Nação legal consciousness and its contribution to the seventeenth-century Dutch Republic debate on slavery and the slave trade

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Nação Legal Consciousness and its Contribution to the Seventeenth-Century Dutch Republic Debate on Slavery and the Slave Trade

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In Loving Memory of My Father Ramon Mota Martínez
4th of Elul 5778

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PREFACE

On March 6, 1857, in *Dred Scott v. Sandford*, the United States Supreme Court ruled that *black* people were not American citizens and could not sue in courts of law. The Court ruled against Dred Scott, an enslaved black man who sued for his freedom (Vishneski 373-90). Despite the various civil and social movements of the twentieth century against racism and discrimination, these issues continue to linger in the psyche and ethos of the human experience. In the United States of America, many innocent persons are incarcerated periodically on the presumption of being guilty (due to their skin color). The *McMillian v. the State of Alabama* case of 1993 and many others attest to this fact. Being "black" is still equated with impurity and inferiority in many societies around the world. As I write this, people from all over the world are protesting about the murder of George Floyd (May 25, 2020) by a Minneapolis law enforcement official, along with three other accomplices. The Black Lives Matter Movement has taken upon itself to riot and protest in the streets of the United States of America. People are tired of the inequality and the abuse. Furthermore, the use of the Arabic word for servant/slave [*abd*] is connected to being "black.*"* It is used as a derogatory name for dark-skinned people in the Middle East. The continual use of such racist language is the enduring legacy of a past with slavery.

Every day, migrants around the world are auctioned off on slave markets due to their ethnicity. Take for example Libya, Somalia, Ethiopia, or the Persian Gulf. With so many human

rights campaigns and media coverage, one wonders how can this be possible. Why can we not put at an end to such abuse of human rights? Notwithstanding the enactment of Article 8 of the International Covenant on Civil and Political Rights (ICCPR), that "No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited," we are still dealing with this reality in various parts of the world.

Anne-Charlotte Martineau criticizes how international lawyers tend to view international law as stepping in to abolish the slave trade in the nineteenth century. She argues that this creates an unduly positive outlook of the law and lawyers. On the contrary, legal rules and their institutions have often been used to advance the desires of greedy men, thereby perpetuating injustices that lawyers do not see, nor want to see (Martineau 238). Therefore, she claims that this is not only naïve, but dangerous.

We must end the culture of silence around the world. The attitudes against "blackness" and "black" people are still very much alive everywhere. The myth of the "Curse of *Ḥam*" and its lasting influence must be dismantled, rejected, and uprooted from human psychology, language, and media. Indeed, it has been utilized by law enforcement officials, political leaders, and theologians as a justification for the disenfranchisement and/or enslavement of dark-skinned peoples.

The archival materials consulted herein can supply limitless answers to questions posed by various historians. Due to my training in rabbinical studies and cultural anthropology, I am inclined to ask questions related to Jewish law and Christian theology. In addition, I am a member of the contemporary *Eẓ Ḥaim* community in Amsterdam, and a descendant of *Nação*

merchants that migrated to the Caribbean to engage in trade. Thus, to some extent, this research project provides an existential experience for myself and the contemporary *Nação*, wherever we may be in our diaspora.

What did seventeenth-century Portuguese Jewish plantation owners do at Passover in the New World colonies? (Davis, "Regaining Jerusalem" 11) How is it possible to having been enslaved, yet to enslave others? Every year during the Spring season Jews celebrate Passover. During this festival, Jews commemorate their emancipation from cruel Egyptian bondage. Indeed, the Exodus story acquired deeper significance for the Sephardim during the Inquisition time period. Western Sephardic communities in Europe and abroad had a special fund for the rescuing of family members imprisoned by the *Santo Oficio* of the Spanish Inquisition. In fact, every year on *Yom Kippur* [Jewish Day of Atonement] the Western Sephardim pray for the deliverance of *los prisioneros de la Inquisición* [Prisoners of the Inquisition]. How then did Amsterdam's Portuguese Jewish community in the seventeenth century justify the systematic enslavement of Africans, while redeeming their brethren from the clutches of the Inquisition?

On the one hand, I cringe upon discovering the dealings of the *Nação* in the Atlantic slave trade, and on the other hand, I want to tell a story that does not portray my ancestral community as a group of ruthless elitists. Surely, there is an inherent struggle to want to hide the dark chapters of our history. In doing so, I would not be true to this research. Therefore, I have come to terms with it and will expose the good, the bad, and the ugly.

The Hague, 2020 Yehonatan Elazar-DeMota

ABBREVIATIONS[1]

TALMUD

y. for Jerusalem.

b. for Babylonian.

Mishnah

m. for Mishnah

TRACTATES

Abod. Zar.	*Abodah Zarah*
B. Bat.	*Baba Batra*
B. Meẓi'a	*Baba Meẓi'a*
B. Qam.	*Baba Qamma*
Ber.	*Berakhoth*
Giṭ	*Giṭṭin*
Ḥul.	*Ḥullin*
Ketub.	*Ketubboth*
Miqv	*Miqva'oth*
Pesaḥ.	*Pesaḥim*
Qidd.	*Qiddushin*
Šabb.	*Shabbath*
Šebu.	*Shebu'oth*
Yebam.	*Yebamoth*

OTHER RABBINIC WORKS

Oraḥ Ḥayyim	*OḤ*
Yoreh De'ah	*YD*
Hilekhoth	*Hil.*
Mishneh Torah	M.T.

[1] "Chicago Manual of Style / Society of Biblical Literature Citation Quick Guide."*Benjamin Cardozo School of Law.* Yeshiva University. Web. 21 Feb. 2016.

TRANSLITERATION GUIDE

Hebrew	English	Arabic
א	ʿ	ا
ב	B	ب
ג	Gh	غ
ג	G	ج
ד	D	د
ה	H	ه
ו	V	و
ז	Z	ز
ח	Ḥ	ح
ט	Ṭ	ط
י	Y	ي
כ	Kh	خ
פ	K	ك
ל	L	ل
מ	M	م
נ	N	ن
ס	S	س
ע	ʾ	ع
פ	F	ف
צ	Ẓ	ص
ק	Q	ق
ר	R	ر
ש	Sh	ش
ת	T	ت
ת	Th	ث

Alexander, Patrick, et al. *The SBL Handbook of style for ancient Near Eastern, Biblical and Christian studies,* Peabody: Society of Biblical Literature, 1999.

APPENDIX OF HEBREW TERMS

Halakhah—practical Jewish law or jurisprudence.

Ma'amad—governing body of the Sephardic community.

Midrash—an exegetical study of the Hebrew Bible.

Miqveh—a bath used for the purposes of removing ritual/ceremonial impurity.

Mishnah—is the first major written collection of the Jewish oral legal traditions.

Talmud—body of Jewish law comprised of 63 volumes.

Tanḫuma—three different collections of exegetical studies and stories based on the Pentateuch.

Tam'e/teme'a—the status of ritual impurity

Torah—the Law of Moses. Known as the Pentateuch in Christian tradition.

Yaḥid—Jewish community member

CONTENTS

1.

Introduction

"When plunder becomes a way of life for a group of men in a society, over the course of time they create for themselves a legal system that authorizes it and a moral code that glorifies it."

(Bastiat 100)

1.1 The Problem

The main focus of this research will be on the pressing issue: How did *Eẓ Ḥaim's* Jews contribute to the legal-political discussions of *ius naturae et gentium* within the Amsterdam-Dutch Republic debate on slavery and slave trade? In the seventeenth-century Dutch Republic there were a number of communities in Amsterdam that wanted to provide justifications for slave trading. Within these communities, some Jews and Christians collaborated via the activities of the Dutch East Indies Company [VOC] and the Dutch West Indies Company [WIC]. Slavery was not allowed in the Netherlands, as there existed the notion of the "free soil" tradition (Peabody and Greenburg 331-39). In the 1550s, the Great Council of Mechelen ruled that enslaved peoples entering the Low Countries were to be freed immediately, independent of their religious convictions (Verhaegen and Gachard 504-06).[1] The Great Council of Mechelen was the supreme tribunal of the Netherlands. At that time, it was established to centralize the areas under the jurisdiction of first the Burgundian dukes and then the Habsburg monarchs (Batselé 79). The Great Council of Mechelen received appeals from the superior courts of particular counties and duchies of the Seventeen Provinces. The Northern provinces (except Holland and Zeeland) were generally independent of it (*ibid*). After 1582, the judicial power was replaced by the provincial council and the Supreme court of Holland, Zeeland and West-Friesland. The "free soil" tradition was developed by Dutch jurists throughout the course of the seventeenth century (Batselé 81). Whereas in 1596, the city leaders of Middelburg recalled the "natural liberty" of African slaves in order to emancipate them, by the end of the seventeenth century, this precedent held no legal

[1] For the primary source, consult Grand Conseil de Justice des Pays-Bas à Malines, T. III, 376-379; "Inventaire des mémoriaux du Grand Conseil de Malines." Tome I: XIVe, XVe et XVIe siècles (Weissenbruch 41).

bearing in other similar incidents in Amsterdam. Portuguese *conversos* challenged the established legal conventions by bringing slaves to the Netherlands.

Who were the Jews who participated in the slavery and slave trade debate in seventeenth-century Amsterdam? Before settling in the Dutch Republic in the late sixteenth century, Portuguese *conversos* began first arriving to the southwestern region of France. King Henri II granted them *lettres-patentes* in 1550, which allowed them to settle and trade as resident-aliens (Graizbord 2006).[2] In February 1571 a merchant arrived in Bordeaux with a cargo of enslaved *négres et maures*, with the goal of setting up a slave market. The Parliament of Bordeaux ruled that the slaves had to be set free at liberty since "*la France ne permettait point aucuns esclaves*" (Rushforth 81-82). A month later they declared "*la France, mère de la liberté ne permet aucuns esclaves*" (Peabody and Boulle 27-8). Contrary to the 1571 legislation, King Henri II sent letters to the Parliament of Bordeaux, stating that the Spanish and Portuguese Hebrew merchant community, henceforth, the *Nação,* therein enjoyed royal protection, and that no one should bother their "*servitors, biens et choses quelconques*" (Moreau de Saint-Méry 9). After having been granted the privilege to practice slavery and trade slaves freely in Bordeaux, the *Nação* wanted to obtain these same privileges on Dutch soil.

On the fifteenth of November, 1596, the Dutch skipper, Melchior van den Kerckhoven arrived on the port of Middleburg with a group of over one-hundred African men, women, and children. The ship had been confiscated from the Portuguese, and Van den Kerckhoven wanted to set up a slave trade market therein. The local authorities agreed to set them free, since there was no slavery in Zeeland […*gehouden of verkocht te worden als Slaven, maar gesteld in heure vrij*

[2] For more information consult Benbassa 49.

liberteit, zonder dat iemand van derselver eigendom behoort te pretenderen] (Zeeuws Archief, Middelburg: Archief van de Staten van Zeeland, Notulen boeken 15 November 1596). The public was encouraged to employ the Africans, provided that they raise them as devout Christians. Nevertheless, Pieter van der Hagen, a Dutch merchant which had ownership of the enslaved Africans on Van den Kerckhoven's ship, appealed to the States General in the Hague, arguing that these Africans were his property. He made a request to leave the crew in Portugal, and to transport the Africans to the Spanish West Indies. Initially, the States General denied his request. However, he appealed a second time after two weeks and was granted the liberty to do as he pleased [*soe hy't verstaet*] with his cargo of African slaves (Resolutiën der Staten Generaal, deel 9, 1596/1597, 333-334; Hondius, "Black Africans in Seventeenth-Century Amsterdam*"* 87).

The *Nação* challenged public policy in Amsterdam in many instances through participation in the seventeenth-century debates over slaveholding and the slave trade. In 1626 four Portuguese Jewish merchants, traveling on the ship *Angel Rafael* from Brazil to Portugal*,* suffered from Dutch privateering (GAA. NA, 5075, No. 3402. 19 Feb. 1626). Izak Barzilai, Antonio Mendes, Rodrigo Alvares Drago, and Antonio Enriques Alvin arrived in Vlissingen with many enslaved sub-Saharan African men and women. After the Portuguese crew was released, some went to Rouen, while Barzilai and Enriques Alvin went to Amsterdam with three "black" men and five "black" women [*drie swarten ende vijff swartinnen*], all belonging to Enriques Alvin. Some witnesses testified that Enriques Alvin remained in Amsterdam with his slaves close to three months, and that he moved with them throughout the city freely and at will (Hondius, "Access to the Netherlands of Enslaved and Free Black Africans" 377-95). Subsequently, after

having received permission from the Hague court, Enriques Alvin left to Bayonne with his slaves.[3]

In 1656 the Portuguese Jewish merchant, Eliau Burgos left Brazil to settle in Amsterdam with his slave Juliana. The notarial records demonstrate that Burgos wanted to force Juliana to remain with him in Amsterdam against her desire, then to follow him to Barbados. Two witnesses from Brazil who came to Amsterdam declared that they knew Burgos and his "black" slave Juliana. Burgos wanted to sell Juliana in Brazil, but after having heard her plea for his compassion, he decided to take her to Amsterdam. In return she promised to serve him perpetually, as long as he did not sell her. In another notarial declaration, Burgos stated that ever since their arrival to Amsterdam, after having realized that she could gain her freedom, Juliana left him. Burgos declared that she had come to this realization through contact with others who had convinced her of her freedom, and thereby not obliged to serve him (GAA. NA, 5075, No.2271/764-766. 1 November 1656, notarias Adriaen Lock).

Throughout the diaspora of the *Nação*, it was usual and customary for slave owners to manumit their slaves in their wills (Emmanuel 79). The fact that the *Nação* in Amsterdam freed their slaves posthumously evidences that they circumvented the law against holding slaves in the Netherlands. For instance, in a deed dated 11 August 1673, Gracia Senior (a.k.a. Ysabel Henriques) presented herself before notary Padthuijsen to free Sara de Tavora from her "good

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[3] The original Dutch reads: *Is gelesen de requeste van Anthonio Enriques Alvin Portugees Coopman, versouckende om redenen daerinne verhaelt, dat hij met sijne drie schwarten ende vijff Swartinnen, daer,ede hij comende uit Phernambuquo bij een capitien ter overneminge genomen ende te Vlissingen gebracht ende wederom aldaer bij de Admir(alitei)t in Zel(an)t gerelaxeert is, uijt dese landen mach trecken met deselve schwarten ende schwartinnen naar Bajone de France, Ende naer deliberatie is goet gevonden hem tselve bij apostille in margine aen sijne req(uiran)te te consenteren.* Nationaal Archief van Staten Generaal 1.01.02, 51, February 1626.

services," on behalf of her deceased husband Duarte Coronoel Henriques (GAA.NA, 5075, inv. 126, No. 2907A, folio 420).[4]

While the legal discourse in the early seventeenth-century Dutch Republic was that slavery was not allowed on Dutch soil, the aforementioned incidents reveal another reality. While the institution of war slavery had essentially fallen into disuse between Christian European states, Portuguese Jewish merchants played a crucial role in the debate on slavery and slave trade (Allain, "The Legal Understanding of Slavery" 89). The legal consensus established (1) that slavery was not allowed on Dutch soil, and (2) that slavery as an institution was only allowed within the context of *ius gentium*, but not *ius naturale.* However, slave trade provoked a change of legal notions and a debate, such that slaves could be owned and sold outside of the context of war, and outside of the Netherlands by merchants based in the Dutch Republic.

How did the *Nação*, a community of Iberian Jewish exiles and refugees gain entry to the seventeenth-century Dutch Republic slavery and slave trade debate? The *Nação*'s participation in the slavery and slave trade debate began in the Iberian Peninsula in the sixteenth century and continued thereafter in the Dutch Republic. Prior to 1497, as resident-foreigners, Iberian Jews were barred from engaging in politics and intellectual (theological) discussions. After the forced conversion of Portuguese Jewry in 1497, many of them continued to practice the Jewish tradition

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[4] The late Duarte Coronel Henriques once held the Spanish monopoly on the slave trade with Africa, no doubt Sara de Tavora was a slave. Gracia did free her slave in "*spontanea voluntad sin inducion ni persuasion."*
To ensure that Sara had the means for a living Gracia gave her a bond, worth a thousand guilders with the States of Holland and West Frisia, resting in the office of Johannes Uytenbogaert, the receiver of this city (Amsterdam). The first owner of the bond had been Juan Pinto Delgado. Sara de Tavora is present in her own person and says (dico): "*que acetava el favor de las uso dita donacion y que por ella dava muchas gracias y gradacimientos a su senhora la dita senhora Donha isabel Henriques ala qual promete de servir con todo amor quidado fieldad y obediencia como hasto a ora ha hecho hasta al fin de sus dias permitiendolo Dios*" The signature of Ysabel alias Gracia is indeed frail and unsteady: Gracia Senior alias Isabel Enriques. Gracia Senior was buried on Beth Haim 24 December 1673. (Courtesy of Ton Tielen and the Sephardic Diaspora Facebook Group).

in secret, maintaining ties with their kin throughout the Sephardic diaspora. Religious and families ties between them harbored an international trade network, uniting the Old Mediterranean trade routes with the New World. Those who lingered in Spain and Portugal were called *New Christians* by the non-Jewish population. As Christians with Jewish backgrounds, they were marginalized by *Old Christians*. However, their newfound Christian identity granted them access and entry into the universities of Salamanca, Coimbra, Évora, and Alcalá de Henares. This Jewish *Other* had formerly confronted Christian society from without, but after the forced conversions became an "inner component of that society without losing his otherness either in the eyes of the host society" (Yovel 58). This sociological phenomenon is what Yirmeyahu Yovel calls the "other within" (*ibid* 58-62). By the mid-sixteenth century, the *Nação* had a trading post in every major port in Europe, Asia, Africa, North and South America, and the Caribbean. Simultaneously, those *New Christians* who joined the clergy in Iberia engaged in theological and legal discussions.

After Philip II expanded the Inquisition to Belgium in 1585, a group of *conversos* left Antwerp and reestablished themselves in the Netherlands. In the early part of the seventeenth century, with the help of rabbis from Germany, Morocco, Italy, and Turkey, they managed to establish a *New Jerusalem* in Amsterdam. Their knowledge of commercial trade proved to be instrumental in the establishment of commerce between the Netherlands and the East Indies (Bloom 33). As such, their resources granted them entry as residents of the Dutch Republic, once again as the "other within." In 1639 the three Portuguese Jewish communities in Amsterdam merged into one—*Talmud Torah Ez̦ Ḥaim,* becoming an intellectual center for Dutch Christians and Jews throughout the diaspora.

1.2 Need for the Present Study

The present work hopes to engage scholars of Jewish studies, religious studies, international legal history, urban governance, and political science. The contemporary discourse on the history of international law is focused on rights, empire-building, and sovereignty (Benton 473).[5] However, there is little to no discussion about how Jews contributed to international legal theory and international law practice through their participation in the early modern slavery and slave trade debate. Slave trade as a topic in itself is mentioned, albeit not discussed to a significant depth within the discourse.

While some have undertaken research on the legal scholarship of European jurists in the early modern period, the contribution of Amsterdam's Sephardim to this discourse is overlooked. This thesis hopes to add to the discussion on the influence of the Jewish tradition on international law by examining the seventeenth-century *Nação* in the Dutch Republic and its colonies, whose ideas of *potestas* [mastery], *dominium* [ownership/sovereignty], and *libertas* [freedom/liberty] were central to the construing of justifications for the Dutch Atlantic slave trade, as participants in, and contributors to the law of nations and nature.

Some legal scholars argue that there is a need to turn to the historiography of international law. Legal scholar, Bhupinder Chimni asserts that the common approach to legal history is rooted in a state-centric approach, which pivots around a narrow set of male European

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[5] For more information consult: van Nifterik, "Hugo Grotius on 'Slavery'" 233-43; Pagden, "The Fall of Natural Man"; Koskenniemi. "Introduction: International Law and Empire—Aspects and Approaches in *International Law and Empire: Historical Explorations*"; Obregón. "International Legal Theory: Empire, Racial Capitalism and International Law. The Case of Manumitted Haiti and the Recognition Debt"; Anghie. "Imperialism, Sovereignty, and the Making of International Law"; Koskenniemi. "The Politics of International Law"; Jiménez Fonseca. "*Jus gentium* and the Transformation of Latin American Nature: One More Reading of Vitoria? in *International Law and Empire: Historical Explorations*"; Tierney. "*The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625*"; Straumann. "Is Modern Liberty Ancient? Roman Remedies and Natural Rights in Hugo Grotius' Early Works on Natural Law."

figures (Chimni 22-72). What would a Jewish model of international law history look like? Lawyer and scholar, Betina Kuzmarov asserts that "to tell the story of international law on Jewish law's own term, and not as the *Other*, can allow us to rethink the origins of international law. This rethinking is not yet achieved" (65). As the "other within," Jews were not acknowledged participants within the history of international legal discourse. As such, international legal scholar and diplomat, Shabtai Rosenne (1917–2010) argued that European jurists appropriated Jewish legal thought on *just war* in order to develop modern international law (Rosenne 119-49).[6]

Nação legal consciousness highlights how Dutch Christian Hebraists, jurists and politicians utilized the *just war* theory of the Jews through the vehicle of Protestant Replacement Theology (125). At the foundation of the *Hebrew Republic* tradition lingered the idea that Protestant Christianity replaced the Jewish People as the *New Israel*. How did this happen? Harvard professor of history, Eric Nelson maintains that early modern European Christians, who never had met a Jew, were generally not *philo-semites* (Nelson 7). Despite this fact, "Jews played an important role in the dissemination of the Hebrew texts (*ibid*).

Euro-Christian centrism has blinded legal historians from seeing the contributions of marginalized or peripheral actors to the international legal project (Koskenniemi, "Histories of International Law: Dealing with Eurocentrism" 21). Consequently, the history of early modern European international law assumes its origin with the Spanish exploration of the West Indies (1492) and culminates at the Treaty of Westphalia in 1648. On the one hand there is Francisco de Vitoria (1483 – 1546) and Hugo Grotius (1583 – 1645) on the other. When delving into the life

[6] For more information on the otherness of Jews in international law, see Kuzmarov 49.

of de Vitoria, one discovers that he was from a Spanish *converso* family (Maryks 70). One wonders how much of his Jewish connections influenced his theological and legal views? Also, Grotius was influenced not only by Jewish literature, but also held a working relationship with Amsterdam Rabbi and diplomat, Menasseh b. Israel. In *Philo Judaeus and Hugo Grotius' Modern Natural Law* (2013), Meirav Jones puts forward that the transition from Scholasticism to modern natural law was pioneered by Grotius under the influence of Philo Judaeus (b.25 B.C.E.). What discussions did Grotius sustain with Amsterdam rabbis? The lack of written sources cannot detail the nature of all of their oral conversations, but one can readily see in Grotius' latter works how rabbinic literature is utilized in relation to his legal theories (Kuhn 173-80).[7]

How can a Sephardic Jewish scope and lens contribute to the contemporary discourse on international legal history? The relevance of *Nação legal consciousness* to the contemporary discourse of international law is best explained in Arnulf Becker-Lorca's *Mestizo International Law* (2014), who claims that "a different narrative of the history of international law will challenge the Western standpoint and may clear up space for new and more emancipatory international legal practices tomorrow" (Becker-Lorca 22). Becker-Lorca asserts, "the expression *Mestizo international law* reminds us of the historical association between Western colonial expansion and European international law" (*ibid*). The term *mestizo* implies a hybrid origin of international law that was formed through the combination of Western and non-Western attitudes and the globalization of European international legal thought (*ibid*).

Scholars such as Stephen Neff leave no room for other legal traditions in assuming that "Until about the 18th century, international law was divided into two schools—Grotians and

[7] For more information see Cardoso de Bethencourt 98-109.

naturalists. The former said that it was comprised of natural law plus the voluntary law of nations, while the latter said that it was natural law alone" (Neff 181). This attests to the problem that Martti Koskenniemi raises "Traditional histories are terribly Eurocentric. European locations such as Munster and Osnabruck (Westphalia), Utrecht and Vienna, the Hague, Paris and Geneva, are central to the historiography of the field, places where we international lawyers find ourselves constantly even today" ("Histories of International Law" 222).

