English Legal System* (London: Butterworths, 1971), 146–7.

Sephardi merchants from England, the Netherlands, Gibraltar, and North Africa; and family disputes regarding the execution of wills worth fortunes big and small – all dealt with, of course, by professional solicitors, almost all without licence from the Mahamad. In one case at least, although the Mahamad ordered that it not proceed to court, the plaintiff did so anyway. Moreover, the plaintiff, if not a member of the current Mahamad, was at least a former one.¹¹⁷ Were we to follow the prevailing image of the Sephardi congregations in the West, this is precisely the kind of court where we would expect to find its members, and not the Court of Requests, which was the court to which the majority actually appealed.¹¹⁸ Let us recall, however, that disputes related to letters of exchange and cases involving large sums were exempted a priori from the need of licence granted by the Mahamad.

Here too we can identify interesting phenomena. In certain cases the members of the Mahamad as individuals and the Mahamad as an institution appear as a parties to litigation, or as testators of wills. Thus, in the case of *Costa Alvarenga v. de Paiba, Fernandes, Ximenes and others*, mention is made of several names who were “the then wardens or elders of the Portuguese Jews Synagogue in London”.¹¹⁹ More intriguing, as wills had to be deposited at an ecclesiastical court (in this case, at the court of the Bishop of Canterbury), the jurisdiction of the Mahamad was rendered irrelevant, even in a field that could easily be dealt with according to Jewish law and tradition. In some cases the person writing a will wished it to be executed according to Jewish law, creating weird situations in which a non-Jewish court, judging between Jews, was asked by a party to issue a ruling according to halakhic principles. In one case, for example, a request was made that the inheritance of a deceased person “should be divided between nearests [sic] relations according to the holy law of Moses”.¹²⁰ In another case mention was made of “the custom and the usage of the Jews” or to rules “according to the custom and the usage of the Jews, he being of that persuasion”.¹²¹ Moreover, issues that seem properly to belong

117 NA/C/12/174/19, *Brandon v. da Costa*, August and October 1791; LMA/4521/A/01/21/003, *Brandon v. da Costa*, 26 Iyar 5551/20 May 1791.

118 See e.g. NA/C/12/1911/74, *Rodrigues v. Namias*, 17 February 1762; NA/C/11/2108/41, *Robles v. Paiba*, 26 March 1746; NA/C/11/508/27, *Lindo v. Lindo*, 1732; NA/C/11/778/21, *Gabay Villareal v. Pereira et al.*, 1733.

119 NA/C/11/668/66, *da Costa Alvarenga v. da Costa Alvarenga*, Oct. 1725. See also NA/C/11/816/17, *de Paz v. Campos*, 1742–1743.

120 NA/C/12/2053/31, *de Paz v. Buzaglo*, March–June 1765. See also Endelman, *Jews of Georgian England*, 142–3.

121 NA/C/11/2090/40, *Supino v. Supino*, Jan. 1742.

within confines of the community made their way to the Chancery Court. One of the disputes refers to 1,000 “pounds sterling to be appropriated in order to apply and dedicate the revenue of that sum towards establishing a *jesiba* or assembly for daily reading the holy law leaving the management thereof to his executors therein named for the same to improve the holy and divine law”. One of the inheritors, as was often the case, objected to implementing the charity articles of the will.¹²²

Conclusions

On 23 April 1778, the Mahamad issued the following decree, to be read aloud at the synagogue before the reading of the Torah, and to be posted on the door of the office of the Mahamad:

In the name of [our] Blessed God, Amen. Having the gentlemen of the Mahamad considered the inconveniency resulting to the members of the congregation and the poverty of our nation due to the present litigations that one has against the other at the court of the land without first being summoned to appear in front of the Mahamad, and wishing the aforesaid gentlemen to avoid this inconvenience conforming the intention of *Ascama* 16, they have decided that from today on they will proceed with all rigour according to the *Ascama*, against any person that will infringe [against the said *Ascama*] it. And peace be upon Israel.¹²³

Not surprisingly, no actual change was implemented in the policy against those who went to an external court without licence. As in other fields of administration of authority, a clear gap existed between the intentions of the Mahamad and what actually transpired. The same can be said about the whole mechanism of arbitration. Whereas in 1664 the internal legal mechanism was set up with the rich merchants of the congregation in mind, by 1778, as is clearly reflected by the decree, it was a mechanism devoted to serving the poor. Indeed, as I will explain in a separate article, the cases that we find in the litigation records are mostly of poor people, struggling for a sack of coal, some bottles of milk, small quantities of flour, some biscuits, a pair of underpants, shoes, coats, and shirts. It was about street brawls and marital violence, small debts of utterly insolvent people who as a matter of rule were dependent on the charity fraternities funded by the rich *imposta* and *finta* payers of the congregation. This was definitely not a tool of control as we could have expected from an allegedly

122 NA/C/11/1072/5, da Costa v. Pereira, May 1743.

123 LMA/4521/01/02/002, Minutes of the Mahamad, 1776–1788, 23 April 1778, fol. 59.

ever more power-seeking body but, rather, another kind of charity system or social service, seeking compromise, promoting peace, and saving the poor members of the community the costs and risks of appealing for justice at an external court.

Although this was not the wardens' intention, the activities of the arbitration court and its interaction with the courts of the realm were part of what Endelman described as "a journey from a quasi-autonomous corporate community, isolated culturally and socially from the surrounding population, to a decentralized Jewish community with no legal standing in the eyes of the state, organized solely on the basis of voluntary participation".¹²⁴

The court of litigations, like the congregation, was far from an isolated institution. On the contrary, the Mahamad was well aware of its constraints, and thus permitted the members of its community to interact with the courts of the land, leaving open, despite its official policy, the path to English justice. This receptivity to the English legal system and its compatibility with it is also a sign of the modernization, integration, and acculturation processes that the Sephardi congregation in London underwent during the eighteenth century. The adoption of the Court of Request model (with some adaptations) instead of clinging to the old isolationist systems used in other communities to cultivate a unique Jewish identity, further demonstrates the particularity of the Anglo-Sephardi case. This, to borrow Yosef Kaplan's term, was one of the expressions of the "alternative path to modernity" of the Sephardi congregation in London¹²⁵ or, perhaps, an expression of this congregation's unique path to Englishness.¹²⁶

124 Endelman, *Jews of Georgian England*, 289.

125 Yosef Kaplan, *An Alternative Path to Modernity: The Sephardic Diaspora in Western Europe*, Brill Series in Jewish Studies (Leiden, Boston, Cologne: Brill, 2000). For the situation in some German cities see Gotzmann, "At Home in Many Worlds?", 429.

126 See Shmuel, *Origins of Jewish Secularization*, 26, 28.