To this date, no legal historian has produced a historical account of Jewish actors participating in a global network such as the *Nação*. No one has thought that perhaps the "School of *Eẓ Ḥaim*" in Amsterdam has something to contribute to the history of international legal thought. Anthony Anghie challenges the very same axiomatic framework that Koskenniemi brings to the surface "there is only one means of relating the history of the non-European world: it is a history of the incorporation of the peoples of Africa, Asia, the Americas and the Pacific into an international law which is explicitly European, and yet, universal" (6, 15). Legal historian Assaf Likhovski asserts that the study of the history of legal consciousness calls for more attention from scholars of Jewish law (Likhovski 260).

Jews have not been invited to the discussion table simply because they were not considered to be *real* Europeans, but resident-foreigners. An overwhelming and important dimension of *Nação legal consciousness* deals with the Jewish attitudes concerning slavery and slave trade, within Europe and her colonies, featuring rabbis, philosophers, and merchants who participated in the Atlantic slave trade as the "other within." *Nação legal consciousness* as a concept, seeks to contribute to the goal of including *Nação* rabbis, philosophers, and merchants, who influenced public policy in seventeenth century Amsterdam as private actors in international

trade. Overall, they played a fundamental and significant role in the reworking of the law of nations and nature in the seventeenth century Amsterdam context.

Why another history of slavery and slave trade? Most scholars who have discussed the topic of slavery and slave trade have done so within the context of imperialism or through the lens of social theory.[8] Few legal historians have researched the political and legal history of the early modern debate on slavery and slave trade.

The legal conceptions of *ius naturae et gentium* sanctioned by the European powers at play in the early modern time period were crucial in the shaping of systemic enslavement of humans. By way of a loose observation based on practice, historian Sally Hadden states "enslaving humans was legal throughout the western hemisphere in the early modern period, sanctioned by every major legal system in operation there" (Hadden 253). She asserts that natural law and *just war* theories were amalgamated in order to build arguments in order to legitimize the enslavement of bondsmen (34). In point of fact, *Nação legal consciousness* attests to the amalgamation of Jewish law, Iberian scholasticism and humanism, Christian theology, and Greco-Roman law and philosophy.

Anthony Russell-Wood (1940–2010) put forward that "black" slavery compelled the Portuguese to reassess values such as *just war* and honor. Such values had previously gone unchallenged (Russell-Wood 22). *Nação legal consciousness* brings to the forefront these assessments *just war* and honor, and those of *Nação* jurists and thinkers. In his *Justice Among Nations* (2014), Stephen Neff highlights the permission granted to King Henry of Portugal by

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[8] See Davis, "The Problem of Slavery in Western Culture"; Brewer. "Slavery, Sovereignty, and "Inheritable Blood"": Reconsidering John Locke and the Origins of American Slavery"; Russell-Wood, "Iberian Expansion and the Issue of Black Slavery: Changing Portuguese Attitudes, 1440-1770."

Pope Nicholas V. The king of Portugal was given the right to "invade, search out, capture, vanquish, and subdue all Saracens and pagans whatsoever, and other enemies of Christ wheresoever placed . . . and to reduce their persons to perpetual slavery" (Neff 109). Thus, politics, law, and religion worked in unison to promote the expansion of Christendom. *Nação legal consciousness* tells of the plight of an exiled community with plentiful resources, in search of religious freedom and freedom of trade.

Anne-Charlotte Martineau criticizes sharply the corruption of the international arbitration system set up by the Spanish in the colonies to settle legal disputes pertaining to the transatlantic slave trade. The business of chattel slavery required the establishment of tribunals to settle disputes and claims of property between merchants. Essentially she argues that the "neutrality" of the arbitration system is what normalized the slave trade. She claims that the judges-conservators "worked within the system," and did not question the "legitimacy nor the legality of slavery." This *system* refers to the relations between states and private investors from the sixteenth to eighteenth centuries which was established to regulate *asiento* [legal permission granted by the Spanish crown to sell slaves within the Spanish territories of the *New World*] contracts between the Iberian powers and investors in the Spanish colonies. *Nação legal consciousness* brings to the foreground how the *asientos* were controlled by *Nação* merchants through ties of kinship and religion. Indeed, by bringing this history to the forefront, she critiques how "legal rules and institutions are often created to advance the purposes of ambitious men who have made possible and perpetuated some of the worst injustices" (238). The judges who sat on the dispute settlement cases were not only appointed by the *asientistas*, but were also paid by

them. In short, this arbitration system was prone to bribery and corruption. The Atlantic slave trade could have not been systematized without this crucial institution.

Theologians and travelers contributed immensely to the formation of the moral consciousness of *white* Europeans toward *blacks* and *mulattos*. Legal scholar Liliana Obregón argues "For many centuries, Europeans believed (legally and morally/religiously) that people of color could be bought and sold or their land and labor appropriated and exploited" (598). Professor of Hebrew Bible and History of Interpretation, David H. Aaron points out that the Oxford Companion to the Hebrew Bible states, "Because some of Ham's descendants, notably Cush, are black (see Gen. 10.6-14), the 'curse of Ham' has been interpreted as black (Negroid) skin color and features in order to legitimate slavery and oppression of people of African origin" (723). At the heart of *Nação legal consciousness* lies the theological notion, the "Curse of *Ḥam*" myth, which will be explained fully in Chapter 3.

As private actors, *Nação* slave traders stimulated the economy of trade. Their activities challenged the legal conventions which had been established prior to the sixteenth century. Eric Wilson asserts "private actors exercise decisive structural power over national politics and economics. The outcome is a radical iterability between public and private sovereignty [*dominium*], both sectors perpetually interfering in the *internal operations* of the other" (222). Thus, *Nação* rabbis, thinkers, and merchants intervened with Dutch politics and law in the early modern time period.

Barely any attention has been given to the contributions of the Sephardim to the legal consciousness among the seventeenth century Dutch Republic debate on slavery and slave trade.

In examining the ways in which Sephardic thought and *halakhah* have influenced the conception of the law of nations and nature within the debate, in support of powerful institutions, I invite scholars of various fields to revisit the slavery and slave trade discourse from a different perspective. By no means do I pretend to present the only factual account of this history, but another lens to analyze the data available to us.

1.3 Claims and Arguments

This thesis claims that the *Nação* in seventeenth-century Amsterdam participated in and contributed to the thinking, reasoning, and arguing about slavery and the slave trade, via the language, concepts, and notions of the time, which was dominated by the language of *ius naturae et gentium.* The majority of the faculty and students at the Salamanca School were from the *Converso*-class (Gilman 342). Ex-*conversos* in seventeenth-century Amsterdam were "indebted to Late Scholastic methodologies" (Miert et al. 217). As Jesuits, a significant number of them studied under Francisco Suárez. This is evident in examining the legal reasoning and language within the philosophical and polemical writings of the seventeenth-century *Nação* in Amsterdam.

Therefore, I will argue that *conversos* synthesized linguistic and legal conventions from the Salamanca School with *halakhic* [Pertaining to practical Jewish law] notions of Jewish slavery law within a humanist context in the Dutch Republic. The product thereof is visible in their intra-communal and extra-communal interactions on slavery and slave trade. Arguably, it relates to the seventeenth-century local-urban and national-republican discussions quite easily, since Dutch jurists and political thinkers study Iberian or "late" scholastic and humanist writers as well (These matters are discussed in detail in chapter 4).

Why a focus on the slavery and slave trade debate from a Jewish standpoint? During the Dutch Atlantic Slave Trade, the *Nação* developed its own legal and linguistic notions, drawing on Iberian, Roman, and Jewish sources. Rabbis and philosophers of the seventeenth-century *Nação* in Amsterdam produce justifications for the Jewish community and also before the Dutch authorities, in order to legitimize their activity in the Atlantic slave trade. I will argue that they accomplish their task through a two-fold process.

First, some rabbis construct rabbinic *responsa* that put in force the Talmudic notion of "Canaanite Slavery"i.e. postbiblical slavery. By utilizing specific rabbinic rulings on this issue, *Nação* jurists throughout the global Sephardic network managed to circumvent the Talmudic obligation of manumitting their slaves, so that Jewish plantation owners can use the majority of their slaves in the production of sugar, while manumitting a limited number of female domestic slaves to provide wives for Jewish colonists. While the rabbis knew the Hebrew and Aramaic *halakhic* sources, the majority of *conversos* who reverted to the open practice of the Jewish tradition in Amsterdam, spoke only Spanish and Portuguese. Thus, *Nação* rabbis and scholars prepared Spanish and Portuguese biblical commentaries, infusing their *halakhic* justifications for slavery therein.

Through the deliberate use of language, these rabbinic scholars managed to create two distinct categories of unpaid workers, namely, the *servo de Israel* [servant of Israel] and the *escravo* [slave]. While the former achieved emancipation through manumission and integration into the Jewish community, the latter was perpetually enslaved. The *escravo* was used by the Jewish community in order to perform duties that are prohibited for Jews on the Sabbath and

holidays. In validating the use of the *escravo* for certain duties, the *Nação* perpetuated its Iberian attitudes of *hidalgura,* i.e. Iberian attitudes of eliteness.

At the core of the seventeenth-century Jewish experience was the belief that the Messianic Age was at hand. In order to harbor this era, the worldwide Jewish community sent financial support to the feeble community in Jerusalem. The *Nação* contributed to this notion and to the community with their slave trading and sugar cane profits in the form of a communal tax throughout the Western Sephardic diaspora.

In order to maneuver themselves with ease in and out of Amsterdam as slaveholders, *Nação* lawyers translated their *halakhic* notions into the legal discursive context of the time—war and trade. Thus, twelfth-century Renaissance legal notions which had been rediscovered concerning *ius naturae et gentium* were synthesized with contemporary rabbinic discourse on slavery, and explained in rediscovered Roman legal language to justify the practice of slavery and slave trading (See Tierney, "The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625"). In the early modern period, Aristotle's *natural slavery* theory became more popular among humanist thinkers (Tuck 42). The discovery of new territories led European jurists to find ways to link all humans under a universal law, i.e. the law of nations. This led to numerous debates among scholastics and humanists on the relationship of the natural law with the law of nations.

Political historian Annabel Brett holds that medieval and Renaissance jurists had called Natural right [*ius naturale*] "primary right of nations" [primary *ius gentium*], being "immutable and is observed by human beings out of their natural justice" (Brett, "Natural Right and Civil Community" 35). The use of the natural law-primary law of nations convention caused much

confusion. Some jurists debated the nature of natural reason and the aspects of human nature which were and were not shared with animals. Furthermore, Brett puts forward:

> The heritage of medieval law and theology had been, broadly, to accept Ulpian's definition of the *ius naturale* and therefore to keep the *ius gentium* as a distinct species of law between natural and civil. Bartolus had also accepted Ulpian's definition of natural law and had solved the problem of the *ius gentium* by dividing it into two, thus yielding a quadripartite division of the field of *ius*: natural law, the primary law of nations, the secondary law of nations, and civil law…The rejection of Ulpian's natural *ius* in the sixteenth century called the whole story into question, as both lawyers and theologians turned directly from the critique of Ulpian to ask about the nature of the *ius gentium*. (Annabel Brett, "Changes of State" 76).

Indeed, by the end of the sixteenth century, some jurists equated *ius gentium* with *ius naturale.* Brett calls this the *naturalization* of the law of nations (82). Legal scholar Peter Haggenmacher calls the same phenomenon the *naturalized* law of nations (Haggenmacher, "Grotius et la doctrine de la Guerre Just" 344). This convention supposes that all human legislations are customs which have a natural and universal character. Thus, whenever I refer to this convention, I call it the *naturalized law of nations* or the *natural law of nations.*

The fusion between "School of Salamanca" and *halakhah* [Jewish law] stimulated humanist legal thought, leading to the development of a Jewish *naturalized* law of nations [In the form of the Seven Noahide laws]. They did so through the writing of philosophical and

polemical literature in Spanish and Portuguese. Simultaneously, *Nação* merchants argued and made claims before Dutch authorities, while sharing their ideas with Dutch theologians and jurists. Hence, the amalgamation of *halakhic* reasoning and Roman law and Salamanca School jurisprudence at the *Ez Ḥaim* Seminary, produced an array of justifications for the Portuguese Jewish community in Amsterdam. In turn, this amalgamation also contributed to the overall moral, legal, and political debate on slavery and slave trade in the seventeenth-century Dutch Republic. Ultimately, the *Nação* contributed to the overall development of international legal thought beyond its community. This ideological syncretism is what I call *Nação legal consciousness.*

Nação legal consciousness encompasses the philosophy of law and legal practices of the Spanish-Portuguese Jewish Nation. It involves the intra-communal and extra-communal discussions of the Sephardim in seventeenth-century Amsterdam to legitimize slavery and slave trade, with a particular focus on how their jurists and philosophers conceived of and mobilized *ius naturae et gentium.* This study will highlight the legal consciousness of the *Nação* within the overall European international legal discourse at the time, concerning slavery and slave trade.

1.4 Methods and Justifications

I have opted to use the Portuguese term *Nação* throughout this research, being that the term includes Iberian Jews which did not succumb to force conversions, and those Jews that did, i.e. a *converso* or a descendant of *conversos*. Sometimes the *Old Christians* would refer to them as *gente da Nação hebrea* [The people of the Hebrew Nation]. On rare occasions a *converso* gave testimony before the inquisitors referring to their clan as *todas as pessoas da Nação dos*

cristãos novos [all the persons from the Nation of New Christians]. The Amsterdam Portuguese Jews forged a group identity that included forced conversions, assimilation, rejection, stigmatization, and inquisitorial persecution (Bodian 147). Even though the Portuguese *conversos* were called *a gente da Nação hebrea* by the outsiders of their clan, they adopted it with pride and made it a legacy unto itself.

I utilize the term "*other within*" to distinguish and confirm the reader in the first use which I briefly introduced above. In the medieval and early modern Iberian context it refers exclusively to *conversos*, who were betwixt and between Jewish and Spanish Catholic culture. In the Dutch context, the *other within* refers mainly to those *conversos* who reverted to the open practice of the Jewish tradition, but also includes *conversos* which traveled between Spain and the Netherlands, without coming out as public Jews. They were also integral to the *Nação*. Although the *converso* is outwardly Christian, he is still a Jew as per *halakhah*. Thus, the *Nação* includes those who are living as open Jews outside of the Iberian peninsula and those who still are linked by kinship and heritage to those who have.

When dealing with the history of the Trans Atlantic Slave Trade, it is almost impossible to not deal with the skin color of the African slaves. Historians must be very careful in understanding how the terms "black" and "white" are used within their respective contexts. For example, in the sixteenth and seventeenth century, many of the dark-skinned Eurafricans in the Upper Guinea who were not subject to enslavement, were either called "Portuguese" or "white" (Silva Horta and Mark 18). Also, during the same period, membership to the *Nação* was not determined by one's physical appearance, and the appellation of "white" was assigned to wealthy traders, regardless of their skin color (Silva Horta and Mark 54). The issue of skin color

only became polemical within the context of the seventeenth and eighteenth-century Dutch Republic theological debates on the "Curse of *Ḥam*." Indeed, skin color was not an issue within the communities of the *Nação*, especially because some plantation owners in the colonies were descendants of a Portuguese father and a manumitted sub-Saharan mother.

Interestingly, some European *chusos* [a term used by the *Nação* for non-Jews] described members of the *Nação* as being "black." This "blackness" was not a physical description, rather a pejorative term ascribed to Jews because of their ethnoreligious identity, thereby assigning them a lower social status within a predominant Christian context (Schorsch 246). Francisco Bethencourt raises the question, "How is it that the same person can be considered black in the United States, colored in the Caribbean or South Africa, and white in Brazil?" (1-2) For the purpose of this thesis which relates to a particular time period, I will use the Spanish terms *negro* or *mulatto* to describe how the members of the *Nação* depicted the physical appearance of African slaves, and "black" for how the Dutchmen described the very same. Furthermore, I have opted to not use the term "racism" within this study because it would be anachronistic to do so.

Accordingly, whenever I refer to the skin color of the protagonists in this research, I use "black" or "white" in italics, since the use of these terms denotes a social-construct. In reality, there is no such thing as "blackness" nor "whiteness."[9] One should be aware that in many early modern sources, Jews are described as *black,* but not in the way that it is used now in many countries where the Atlantic slave trade affected the local culture. At some point, being *black* referred to eye and hair color, or even more, an ascribed position of social inferiority.

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[9] Contemporary genetics studies have demonstrated that skin color represents less than 1 percent of human DNA (Byard 123).

Likhovski identifies eight recent trends in the study of the intellectual history of law and asks whether these developments also exist within the study of Jewish law (Likhovski 227). He explains that in the last twenty years, legal historians have shown interest in "expanding the spatial frameworks used to study the past" (231). In moving away from the history of national legal systems, legal historians have shifted to studies that "examine the influence of legal thinkers belonging to one legal system on the thought of legal thinkers belonging to another system" (233). Within the spatial framework, some recent scholarship explores the contribution of non-western legal thinkers on the history of modern law and modern legal thought.

Nação legal consciousness assumes the spatial framework of the intellectual history of ideas. As such, this study rejects the idea of a single organic entity called "Jewish law." Even though the *Nação* actors within this research reside in the Western European context, they are considered to be "outsiders" by their hosts. The framework that I take on here focuses on non-Ashkenazi [Jews from Central and Eastern Europe] thinkers in the early modern world. Accordingly, the *Nação* actors herein are Mediterranean, Iberian, Jewish, and liminal in their identities at times. In contrast to the unitary idea of "Jewish law," the intellectual history of Jewish law presented herein exemplifies how Jewish legal thought is linked by various cultural contexts in which it existed.

In order to answer the relevant questions of this research project and sustain the claims identified in the previous section, I utilize the Cambridge School method of intellectual history and political thought, as developed by Quentin Skinner (Skinner, "Visions of Politics" 86-7). This task will entail producing micro-historical accounts of the actors that I have chosen, and

contextualize the use of the notions that they mobilized. If one were able to interview deceased subjects or survey their thoughts, historians would have an easier task. Essentially, this is what the ethnographer intends when performing fieldwork, i.e. understanding the subjects through their own eyes. Since this is not possible, historians do their very best in deciphering intended meanings of written records.

Skinner approaches an idea through its use within a debate or discourse. He analyzes the speech acts used within the texts that espouse the idea. In linguistics and the philosophy of language, a speech act is an utterance that has a performative function in language and communication. There are many types of speech acts. Some are declarative, e.g., "We find the defendant guilty"; representative, e.g., "It was a warm sunny day"; expressive, e.g., "I'm really sorry!"; directives, e.g., "Don't touch that!'; commissive, e.g. "I'll be back." In addition, there are special terms which describe and normatively evaluate behavior. Skinner calls the ideas "evaluative-descriptive" terms (Skinner, "Visions of Politics" 148). They do not only describe individual actions, but also evaluate them. One can commend and approve or condemn and criticize whatever actions they are employed to describe. The scrutiny of the speech acts and evaluative-descriptive terms used within a text allows the historian to understand the intended purpose of the author.

Skinner argues that history is the history of the uses of the terminology. Words change in meaning over time and in different contexts. Consider the words "freedom," "justice" and "virtue," or *black* and *white*. If one is to try to define them in the English language, one would see that before the nineteenth century, they have different meanings from how they are used today, notwithstanding their Greek and Latin counterparts. Ludwig Wittgenstein calls this the

"language game," how words are used within specific political and cultural contexts (Wittgenstein xxxix). Finally, Skinner asserts that the rival meanings create the debate.

The Cambridge School method requires one to identify the issue at stake. Then one looks at the texts written around the target issue. Herein, one identifies the differences and similarities of the terms and concepts involved. At this point, one identifies the linguistic debate between the different authors' use of a term or idea. The next task is to reconstruct the context of the debate. This is when the analyses of the speech acts become important, since the performative acts are directly intertwined.

Legal scholars assume three standpoints when writing legal history: history for history's sake, i.e., history without theory; history for the sake of critique, i.e., history as theory; history for self-knowledge and an enlarged sense of possibility, i.e., history and theory (Koskenniemi, "Histories of International Law" 215-40).[10] These three approaches to the history of international law entail doing history for different purposes. Doing history for history's sake supposes an objective depiction as a model for handling former thought. Some international legal historians justify this position, arguing that doing history should not have an interest for contemporary purposes. Next, doing history for the sake of critique approach the history of international law in order to deconstruct ideas upheld as truths and accepted premises. Finally, doing history for the sake of the history and theory of international law, the legal scholar starts by producing a historical narrative and then question contemporary international law and legal thinking to propose other possibilities. This approach demonstrates that givens are constructed. Overall,

[10] For a comparison of approaches, see Orford, "The Past as Law or History?"; Benton 7); Arvidsson and McKenna 37–56; Nijman, "Situating Contingency in International Law" 7 –18.

independent of one's purposes in doing history, it creates a crucial space that enables scholars to communicate ideas between past and present international legal thought.

Being that Skinner's approach to history is heavily focused on the minutiae of language and contextualization of ideas, there is an inherent limitation to his method. Martti Koskenniemi raises the issue of scope and scale in writing history ("Histories of International Law" 232). The macro-historian focuses on global impacts of history, whereas, the micro-historian hones in on the archives, details, and contextual aspects of history. In this latter case, the challenge is to ascribe global meaning to the fine details of specific events. Also, Koskenniemi puts forward that all significant history must have some form of relevance to contemporary readers ("Imagining the Rule of Law" 20).

Anne Orford tackles this challenge through deliberate anachronism as a means to link the past to the present ("International Law and the Limits of History" 1-12). She argues that lawyers tend to push away from legal history in order to "reject natural law and any kind of theological account as the foundation for the discipline, and perhaps also to reject any sense of responsibility for the imperial past" (Kemmerer 4). Therefore, she utilizes contemporary language and notions and superimposes them on past events to unsettle a hegemonic discourse.

In implementing the Cambridge School method, I will produce a historical account for the sake of history of international legal thought. By no means do I pretend to encompass all of the details and meanings of the early modern Dutch slave trade. I will limit myself to the archives and pieces of information necessary to reconstruct historical narratives which will be useful to establish and defend my arguments.

This research project incorporates an interdisciplinary and innovative approach in combining various disciplines and research methods: archival research, legal anthropology, case-studies analysis, rabbinic legal analysis, intellectual history, politics, Christian theology, and urban governance. By adopting the Cambridge School method of intellectual history, I construct micro-historical narratives that highlight the doctrinal and material contributions of the *Nação* in relationship to the legal and political understanding and practices of the Dutch Republic in East and West Indies slave trade.

This method is vital to this study because it allows me to follow challenges to the conventions and analyze the changes in the legal debates. The study at hand highlights Jewish legal notions, Roman legal notions, Iberian legal and theological notions, and Dutch legal and theological notions. The Skinnerian method will be used to follow closely the legal debate on *ius naturae et gentium*, and how the terms *dominium*, *libertas*, and *servitus* are used to the debate. This will allow me to reconstruct the context in which the *Nação* conducted international trade.

To sustain my claim and arguments I need to consult various sources: those contained within the *Ets Haim/Livraria Montezinos* and the *Bibliotheca Rosenthaliana,* the Hague and Amsterdam municipal archives, the States General resolutions and minutes, prayer books, sermons, rabbinic *responsa*, biblical commentaries, and the *Talmud Torah* community minutes, *Las Siete Partidas* and *Ordenações Alfonsinas, Manuelinas e Filipinas,* the rabbinic *responsa* from the Portuguese Jewish community in Amsterdam, and relevant literature at the Peace Palace and the *Koninklijke Bibliotheek* in the Hague, and the University of Amsterdam library, on international legal scholarship. Ultimately, I use the combination of these resources to understand

how the *Nação* uses and conceives of the law of nations and nature via their slave trading endeavors.

1.5 The Roadmap

I will substantiate my arguments and claims through an analysis of language, ideas, natural law language, Greco-Roman, and Jewish legal notions. Chapter 2 presents a macro-historical account of the *Nação*. Therein, one learns how the *Nação* became the "other within" Iberian society and the Dutch Republic*,* how the actors utilized their liminal identity to their advantage and established the "School of *Ez̤ Ḥaim*" in Amsterdam. In chapter 3 I contextualize the idea of the biblical "Curse of *Ḥam*" to examine how Sephardic exegetes and Dutch theologians came to identify *Ḥam* with Sub-Saharan Africans. Chapter 4 discusses the Iberian political-legal context in the fifteenth and sixteenth centuries, concerning slavery and slave trade. This entails an ideological analysis of Iberian slave codes and how Moor and *servo* shifted to *negro* and *escravo.* This chapter demonstrates how the *imago Dei* doctrine was limited in its scope, so that *black* Africans could be enslaved. Therein the reader gains insight of the fifteenth and sixteenth-century Iberian legal consciousness, i.e., the conceptions of *ius naturae et gentium,* and how slavery and slave trade in the West and East Indies intervened. Chapter 5 explores the Dutch Republic and Amsterdam thinking on slavery and slave trading. Its aim is to situate the *Nação* within the Dutch Republic debate on the law of nations and nature. This chapter reconstructs the legal debate surrounding slavery and slave trade, for the purpose of understanding how the *Nação* intervenes within the dimensions of legal and theological thought. It discusses how the idea of the "free soil" tradition informed public policy in the Netherlands,

yet did not prevent slave trade. Then, it continues to discuss the debate between the Cocceains [Moderate Calvinist pro-slavery group and followers of Johannes Cocceius (1603–1669)] and Voetians [Orthodox Calvinist anti-slavery group and followers of Gisbertus Voetius (1589–1676)] on the slave trading activities of the VOC and WIC. The theological linguistic conventions within the Cocceian-Voetian discourse examined are: "thou shalt not steal," "Hebrew and Canaanite slavery," "The Curse of *Ḥam,*"[11] *"Just war,*" "*Regnum Dei*" [God's Kingdom], and "Paying for sins of the parents," through the sermons and letters of the participants in the debate. The Cocceian-Voetian debate brings the theological arguments of pro-slavery and anti-slavery Dutch theologians to the surface. Finally, it highlights the legal notions on slavery within the Dutch context. Chapter 6 deals with the intra-communal discussions and justifications for slavery and slave trading of the *Nação* in Amsterdam. This will include a linguistic analysis of the terms *siervo/servo and esclavo/escravo* in the Bible and rabbinic works. Next, it highlights how *Nação* jurists constructed their *responsa* in order to justify the enslavement of dark-skinned African peoples in the Atlantic slave trade. This chapter also includes a discussion on the Sephardic attitudes of *hidalgura* and messianism. The *Nação*'s noble lifestyle inherited from Iberia, contributed immensely to their desire for slaves. Also, at the time when the *Nação* was active in the practice of slavery and slave trade, the Jewish world was preparing itself to usher in the Jewish *Messianic Era.* Accordingly, their economic pursuits and efforts were also motivated by this belief. Chapter 7 details how *Nação legal consciousness* coalesced and emerged within seventeenth-century Amsterdam context. This chapter includes notions of *just war*, law of nations and nature, and slavery in the writings of the *Nação* rabbinic

[11] See Aaron 721-759 and Braude 103-142. This will be discussed extensively in Chapter 3.

scholars and thinkers. This chapter highlights various cases where *Nação* slave owners interact with Amsterdam's political authorities. The final chapter concludes with a discussion on how the *Nação* contributed to the Dutch Republic legal-political debate on slavery and slave trade in the seventeenth century and how its participation in the debate grants agency to the peripheral actors of Portuguese Jewish Nation.

The sum of the matter is that I have a two-fold aim. In challenging preconceived historical and geographical standpoints of the contemporary international legal discourse in regards to the early modern European consciousness, vis-à-vis slavery and slave trade, I afford the *Nação* visibility within this discourse. The inclusion is not celebratory, but to offer a critique. While global histories of legal theory commence with philosophical traditions emerging from the Stoics, the Romans, and the Spanish scholastics, I will assume the lens of the Torah, the Hebrew Prophets, the Talmudic jurists, climaxing with *Nação* lawyers and philosophers. *Nação legal consciousness* is my effort to make room for Jews in the development and history of international legal thought.

2.

The Birth of the *Nação*

"Liminal entities are neither here nor there; they are betwixt and between the positions assigned and arrayed by law, custom, convention, and ceremonial."

(Turner 95)

The Other Within—The Four Classes of Conversos—The Jewish Expulsion From Spain—The Forced Conversion in Portugal—The Conversos in the Salamanca School—The Port Jews—The Nação in Amsterdam

2.1 Introduction[1]

At the turn of the seventeenth century, a new community with a powerful global network arrives to Amsterdam from Southern Europe and the Ottoman Empire. Part of their lifestyles necessitates slaves (discussed at length in Chapter 6), but the Amsterdam city authorities render the practice of slavery illegal (Chapter 5). The community develops legal innovations during a time when legal conventions of natural law and law of nations are taking form (Chapter 4). In order to understand how they accomplish this, one must explore and analyze the different elements and the use of *ius gentium et naturae*, *dominium*, *servitus*, and *libertas* in relation to or within the bodies of law or thought mentioned hereafter: Jewish law, Dutch Roman law, Catholic theological notions, and Jewish philosophy (discussed in Chapter 4, 5 & 6). The aim of this chapter is to introduce the protagonists of this research. Without this background, it is not possible to understand where their contributions stem from.

Before I delve into the legal consciousness of the *Nação,* I will discuss briefly the pre-seventeenth-century Amsterdam history of how the *Nação* came to be. I will offer a macroscopic historical account of the Sephardim in the Iberian Peninsula from the *Reconquista* to their

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[1] This chapter contains some information from my article Spanish and Portuguese conversas: A model for Sephardic Jewry under the Ashkenazic hegemony. *Journal of Student Research*, 1.1 (2015): 25-35, reproduced here with permission. I gratefully acknowledge the publisher Journal of Student Research for providing me the venue to publish some of the content that appears in this project."

expulsion. This will be necessary in order to understand how they acquired so many crucial skills in commerce and forged political ties between the Old and New Worlds. I will describe how the conversion to Catholicism of some of the Sephardim afforded the *Nação* an advantage in international trade. Overall, an analysis of their trade network, their culture, and intellectual tradition will serve as the basis for understanding *Nação legal consciousness*.

2.2 The *Other Within*

As indigenous and *Other,* i.e. the native Other, the Jews' status afforded them high ranks within Christian Spain. According to Yirmiyahu Yovel, "the Jews were more dependable than their Spanish peers in doing the Crown's work because, as members of an irremediably stained group, they did not have sufficient political legitimacy to contend for real power" (Yovel 33). Essentially, their illegitimacy allowed them to attain high office and flourish in Spain. Thus, they lived inside the city, yet separated from it. The tension between alienation and acceptance played in their favor. Thus, they were resented and tolerated simultaneously.

In the fourteenth century, Spanish Jews suffered harsh decrees and forced conversions to Christianity, under the penalty of death. The clergy became jealous of the wealthy Jews' positions within the Kingdoms of Castile, Aragon, and Valencia (*ibid*). The Jews' money business gained them prestige and influence. For many generations, Jews transmitted Arab knowledge and civilization to Christian Spain, maintaining a mixed cultural identity; they preserved their Arabic names, language, and other aspects of Arab culture (Yovel 31). Also, they held vital skills to rebuild Christian Spain. Their greatest trait was their loyalty to the Crown.

With the rise of anti-Jewish sentiments, many Jews from Castile and Aragon emigrated. In 1360, Henry II of Castile executed all of the Jews of Najera. The centers of Jewish scholarship in Villadiego and Aguilar were utterly destroyed. In Valladolid, the synagogues and Jews' homes were pillaged by sympathizers of Henry II, leaving their Torah scrolls in shreds. The Jewish communities of Paredes and Palencia suffered the same doom. In Jaén, 300 Jewish families were taken captive and sold as slaves to the Moors in the Kingdom of Granada (De los Ríos cit., t. II, doc. VIII). Overall, Spanish Jewry suffered greatly throughout the various Christian kingdoms.

In 1391, the archdeacon of Ecija, Ferrand Martínez became inflamed by the conduct of the young King, Henry III. Martínez accused the Jews of injuring the state through usuries and commerce (Mocatta 17). He went out to the streets of Seville preaching hatred against the "Children of Israel." Initially, the Christian residents paid no attention to him, but after thinking that their silence had favored the Jews, they began to harass them at their residences. Ferrand Martínez argued that it was a "Christian duty to convert all of the synagogues to churches and to settle the Jewish quarters" (Elazar-DeMota, "Spanish and Portuguese conversas" 28). His inflammatory speech resulted in riots breaking out in throughout Aragon, Castile, Catalonia, Extremadura, and Andalusia (*ibid*).

Many Jews gave up their lives as martyrs, including the rabbinic family of Asher b. Yeḥiel. In fact, "most of the Jews in Madrid were either killed or baptized" (*ibid*). Some of the Jews of Burgos were also baptized, and a whole quarter inhabited by *conversos* emerged (Baer 99). Those Jews who had not converted had to hide themselves within their homes, lest they suffer being mobbed. On the sixth of June of 1391, four thousand Jews in Seville perished by the hands of Christian mobs. Two of the synagogues in Seville became parochial churches—Santa

Cruz and Santa Maria la Blanca (Lindo 174). The Jews of Palma de Majorca met the same fate at that time. About a year later on August 5, the *juderías* [Jewish quarters] of Cordova, Toledo, Burgos, and Valencia were also plundered (Baer 99). In Valencia, eleven thousand Jews received baptism to save their lives. Over two-hundred thousand Jews were baptized in the Kingdoms of Castile and Aragon (Wolff, "The 1391 Pogrom in Spain" 6). Many of the Jews that stood firm to the faith of their ancestors left for Algiers (Baer 359).

The rabbinic scholar and jurist, José Faur (1934 – 2020), noted that there were four classes of *conversos* in Spain between the fourteenth and fifteenth centuries: those who wanted to be Christians and to have no contacts with other Jews; those who wished to remain Jews and were willing to pay a high price to do so; those who wanted to have Jewish and Christian identities simultaneously; and those who wanted neither (Elazar-DeMota, "An Ethnography" 83; Faur 117). Those that did not want to remain in contact with other Jews felt that way because they were tired of being persecuted as Jews (*ibid*; Faur 118). Those that kept practicing the Jewish faith did so because they felt that the Jewish People were being punished due to their backsliding from the Law, and hoped for the final redemption. For them, Christianity was a means to escape violence. The third class of *Conversos* was comprised of sincere Christians that kept Jewish traits. Their education and status allowed them to contribute to the Christian society, while retaining their Jewish characteristics. Among the fourth class of *Conversos* were the skeptics—irreligious as Jews before the conversion, and unbelieving as Christians (*ibid*; Faur 122).

Those *conversos* of the second and third classes became subject to harassment from both the Old and New Christians. In *Conversos, Inquisition, and the Expulsion of the Jews from Spain*

(1995), Norman Roth states "The strong animosity against *conversos* erupted only in the fifteenth century, and then only in Castile, at least at first. The hostility began to emerge also in Aragón and Catalonia, but only toward the end of the century." This hostility resulted in widespread rioting against the hated *Converso* class. The motives were chiefly, if not entirely, jealousy over the wealth and power of the c*onversos* (Roth 115). This is mostly because as New Christians, the Jews had access to a new area of power, since the average pious *conversos* became monks and nuns, and the more ambitious became bishops and even archbishops (154). Moreover, the *Converso* community in Andalusia, especially in Seville, was among the largest and wealthiest in Spain. It also contained many a covert Judaizer—a fact that supplied ammunition to the c*onversos*' enemies among the clergy and the burghers (Yovel 155). Yovel asserts, "The Jewish Other, who formerly had confronted Christian society from without, had now become an inner component of that society without losing his otherness either in the eyes of the host society or, often, in his own self-perception. For several centuries, Iberian society proved unable to fully assimilate this internal Other or to evict it" (58). When the forced conversions did not work to get rid of *Jewish heresy*, the Inquisition became the political tool of the monarchy to purify Spain of its traces.

After two decades of trying to remove the *Mosaic heresy* from the *Converso* class in Catholic Spain, the Monarchy decided to expel the Jews of Granada. Andrés Bernáldez (1486), the cardinal of Seville, claimed that the Monarchs were convinced of the "perpetual blindness" of the Jews and their influence on the c*onversos* (Roth, "Conversos, Inquisition, and the Expulsion of the Jews from Spain" 285). Thus, Fernando and Isabella decreed the expulsion of all Jews from their Kingdom, with the exception of those that had converted to Catholicism. The

Alhambra Decree was signed on March 31, declared publicly on May 1, and executed on July 31, 1492, ending overt Jewish life in Spain. According to Jewish and Christian sources, the majority of the exiles, numbering between one-hundred thousand and one-hundred and twenty thousand, emigrated to Portugal (Baer 433).

The Portuguese monarch, King João II permitted the exiles to enter Portugal for a period of 8 months, in exchange for a payment of 8 *cruzados* (equivalent to 3 months of work for an average salaried worker).[2] They could stay there with the native Portuguese Jews for a larger payment (Bodian 18). Failure to meet these conditions yielded in enslavement by the Portuguese Monarchy, i.e. they could be sold as slaves to Christian families (Russell-Wood 21). Once again, Spanish Jews are subjected to enslavement by the Crown.

Though a number of *conversos* and their descendants adhered to the tenets of Christianity, such as Dominican Bishops Francisco de Vitoria (1483 – 1546) (Maryks 70) [Through his maternal lineage he was from the Compludos—a Sephardic family of Burgos], and Bartolomé de las Casas (1484 – 1566) (Castro 190-277), and the Jesuit priest, Francisco Suárez (1548 – 1617) [Sephardic family along the maternal lineage], some of them chose to "secretly keep the flame of their ancestral tradition ablaze" (Bernardini and Flering 208). They attended mass during the day, went to confession, and had their children baptized. However, they met for Jewish rites and ceremonies on certain nights (Kritzler 4). It is these latter ones that received the derogatory label of *Marranos,* henceforth, crypto-Jews. After the Alhambra decree, while a number of the Sephardim migrated to the non-papal states of Italy, North Africa, and the

[2] This calculation was based on the average salary of workers at the end of the fifteenth century in Portugal. The table utilized comes from Antonio Henrique R. de Oliveira Marques. *Daily Life in Portugal in the Late Middle Ages.* University of Wisconsin Press, 1971, 205.

territories of the Ottoman Empire, a great number of crypto-Jews stayed in the Iberian Peninsula. These crypto-Jews became the "other within" the Iberian Catholic societies.

Before escaping Iberia, they had to live a double-lifestyle. Even though they were legally Christians, they were often time repudiated as *cristianos nuevos* [New Christians] because of their *ius sanguinis,* i.e. Jewish blood. Some of them were able to leave Catholic Spain by way of the Kingdom of Navarre, then on to Bayonne and Bordeaux. After Spain and Portugal consolidated their kingdoms in 1580, many Portuguese crypto-Jews resettled in the port cities of Spain. Thereafter, some of them settled in Antwerp and Hamburg. Indeed, a great number of them used aliases in order to continue to go back to the Iberian Peninsula for commercial pursuits.

The Western Sephardim [crypto-Jews and reverted Jews] created a trading network between Portugal, Brazil, and the Netherlands in the sixteenth and seventeenth centuries. The commercial route between Recife and Amsterdam allowed for Portuguese *conversos* to openly practice the Jewish tradition in Brazil. Many of them reverted to the Jewish tradition therein. David Sorkin traces the *conversos* that left the Iberian Peninsula to the Mediterranean port of Livorno and Venice, the Atlantic ports of London, Bordeaux, Hamburg, and Amsterdam, and the New World ports of Suriname, Jamaica, Recife, and New Amsterdam (Sorkin 89). Indeed, many of those who remained in Spain and Portugal were active in commerce at the ports of Lisbon, Porto, Seville, and Valencia (*ibid*). In addition, the Flemish port of Antwerp functioned as an entrepôt and financial center for the port Jews. In fact, the Portuguese *conversos* in Antwerp had excellent ties to the Portuguese monarchy and had practically monopolized the spice trade in the

East Indies (Klooster 131). Ultimately, the Western Sephardim established a trade network, linking the "old Mediterranean routes with the new Atlantic economy" (Sorkin 89).

Some Iberian crypto-Jews traded between Portugal, Morocco, Senegal, and Angola. Their main commodities were gold, ivory, hides, and swords (Antunes and Ribeiro da Silva 14). According to Jonathan Schorsch and Filipa Ribeiro da Silva, the crypto-Jews in Portugal, Antwerp, and Hamburg had been engaging in slave trade and taking slaves from West Africa for personal use in the sixteenth century (Schorsch 70). Wim Klooster maintains that when Spain and Portugal united, Seville was infiltrated with Portuguese *conversos*. This consolidated their strong position in the transatlantic slave trade, since the Spanish Crown held the *asientos* to supply slaves to its American provinces ("Communities of port Jews and their contacts in the Dutch Atlantic World" 131).

In 1560 some Portuguese *conversos* were publicly practicing the Jewish tradition at Rio de São Domingos [northern Guinea-Bissau] (Torrão 122-23). In the seventeenth century, the Sousa brothers—Diogo and Filipe—went from Senegal to Amsterdam to revert to the Jewish tradition (Mark and da Silva Horta 23). Many others followed suit. Upon returning to Senegambia, Diogo Vaz de Sousa established a synagogue therein. At that time, other *Nação* merchants went from Amsterdam to Senegal. Among these traders were Simon Rodrigues Pinhel and Jacob Peregrino. The former had connections to Portugal, Holland, and England, and the latter had ties to Portugal, Holland, and Milan. Cultural historian Peter Mark (2004) posits that the Dutch were motivated to maintain close ties with the *Nação* in Petite Côte because of commerce, since members of the *Nação* had established trading alliances with local rulers (Mark

and da Silva Horta 244). As a matter of fact, Dutch Sephardim utilized their contacts in West Africa to encourage commerce. The *Memoria* of 1612 contains details Sephardic contacts with West Africa. It is a manuscript which combines the eyewitness accounts which took place at the coast of Rio de *São* Domingos, of two different authors. It details the activities of fifteen Jews from Flanders who served the French and the English, trading between Rio de *São* Domingos and Cape Verde. Therein it states:

> Item from the Rio de São Domingos which is much further down [the coast] than Joal, where there is a church called Our lady of Victory and where all the ships of the *registro* go, and in this port [Cacheu] there are a lot of white people and all "*da Nação*" who came from this city [Lisbon] to the above mentioned river [S. Domingos] in "*registro's*" [legal trade] vessels which load there with Blacks for the *Indias* [Spanish Americas] and from there they go to where the aforementioned vessels go and they go to this Coast named Jalofo coast [the Petite Côte] and they go by way of Flanders and they return to the said coast, and from there also depart Jews who came from this city in the ships of the undermentioned people.[3]

The historiographer, José da Silva Horta questions the use of *whiteness* in these records "But who was European? In sixteenth and early seventeenth-century Upper Guinea, many who were considered 'Portuguese' or *white* and who were not subject to enslavement were in fact, dark-

[3] This comes from an anonymous source. *Memoria*, *e relação do resgate que fazem francezes, ingrezes, e framengos na costa de Guiné a saber do rio de Snaga atee Serra* Leoa, cód. 51-VI-54, n. 38, ff. 145-46v.

skinned Eurafricans" (Mark and da Silva Horta 18). Da Silva Horta also maintains "in Senegambia the appellation *white* applied to wealthy traders regardless of their skin color" (54). Furthermore, the aforementioned registry evidences the slave trading activities and routes of the *Nação* in West Africa, before the Dutch became involved in the Atlantic slave trade.

2.3 The *Nação* in the Slave Trade

Slave trading had been going on in Africa since the Arab-Berber trade. After the Muslims sacked Constantinople, Nicholas V (1452) issued the papal bull *Dum Diversas*, allowing the king of Portugal to "subdue Saracens, pagans, and other unbelievers—even to reduce them to perpetual slavery" (Thomas 65). Facing the threat of the Islamization of Europe, pope Calixtus III (1456) vowed to recover Constantinople and reinstate Christendom in the eastern Mediterranean (66). Accordingly, with the authority of the Vatican, the idea of the Spanish and Portuguese *Reconquista* encouraged maritime expansion and "mistakenly equated non-Muslim Africans with Moors" (Orique 87-118).[4]

The Portuguese initiated the Atlantic slave trade by kidnapping and capturing Africans on the coast of Arguin. Prince Henry "the Navigator" had approved of these expeditions. He collected a fifth of the booty therein. Due to the loss of lives on these expeditions, the Portuguese began to buy slaves instead of capturing them. In 1445 under the approval of King Henry, captain João Fernandes stayed on the Bay of Arguin. In a year's time he had acquired invaluable knowledge about markets and had won over the locals. He learned where European goods could be traded for gold and for slaves. The transactions were made through the Muslim merchant,

[4] See also Davis, "The Problem of Slavery in Western Culture", especially chapters 4 and 6.

Ahude Meymam. The merchants living there were called "Moors" by the Portuguese, even though many of them were sub-Saharan Africans. These Muslim merchants sold heathen slaves, being mostly war captives or confiscated through raids. Since African rulers did not have kinship to other kingdoms, they did not care to sell their captives or slaves to other Africans or Europeans. The Portuguese slave trade in Africa represented a continuity of the Arab-Berber slave trade, and not an innovation (Thomas 57-9). The Atlantic slave trade could have never happened without the collaboration of local African merchants and monarchs. The details of these matters will be discussed fully in chapter 4.

Some Portuguese *conversos* engaged in the African slave trade thereafter. They established both clandestine and openly-public communities in Senegal, Angola, Guinea, and on the Atlantic islands. During the course of the sixteenth century, the *Nação* established commercial networks between Lisbon, Seville, Antwerp, London, Brazil, and West Africa. These networks proved later to be vital to the Dutch West India Company in the seventeenth century (discussed at length in Chapter 5).

Already in the sixteenth century, the Portuguese had initiated slave trading markets between the Iberian Peninsula, West Africa, and the Atlantic islands—São Tomé, Madeira, Cape Verdes, Azores, and the Canary Islands.[5] Many *conversos* were prominent in the slave trading markets. Historian Hugh Thomas asserts that the most important Portuguese Jewish slave-trading merchant in the mid-sixteenth century was Fernando Jiménez. Though he was based in Lisbon, he had close ties in Italy and in Antwerp (Thomas 117). The largest contractors in Africa, especially in Angola were Jiménez's descendants.

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[5] For detailed information see Duncan, "Atlantic Islands: Madeira, the Azores and the Cape Verdes in seventeenth-century commerce and navigation."

Following the Jiménez family in wealth was another *converso*, Emanuel Rodrigues, and his family. Essentially, the Cape Verdes' slave trade was dominated by Simón Rodrigues, a close kin of Emanuel. Another *converso,* Manuel Caldeira, reached his commercial peak through slave trading in the early 1560s, becoming the chief treasurer of financial affairs in the Cape Verdes. By the mid-century there were about sixty to seventy slave trading merchants in Lisbon, with the large-scale companies led by *conversos* Damião Fernandes, Luis Mendes, and Pallos Dias (Thomas 117). Furthermore, Fernão Noronha and his descendants became monopolists in the odious trade in its early days along the delta of Niger. Also in Seville the slave trade was dominated by *conversos,* such as Diego Caballero and the Jorge family.

The most remarkable merchants were those that held the *asientos* for sending slaves to the Spanish territories between 1580 and 1640, such as Antônio Fernandes Elvas (1614 – 1622) (Martineau 224). Elvas was connected by blood with almost all the major slave traders of the Spanish-Portuguese empire (299). It is remarkable that so many *conversos* were involved in slave trade, considering the *limpieza de sangre* [purity of blood] decree, which held that New Christians could not travel to the colonies (Martinez 270). These *converso* slave traders were in fact secret Jews (Martineau 458).

The Portuguese War of Independence dramatically impacted the long-distance trade networks. After the partial expulsion of the *conversos* from Antwerp in 1550 and the establishment of the Inquisition in Portugal in 1543, they began arriving to Rotterdam and Amsterdam (Israel, "European Jewry in the Age of Mercantilism" 13). Subsequently, when the Dutch lost Brazil to Portugal in 1653, there was a mass exodus of Sephardim to the Caribbean,

Europe, North America, and other South American territories. The crash of the financial market in Madrid, together with the Inquisition, forced many Sephardim to search for a new place to reside. Thereafter, the war between Venice and Turkey also aggravated trade and threatened life for the Jews. All of these factors forced Sephardim to move from the Ottoman Empire to Amsterdam, from Venice to Amsterdam and the Caribbean, from South America to the Caribbean and back to Amsterdam.

2.4 The *Nação* in Amsterdam

The Sephardim began arriving to Amsterdam at the end of the sixteenth century, in the course of the Eighty Years' War. Sometime between 1602 and 1608, they founded *Beth Jacob,* under the leadership of a Thessaloniki rabbinic scholar David Pardo (1591 – 1657). Then *Neveh Shalom,* initially under the spiritual leadership of Judá Vega (b.1550) from Constantinople, then Isaac Uziel of Fez, was established between 1608 and 1612. A third community called *Beth Israel* was founded in 1618. Approximately two-hundred Portuguese Jewish families lived in Amsterdam by 1619 (Roth, "A History of the Marranos" 244). By 1621, the community had reached circa twenty-three hundred people (Mansfeld-Fuks 67).

The first two congregations followed the communal structure of the Sephardic community from Venice. This meant that the community board of seven members [*Mahamad*] stood above the rabbis (59). In fact, when there was a discrepancy between the rabbis and the board members, the latter took precedence (60). The board members were an elite class of merchants who made negotiations with the Amsterdam city authorities on the rights and

privileges of the *Nação* community[6]. The community enjoyed a degree of autonomy to establish ordinances and regulations for itself, as long as it did not conflict with the law of the land. With such influence, they were able to steer the community. After much debate and internal conflicts, the communal leaders of the three congregations united under one roof to form *Kahal Kadosh Talmud Torah Eẓ Ḥaim* in 1639 (Liemburg 70).

David Franco Mendes details the history and organization of Jewish learning at *Talmud Torah Eẓ Ḥaim* in his *Memoria do Establecimento e Progresso dos Judeus Portugueses e Espanhois* (1769) (Fuks-Mansfeld and Teesma 1-171). Saul Levi Mortera, David Pardo, Isaac Aboab da Fonseca, and Menasseh b. Israel were the main rabbinic teachers [*Ḥakhamim*] at the Seminary. Mortera was appointed to teach advanced Talmud and commentaries. Pardo was in charge of the cemetery and the ritual functions of the community. Menasseh was responsible for delivering a monthly sermon. Aboab da Fonseca instructed the students in Hebrew grammar and Talmud and exegesis for beginners.

In addition, there were other teachers [*Rabbanim*] who imparted several other courses. Shelomoh b. Joseph taught a course on the Prophets with commentaries. Abraham Barukh taught the weekly Torah portion in Spanish. Jacob Gomez taught the same, but in Hebrew with the cantillation notes. Joseph Faro taught beginner's level on reading the weekly Torah portion in Hebrew. Mordekhay de Crasto taught the children the Hebrew alphabet and how to join the letters to form words (Fuks-Mansfeld and Teesma 47-8). The Portuguese Jewish community in Amsterdam inherited this educational structure from the Sephardic community of Venice

[6] For more information on negotiations see Julia van der Krieke's doctoral dissertation on the on the evolution of the concept of citizenship arising out of the negotiations for legal recognition and rights of the Sephardic Community in seventeenth-century Amsterdam and other Dutch cities.

(Hyamson Chap. X)[7]. Within one generation, this community became one of the most important in the world; it exported rabbis throughout the Sephardic diaspora (Arbell 15).

Portuguese Jews in the Dutch Republic practically had a monopoly on trade with Portugal, the Portuguese colonies, and a soon major role in the Dutch colonies (Rooden, "Theology, Biblical Scholarship and Rabbinical Studies" 161). Jonathan Israel (1997) argues that Jews handled a large part of the Dutch trade between Holland and the WIC in northeastern Brazil between 1630 and 1654, because of Jews' "indispensable skills and resources" (Israel, "European Jewry in the Age of Mercantilism" 87). Peter van Rooden asserts, "Brazilian sugar trade in the thirties and forties [of the seventeenth century] for example was mainly in the hands of the Jews…which led…to one of the few outbursts of an economically motivated anti-semitism in the Republic" (161).

After the Treaty of The Hague [1641], between the Dutch and the Portuguese, many opportunities were bestowed to the *Nação*. Ribeiro DaSilva notes that after the 1640s, due to the high risks involved with slave trading, the constant altercations between European States for the power of the imperial spaces, and the persistent privateering, several members of the *Nação* in Amsterdam decided to purchase shares of the WIC in the Amsterdam stock exchange, and credit offers to other Jewish merchants based in the Antilles and the Dutch Guianas (Ribeiro da Silva, "Portuguese Sephardi of Amsterdam and the Trade with Western Africa" 12). By that time, the *Nação* had "demographic strength, wealth, and rabbinic stature" to have a political impact (Bodian 51).

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[7] For more detailed information on the similarity between the Amsterdam and Venice Sephardic communities, see Stiefel, "Jewish Sanctuary in the Atlantic World: A Social and Architectural History."

Once established as a merchant community in the Netherlands, the *Nação* challenges public policy in Amsterdam by bringing enslaved Africans there (to de discussed at length in Chapters 6 and 7). Furthermore, Dutch theologians from the Leiden Circle and the Hartlib Circle are influenced by *Nação* rabbis and Sephardic thought, such that they begin to introduce the so-called "Curse of *Ḥam*" myth into their theology. This idea then contributes to the construction of racial difference, which then influences the conception of the law of nations and nature.

3.

The *Curse of Ḥam* Theory in the Ibero-Dutch Context: Sephardic Rabbis and Dutch *Predikanten*

"Three copulated in the ark, and they were all punished—the dog, the raven, and *Ḥam*…*Ḥam* was smitten in his skin."

(b.Sanhedrin 108b).

Origins—The Midrash—Blackness is evil—Jewish apostates—Dutch encounters with Sephardic thought—A new justification

3.1 Introduction

At a time when many European Catholic Christians did not know how to read, the weekly sermon was rendered as divine instruction; the interpretation and the reinvention of Biblical passages often provided moral and theological justifications for irrational beliefs and actions toward others (Cavanaugh 254). An exemplary case was the so-called "Curse of *Ḥam*." From the fifteenth century, it was utilized by Islamic scholars, Christian theologians, and rabbis, in justifying the systematic enslavement of *black* Africans and Asians. International lawyer Liliana Obregón puts forward that by the sixteenth century, "The religious view ("Ham's Curse") that black people were natural slaves and property had produced a racial consciousness that presented Africans and their descendants as inherently unfree" (597-615). The goal of this chapter is to understand how the "Curse of *Ḥam*" contributed to the construction of racial difference that influenced legal consciousness in the seventeenth century. This chapter surveys how this theory developed in North Africa and Iberia, and was then introduced to Dutch theological circles through Sephardic literature and direct contact between Sephardic rabbis and theologians in the "Leiden Circle" and the "Hartlib Circle."

This chapter contextualizes the idea of the biblical *Ḥam* to examine how the Sephardim (before the fifteenth century) and the Dutch (seventeenth century) came to identify *Ḥam* with

sub-Saharan Africans. Indeed, I examine rabbinic texts written between the eleventh and sixteenth centuries, and seventeenth-century Dutch Christian texts. My aim is to substantiate the claim that this theory did not exist in the early seventeenth-century Dutch Christian context, and that Dutch Christian Hebraists appropriated Sephardic thought through rabbinic literature to generate a theological justification for the enslavement of *black* Africans. Ergo, after the mid-seventeenth century, this ideology became widespread within the Netherlands, to the effect that Dutch jurists mobilized pro-slavery arguments under the influence of the "Curse of *Ḥam*" theory. Ultimately, this destructive myth (as an amalgamation between Aristotelian *natural slavery* and Jewish, Christian, and Islamic theology) contributed to the conception of *dominium* and *libertas* in the Iberian sixteenth-century context (Chapter 4) and the seventeenth-century Dutch Republic context (Chapter 5).

The analysis of the "Curse of *Ḥam*" theory begins in section 3.2 with a reconstruction of the biblical story in detail through the eyes of medieval ethnographers. Section 3.3 introduces some medieval Jewish commentators to the discussion to demonstrate how the destructive myth was shaped within Sephardic circles. Section 3.4 details the *Respublica Hebraeorum* tradition and how the Dutch developed political thought through rabbinic literature. Section 3.5 reconstructs the close relationships between Dutch theologians and Sephardic rabbis and how they partnered to publish religious literature for a Protestant Christian audience. Section 3.6 examines when the myth appeared within Dutch theological circles. Section 3.7 discusses how Dutch theologians appropriated the "Curse of *Ḥam*" myth via their direct and indirect contact with Sephardim. This analysis will then set the background for Chapter 4, where legal aspects related to the enslavement of Moors in Iberia are discussed. In turn, the amalgamation between

the Iberian attitudes toward the Moors and the "Curse of *Ḥam*" myth became a basis for slave traders to treat dark-skinned Africans as a subhuman species.

3.2 The Biblical *Ḥam* and Canaan

At the heart of the construction of the "Curse of *Ḥam*" myth lies an interpretation of the Hebrew Bible (See Section 6.2 for a detailed description of the Talmud), which are reflected in Talmudic commentaries In Genesis chapter nine it states:

> *Ḥam*, Canaan's father, saw his father naked and told his two brothers who were outside. Shem and Japheth took a robe, threw it over their shoulders, walked backward, and covered their naked father without looking at him because they turned away. When Noah woke up from his wine, he discovered what his youngest son had done to him. He said, "Cursed be Canaan: the lowest servant he will be for his brothers." He also said, "Bless the Lord, the God of Shem; Canaan will be his servant. May God give space to Japheth; he will live in Shem's tents, and Canaan will be his servant."
> (*Common English Bible*, Gen. 9:22-27).

Since this passage leaves out contextual information, it raises many questions: What did *Ḥam* do to his father Noah? Why was Canaan cursed instead of *Ḥam*? What are the "tents of Shem"? Since the Bible does not answer these questions, it leaves the reader to imagine that *Ḥam* performed some type of illicit sexual act with Noah during his drunkenness.

In the next chapter of Genesis, there is a genealogy of Noah's sons: Shem, *Ḥam*, and Japheth. The sons of *Ḥam* are Kush, Egypt, Put, and Canaan. Kush's sons are Seba, Havilah, Sabtah, Raamah, and Sabteca. The scripture mentions Nimrod, son of Kush, who was a great hunter and ruler of Babel. Next, the descendants of Canaan are said to live in Sodom, Gomorrah, Admah, Zeboiim, and Lasha (*Common English Bible*, Gen. 10:6-20). A superficial analysis leads a reader to make connections between *Ḥam*, the African continent, sexual immorality, and rebelliousness, by juxtaposing the works of *Ḥam*'s descendants [*Common English Bible*, Gen.10] and the narrative at hand [*Common English Bible*, Gen. 9].

The most widely read work on travel between 1350 and 1600 was *The Travels of Sir John Mandeville* (ca. 1350), a supposed English knight in the service of both the Mamluk Sultan of Egypt and the Mongol Great Khan of China, who chronicles his travels to the Holy Land, Egypt, and the Far East (Braude 115). Although many manuscripts are extant in at least ten languages, the Paris Manuscript describes *Ḥam* as heir to Asia, Shem to Africa, and Japheth to Europe. *Ḥam* is considered the father of the Khan and his Mongol followers, Shem the ancestor of the Saracens, and Japheth the ancestor of the Europeans and "the people of Israel" (116). These geographical associations are in stark contrast to how the Bible links the Children of Israel to Shem, and not to Japheth. It was not until the sixteenth century that Jewish Bible commentary associated the sons of Noah to Europe, Asia, and Africa, which means that contact between Western European Jews and West Africans played a significant role in the shaping of Jewish attitudes and biblical interpretation (Schorsch, "The Black Mirror" 55). Most importantly, the *Travels of Sir John Mandeville* renders Europeans and the children of Israel the center of human

history, whereas the Saracens and the Mongols are constructed as the *Other*. Indeed, the world of medieval explorers was shaped by this fanciful chronicle (Braude 116).

Next, a Talmudic passage which discusses the three sons of Noah states "Three copulated in the ark, and they were all punished—the dog, the raven, and *Ḥam*… *Ḥam* was smitten in his skin" (b.Sanhedrin. 108b). The French Jewish exegete, Shelomo b. Isaac [Rashi 1040 – 1105], explains "…smitten in his skin…i.e. from him descended Kush [the negro] who is black-skinned" (Rashi on b.Sanhedrin. 108b). It is noteworthy that the Talmud does not specify what the infliction of the skin is, but Rashi asserts that *Ḥam* was smitten with *black* skin.

In Rashi's view, all dark-skinned peoples are, potentially, descendants of Kush, thereby cursed because of *Ḥam's* transgression. However, Abraham Ibn Ezra (1089 – ca.1167), the biblical commentator from Navarre, Spain, opposed this idea stating "There are those who think that the Negroes are slaves because of Noah's curse. But they have forgotten that the very first king in the Torah after the Flood was from Kush…but obviously a king cannot be a slave" (Abraham Ezra on Gen. 9:22). It can be inferred that the link between Kush, dark-skinned peoples, the Curse of *Ḥam,* and a form of natural slavery, was familiar to twelfth-century Spanish Jews.

That "Kush" was used in Sephardic parlance for dark-skinned peoples is attested in the diary of the Spanish traveler and merchant, Benjamin of Tudela (circa 1180):

> These are the sons of Kush, who read the stars, and are all black in color. They are honest in commerce. When merchants come to them from distant lands and enter the harbor, three of the king's secretaries go down to them and record their names, and then bring

> them before the king, whereupon the king makes himself responsible even for their property which they leave in the open, unprotected. There is an official who sits in his office, and the owner of any lost property has only to describe it to him when hands it back. This custom prevails in all that country. [...] And throughout the island [Quilon, Malabar], including all the towns, there live several thousand Israelites. The inhabitants are all black, and the Jews are also. The latter are good and benevolent. They know the law of Moses and the prophets, and to a small extent the Talmud and *halakha* (Aaron 727).

Interestingly, both Jews and non-Jews in Malabar are described *black* in skin color, but the latter are reckoned to be descendants of Kush, who read the stars, i.e. idolaters. This ethnographic account reveals that dark skin is not exclusive to the descendants of Kush, and neither does having black skin imply that one is naturally a slave. By this line of construction, the Bible was held specifically to support the servitude of Canaan's descendants.

3.3 The Conception of the Curse of *Ḥam* among Sephardic Jews[1]

An analysis of the conceptions of the "Curse of *Ḥam*" among Iberian Jews will suffice to reconstruct the debate surrounding the myth. Benjamin Braude asserts that "the initial construction of the destructive image of dark-skinned Africans in medieval Europe lies with the Portuguese explorers during the time of King Henry the Navigator (1415 – 1460)" (Elazar-

[1] This section contains some information from my blog *The Conception of the Curse of Ḥam among Sephardic Jews and the Atlantic Slave Trade* on the Global Cities Project website: https://www.asser.nl/global-city/news-and-events/the-conception-of-the-curse-of-h-am-among-sephardic-jews-and-the-atlantic-slave-trade/, reproduced here with permission.

DeMota, "The Conception of the Curse of *Ḥam*"; Braude 127). He argues that before that time, the connection between *black* Africans and the biblical son of *Ḥam* was not always made, albeit it was common among Islamic literature in Africa, due to the Arab-Berber slave trade which began in the eighth century (Savage, "Berbers and Blacks"). The ambiguities of Talmudic, exegetical Jewish texts, and non-Jewish texts, and interpretations thereof, played a role in inventing the tradition of the "Curse of *Ḥam*" (Braude 130). In addition, David H. Aaron maintains:

> In assessing the impact of these isolated passages, we have not established evidence for centuries of a Jewish Hamitic myth, for the existence of such a "myth" can only be derived from sources subsequent to the *midrash* that would reflect this early exegesis. Indeed, what should impress the reader with regard to the ancient material is the relative paucity of sources reflecting this motif and the impoverished development (748; Elazar-DeMota, "The Conception of the Curse of *Ḥam*").

The *midrash* [an exegetical study of the Hebrew Bible] to which he refers is the *Tanḥuma*:

> ..as for *Ḥam*, because he saw with his eyes the nakedness of his father, his eyes became red: and because he spoke with his mouth, his lips became crooked [*qumoth*] and because he turned his face the hair of his head and his beard became singed [*niṯḥareq*] and because he did not cover his [father's] nakedness, he went naked and his prepuce became stretched, [all this] because all of God's retributions are commensurate to a transgression.

> Even though this was the case, the Holy One Blessed be He, returned and had mercy on him, for his mercy extends to all his creations
>
> (Levy- Epstein edition, Noah, par.13; para. 29; Zondel edition, para 17; Aaron 736; Elazar-DeMota, "The Conception of the Curse of *Ḥam*").

Remarkably, this *midrash* challenges the idea of complete damnation of any sort, since God applies mercy to *Ḥam*. The synthesis of New World and Old World slavery notions were reworked by theologians and jurists to produce an array of justifications for the slave trade (Schorsch, "Jews and Blacks" 10). The biblical commentaries of David Kimhi [Radak] (1160 – 1235) and Isaac Abarbanel (1437 – 1508) contributed to the amalgamation of ideas. These two Sephardic commentators juxtapose the "curses of *Ḥam*" with the Kushites [Descendants of the biblical Kush, son of the biblical *Ḥam*], as perpetual in nature, hence condemning them to eternal enslavement ("Jews and Blacks" 20; Elazar-DeMota, "The Conception of the Curse of *Ḥam*"). As such, In *Jews and Blacks in the Early Modern World* (2004), Jonathan Schorsch reads Isaac Abarbanel's conflicted statements [*Commentary on the Pentateuch published in Venice*, 1571] about *blacks* as a reflection of the attitudes of a certain class toward the historical juncture of the beginnings of the systematic enslavement of *black* Africans by the Iberian powers (*ibid*).

Another association found in medieval Sephardic commentaries is *blackness* with *ugliness*. In the biblical narrative when Abraham enters Egypt, he tells his wife Sarah to tell the Egyptians that she is his sister, lest they kill him. Rashi comments "I have long known that thou art fair of appearance: but now we are traveling among black and repulsive people, brethren of

the Ethiopians [Kushites], who have never been accustomed to see a beautiful woman" (Rashi on Gen. 12:11). This commentary demonstrates how dark skin, Kush, and repulsiveness, are linked. Radak, the Sephardic commentator describes the beauty of Jacob's wife, Rachel—black hair and white-ruddy skin (Radak on Gen. 29:17). These two commentaries convey the idea that *ugliness* is related to dark skin, whereas *beauty* is related to *white* skin. When commenting on Genesis 10:1, Abarbanel associates beauty and other positive attributes with fifteenth-century European *whiteness* "How beautiful are all their deeds, their conduct, their politics, the manner of their rule and their prowess; all of them are beautiful in form and appearance" (Abarbanel on Gen. 10:1). A few sentences later, he comments on *Ḥam's* descendants:

> And you will see how the characteristics of these three fathers are found in the nations which come from them, for from *Ḥam* comes "Kush and Egypt and Libya, and Canaan" [*Common English Bible*, Gen. 10:6], for they are all until today ugly looking and their figures are black as a raven, steeped in licentiousness and drawn after the animal lusts, lacking intelligence and knowledge and lacking [political] states and the degrees of good qualities and bravery (*ibid*).

Jonathan Schorsch asserts that Abarbanel had admired the Europeans [Japheth] above Africans [*Ḥam*] ("Jews and Blacks" 48). Expressing the same idea by way of a parable, Moses Maimonides [Rambam] (1135 – 1204) states:

> Those who are outside the city [i.e. most distant from God, but also most removed from the *polis*, the site of civility] are all human individuals who have no doctrinal belief, neither one based on speculation nor one that accepts the authority of tradition: such individuals as the furthermost Turks found in the remote North, the Negroes [*Al-Zanj*] found in the remote South, and those who resemble them from among them that are with us in these climes (“The Guide for the Perplexed” 618-19).

Evidently, Iberian Jews shared their *whiteness* with Iberian Catholics (Schorsch, “Jews and blacks” 48). Essentially, these attitudes and ideologies about the biblical *Ḥam* and *blackness* were developed in Iberia by medieval Sephardic commentators. The sum of the matter is that scholars agree that the myth of the "Curse of *Ḥam*" did not always exist among Iberian Jewish circles until about the eleventh century, but emerges as an amalgamation of ideas and interpretations of Jewish texts between the eleventh and eighteenth centuries. Ultimately, medieval Jewish sources applied the curse of the biblical Canaan to all of *Ḥam's* descendants (31).

Neither the Bible nor the Talmud associate dark skin, the African continent, and slavery with *Ḥam.* However, Islamic, Christian, and Jewish interpretations of biblical narratives led to the infamous "Curse of *Ḥam*" theory (Whitford 77). As Europeans traveled to remote places throughout Eurasia, they created ethnographic sketches of the peoples thereof (Braude 111). At length, these chronicles served as factual accounts not only for historians, but also for theologians.

After Jews were expelled from Spain in 1492 and Portugal in 1496, they took these ideas to their new places of residence. Also, the *Nação* still in Iberia participated later in the Atlantic slave trade and, together with their expelled brethren, contributed to the construction of racial difference for the next hundred years. In West Africa *whiteness* and *blackness* were associated with social status and not necessarily skin color, such that an enslaved African was considered to be *black,* and a *free mulatto* was *white* (Silva Horta and Mark 18).

After the commencement of the Protestant Reformation (1517), some Iberian *conversos* relocated to Protestant pockets in France, Germany, and Belgium. After the Inquisition expanded to Belgium, many of them moved to the Netherlands with their slaves (Schorsch, "Jews and blacks 55). Around that time, Christian Hebraist Joseph Justus Scaliger (1540 – 1609) stated that Jews needed to return to the west because "we need to learn from them," not just for their wealth (Israel, "European Jewry in the Age of Mercantilism" 45).

3.4 Hebrew Republic Literature in the Dutch context

The intellectual history that I can narrate is limited to what is written, being that there are no alternative sources of what was discussed by the participants of the Leiden and Hartlib Circles. In this section I argue that the encounter between Dutch theologians with Sephardic literature and thought throughout the Dutch Republic contributes to the Hebrew Republic tradition. Thereafter, the Leiden Circle is steered in a direction of pro-slavery argumentation motivated by the myth of the "Curse of *Ḥam.*" The seventeenth-century Dutch Republic saw a new wave of scholarship written by Protestant thinkers in Western Europe, namely the

Respublica Hebraeorum tradition. At the center of the Hebrew Republic tradition was the "understanding of the land laws and the theory of property underlying them" (Nelson 72).

Most importantly, the Christian Hebraists of the Renaissance had Jewish mentors and tutors. These Jews were all baptized Christians, serving as the sole available source of Hebraic knowledge, until the mid-seventeenth century, when Christians taught other Christians post-biblical Hebrew (Nellen and Rabbie 130). Many of these converts adopted a "theological-rhetorical convention common among late medieval and early modern Jewish convert scholars," i.e. taking the name Paul (Dunkelgrün 221).[2]

Moreover, Christian humanists corresponded in Hebrew with Jewish scholars, Jewish apostates, and with each other throughout the Catholic and Protestant world (247). Ultimately, the Hebrew Republic movement was able to flourish in the Netherlands, with the assistance of the Sephardic community in Amsterdam, and access to printed materials (*ibid*). Among Dutch Hebraists were: Franciscus Junius (1591 – 1677), Henry Ainsworth (1571 – 1622), Hugo Grotius, Peter Cunaeus (1586 – 1638), and Constantijn L'Empereur (1591 – 1648). It was Junius, as the theology chair at Leiden, who employed classical paradigms to understand the Hebrew land laws in *De Politiae Mosis Observatione* (1592) (Nelson 73). Indeed, his disciple Johannes Althusius (1557 – 1638) compares the biblical Jubilee to the Athenian *seischtheia* [the release of burdens] instituted by Solon in the sixth century B.C.E. (*ibid*). In doing so, he argued that any land confiscated as collateral from serfs should be returned to their initial owners.

In the early seventeenth century, Ainsworth argues:

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[2] Some examples are: Paul de Bonnefoy, Paul of Burgos, Pable Christiani, Pablo Coronel, Paulus de Heredia, Paul Joseph, Paolo Medici, Paolo Paradiso, Elchanan Paulus, Paul Altdorfer, Paolo Ricci, Giovanni Paolo Eustachio, and Johannes Pauli.

> It is necessary to consult Hebrew doctors of the ancienter sort, and some later of best esteem for learning, as *Maimony*, or Rabbi Moses ben Maimon, and others if one wishes to give light to the ordinances of Moses touching the external practice of them in the commonwealth of Israel, which the Rabbis did record, and without whose help, many of those legal rites (especially in Exodus and Leviticus) will not easily be understood (Ainsworth Preface).

Ainsworth cites Maimonides' *Mishneh Torah* frequently in his *Annotations Upon the Five Books of Moses* (1627), demonstrating its vital contribution to the Hebrew Republic tradition (Nelson 74). In addition, Cunaeus praises Maimonides' *opus* magnum "the greater writer, Rabbi Moses ben Maimon, he that in his divine work entitled *Mishneh Torah* hath happily collected all the Talmudical doctrine except the trifles, an Author above our highest commendation" (Cunaeus 51-3).

Knowing Hebrew was crucial for the study of the Jewish tradition in the early seventeenth century, since only *Pirqe Aboth* [Chapters of the Fathers] and *More Nebukhim* [Guide for the Perplexed] had been translated to Latin by 1620 (Rabbie 102). In the 1630s the first Latin translations of rabbinical texts had become widely-available. Johannes Cocceius (1603–1669) had translated the Mishnaic tractates *Sanhedrin* and *Makkoth* in 1629. In his *De Ratione*, chapter eight, he demonstrates his familiarity with seven Jewish exegetes, including: Saadia Ga'on (882–942), Isaac Abarbanel, Rashi, Moses b. Nahman [Nahmanides] (1194–1270), Levi b. Gershon [Gersonides] (1288 – 1344), and Radak. Furthermore, Constantijn

L'Empereur translates tractate *Middoth* in 1630 and *Baba Qamma* in 1637 (114). L'Empereur owned biblical commentaries of Spanish Jews: Moses Albelda, Moses Alshekh, Isaac Arama, Isaac Caro, Baḥya b. Asher and Isaac Abarbanel, in addition to the classical Jewish biblical scholars, Rashi, Abraham Ibn Ezra, and Radak (Rooden, "Theology, Biblical Scholarship and Rabbinical Studies" 96). Moreover, he had purchased rabbinic literature from Amsterdam rabbis: Menasseh b. Israel (1604 – 1657), Isaac Aboab da Fonseca (1605 – 1693), and Saul Levi Mortera (1596 – 1660) (101).

Undeniably, the seventeenth-century Dutch Republic harbored a plethora of Christian Hebraists, who sought to understand Christian faith through the eyes of the Jews. Rabbinic literature played an important role in Dutch political thought in the seventeenth century. At an early stage, the Jewish contribution to the Hebrew Republic tradition came from Jews that had converted to Christianity. Later, as the Sephardim gained prominence in the Netherlands, Dutch Christian Hebraists befriended rabbinic scholars and even joined together in projects. Overall, no Dutch theologian could study the Hebrew Bible or rabbinic literature without assistance from Jews or Jewish proselytes to Christianity, simply because they did not have access outside of Jewish teachers (Burneet 3-5).[3] The legal contributions of the Dutch Sephardim will be discussed in Chapter 7, here however it suffices to bear in mind that Sephardic thought and literature played a huge role in early-modern Dutch political and legal thought.

[3] For more details see Rooden 100-101.

3.5 Partnerships between Rabbis and Dutch Theologians in the Seventeenth Century

Most theologians of the Hartlib Circle drew their information about Jews and the Jewish tradition through secondary sources. I argue that Sephardic literature influenced the theological conceptions (millenarianism, political economy, philo-Judaism) of notable Dutch Christian scholars (Kaplan, "Jews and Judaism in the Hartlib Circle" 190). In the seventeenth century, some Dutch Christian Hebraists maintained communication with Sephardic rabbis and even worked together on translation projects.

Such was the case for theologian and Hebrew scholar, Adam Boreel (1602–1665)[4]. He was born in Middelburg and devoted his life to the *Mishnah*. His goal was to publish a vocalized version of the *Mishnah*, translate it into Spanish, and then Latin (Wall, "The Dutch Hebraist Adam Boreel" 240). He made this feat possible by collaborating with the Jewish scholar, Jacob Judah Leon (1602–1675) (Kaplan, "Jews and Judaism in the Hartlib Circle" 199). While in Middelburg, both Boreel and Leon shared a house, in which they spent countless hours vocalizing the Mishnah and translating it into Spanish (240). This vocalization project came to fruition when it was printed in Amsterdam in 1646. At that time, Boreel made contact with Menasseh b. Israel (241). That same year, Leon finished his model of Solomon's Temple, which was funded by Boreel. Around 1660, Boreel was in contact with the Jewish scholar, Jacob Abendana (1630–1685), who had been educated in *Academia de los Pintos* in Rotterdam. Boreel commissioned him to translate the *Mishnah* into Spanish, which was later used by Christian scholars (Rooden, "Theology, Biblical Scholarship and Rabbinical Studies" 110-30).

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[4] The research of Sephardim in Middelburg and slave trade is outside of the scope of this research, but for more information consult Israel, "Sephardic Immigration into the Dutch Republic"; Bruyn Kops, "The Sephardim and the Dutch"; Wall, "The Dutch Hebraist Adam Boreel and the Mishnah."

Apart from Adam Boreel, other Dutch Christian Hebraists were in contact with Menasseh and Yosef Pardo (1624 – 1677) (Rabbie 104), including Isaac Vossius (1618 – 1689), Hugo de Groot (Kuhn 173-180),[5] and Dutch merchant, Gerbrand Anslo (1612 – 1643). Since Anslo was deeply affected through his direct contact with the Jews and Jewish learning, he began to financially support projects in which Christian scholars came to grapple with the Jewish tradition and Jewish literature (Rauschenbach 99). The German scholar, Georg Gentius (1618 – 1687), studied oriental languages at Leiden and communicated directly with Sephardi scholars in Amsterdam. As a result of his correspondence, he produced a Hebrew edition and Latin translation of a section of Maimonides' *Mishneh Torah*, and a long Hebrew epistle in praise of Jewish learning, approved by the Amsterdam rabbis (Dunkelgrün 248).

Furthermore, Hebrew professor in Groningen, Jacob Alting (1618 – 1679), corresponded in Hebrew with the Sephardi printer, Abraham Senior Coronel (b. 1637). Senior Coronel added Alting's letters in the appendix to his treatise on Hebrew vowel-points (250). Apart from a few names, there is much conjecture as to the extent to which Dutch Hebraists had contact with Sephardic Jews. Undoubtedly, Dutch Christian scholars were indebted to Sephardic thought. Together, Christian theologians and Sephardic rabbis constructed a racial difference which then influenced Dutch legal consciousness.

3.6 The "Curse of *Ḥam*" in Dutch Christian theology

Herein I utilize the *other within* to denote the *Nação* as residents of the Netherlands, yet stemming from Iberian Jewish culture. This ascribed *otherness* did not permit them access to

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[5] For information on the correspondences see Cardoso de Bethencourt 98-109.

political activity within the Netherlands. Having shown that Dutch theologians forged links with the *other within*, in this section I argue that seventeenth-century Dutch theologians appropriated the "Curse of *Ḥam*" via Sephardic thought (Rabbie 114). In turn, "Curse of *Ḥam*" provided a theological justification for seventeenth-century Dutchmen and *Nação* merchants active in the odious trade of African peoples and solidified humanist arguments in favor of their enslavement. Upon reaching its maturity, this myth influences the development of *ius gentium and naturae* among Dutch jurisprudence, such that Aristotle's theory of *natural slavery* takes on a new form (this section demonstrates how Dutch theologians appropriated Sephardic thought and Chapter 4 and 5 demonstrate how it influenced Iberian and Dutch theological and legal thought, respectively).

Throughout the sixteenth and seventeenth centuries, professional Catholic clergy, theologians, and university professors removed the presence of Canaan from the story of Genesis nine. In the biblical story involving *Ḥam* and Noah, Noah curses Canaan as a "slave of slaves" to Shem and Japheth. Historian and religious studies scholar, David Whitford argues that Canaan disappears from Christian sermons on Genesis nine (Whitford 77). He disappears from biblical commentaries and dictionaries too.

Essentially, he even disappears from the Bible itself. The removal of Canaan from the story of Genesis nine did not begin as a defense for the transatlantic slave trade, even though it would provide a theological justification for it onwards. To justify or at least explain African slavery required the loss of Canaan because the Hebrew Bible states that Noah cursed Canaan and not *Ḥam* (*ibid*). Moreover, the use of the "Curse of Ḥam" to justify the transatlantic slave trade and American slavery required a curse on Africans. In order to ascribe the curse onto

Africans it was necessary to move the curse back a generation and onto *Ḥam* directly. To do that required the loss of Canaan (*ibid*).

In the late seventeenth and then eighteenth century, when the transatlantic slave trade required a myth of legitimacy, the fact that the narrative of Canaan had been lost allowed for easier acceptance of the Curse of *Ḥam* in both elite and popular circles. This silencing of Canaan became commonplace and allowed for Noah's curse to fall directly upon *Ḥam* (Whitford 78). The use of this biblical story by both Dutch slave traders and *Nação* investors—as the *other within*—indirectly helped disseminate the idea of white supremacy, since dark-skinned Africans were seen as being descendants of their accursed ancestor, the biblical *Ḥam*.

Whitford asserts "Hugh Broughton in 1614 serves as a marker pointing to the dangerous shoals that await when this curse is severed from a connection to Canaan when he writes 'For whatsoever plagues doth befall the Egiptians [*sic* Egyptians], the Canaanites, Ethiopians, Blackemores, Babylonians, and such like, is contained within Chams's [*sic Ḥam's*] curse'" (Whitford 85). The association of *Ḥam's* curse with Africa and slavery in Christian biblical commentaries remained relatively rare throughout the sixteenth and seventeenth centuries (*ibid*). However, in 1660 the German-Dutch physician and preacher, Johan Picardt (1600–1670) argued that the Hamites—identified with negroes—are cursed and condemned to perpetual slavery under the Shemites—identified with Jews—and Japhethites—identified with Europeans (Picardt 43 and 74). In 1680, Morgan Godwyn (1640 – ca.1686), the Anglican clergyman and missionary, considered the idea that the Natives of Africa were descendants of *Ḥam* and "under the curse" to bondage, the chief strength behind an argument on behalf of their

perpetual slavery (103). The Curse of *Ḥam* theory changed theological thinking concerning skin color and slavery, which later influenced Dutch legal thought (Chapter 5). Eventually, all dark-skinned Africans were equated with the offspring of *Ḥam*, thereby condemned to perpetual servitude (Postma 11).

3.7 Heart of the Matter: Dutch Theologians and Jurists Appropriate the "Curse of *Ḥam*"Through Sephardic Thought

The "Curse of *Ḥam*" theory developed over a period of about six centuries, initially in North Africa and Iberia, then in the rest of Western Europe. By the eleventh century, western European Jews began to make a link between the enslavement of dark-skinned Africans and *Ḥam.* This was afforded through the connection of the rabbinic understanding of Kush, who is a descendant of *Ḥam*, such that all of *Ḥam*'s descendants are said to have been punished with dark skin and cursed with eternal enslavement. During the developmental stages of the Portuguese slave trade of West Africans, Isaac Abarbanel synthesizes Aristotle's natural slavery theory with Rashi's understanding of Kush, in order to provide a reason for the enslavement of dark-skinned Africans.

Professor of Jewish philosophy Avraham Melammed asserts that Abarbanel was influenced by Aristotle by way of scholastic philosophical commentaries ("Isaac Abravanel and Aristotle's Politics" 55). He argues that Abarbanel became acquainted with Aristotelian philosophy by reading Aquinas (*ibid*). Certainly, he was familiar with Aquinas' exposition of the *Imago Dei* and free-will. However, he did not apply this to *black* Africans within the slaveholding society of his day. Schorsch puts forward that there were plenty of Jewish

commentators from the same slaveholding societies as Abarbanel who produced positive evaluations about Kushites, yet Abarbanel did not do so in his commentary to Genesis ("Jews and Blacks" 39).

As citied by Schorsch, in his commentary to the book of Genesis, Abarbanel reiterates Aristotle's *natural slavery* theory:

> And about Ham it said: "And Canaan will be a slave to him," meaning to say that Canaan his son, most beloved to him [of all his sons] will serve Shem and Japheth. For just as the philosopher [Aristotle] mentioned in his book on the leadership of the state, for sages the desire for authority and mastery is natural while for those who work the ground the desire [is] for servitude and being ruled over, which according to this is called Canaan, from the language of "submission," as I explained, for the animal life serves the aesthetic life and yields to the intellectual life (Abarbanel on Genesis 9:25; Schorsch, "Jews and Blacks" 22).

Abarbanel draws on Aristotelian thought to explain the serving nature of Canaan and his descendants. It is evident that Abarbanel equates *Ḥam* with Canaan, thereby contributing to the construction of the destructive myth. Commenting on Abarbanel's political philosophy, Jewish philosopher, Leo Strauss (1899 – 1973) asserts that Abarbanel occasionally adopts Aristotelian doctrine of natural masters and servants (Leo Strauss: Gesammelte Schriften 204).

By the time of the Expulsion of the Jews from Spain, this theory became an integral part of the Sephardic ethos. Thus, it was the Sephardim which introduced the "Curse of *Ḥam*" theory

to Dutch theologians in the seventeenth century. At that time, the commentaries of the Sephardic luminaries—Radak, Maimonides, and Abarbanel—had been translated to Latin, for the use of non-Jewish scholars. Access to these commentaries ushered in a new era of Protestant Christian scholarship in the Netherlands, leading to what is called the Hartlib Circle. In addition, the joint projects between Dutch theologians and Sephardic rabbis granted Protestant Christian scholars direct access to Sephardic thought in regards to the contemporary descendants of *Ḥam*.

There is no doubt that the Hartlib Circle and Leiden theologians had knowledge of the aforementioned biblical commentaries on the "Curse of *Ḥam*." As more rabbinic commentary to the Bible and Talmud were translated to Latin in the early seventeenth century, Dutch theologians gained access to Sephardic thought. Once there are sufficient Hebrew teachers in the Dutch Republic, Christians teach each other from the Hebrew sources. Johannes Cocceius (1603–1669) was such a Dutch Hebraist who mastered the Hebrew language and Jewish literature [he is discussed in depth in Chapter 5]. Indeed, it was Cocceius who had produced his own commentary on the Torah, based on seven medieval Jewish commentators. While it is clear that that Cocceius and his students identified dark-skinned Africans with the biblical *Ḥam* in order to justify the enslavement and slave trade of Asians and Africans in the East and West Indies, further research of the primary sources is lacking (Vink "A Work of Compassion"; Amponsah, "Christian Slavery, Colonialism, and Violence).

Medieval Sephardic thought became the harbinger of a new era, with rabbinic texts serving as the justification for the systematic enslavement of *Ḥam's* descendants in West Africa. Even though slavery was not permitted on Dutch soil, the "Curse of *Ḥam*" myth was influential in setting the moral tone concerning overseas slavery and slave trade among the Dutch elite

around 1621, when the Dutch West India Company was established. Thus, Sephardic thought becomes intimately fused with the theology among some Dutch Protestant Christians (Rooden, "Theology, Biblical Scholarship and Rabbinical Studies in the Seventeenth Century"; Katchen, Christian Hebraists and Dutch Rabbis"). Proximity with the Sephardim forged a new consciousness in the mind of Johannes Cocceius and his sympathizers, such that the enslavement and the systematic trade of *black* Africans was not subject to divine retribution. Chapter 5 contains a full description of how Cocceius' reception and application of Sephardic thought contributed to the development of the conception of the law of nations and nature.

3.8 Conclusions

In this chapter, I argued that Sephardic Jews introduced this idea indirectly and directly to seventeenth-century Dutch theologians (Udemans, "'t Geestelyck Roer vant't Coopmans Schip"; Picardt, "De Nederlandse Hundingten Aazien van de Slavenhandel en de Slavernij"; Witsius, "The Economy of the Covenants Between God and Man" Book 3, Chapter 5, para. xix). This chapter discussed the origins and development of the myth of the "Curse of *Ḥam*" within medieval Sephardic thought. We explored the biblical passage in Genesis from where the myth was constructed, and how Talmudic rabbis and medieval Jewish commentators interpreted it within their respective social contexts. While, the Talmudic commentary to the three sons of Noah does not associate any geography nor ethnicity to them, Rashi does make this association. Sephardic commentators such as Radak, Maimonides, and Abarbanel construct *whiteness* and *blackness*, where the latter is linked to *ugliness* and *natural servitude*. At the time of the

expulsion of Spanish Jews, Abarbanel links *Ḥam* with Aristotelian *natural slavery* in his biblical commentary to Genesis.

Overall, this chapter serves to lay the ideological context within early modern Iberia and the Dutch Republic. The "Curse of *Ḥam*" theory is the tool by which theologians and jurists construct arguments in favor of enslaving *black* Africans, under the pretense of divine volition. The "Curse of *Ḥam*" myth weaves Iberian, Dutch, and Jewish legal consciousness throughout the entire research project. Essentially, the "Curse of *Ḥam*" myth contributed to the construction of racial difference which influenced the law of nations and nature debate. The next chapter will discuss Sephardic and Iberian jurists and the involvement of *Nação* merchants taking the slave trade along. Therein, I will discuss the influence of this synthesis on Iberian traders on the move and Iberian thinkers. In the seventeenth century, when the Sephardim began to integrate into Dutch society, these Jewish ideas reach a limited, but influential audience.

4.

The Iberian Legal & Political Ideas on Slavery and Slave Trading: Fifteenth and Sixteenth Centuries

"Liberty was born with servitude…there was no one free, when no one was a slave: as among Christians no one is called free, since none of them is a slave."

François Connan, *Commentariorum Iuris Civilis Libri X*, 1557, 72-73.

Francisco de Vitoria on Imago Dei of the New World Indians—Imago Dei in the Valladolid Debate—Free-will, Dominium et Libertas—Servitus and Imago Dei in the Portuguese Context—Slavery in the Spanish and Portuguese Ordinances—"Curse of Ḥam" and Iberian legal consciousness

4.1 Introduction

The aim of this chapter is to reconstruct the theological, legal, and political context concerning the practice of slavery and slave trade in early modern Iberia. This is the context in which the *Nação* developed its *modus operandi* in African and Asian slave trade. Spanish language scholar Daniel Nemser posits that a return to the rise of Iberian slave trade "can shed new light on the entangled histories of freedom, race, and capital" (Nemser 119). He argues further that "the colonization of the individual by the market is critical for understanding how the concept of *freedom* begins to be mobilized as a justification for the slave trade" (126). Legal conventions, around *servitus*, *dominium*, and *libertas*, were ever-developing in Spain and Portugal in the sixteenth century. In the sixteenth century, after almost two centuries of stagnation, the debate on law of nations and nature had been revived by Francisco de Vitoria (ca. 1492–1546) and other Spanish Scholastics (Haggenmacher, "Grotius et la Doctrine de la Guerre Juste" 58). At that time, *converso* merchants dominated the Atlantic slave trade, commanding a network that connected Iberia, Africa, and the West Indies.

This chapter examines the theological concepts: *Imago Dei* [Created in the image of God] and free-will, and how they relate to the legal notions: *dominium* and *libertas* [Section 4.2]. Whereas Francisco de Vitoria and Bartolomé de las Casas (ca.1484 – 1566) upheld the divine

image of the New World *Indians*, Iberian lawyers with interests in New World plantation economy deprived *black* Africans of *dominium* and *libertas*.

The Atlantic slave trade challenges previously held notions concerning *servitus,* and natural-born *freedom* for all [Section 4.3]. Thus, even though Christians do not enslave each other, baptized Africans are still enslaved and sold as chattel. An analysis of Iberian and New World ordinances dealing with the practice of slavery can lend insight on how legal consciousness changes in the sixteenth century [Section 4.4]. Accordingly, this chapter scrutinizes the attitudes and the language surrounding Moors and *negros* [black Africans], and finally on how the "Curse of *Ḥam*" myth influences public international law [*ius naturae et gentium*].

In applying the Cambridge School method on the history of ideas, in section 4.2 I include a discussion on the meaning and change of the legal concepts: *dominium,* and *libertas* [Greek.: *eleutheria*]. In the sixteenth-century Spanish and Portuguese contexts, I have chosen to focus on the moral philosophies of theologians Francisco de Vitoria, Francisco Suárez (1548 – 1617), António de Santo Domingo (1531 – ca.1598), Fernando Perez (1530 – 1595), and Luis de Molina (1535 – 1600). The legal-political and moral discussions surrounding the sovereignty of Native Americans and the enslavement of *black* Africans bring to the foreground their conceptions of *ius naturae et gentium* in general, and in particular, their conceptions of *liberty* and *ownership*.

In sections 4.3 and 4.4 I reconstruct the fifteenth and sixteenth-century Iberian New World expansion context through an analysis of the linguistic conventions and argumentations utilized in the political texts that dealt with slavery. I have chosen to highlight the Roman legal

terms: *servus* and *servitus* in the medieval Spanish code *Las Siete Partidas,* and the Portuguese codes: *Ordenações Afonsinas, Manuelinas & Filipinas,*[1] which I utilize to reconstruct the Iberian moral theological and legal consciousness in which the *Nação* was birthed. Therein, I argue that the way in which *servus* and *servitus* were translated to Spanish and Portuguese, demonstrates how their meanings and understandings transitioned from the context of war captivity in the mainland to the colonial plantation economy context. In addition, I posit that the "Curse of *Ḥam*" myth contributed to the construction of negative attitudes toward *negros* [*blacks*] and *mulattos* [the offspring of an Iberian father and dark-skinned African mother], which were once directed toward the medieval Moors [*moros*]. This change took place within the Spanish New World context, as reflected in the language in *Las Leyes de Indias* and *Actas del Concilio Provincial de Santo Domingo.*

4.2 *Imago Dei*, Free-Will, *Dominium et Libertas* in Sixteenth-Century Spain

Imago Dei is a metaphysical expression which signifies the symbolical connection between the divine creator and humanity. It originates in the Creation story in Genesis 1:27 where it states that God created humans in his image and likeness. Roman law did not afford slaves the dignity of legal personality (Howard 26). However, prior to the sixteenth century Iberian scholastic thought associated *imago Dei* with the Roman legal notions, *dominium* and *libertas*. In Ancient Rome the concept of *libertas* meant to have protection from abuse by officials and having equality before the law. This also implied that the elite class had equal opportunities to compete

[1] Ordenações Afonsinas online edition. http://www.ci.uc.pt/ihti/proj/afonsinas/ .Accessed on 19 June 2020; Ordenações Manuelinas online edition. http://www1.ci.uc.pt/ihti/proj/manuelinas/. Accessed on 19 June 2020; Ordenações Filipinas online edition. http://www1.ci.uc.pt/ihti/proj/filipinas/ordenacoes.htm. Accessed on 19, 2020.

for high office, ruling out the idea of dictatorship (Plessis, Ando, and Tuori 350; Evrigenis 249). *Libertas* also expressed the idea of being free from servitude (Plessis, Ando, and Tuori 350; Evrigenis 250). Cicero conceived of *libertas* as enjoying freedom from coercion or the threat of it. In other words, the possibility of being threatened did not exist (Kennedy 492). This refers to political *slavery*, which had two facets: one internal [tyranny threatens the individual] and one external [one state threatens to subjugate another] (Nyquist 10).

In Ancient Greece the concept of *eleutheria* [liberty] was linked to the idea of non-enslavement, and the idea of being a citizen (Gazolla 25-33; Moreira 104-11). In the writings of Pericles (d. 429 B.C.E.) one can find definitions of *liberty* concerning the *freedom* to move in and out of the country at will, and the *freedom* to voice one's opinion (Guerra Ribeiro de Oliveira 70). Socrates defined *freedom* as the ability of having self-control, dominating one's desires. Thus, when humans rid themselves of everything irrational, they are truly *free* (72). Plato considered tyrants as *slaves* of their desires, therefore, not possessing *freedom* (72; Plato, "The Republic" Book IX). Aristotle's concept of *liberty* includes two forms: One is according to the law, since it consists of ruling and being ruled in turn; the distinction between free men, who can live as they will, and the enslaved who cannot (Evrigenis 250; Aristotle, "Politics" 1317a40-b17). According to Aristotle, slaves are naturally mere instruments whose purpose is to produce things for others, and are the property of others. Since they are not citizens, they cannot exercise *freedom* (Reale and Antiseri 218-22). Overall, the Greek Classics theorized three concepts of *liberty*: the ability to exercise self-control; free will and to use reason; participation in politics (Cláudio de Lima 107).

The North African Christian scholar, Lucius Caecilius Firmianus Lactantius (ca. 250 C.E..–ca. 325 C.E..) revamped *libertas* by relating it to religious toleration. Instead of tyranny, he applied it to religious compulsion. Hence, the Roman emperors: Diocletian (244–311), Maxentius (276 – 312), and Licinius (263 – 325) were branded enemies of Christian *libertas* (Leithart 109). Essentially, full legal personality in Ancient Rome required *civitas* [citizenship] and *libertas* [freedom from slavery] (Guerra Ribeiro de Oliveira 78). It can be concluded that the Greek *eleutheria* and the Roman *libertas* shared some common meanings: possessing political agency and being free from enslavement.

In the early modern period *eleutheria* and *libertas* reappeared in European political and legal discourse (Bell 742; Skinner, "Visions of Politics" Vol. II). Republican writers such as Machiavelli sought to recover the Roman tradition of *libertas* and "free states." Inspired by Cicero, they argued that *freedom* was not freedom from other states but also the independence from the desires of others (Kennedy 488). Franciscan John Pecham (d. 1292) equated *dominium* of one's will with *liberty* (Brett, "Liberty, Right, and Nature" 13). The Italian Franciscan Giovanni di Fidanza or St. Bonaventure (1221 – 1274), posited that brute beasts, which are excluded from spirituality, do not have internal liberty nor *dominium* (Brett 612-13).

In the thirteenth century, Thomas Aquinas (1225 – 1274) links *libertas* with the anthropological idea of *imago Dei,* arguing that man can participate in the rational eternal law of God, being made in His image and sharing divine reason, i.e. natural law:

> Man is said to be after the image of God, not as regards his body, but as regards that whereby he excels other animals. Hence, when it is said, "Let us make man to our image

> and likeness," it is added, "And let him have dominion over the fishes of the sea" (Gn. 1:26). Now man excels all animals by his reason and intelligence; hence it is according to his intelligence and reason, which are incorporeal, that man is said to be according to the image of God ("Summa Theologica" I, Q. 3, Art. I).

According to Aquinas, humans possess the divine image being created with intellect and rational capacity. This sets humans apart from animals. As such, humans have free-will, being able to make rational decisions. Aquinas argues "Man has free-will and reason: otherwise counsels, exhortations, commands, prohibitions, rewards, and punishments would be in vain" ("Summa Theologica" I, Q. 83, Art. I). Commenting on Aquina's conception of humans in the prelapsarian state, political historian Joseph Canning, states that humans shared common liberty [*libertas*] and possession of all things (130). It goes to show that according to Aquinas, humans, possessing the *imago Dei*, have reason, *libertas* [free-will] and *dominium* [lordship] of the natural world (Genesis 1:26-27).

Furthermore, Aquinas argues that the *right* to possess property [*possessio*] derives from man's creation in God's image [*Imago Dei*] and rational use of things for his development (Davis, "The Problem of Slavery in Western Culture" 96). This was a novel idea at the time, since theologians, canon lawyers, and civil lawyers argued about the notion of property [*dominium*], whether persons could be owned as property or not. The Franciscans argued that there were no legitimate claims of property over persons nor things, whereas Pope John XXII (1244 – 1334) declared that the notion of private property already existed since the prelapsarian time period.

Medieval theologians debated on the notion of free-will, thereby establishing two positions. Legal historian Anna Taitslin asserts "The notion of a free will grew out of a synthesis of the *intellectualist* notion of man's capacity for rational decision and the *voluntarist* notion of his responsibility to adhere to God's Commandments" (Taitslin 80). Similarly, some medieval theologians reasoned that since humans were created in the *imagine Dei,* they must have a free will similar to God's will (Pink 569).

The debate among canonists and scholastic philosophers pivoted around the question whether postlapsarian humans have true free will and reason (Nijman, "Grotius' Imago Dei Anthropology"). Assuming the *voluntarist* position, John Duns Scotus (1266 – 1308) maintained that true free will was lost after the Fall.[2] Franciscan friar William of Ockham (ca. 1287 – 1347) held that human free will was corrupted after the Fall, but that due to the divine image in humans, an aspect of the original *dominium* [property and sovereignty] prevailed. He argued further that the rational faculties in humans permits them to decide whether their actions are in accordance with right reason or not. In short, Ockham did not view human free will as a liberation from divine will, rather that humans have the capacity to perform God's will through right reason (Anfray 161; A. Lee 23-44).

Upon the Spanish conquest in the New World and contact thereof with the native peoples, new questions emerged: Is it always lawful to wage war? Do the Spaniards have the *right* to travel to the lands of the New World *Indians*? Can the Spaniards subdue the aborigines under their power if it is absolutely clear that they are defective of intelligence? This led to numerous

[2] See Anfray, " Molina and John Duns Scotus."

discussions on the *dominium* [sovereignty] and rule of the *Indians* (Brett, "People in Portrait"; Belli, Part II, Ch. XII).

In the Roman civil context, *dominium* implied primarily ownership of *res* [Anything which is the object of a legal act, i.e. property] and the rights and limitations related with the civil idea of ownership. *Dominium* was simply "man's total control over his physical world—his land, his slaves or his money" (D. Lee 378). Also, *dominium* signified the Romans concept of mastery, and power over persons or things (Tierney 16-7). The conquest and colonization of the New World motivated Spanish imperial jurists to reformulate *dominium* as private rights, by which they legalized and legitimized the Spanish hegemony over native peoples, in order to confiscate resources and generate wealth for the monarchy (Obregón 598).

In his *De Iustitia et Iure* (1553), Domingo de Soto (1494 – 1560) proposes the universalization of private property, thereby increasing human power over the environment (Jiménez Fonseca 129). De Soto cites the Biblical Creation narrative to substantiate humanity's claim to the original regime of common property. According to this theory, all things remain common prior to original sin [*ius naturale*]. It is only in the postlapsarian state of humans that things were privately distributed through human law and by consensus [*ius gentium*] (Jiménez Fonseca 130).

The Spanish encounter with New World Indians also led some theologians to define *dominium* as self-governance, whereas its abandonment signified true obedience to God. Possessing *dominium* of externals came to be identified with "external liberty, property and power" (Brett, "Liberty, Right, and Nature" 16, 18). In point of fact, some Spanish theologians utilized Aristotle's theory on natural slavery to justify the subjugation and rule of Native

Americans, on the basis of *imperium* [absolute power] and *dominium* [sovereignty] (Salazar 285-293).

Political theorist and historian, Richard Tuck asserts "the notion of natural slavery was being considered with favor from the early fifteenth century onwards" ("The Rights of War and Peace" 67). Furthermore, Anthony Anghie maintains that the extension of Empire and the idea of civilizing, educating, and rescuing the barbarian had many versions (Tuck 96). Essentially, actors who participated in imperial expansion utilized this idea. John Mair (1467 – 1550) was the first to apply Aristotle's natural slavery doctrine to the Native Americans:

> As the the Philosopher [Aristotle] says in the third and fourth chapters of the first book of the *Politics*, it is clear that some men are by nature slaves, other by nature free...And this has now been demonstrated by experience, wherefore the first person to conquer [the *Indians*], justly rules over them because they are by nature slaves (Pagden, "The Fall of Natural Man" 38).

Political science scholar, Anthony Pagden asserts that Mair's stance presented a solution to a political dilemma, i.e. by what "right the crown of Castile occupied and enslaved the inhabitants of territories to which it could make no prior claims based on history?" (Pagden, "The Fall of Natural Man" 27). The claim is that they are savages, cannibals, animalistic, and cannot govern themselves, thereby incapable of *dominium*. In the *Requerimiento*[3] of 1513, Palacios Rubios (1450 – 1524) agreed with Aristotle and Mair that the New World natives were incapable of self-

[3] The Spanish Requirement of 1513 was a declaration by the Spanish crown that legitimized the seizure of territories of the New World by divine ordination.

governance (Neff 118). In the same vein, Agostino Nifo (1531) remarks in his essay *On Wealth* "The wealth which can be acquired by war consists of barbarians and their goods, for (as Aristotle says) war is only just for Greeks and Latins if it is against barbarians. Barbarians are natural slaves, and Greeks and Latins are natural masters. So barbarians and their goods are the common use of all Greeks and Latins" (Tuck 42). Nifo defines *barbarians* as the "Ethiopians and their neighbors" and the Arabs (*ibid*).

Contrary to sixteenth-century Spanish humanists, Francisco de Vitoria put forward that the New World *Indians* were not subject to *natural slavery*. De Vitoria argued that *dominium* was inalienable, and could not be relinquished voluntarily ("De Indis" q.1, art. 2; q.1, art. 3). He held that the *Imago Dei* establishes the legal parameters of *dominium*, but that transgressors are deprived of *dominium* because they lack this image (Vitoria, "De Indies" 1, para. 318). In utilizing Aristotle's arguments in defense of the *Indians,* he posited that they used their reason, since the way they lived testified to their capacity to reason [they had cities, governments, marriages, and laws].

De Vitoria also argued that the pope was not the the emperor of the world (Bunge 46). As such, natural law must be globalized so Christian and non-christian peoples can have a common law to abide by (Jiménez Fonsenca 125). Even though de Vitoria removed the *Indians* from the class of slaves, nevertheless, he justified their subjection to the Spanish crown (Capizzi 48). After proving that their subjugation could not be argued on the grounds of *natural slavery*, de Vitoria claimed that unless they ceded *dominium* voluntarily, the primary cause of their rule would be as a result of a *just war* (Brett, "People in Portrait"; Gutiérrez 321). In his *First Relectio of the Indians Lately Discovered* (1532)*,* de Vitoria puts forward that the Spaniards

could declare a *just war* against them on the basis of violating the natural *right* to hospitality, free travel, and free trade ("De Indis" q.4, art. 4; Anghie 91).

The theological notion of the *Imago Dei* was also invoked within the Valladolid debate (1550). In early July 1550, the Dominican Scholastic, Domingo de Soto was called to Valladolid to discuss *Democrates Alter de Iustis Belli Causis Apud Indos* (Rome 1550), the recent work of Juan Ginés de Sepúlveda (1494 – 1573). Bartolomé de las Casas (ca.1484 – 1566) also attended the debate, in defense of the New World *Indians*. Like de Vitoria before him, de las Casas held that natural slaves (Aristotle) may indeed exist, but that the Native Americans were not so (Neff 122). De Vitoria's conclusions, as expounded by de las Casas, provoked the anger of the Humanist Ginés de Sepúlveda.

De Sepúlveda referred to Aristotle, synthesizing his doctrine with Cicero: "Nature has endowed every species of living creature with the instinct of self-preservation, of avoiding what seems likely to cause injury to life or limb and of procuring and providing everything needful for life" (Neff 122). Ginés de Sepúlveda maintained, "the defect of the *Indians* lies not simply in individual infractions of the law of nature, but in the fact that they constitute a city so barbarous and inhumane that it does not include among moral evils the crimes I have enumerated and does not condemn them in its laws or morals" ("Demócrates Secundus" 30A).

De las Casas countered "Every human being is a reflection of the image of God, therefore, natural distinctions between free and slaves cannot exist, but all humans possess a common image (Hanke "All Makind is One"). In saying thus, de las Casas upheld the *imago Dei*, *dominium* and *libertas* of the Native Americans. As a consequence of this debate, the majority of the *junta* of theologians and canonists favored de las Casas (Almeida de Souza 25-59).

4.3 *Servitus* and *Imago Dei* in the Portuguese Context

Although natural law reasonings were constructed to protect the rights of the New World *Indians*, the same was not done on behalf of African *blacks*. After his visit to the island of Hispaniola, de las Casas suggested in his *Memorial de Remedios* (1516) to the Regents of Castile that a license be issued to import *negros* [African blacks] from Spain or directly from Africa to Hispaniola. He put suggested that it would go better with the *Indians* "if we could each get licenses to bring a few dozen Negro slaves from Spain or Africa" (De las Casas, "*Historia de las Indias*," 2190-91)[4]. Las Casas made this proposal to alleviate the harsh labor endured by the natives and to assist the declining indigenous labor force. His motivation was flamed by the advancement of the sugarcane industry which benefited Spain.

It was not until 1547 when de las Casas visited the Lisbon royal and commercial documents in the archives, and received the testimony of Portuguese chroniclers, that he began to condemn the African slave trade (Pérez Fernández, "Fray Bartomolé de las Casas"). Upon analyzing the debates and the sources thereof, I question why did de las Casas suggest the importation of black African slaves? Indeed, it was not until after he had heard about the horrors of Atlantic slavery that he changed his mind. This leads me to think that he had initially subscribed to the "Curse of *Ḥam*" myth. After all, he did believe that barbarians, as natural slaves did exist, albeit not among the Native Americans. If so, then he did not think that *black* Africans possessed the *imagine Dei*.

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[4] See the eleventh remedy of Las Casas's "Memorial de remedios para las Indias (1516)" in *O.E.,* 5:9b.

The Portuguese had been engaging in West African slave trade (1445) many years before the Spanish got involved. While there were ecclesiastical and legal-political debates about the *dominium* [property and sovereignty] and rule of New World *Indians* by the Spanish empire, such never took place on behalf of the enslaved Africans within the Portuguese context, notwithstanding of a few voices of protest. Luis de Molina argued that the trade of sub-Saharan Africans was never debated systematically, primarily because it was introduced little-by-little, and because there were no learned men among the Portuguese who could approach the king to dissuade him from engaging in the trade of humans (Hespanha 953; "Tractatus de Iustitia et de Iure" col. 178, B/C).

The legal understandings of Aquinas, de Vitoria, de Molina, and de Soto gained entrée into the universities at Coimbra and Évora. Therein, the legal debate on *dominium* [property/ sovereignty] and *servitus* developed. António de Santo Domingo and Fernando Perez were among the most prominent jurists in these debates. Agreeing with Justinian law and Aquinas' legal conceptions, these theologians accepted the enslavement of peoples as a result of a *just war*. If so, who were the West Africans at war with so that the Portuguese could legally enslave and trade them? Papal bulls legitimized Portuguese attacks in Africa and Asia, and the enslavement of their peoples (Obregón 599). Since there were no conditions for a *just war*, I argue that the involvement of the Portuguese in the Atlantic slave trade depended on universalized natural law theories, the pursuit to strengthen Christendom in Europe from an Islamic threat in Constantinople, and the construction of racial difference.

The Roman legal term *servitus* acquired new meanings and understandings within the Portuguese slave trade of *black* Africans. Before 1445, *servitus* was discussed within the context

of war captivity, but transitioned to the colonial plantation economy context thereafter. Sometime between the eleventh and the thirteenth centuries, Latinists indicate a linguistic transition between the Roman terms *ancilla, serva, servus,* and *familius* to *sclavus* (Karkov, Klosowska, and van Gerven Oei 161). Before the eleventh century, *servus* was used to describe a chattel slave. After that time it became synonymous with a serf (162).

Siervo derives from the Latin *servus*. According to Justinian's Institutes and Digest, s*ervi* [plural or *servus*] are so called because commanders order their captives to be sold, and thereby they are accustomed to save [*servare*] rather than kill them [Justinian, "Institutes" 1.3.3; Justinian "Digest" 1.5.4.2]. *Servitus* is also derived from the same Latin cognate *servare*, as Isidore of Seville (560–636) states in seventh-century Iberia: *Servitus* is derived from saving (*servare*), for among the ancients, those who were saved from death in battle were called *servi* (Isidore of Seville V.xxvii.32; Phillips 1). Furthermore, Thomas Aquinas (1225 – 1274) used the term *servitus* as servitude, and referred to "slavery" only when he meant chattel slavery, which was not common in the Middle Ages (Capizzi 31-52). Whereas before the medieval time period, *servus* meant a war captive whose life was spared, subsequently, its meaning became associated with different forms of *slavery*.

In spite of the odious trade and its defendants, there were a few opponents who raised their voices against it. After having witnessed the sale of slaves in his native Seville, in his *Tratado y Contrato de Mercaderes* (1569), Tomás de Mercado criticizes the way in which the Portuguese dealt with the African slave trade (Russell-Wood 35). He exhorted Spanish merchants not to engage in the trade of African peoples, due to various forms of abuse which were justified through law (Pérez Memén 106).

Similarly, in his *De Iustitia et Iure* (1593), Luís de Molina denounces and chastises the bishop and clergy of Cape Verdes for their indifference and their negligence to stir moral indignation against the trade (Russell-Wood 35), considering it illegitimate on moral and theological grounds. Thus, he declared the traders liable of mortal transgression (*ibid*). These sharp criticisms of the Portugueses' slave trading activities raises the question: What legal notions did Portuguese jurists and theologians put forward in order to exploit *black* Africans? Removing the need of a *just war* was crucial for Portuguese theologians and lawyers in justifying their pro-slavery position.

Jurists and theologians in Coimbra and Évora concurred that *servitus* was the result of a *just war*. What legal understandings did they maintain in regards to the nature of *servitus*? Born in Coimbra in 1531, António de Santo Domingo entered the Dominican Order in 1547, and was appointed Chair of Prima at the University of Coimbra in 1573. While at Lisbon, he began commenting on Aquinas' *Summa Theologie* (1578 – 1586) (Stegmüller 10). As a Thomist, de S. Domingo adopted Aquinas' division of law, instead of the division proposed by de Soto. In contradistinction to de Soto, he argued that *ius gentium* must be a natural law, since all humans recognize the same value in it [*Habet eadem vim apud omnes*.]. What was clear for de S. Domingo is that the law of nations is derived from natural reason. However, he distinguished between norms which are necessary for human existence and norms which can be abolished, since they are not necessary for human existence. According to this conception, de S. Domingo concluded that *servitus* could be abolished if there was no human consensus agreeing to it (Cod. 5512, f.7r).

In contrast to de S. Domingo, Fernando Perez adopted de Soto's conception of natural right—a type of natural-rational instinct. Perez was born circa 1530 in Córdoba. He came to Évora in 1559. He taught theology in the Chair of Vespers (1559 – 1567) then at Prima (1567 – 1572). Upon leaving Évora for Coimbra, Luis de Molina succeeded him. While in Coimbra, Perez prepared *De Iustita et Iure* (1588) (Stegmüller 10). He argues that *ius gentium* is necessary to promote a peaceful coexistence among peoples because of the fallen state of humans after the original sin. Thus, the *imago Dei* was corrupted after the Fall. Wherefore, Perez posited that *ius gentium* is a positive and instituted *right*. Hence, *servitus* within the context of war, is ruled by the law of nations, as a result of the postlapsarian state of humans.

Similar to Perez, Francisco Suárez considered war and *servitus* as belonging to the law of nations, and not of the natural law. Suárez was born in Granada, Andalusia and began studying law at Salamanca since 1561. While there, he entered the Jesuit Society in 1564, where he continued his studies of theology and philosophy. In 1572 he was ordained priest, after which he taught theology at Ávila, Segovia, Valladolid, Rome, Alcalá, Salamanca, and Coimbra. He remained in Coimbra teaching theology until his death in 1617. Robin Blackburm asserts that Luis de Molina's teachings on slavery and the slave trade had a significant impression on Francisco Suárez (Blackburn 179). De Molina maintained that the primary rationale for the institution of *servitus* by the law of nations was to castigate crimes which were unworthy of death ("De virtute et statu religionis*"* tr. VII, I.6, c. 2, n. 20, Vol. 15, 394; tr. VII, I.2, c. 12, n.17, Vol. 15, 173). He argued furthermore, that even though *servitus* is a universal custom according to the law of nations, a prince has the power to censure it. Essentially, the apathy of the colonial powers to dissolve the African slave trade is precisely what Suárez criticized in his day.

By the same token, in *A Arte da Guerra do Mar* (1555), Fernando de Oliveira criticizes Portugal's ideals of territorial extension, commercial exploitation, and religious expansion "giving themselves to war have gained our Portuguese riches and prosperity, and lordship of lands and realms … and, above all, given a chance for the faith of God to be multiplied" (Silva 31). Fernando de Oliveira was born in Gestosa and had obtained a broad Christian humanist education under the Dominican theologian André de Resende. At the age of 25 he moved to Spain, where he became interested in linguistics. In 1536, he produced the first Portuguese grammar book, and returned to Portugal in 1543 (F. de Oliveira Part I, chap. 1-5).

De Oliveira argued that wars must be waged according to the principles of *just war,* and that any enslavement of peoples acquired by unjust wars must be stopped. These issues are discussed in the first five chapters of *A Arte da Guerra do Mar.* De Oliveira confronts Portugal's wars at sea and those of some African states. He points out that African kings wage unjust wars with other African kingdoms to acquire slaves to sell to the Europeans, or by stealing fellow Africans for the slave trade. Even though slave markets existed among Africans before the introduction of the Portuguese, he accuses the latter of stimulating the request for slaves and thereby expanding the slave trade across the Atlantic (Duffy and Metcalf 149).

In addition, he accuses the Portuguese with leading slave raids and unjust warfare in order to take slaves on the West African coast (Newitt, "How Portugal Built its Empire"). Therefore, he reasons, "If there were no buyers, there would be no sellers," and denounces the Portuguese as … "the inventors of such a vile trade, never before used or heard of among brothers' as the "buying and selling of peaceable freemen as one buys and sells animals," with the spirit of a "slaughterhouse butcher" (Figueiredo 814). Essentially, de Oliveira rejected the

Portuguese monarchy's two-fold justification of the capture and trade of slaves along the West African coast, i.e. a *just war* theory-rationale, and the natural slavery of West Africans as inferior peoples (Smith, Mieroop, and Glahn 17-8).

During the latter part of the sixteenth century (1593), Luis de Molina advocated for the illegality of the African slave trade. De Molina raises a number of issues against the implementation of the institution of slavery and the practice of slave trade at the time. First, he expounds on his understanding of what constitutes a *just war* (col.415,C; col.415, A; tr. 2, d.104; col. 431, D and following). António Manuel Hespanha posits that de Molina's conditions for *just war* evidence that war is unjust when motivated for expansion of territories, glory, or personal gain (942). In that case, some cases for war and slavery were more controversial.

Furthermore, de Molina argued that Christians were not permitted to castigate anyone with war for violating natural law principles (col. 435, E). Only God can punish peoples for violating natural laws (col. 436, B/E). In doing so, he contradicted the contemporary Franciscan opinion, which desired to revive the spirit of the Crusades. Thus, he considered it unjust that "barbarous" or "rude" peoples became subjected through evangelization, so that they could keep natural law principles.

De Molina also expounded on *servitus* as a result of a crime: this state of *slavery* can only apply to the culprit, not to his descendants. However, once the culprit was lowered to the status of a *servus*, then his descendants also became perpetual *servi* (col. 158. C; 160; C). Upon analyzing the African slave trade, de Molina maintained that Portugal was not at war neither with Upper nor Lower Guinea. There was no legitimate legal basis for a *just war* (col. 166, D). The only possibility was that the slaves were bought from local African traders.

Without a doubt, these people had become enslaved due to local wars and condemnation for crimes. De Molina doubted the legitimacy of the wars among the Africans. He argued that if the internal wars are not just, then neither are the slaves bought by the Portuguese, truly war slaves. He further argued that even if the wars were just, the buyers did not certify that the slaves were true slaves (col. 189, E). Hence, the manner in which the slave market functioned did not allow for verifications of legal enslavement.

De facto, often time the Portuguese would arrive at a river or a port and Africans would offer to sell themselves. The Portuguese would buy the persons at the best price, without examining the legitimacy of the *tangomãos'*[5] titles (Silva Horta and Mark, "The Forgotten Diaspora"). Consequently, many innocent people—children and women—were condemned during internal wars. It was common in Africa that children and wives were sold as slaves together with their fathers and husbands. De Molina rendered this unjust and illegal (Hespanha 955). These were then sold to the Portuguese buyers, then sent to Brazil or elsewhere (951).

Finally, he held that even if some Africans were guilty of practicing cannibalism, this was not a reason to globalize it as a crime against all sub-Saharan Africans, thereby selling them (Hespanha 955). In point of fact, in his *First Relectio of the Indians Lately Discovered*, de Vitoria puts forward that cannibalism is a crime against the law of nature ("The First Relectio on the Indians" para. 375). Concerning the application of Aristotle's theory of natural slavery, de Molina explained that it referred to people that could govern themselves, and should be reduced to civil servitude, but not systematic chattel slavery (Hespanha 958). On these grounds, de Molina considered the entire trade illegitimate.

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[5] Eurafrican traders. Many of them were the product of Portuguese Jewish merchants and African mothers, who were integrated into to the Jewish people.

If truth be told, the Atlantic slave trade depended primarily on politico-economic factors. Whereas Portuguese jurists and theologians agreed that *servitus* as an institution was part of the law of nations, the ethnographical sketches of Fernando de Oliveira and the legal analysis of de Molina's suffice to substantiate their claims that there was no legal basis for just wars against the West African nations. Private enterprise of the lucrative sugarcane industry and the *hidalgo* [nobility] lifestyle of Iberians; and a religious war on a grand scale were the three main motors behind the odious trade.

In 1488, King John II (r. 1481 – 1495) informed Innocent VIII (r. 1484 – 1492) that slave trade dividends lent financial assistance to wars against North African Moors. The Portuguese monarchy collected more than two million *reis* through slave trade taxes and duties in 1506. After 1531, low-interest loans were made to Portuguese owners of sugar plantations in the Indies to enable them to purchase slave laborers (Orique "A Compassion of the Voice"). Koskenniemi asserts "Behind every sovereignty there is some kind of an ideology that justifies it but is visible only once the (positive) legal routines are disturbed—and every natural law needs positivity to make itself applicable in the world…But much of Europe's expansion took place through private operators, colonial or trading companies, and by way of private contract and the exercise of the right of private property" ("International Law and Empire" 10). The Portuguese monarchy promoted the trade of enslaved Africans for nearly sixty years by the time Portuguese theologians and jurists began to discuss the legality of *servitus, dominium,* and *libertas*.

4.4 Slavery in the Spanish and Portuguese Ordinances

An examination of Spanish and Portuguese legal codes which deal with slavery highlight the racial difference which was constructed through language and law. After the *Reconquista* (722–1492), *moro* [Moor] as an idea was equated with slavery within the Spanish Christian context, and thereafter, against the background of the Atlantic slave trade, the negative attitudes toward the Moors were imputed on all dark-skinned Africans.

In the Spanish medieval period, Alfonso X the Wise compiled *Las Siete Partidas* [Seven-Part Code] in Castile, between 1251 and 1265. However, these laws were not set into effect until around 1348. This code relied on the legal and ethical traditions of the ancient Visigoths, Romans, and the Justinian Roman law Code (Saperstein and Marcus Chapter 22). These were then synthesized with Church law in the early modern period. Before *Las Siete Partidas*, the enslaved included: non-Christian prisoners of wars, condemned persons, voluntary slaves who needed to pay their debts, and the children of enslaved mothers ("Las Siete Partidas" Code 4:XXI:1). *Las Siete Partidas* added two more categories: children of priest as slaves in the service of their father's churches, and Christians who helped the Moors with war materials (Code 4:XXI:4).

The fourth code of *Las Siete Partidas* addresses the rights of masters and the enslaved within a system of slavery, that reflects various ethnicities in a domestic, urban, and temporary environment. The North African and sub-Saharan soldiers accompanying Muslim armies, who were captured, became the property of Spain. Other Africans arrived to Spain either as free persons or via the slave market. Among the slaves in medieval and early modern Spain were

Greeks, Sardinians, Canary Islanders, Russians, Turks, Egyptians, Spaniards, and Moors. Even though the laws of *Las Siete Partidas* favored Christians, the enslaved could include Muslims, Jews, or even Christians. The idea that servitude was born out of sparing the lives of war captives is reflected in *Las Siete Partidas*:

> *Servidumbre, es postura, o establecimiento que hicieron antiguamente las gentes, por la cual los hombres, que eran naturalmente libres, se hacían siervos y se sometían a señorío de otro contra razón de naturaleza. Y siervo tomó este nombre de una palabra que es llamada en latín servare, que quiere tanto decir en romance como guardar: Y esta guarda fue establecida por los emperadores, pues antiguamente a todos cuantos cautivaban, matábanlos, mas los emperadores tuvieron por bien y mandaron que no los matasen, mas que los guardasen y se sirvieren de ellos.*
>
> Servitude, is a position, or an establishment that people did in the ancient times, by which men, who were naturally free, became servants and submitted to the lordship of another against reason of nature. And [the] servant took this name from a word that is called in Latin *servare*, which means to say in romance [Spanish]—to preserve: And this preserving was established by the emperors, because formerly, they killed them all whom they captivated but the emperors had good [intentions] and ordered not to kill them, but to preserve them and serve themselves with them (Code 4:XXI:1).

In this context, Roman emperors demonstrate mercy by saving the lives of his captors, and reducing them to servitude. This law assumes that humans were born naturally free, and to submit oneself to the lordship of another goes against natural or right reason. Thus, it stands in contradistinction to sixteenth-century Spanish humanists' conceptions of Aristotle's premise of natural slavery, which puts forward that some peoples were born in a natural state to serve others (Aristotle, "Politics" 1.2, 1252a24-6; Tuck "The Rights of War and Peace" 42).

The laws of *Las Siete Partidas* assume the legal understanding that *servi* are acquired as a result of a *just war*. As such, masters have *dominica potestas* [complete ownership] over their *siervos*. Yet, this power restricts the master from killing or abusing a *siervo* through starvation or physical strikes, unless the master discovers the *siervo* sleeping with his wife or daughter, or similar things (Code 4:XXI:6). At the farthest extent of this law lies the assumption that a male servant is sexually promiscuous. In fact, this form of *servitus* is limited to males, since they are taken captive from enemy armies. One could then conclude that these laws do not apply to female servants.

Libertas as a notion within *Las Siete Partidas* is intimately related to the idea of *Imago Dei* and free will. Thus, humans created in the "image and likeness" of God have the capacity to reason and to make decisions are truly *free*. According to *Las Siete Partidas* a master could grant *liberty* to his *siervo* at the church or outside of it, in front of a judge or in a written will ("Las Siete Partidas" Code 4:XXII:1). The master must do this himself, and cannot assign someone else to manumit the *siervo*.

Sally Hadden argues that the omissions on: the proper religious instruction for *siervos*, their right to marry, or the rights to food, clothing, and shelter, demonstrate that bondsmen

comprised a small population, and that this type of *servitus* was intended for a temporary time period (258). She also posits that the presumptions of title XXII of the Fourth *Partida*, "all creatures in the world naturally love and desire liberty," formed part of Spanish colonial laws, yet their transmission were lost by sixteenth-century settlers in the New World (*ibid*). This implies that external factors to the legal codes had influenced public policy in the New World.

Certainly, the international arbitration system set up in the Spanish colonies to settle slave-property disputes had been corrupted. Essentially, the "neutrality" of the arbitration system normalized the slave trade, since judges-conservators "worked within the system," yet did not discuss the "legitimacy nor the legality of slavery" (Martineau 219-241). While the Spanish medieval *siervo* was not limited to a racial nor ethnic group, after the Portuguese commenced the trade of dark-skinned African slaves (1445), medieval Iberian slavery law began to acquire pejorative elements, based on phenotypes, and influenced the language thereof.

The *Ordenações Afonsinas* were instituted with the objective of systemizing Portuguese laws in the fifteenth century. They were approved sometime between 1446 and 1447. This code was organized in five books, divided by titles, and paragraphs; its structure is similar to *Las Siete Partidas.* The books are divided as follows: judicial administration; protective rules on behalf of some persons and institutions; procedural norms; civil law proceedings; criminal law. It also contains laws regulating the rights and legislations pertaining to the Jews and the Moors.

The printing press was introduced in Portugal during the monarchy of King Manuel. Already by 1512, the *Ordenações Afonsinas* were modified and named *Ordenações Manuelinas*, after Dom Manuel. However, there is a debate as to the exact date when they went into full force. The first publication was in 1514, and implemented in 1521, the year of King Manuel's passing

(Almeida Costa 282). This code maintained the same structure of the five books, but some laws were eliminated, while others were added (Dias Paes 525). After Spain and Portugal consolidated power in 1580, this code of law underwent another modification—the *Ordenações Filipinas.*

King Phillip of Spain modified the *Ordenações Manuelinas* to include legislation from *Las Siete Partidas* in the Portuguese ordinances. The redaction of this code was concluded in 1592, but it was not until 1603 when it went into effect. Whereas the *Ordenações Manuelinas* had 393 titles, the *Ordenações Filipinas* had 511 titles (525). By the time that the *Ordenações Filipinas* were redacted, Spain and Portugal had expanded their empires across the seas, and the Catholic Church's religiosity and authority had been centralized. Thus, the previous codes needed to be reworked in order to adjust to changes in social structure and the disuse of many laws. The *Ordenações Filipinas* demonstrated a respect for Portuguese legislation, despite the submission of Portugal to the Spanish monarchy (Lara, "Ordenações Filipinas Livro" V).

Collectively, the *Ordenações Manuelinas* and *Ordenações Filipinas* include 71 sections on slavery. The former contains just twenty-three sections on slavery, whereas the latter has forty-eight. They are found in Book Four and Book Five. While in the *Ordenações Afonsinas* the term *servo* applies to a captive Moor*,* in the *Ordenações Manuelinas, servo* applies not only to Muslims, but also to *black* Africans [*servo* is servant in Portuguese]. However, in the *Ordenações Filipinas* the term *escravo* is used exclusively for enslaved sub-Saharan Africans.

The myth of the "Curse of *Ḥam*" contributed to this racial difference. The *escravo* is mentioned in sixty-four sections, while *free* persons in ten, and the African *negro* in eleven. Indeed, the use of *escravo* in the *Ordenações Filipinas* brings out into the open the reality of plantation slavery in the colonies (Lara Ribeiro 375-398). Plantation slaves [*escravos*] were

"bequeathed in wills, sold in deeds, given as gifts, used to pay mortgages, used as security in loans, listed in plantation inventories along with other moveable property and livestock, and their value specified in currency or sugar" (Handler 240).

The *escravo* is equated with things, together with animals and objects "And if there were a quarrel regarding an *escravo*, a beast, or a ship, and depending on the appeal, whether the *escravo*, or the beast, or the ship perish, they shall not fail to go thereafter" [*E se for contenda sobre algum escravo, besta, ou navio, e pendendo a instância da apelação, morresse o escravo, ou besta, ou perecesse o navio, não deixarão por tanto de ir pelo feito em diante*] (Book III, Title LXXXII:1). Hence, the *escravo* is considered to be property. Furthermore, in Book Five, Title LXX, *escravos* and *negros* are prohibited from living alone and from dancing within the city limits of Lisbon. This law singles out dark-skinned Africans, regarding them as slaves. Also, in Book Five, Title XCIX, slaves from Guinea and the offspring of female slaves born in Brazil, are required to be baptized. Herein, it is evident that most African slaves were taken from Guinea and that it was common practice for Portuguese men to have children with their slaves. In legal terms, the *escravo* in the *Ordenações Manuelinas* and *Filipinas* has the status of private property, with the exception that they can enter into matrimony (Dias Paes 533).

After the late fifteenth-century Spanish conquest in the New World, it became necessary for the crown to establish laws to regulate economic, political, and social life in its overseas territories. Throughout the four-hundred years of Spanish imperialism on American soil, legal codes were compiled several times. Slavery was accepted in legal codes on the Iberian peninsula and exported overseas; they were compiled as *Las Leyes de Indias* [Laws of the Indies] (García Benítez 259-274). In volume one, Phillip II orders on May 26, 1596, that in "each town a time be

designated in which the *Indians* and *negros* shall listen to the Christian doctrine" (De la Guardia 31).

Law XII reads:

> We order that in each of our Christian towns in the Indies designate a time each day, where all of the *Indians, negros*, *mulattos*, whether slaves or free, within the towns, to listen to the Christian doctrine, and provide them persons to teach them, and that all the neighbors be obliged to send their *Indians*, *negros*, and *mulattos* to the doctrine, without impeding them at said time…and we declare that they whom should hear the doctrine every day, to be *Indians*, *negros*, and *mulattos*, which serve in homes, who normally do not toil in the fields (32).

Decades earlier, on October 18, 1549, Phillip had decreed, "We order and command all peoples that own slaves, *negros,* and *mulattos*, to send them to the Church or the Monastery at the time designated by the priest" ("Las Leyes de la Indias" Lax XIII).

In comparing Law XII and XIII, there is a slight difference between the tripartite formula: *Indians*, *negros*, and *mulattos*; slaves, *negros*, and *mulattos*. By 1596, the Native Americans were no longer considered to be enslaved subjects of the Spanish crown. However, *negros* and *mulattos* were placed on the same social echelon with slaves (García Benítez 262). These terms not only describe their phenotypes, but evaluates them as slaves in need of salvation through Christian instruction.

At the *Concilio Provincial Dominicano* in 1622, owners of *negros* brought from Ethiopia and other parts, were commanded to indoctrinate and baptize them. The Council also determined to catechize and baptize the Africans on the docked ships, awaiting to be sold, lest some of them die and lose their souls, without indoctrination and baptism (Armellada 21-4). By the end of the sixteenth century the sole source of New World plantation slaves were *black* Africans (Salzman, Smith, and West 274). Even though *black* Africans were Christians, they did not have the *Imago Dei.* As such, they could be enslaved by *white* Europeans.

4.5 Conclusion: The "Curse of *Ḥam*" and Iberian legal consciousness

The myth of the "Curse of *Ḥam*" contributed to the depreciation of dark-skinned Africans and to their association with enslavement. This destructive myth contributed to the construction of racial difference which influenced Iberian legal consciousness. In the Spanish colonial codes and councils, *negros* and *mulattos* are deemed heathens and slaves. Thus, the linguistic convention in the Spanish West Indies is that dark-skinned Africans are not only enslaved, but also need to be saved through Christian doctrine.

French Jurist François Connan (1508 – 1551) declared "Liberty was born with servitude…there was no one free, when no one was a slave: as among Christians no one is called free, since none of them is a slave" (*Commentariorum Iuris Civilis Libri X*, 1557, 72-73). Indeed, before the commencement of the Atlantic slave trade, the practice of slavery within the Christian kingdoms of Spain and Portugal was limited to the war captivity. Prior to the peculiar trade, *libertas* was defined as possessing free-will and right reason. The rational capacity to make decisions was based on the theological notion *imago Dei*. Accordingly, *dominium* was either

equated with *libertas* or understood as self-governance. As such, *servi* did not have *libertas* nor *dominium*.

The myth of the "Curse of *Ḥam*" provided a basis for the dehumanization of sub-Saharan Africans. Tuck asserts that the first readers of Aristotle's *Politics* in Latin understood that "hunting natural slaves is *ipso facto* just," [*ad hominum quicumque nati sunt subici et non volunt, velut naturum iustum hoc existens bellum premum*] since the victims of the raids are natural slaves (66; Aristotle, "Politics" c.1260). Essentially, in citing Aristotle, Renaissance jurists dehumanized individuals and treated them like animals, to justify slavery and slave trade (Shelton 230-31; Zack 115; Davis, "Inhuman Bondage" 33).

The amalgamation of Aristotelian *natural slavery* with the "Curse of *Ḥam*" myth was the vehicle by with lawyers justified the eradication of natural *rights* and the divine image from *black* Africans. Therefore, even if dark-skinned Africans were baptized into Christianity, they did not possess the natural *right* to *libertas* and *dominium*. Therein lies the contradiction of it all. Consequently, West Africans are enslaved without the legal basis for a *just war.* Even though the slave owners hold illegitimate titles over their slaves, the enslaved are sold as *res.*

The Atlantic slave trade had a great influence on how the law of nations and nature was conceived within the sixteenth-century Iberian context. The analysis hereof evidenced that *ius naturae et gentium* was fluid. *Dominium* [sovereignty or property] as an institution of the law of nations and nature was reworked by opportunistic theologians and lawyers in order to construct arguments in favor of the Atlantic slave trade. *Dominium* as private property was universalized as a natural *right*, such that Iberian Christians could own Christian and non-Christian African slaves alike.

On the same token, *dominium* as sovereignty was universalized such that the law of nature was applied to all humans, irrespective of religious affiliation. Thus public law and private law became intertwined (Koskenniemi, “Law and Empire” 12). The destructive myth of the biblical *Ḥam* and his descendants was understood by pro-slavery Iberian theologians as volitional divine law, i.e. lawful because it was willed by God. When the "Curse of *Ḥam*" myth is understood as volitional divine law, and is synthesized with the *naturalized law of nations* (refer to Section 1.3), the enslavement of Africans becomes a mandate sanctioned by both God and men. The conceptions of the law of nations and nature were not static; they changed according to the time and their use. To that end, Iberian jurisprudence sought to maintain balance with morality, law, and Christian ethics (Koskenniemi, “International Law and Empire” 11).

In the case of slavery and slave trade between Iberia, Africa, and the islands, legal thinking developed in service of colonization and the enslavement of innocent peoples. Whether a person was born into slavery, enslaved within the context of war, or due to a penalty, in Roman law he or she is considered *res* of the owner on the grounds of *dominica potestas* [The ownership of slaves]. It is on this basis that European colonists made their legal claims on *blacks* wherever they were to be found. This is the context in which *Nação* merchants participated in the early modern Iberian debate on slavery and slave trade. By the time the Dutch arrive to the scene, there is a ready-made system of colonial slavery, a network of slave trade, and legal arguments to draw from.

5.

The Seventeenth-Century Dutch Republic Legal & Theological Ideas On Slavery and the Slave Trade

"Natural law performed in the older days the function of a bridge between international and private law; it was the cover under which international law drew from the rich source of private, notably Roman law. In the days of the predominance of positivist tendencies it is *general jurisprudence* which is fulfilling this function"

(Lauterpacht 34-35).

The VOC and WIC Slave Trade —The Synod of Dordrecht—Cocceius and Voetius on Slavery and Slave Trade—The Law of Nations and Nature in the Dutch Republic—Dutch Trading Companies Punish Barbarians——Natural Law and Law of Nations Amid Slave Trade

5.1 Introduction

The previous chapters introduced the Iberian early modern legal, theological, and ideological debates concerning slavery and the slave trade. In Chapter 3 we discussed the so-called "Curse of *Ḥam*" theory and how Sephardic thought contributed to the theology of Johannes Cocceius and his followers. This chapter continues with the legal, political, theological, and ideological debate concerning slavery and slave trade within the seventeenth-century Dutch Republic. Each with their own interests, Sephardim and Moderate Calvinists constructed arguments in such a manner that they were accepted by the authorities in the port cities of Holland, Friesland, and Zeeland (Ribeiro da Silva "Crossing Empires"; Postma 9; Schorsch, "Revisting Blackness"). Dutch merchants and stakeholders of the WIC became involved in international trade and realized that they could make huge profits through slave labor and slave trading. The heart of the matter is how merchants and companies operating from Amsterdam and the Republic justified these institutions legally in order to continue to amass wealth.

The aim of this chapter will be to reconstruct the debate on slavery and slave trade, in order to understand how the *Nação* intervenes within the dimensions of theology and law (Chapters 6 and 7). When pro-slavery jurists synthesize their arguments with Cocceian theology, the result is that the political and economic elite have a moral and legal support to work with.

This chapter sets the moral and political stage of the *Nação,* as the "other within" the Dutch Republic slavery and slave trade debate. In general, Portuguese Jews in Amsterdam kept to themselves, being barred from theological and political discussions with the host Protestant communities, with the exception of a few rabbis from *Eẓ Ḥaim*.

A number of scholars have discussed the material and doctrinal contributions of the Dutch in the practice of overseas slavery and slave trade. Ernst van den Boogaart and Pieter Emmer argue "from the notarial archives in Amsterdam it can be shown that Dutch skippers participated in the slave trade to Europe and America on behalf of merchants in Lisbon and Portuguese Jews in the Netherlands" (Boogaart and Emmer 354). Cátia Antunes and Felipa Ribeiro da Silva have confirmed this in their analysis of the Amsterdam municipal archives ("Amsterdam Merchants in the Slave Trade and African Commerce" 3). Marcus Vink asserts that the "Dutch were active participants in the Atlantic and Indian Ocean slave trades" and "for nearly two centuries they were the 'nexus of an enormous slave trade, the most expansive of its kind in the history of Southeast Asia'" ("Freedom and Slavery" 20).

East Indies slavery led to theological debates within the Dutch Republic over the morality of slave trade, requiring the Synod of Dordrecht in 1618. After the establishment of the Dutch West India Company [WIC] in 1621 and the systematic enslavement and trafficking of Africans, the Dutch Republic was torn over the morality of the Atlantic Ocean and Indian Ocean slave trades. Marcus Vink puts forward that "slavery was part of a larger conflict between orthodox and moderate Calvinists or Voetians and Cocceians" ("A Work of Compassion" 3).

Despite the plethora of historical research on the involvement of the Dutch brokers, merchants, and sailors in slave trade, there is a lacuna when it comes to the legal history of

slavery and slave trade in the seventeenth century. Jean Allain puts forward that Cornelius Bynkershoek was the first jurist to acknowledge that the Dutch practiced slavery and participated in slave trading (“Slavery in International Law 49). Since Bynkershoek was active toward the end of the seventeenth century and the beginning of the eighteenth, this implies that Dutch jurists before him either did not address overseas slave trade or that the matter has not been seriously investigated. Seymour and Paul Finkelman maintain that even though slavery had long ceased to exist in northern Europe before the overseas colonial ventures of the seventeenth century, “northern European political, legal, and religious authorities offered no sustained opposition to overseas slaving or slave holding” and that Holland provided charters for trade and colonizing companies to draft legal codes to meet their circumstances overseas (“African and American Slavery” 896-97).

Before the Synod of Dordrecht (1618) there was no legal nor theological stance on the practice of slavery and slave trade within the United Dutch Provinces. Time after time, merchants came into the different port cities of the Dutch Republic with slaves, which caused much upheaval. The consensus understood that slavery was not practiced in the Netherlands due to the "free soil" tradition. However, the activities of the VOC and WIC thereafter, challenge this consensus. By the 1630s, the WIC grants charters allowing slave trade in New Amsterdam.

One of the most influential Dutch jurists in international law and relations in the seventeenth century was Hugo de Groot (1583 – 1645). Even though he was against the idea of early modern-humanist re-workings of Aristotle’s theory of natural slavery, his legal theories could have been used by later jurists to construct pro-slavery arguments. Cultural historian David B. Davis (1927–2019) posited that Grotius’ intimate knowledge of classical authorities “could

also be turned to a secular defense of slavery at a time when the prosperity of Holland was closely linked to the African trade" ("The Problem of Slavery" 114). Davis argues that Grotius accepted *servitus* to be in harmony with *ius naturale*. In agreement with Davis, John Cairns holds "what Grotius had provided in his *De Iure Belli Ac Pacis* was an ideological support for the institution of slavery that was becoming important to the economies of the maritime colonial powers" (201). This provision was his conception of *servitus in ius naturale* [perpetual servitude]. This is discussed in detail in Section 5.4.

Even though Grotius did not produce a pro-slavery nor an anti-slavery treatise on behalf of the VOC nor the WIC, other Dutch jurists certainly constructed pro-slavery arguments by mobilizing his conceptions. Pieter Emmer maintains "Grotius did highlight a problem: Africa and the Netherlands were not at war with each other, so the Dutch slave trade appeared to lack any legal justification" (Emmer13-14). Since the legal discourse of enslavement was based on the parameters of *jus bellum* [just war], the lack thereof leads to the logical conclusion that there were other factors at play.

While there exists some discussion on how the legal conceptions of Hugo Grotius relate to mercantilist endeavors of the VOC, there is little to no discourse on how the institution of slavery in the Indian Ocean and the Atlantic slave trade shaped seventeenth-century Dutch legal thought. This chapter aims to lay the foundations for this study. Building on Marcus Vink's narrative on the Cocceian-Voetian slavery and slave trade debate, I add the legal dimension, bringing Vink's work into conversation with the legal discussions at the time. Accordingly, I will argue that the legal conception of the law of nations and nature, as espoused by Alberico Gentili (1552–1608) represented the convention at the time among Protestant humanist scholars, yet

underwent a transformation, whereby private entities were permitted to exercise public authority on behalf of the Dutch Republic. This permitted those with interests in the VOC and WIC to acquire slaves and trade them under the pretense of *just war*. Building on Gentili, Grotius [pre-1621] mobilized notions of *just war*, natural law, and property to grant the VOC [a private company] to exercise public authority [in the name of the Dutch Republic]. Thereafter, other jurists constructed legal arguments for overseas slavery and slave trade on the same grounds.

Section 5.2 constructs a narrative which details the participation of Dutch and Sephardic merchants in slave trade, as introduced in Chapter 1. Section 5.3 introduces the political-religious debate, bringing to the forefront the debate between Johannes Cocceius (1603 – 1669) and Gisbertus Voetius (1589 – 1676), the role of the "Curse of *Ḥam*" myth, and their respective schools of thought on the slave trading activities of the Dutch East India Company [VOC] and Dutch West India Company [WIC]. Therein, an analysis of a few sermons and letters build the context concerning the theological justifications for and against slavery. Afterwards, I discuss how these justifications informed the legal discourse at the time.

Section 5.4 details how *dominium*, *potestas* and *libertas* were understood by Dutch jurists. This is vital to reconstruct the intellectual context within which *Nação* legal consciousness developed. Overall, as introduced in Chapter 1, I argue that Dutch Christian merchants, together with *Nação* merchants, created business partnerships to promote trade between the United Provinces, Africa, and the Indies. In doing so, they shared theological and legal ideas regarding slavery and the slave trade. In order to substantiate this claim, I will piece together the seventeenth-century Dutch Republic theological and legal debates on slavery and slave trade. By applying the Cambridge School method of intellectual history as set out in

sections 1.4, this chapter includes an examination of the linguistic conventions and argumentations used by seventeenth-century Dutch traders, theologians, and jurists. The goal is to understand how *dominium*, *servitus*, and *libertas* were used in order to circumvent and change the established conventions.

Section 5.5 examines the legal debate of *ius naturae et gentium* and *servitus* in a *just war*, through the lens of Hugo de Groot, Willem de Groot (1597 – 1662), Ulrich Huber (1636 – 1694), and Cornelius van Bynkershoek (1673 – 1743). I limited myself to study the writings of these four because they highlight the change and mobilization of legal conceptions and conventions throughout the seventeenth century. How was the VOC to deal with prisoners of war in the East Indies? How did the WIC become involved in the Atlantic trade, without a *just war* against West Africans? How could there be an acceptance of selling and buying humans created in the "image of God" as *res* [anything which is the object of a legal act, i.e. property]? In order to contextualize this question, I reconstruct a limited political-religious debate surrounding the establishment of the VOC and the WIC. In general, this chapter discusses the ideological, theological, and legal context for the slave trading activities of the Dutch and the *Nação* in the seventeenth-century.

5.2 Slavery and Slave Trade Through the VOC and the WIC

During the seventeenth-century Dutch Republic, merchants from north Netherlands discovered goods from Asia, Africa, and the Americas, and brought them back home to consume, trade, and export. In the mid-1590's, Philipp II of Spain [Castille and Aragon] lifted the embargo on the Dutch in the East Indies. Shortly thereafter, Portuguese *conversos*, specializing in

importing East Indies commodities from Lisbon, began arriving in Rotterdam, Middelburg, and Amsterdam.

After the publication of *Itinerario* (1596), many Dutch merchants gained knowledge of commodities, routes, and conditions in the East Indies. *Itinerario* is a report of the journey of Dutch merchant, trader, and historian, Jan Huyghen van Linschoten (1563 – 1611), which he undertook from Lisbon to Goa and back. It encompasses information on many countries in the region, especially on Goa itself, its milieu, the state of affairs in Portuguese India, and valuable details on regions unknown to most Europeans.

Already in 1599 there were no fewer than eight companies specializing in East Indies traffic to Holland and Zeeland (Israel, "European Jewry in the Ages of Mercantilism" 320). The States General and Estates of Zeeland made agreements with the merchants in the form of a charter in 1602 (322). The *Verenigde Oostindische Compagnie* [VOC] was born amid the frantic trade activity between the Spice Islands, Java, and Holland. Portuguese Jews were vital in helping Dutch brokers and traders in the East Indies since they had knowledge and access to networks in those regions (Bloom 33). Herbert Bloom (1922 – 1989) asserts "These patrician traders [Dutch East India Company], with Eastern goods at their door, first utilized Jews as their mentors in international business. Having learnt their methods and established connections, they then forced them into relatively subordinate positions, employing vast monetary resources to gain control of the trade" (Bloom 33). Undoubtedly, Sephardim and Dutch Christians shared resources in international trade.

The Dutch did not wage a defensive war against the Portuguese to secure either their homeland or existing trade patterns. They waged an offensive war, with the goal of opening up

trade routes and to accumulate wealth (Tuck, "Rights of War and Peace" 79-82). Charles Henry Alexandrowicz generated quite some scholarship in the recent years after publishing his *Introduction to the History of Law of Nations in the East Indies* (1967). Therein, he asserts that historians have often overlooked one aspect of the problem of the establishment of Corporate Sovereignty in the East Indies. While respective armies were battling in the Indian Ocean, jurists were back home developing legal theories in order to protect their overseas political-economic interests.

Alexandrowicz maintains that Grotius formulated the doctrine of *mare liberum* [open seas] on this account ("Treaty and Diplomatic Relations" 44). Grotius produced *Mare Liberum* at the probable request of the VOC, as a chapter with *De Iure Praedae* (Ittersum "Mare Liberum" 60). Essentially, Grotius agreeing with de Vitoria, argued that every nation had the right of free access to other nations and trade with them, based on the primary law of nations [secondary natural law]. Contrary to Grotius' theory, Portuguese jurist, Franciscus Seraphin de Freitas, argued that primary and secondary natural law or law of nations were artificial divisions (Alexandrowicz, "Freitas versus Grotius" 165). This difference is crucial since many jurists at the time separated *ius gentium* from *ius naturale*. As such, Seraphin de Freitas argued that the claim to free access to lands and seas was not based on natural law principles, but agreements in accordance with the law of nations.

Of utmost importance to the VOC was the Roman-Dutch notion of *pacta sunt servanda,* meaning that all agreements in the form of a contract were written in stone (Alexandrowicz, "Treaty and Diplomatic Relations" 203-21).[6] The issue at stake for Iberian scholastics and

[6] Peter Borschberg argues similarly in "Hugo Grotius, the Portuguese and 'Free Trade' in the East Indies."

Grotius was what constituted grounds for *just war*? As such, if a violation of the natural law of nations resulted in a *just war*, then the Dutch could defend their right to navigate freely in the Indian Ocean. Ultimately, in establishing the basis of a violation of natural law [The natural *right* to free trade and free sea] for a *just war* against the Portuguese, the VOC justified its *right* not only to secure trading routes, but also to all prize belonging to them, i.e. slaves and slave markets.

The Dutch privateering of Portuguese ships in the East Indies, and the battle over territories thereof, through the activities of the VOC, often yielded prisoners of war, and thereby, enslaved peoples (Boogaart and Emmer 355-56). Marcus Vink holds that already by the end of the sixteenth century, Dutch explorers "took over and interacted with preexisting systems of slavery dependency" in the Indian Ocean ("The World's Oldest Trade" 149). Thus, the arrival of the VOC in the East Indies early in the seventeenth century ushered greater slave trade therein between Dutch and Asian merchants.

Slaves in the Indian Ocean slave trade were *true* slaves, either recently captured and sold in *open systems*, or in *closed systems* of slavery (Reid 1463; Watson, "Asian and African Systems of Slavery" 9-13). Leland Donald explains:

> Open systems of slavery (which are common in Africa but found elsewhere as well) are characterized by the gradual absorption of slaves into the kinship and family system of their masters…Closed systems of slavery (which are common in Asia but found elsewhere as well) are characterized by the failure of slaves to be absorbed or adopted

> into the family or kinship unit of the master…The only way out of slavery is by formal emancipation (100).

The VOC transported Asian and African slaves workers as domestic servants, artisans, and laborers from their base in Batavia, Malacca, at the plantations in eastern Indonesia, at their stations in coastal Sri Lanka, and its settlement at the Cape of Good Hope (Allen 9). Sephardic Jews generally practiced open systems of slavery everywhere they went, until the establishment of plantation slave economies in the colonies (see infra sections 6.3 and 6.4).

Richard Allen explains the VOC's hegemony in the Indian Ocean and how Asians were absorbed into systems of slavery:

> Political strife and warfare produced many of the slaves shipped from India's Coromandel Coast by the Dutch during several of the export "booms" that occurred during the seventeenth century, while warfare and endemic raiding generated a steady supply of slaves from stateless societies in the Indonesian archipelago following the VOC's destruction of the powerful sultanate of Makassar in the late 1660s. Famine, whether the product of natural forces such as drought or flooding or the by-product of political strife and warfare, forced many desperate Indian men and women to sell their children, if not themselves, into slavery in order to stay alive. Debt was the single most important factor behind enslavement in Southeast Asia (Allen 12).

One could agree that the main source of enslavement in the Indian Ocean basin was due to warfare between local parties and Europeans against the locals.

The Protestant Reformation opened the door to a different way of serving God and interpreting the Bible than Catholicism (Witte, "Law and Protestantism" 35; Witte, "From Gospel to Law"). As Protestant theologians took it upon themselves to translate the Bible into the vernacular of the respective European languages, new groups sprang up—Lutherans, Calvinists, Anabaptists, Mennonites, Baptists, Moravians, and more (DePrater 117). Each scholar or theologian claimed to have found the *present truth*, i.e., a belief in truth as appropriate to any given time. After the Protestant Reformation, more opportunities were granted for Protestant Christian movements to develop themselves into political-religious entities across the European continent (McGrath 1).

Throughout the Dutch Republic, tensions between Gomarists and Arminians were felt (1608 – 1618). Already by the seventeenth century, there were several Dutch versions of Scripture. In order to arrive at a common ground, a group of theologians decided to gather at the Synod of Dordrecht (1618). One of the themes was the lack of an authorized "States" Bible. Thus, they agreed to provide a new, authoritative translation of the Bible from the Hebrew, Aramaic, and Greek into Dutch. This task was handed over to six chief translators (Israel, "The Dutch Republic" 461). After 180 sessions, in June 1619, the thirty-one Dutch and twenty-eight foreign theologians assembled at Dordrecht, finalized their deliberations and received the approval of the Dutch States General, and provincial councils, for their resolutions (462). One of the main issues was how to translate the Hebrew word for servant/slave into Dutch in specific passages by which East Indies slavery could be legitimized on biblical grounds.

In the context of this thesis, one of the main questions raised at the Synod of Dordrecht was "Did the baptism of a slave lead to his or her manumission?" The answer to this question did not only affect Dutch Christians, but also affected the policy for manumissions within the *Nação* community in Amsterdam and abroad [section 6.4]. One of the biggest fears of Dutch colonists was that they would have to manumit their slaves upon baptizing them to the Christian faith (Klein 146). According to VOC policy, slaves born in the household had to be baptized within eight days (Brana-Shute and Randy Sparks 104). On the one hand, the Reformed Church taught that colonialism and slavery was a pathway for the heathens to be saved and experience the grace of God. Furthermore, the Reformed Church held that baptism was the sign by which God seals his covenant with children of believers (Tjondrowardojo 135). On the other hand, some theologians taught that heathens could only approach grace in this lifetime, and only be saved in the next. Consequently, slaveholders had mixed feelings between sharing the gospel of Christ, while maintaining their coreligionists enslaved to them (Brana-Shute and Randy Sparks 104)).

At the Synod of Dordrecht, theologians debated on whether slaves should be baptized, integrated into the master's family, and then freed (Elbourne 113). There were at least eighteen opinions put forward by Reformed Church authorities, concerning the decision to baptize the enslaved offspring of heathen parents. The Reformed Church authorities left this responsibility to the household head (*ibid*). Others declared that baptized slaves must be freed, and if the slave owner failed to do so, he could not sell the slave outside of the household to which he or she had been born (Mason 184).

One of the foreign theologians participating in the Synod was Giovanni Diodate (1603), who had authored an Italian translation of the Bible argued:

> There is no objection to baptizing those [slaves] who are well-educated and have free choice and are capable of professing the Christian faith. However, two thing must be observed—they must answer not only from some booklet, but according to their own opinion, therefore one ought to give them sufficient time for education than to expose the sacred sacrament to desecration; here is the same requirement, which the apostle states in regard to attending the Lord's supper; these baptized must enjoy the same political freedom as the other Christians, and one ought to take care as much as possible to keep them from the danger of straying away, by prohibiting them from being sold and estranged. They must not be regarded as slaves but as workers by their lords as well as other Christians (Jaajan 355).

According to the Africana studies historian, Graham R. Hodges (1952–2003), Diodate's declaration influenced "Dutch opinion and judicial action and effectively disallowed slavery in Holland" ("Slavery and Freedom" 36). If truth be told, it was already prohibited before Diodate's declaration, only that he reinforced what was already understood in previous centuries, i.e. that there is no slavery in the Netherlands. Essentially, this meant that slaves brought to the United Provinces were automatically emancipated [the "free soil" tradition]. Furthermore, the delegates to the Synod from South Holland did condemn baptism for enslaved children on the basis that they did not wish to emulate the Roman Catholic Church (Krauth 32).

Attesting to the baptism of enslaved West African children by Catholic priests, Dominican friar, Tomás de Mercado (1525 – 1575) denounced the way in which the Portuguese

conducted the trade and the brutality meted out to the enslaved. He thereby found it difficult to accept reports of mass slave baptisms at embarkation on the West African coast with the humiliation to which these new-born Christians were put through on their arrival in Spain (Russel-Wood 35). Evidently, the Portuguese had the custom of converting enslaved Africans *en masse* at the West African ports. In conclusion to this issue, the Protestant theologians declared at the twenty-first meeting of the Synod [Dec. 5], that those children who had reached a certain age and who had been confiscated from their heathen parents during war, without consent, adopted by Dutch Christians, and either used or bought, could return to their pagan customs at any time (Donner and van der Hoorn 44).

In consequence, there was no formal position established on whether slaves born in Reformed Christian households outside Europe should be baptized or not; the discretion was left to the head of household (Blackburn 64). This implied a loophole wherein Dutch Christians overseas could enslave Asian peoples and decide whether they wanted to introduce their slaves into the Christian fold or not. Despite the nonexistence of an official resolution on the matter between baptism and slavery, "Protestant theologians [Cocceians] agreed that slaves should be encouraged to convert to Protestant Christianity and be educated" (Gerbner 23).

Had it been decreed that the enslaved were to be freed upon baptism, then it would have discouraged slaveholders to baptize them (*ibid*). In contrast to Giovanni Diodate's discretion on the political freedom of Asian slaves, the majority of the Synod delegates agreed that the power of decision was left in the hands of the slave owner to buy, sell, convert, or manumit the enslaved. The Synod of Dordrecht resolution set the moral and legal context for the slaving activities of the WIC thereafter.

Between 1609 and 1621, Dutch traders "handled about half of the sugar exports from Portuguese Brazil" (Emmer 731). Crucial to the Dutch-Brazilian trade were the *tangomãos* or *lançados* [Eurafrican traders. Many of them were the offspring of Portuguese Jewish merchants and African mothers, who were integrated into the Jewish people] that were brought by Sephardic merchants from Africa to the Netherlands to be trained as interpreters (Boogaart and Emmer 354). Their knowledge of Dutch and African languages facilitated the trade relations with the WIC.

Because the production of sugar requires so much labor, the importation of slaves was crucial to the business. After the expiration of the Twelve Year Truce (1621), States General granted a group of shareholders of the VOC the charter for the *Westindische Compagnie* [WIC] (Blanken 2). The board consisted of nineteen members known as the *Heeren* XIX, with established chambers in Amsterdam, Hoorn, Rotterdam, Groningen, and Middelburg. The chambers in Amsterdam and Middelburg contributed more financially than the others (Blanken 23-24).

When discussing the involvement of the Dutch Republic in the Atlantic slave trade, some raise the argument, "well those were the times, people didn't know any better" (Korgen 40-44). Contrary to that opinion, the establishment of the WIC charter did not go without an outcry. When a considerable number of merchants initially expressed a desire to transport African slaves to Brazil, the WIC's board of directors set up a committee to consider the moral overtones of the slave trade and report back to the board (Emmer, "The History of the Dutch Slave Trade" 732). According to Peter Emmer, the committee which had been appointed by the WIC board in 1623, to look into the matter of the slave trade from Angola, advised negatively, meaning that slave

trade should not be practiced in West Africa (*ibid*). The board of directors raised the issue, "It appears that this trade ought not to be practiced by Christians" (*ibid*). Unfortunately, the minutes detailing the discussions of the committee on the matter have not been found.

Willem Usselincx (1567 – 1647) from Antwerp who had lived in Middelburg since 1591, was the man who tried to promote the establishment of the WIC. Part of his vision was to establish colonies in the Americas where slavery would not be allowed. The colonists were to till the ground and in return receive manufactured articles from Holland in exchange for their agricultural products (Bloom 124). Despite the initial outcry, WIC ships transported over 15,000 sub-Saharan slaves to Pernambuco between 1620 and 1623.

In order to increase profits, the WIC felt compelled to secure its own slave port on the African coast, taking it from Portuguese possession. The first slave-related voyage to the Congo region took place that same year when the Dutch sent the vessel *Nassau* to Angola, including 200 pair of handcuffs (ARA OWIC 23 fol. 763v Minutes of Zeeland Chamber 12 November 1637). After several attempts, in 1637, under the guidance of Captain Johan Maurits, the WIC was successful in capturing the West African slave port, São Jorge d'Elmina. Four years later, they also captured São Paulo de Luanda on the Angolan Coast.

After the capturing of these two ports, over 23,000 sub-Saharan African slaves were brought over on Dutch slavers (1637–1645) (Emmer, "The History of the Dutch Slave Trade" 732). In 1641, Frans van Capelle discussed the morality of the slave trade in a few lines in a report on the Congo. According to him, it could be only beneficial to the heathen to be brought to a country where they could become acquainted with the Word of the Lord (Boogaart and Emmer 356). After many dialogues with the king of Congo, Van Capelle was not successful in

converting him to Christianity (Heywood and Thorton 207). In fact, Christianity did not take hold until 1667, when the missionary Bernardo Ungaro managed to convert the king and thousands of his subjects (*ibid*).

Although the minutes of the initial WIC committee have been lost, and its recommendations remain unknown, the outcome speaks for itself—economic pursuits overruled all moral considerations of the odious trade (Emmer, "The Dutch Slave Trade" 13-14; Selderhuis 355). Also, the numbers speak for themselves. Captain Maurits' 1637 budget for the expedition between West Africa and Brazil demonstrates as follows (Emmer, "The History of the Dutch Slave Trade 732):

15,000 blacks to be purchased at f50 each	f 750,000
Victuals for 6 months at f15 per month	f 405,000
30 ships for transportation at f10,000	f 300,000
Possible losses: 1,000 blacks at f300 each	f 300,000
1,500 men, soldiers, ammunition, etc	f 1,755,000
	f 582,000
Sold at f300 a piece	—f 2,337,000
	f 4,500,000
Net profit for the Company	f 2,163,000

This calculation reveals that slave trading was a lucrative business at the beginning of the Dutch involvement. Another strategy of the Dutch was to build a large slave prison on the Angolan Coast, in order to avoid loss of time and slaves after their purchase (Emmer, "The History of the Dutch Slave Trade" 732). After the WIC captured the two Portuguese slave ports in West Africa, the Dutch were able to secure the slave trade monopoly between West Africa, the Americas, and Europe. The WIC charter ultimately divided Dutch theologians even more.

5.3 The Voetian-Cocceian Slavery and Slave Trade Debate

One of the notions at the heart of Dutch ethos was freedom from biblical slavery. In the 1610s the first preachers traveled with the VOC to the Moluccan Islands, under the leadership of Company governors: Pieter Both, Gerard Rynst, Laurens Reael, and Jan Pieterszoon Coen (Parker 204). The synthesis of public authority and private force was conducive to the development of the slave trade (Davis, "The Problem of Slavery" 110; Wilson 222; Koskenniemi, "International Law and Empire" 12). Even though all Reformed churches overseas accepted the provisions of the Synod of Dordt, they were modified by local church orders or the leaders of the respective Companies (204).

The focal point of this section will be the slavery and slave trade debate between the schools of Johannes Cocceius and Gisbertus Voetius. Prior to that debate, Festus Hommius (1576 – 1642) a Leiden educated theologian siding with Franciscus Gomarus, expanded the Eighth Commandment from the Decalogue [regarding theft] in his *Het Schat-boeck der Verclaringhen Over de Catechismus* (1617) ("Thou shalt not steal" *Common English Bible*, Exo.

20:15). He argued that the practice of slavery is a form of stealing, punishable by the government, based on the verse, "He who kidnaps a man and sells him, or if he is found in his hand, shall surely be put to death" (*Common English Bible*, Exo. 21:16).

Furthermore, Hommius condemned those who abducted free persons and sold them into slavery, based on the passage:

> But we know that the law *is* good if one uses it lawfully, knowing this: that the law is not made for a righteous person, but for *the* lawless and insubordinate, for *the* ungodly and for sinners, for *the* unholy and profane, for murderers of fathers and murderers of mothers, for manslayers, for fornicators, for sodomites, for kidnappers, for liars, for perjurers, and if there is any other thing that is contrary to sound doctrine, according to the glorious gospel of the blessed God which was committed to my trust (Common English Bible, Tim. 18-11).

The argument here is that the enslavement and trade of humans deprives them of their most precious possession, i.e. natural freedom, and that it is not proper Christian attitude. So, humans cannot be equated with *res* [property] because they have been created in the *Imago Dei*, possessing free-will. Thus, according to Hommius, the gospel of Christ cannot be reconciled with slavery and slave trade.

This section reconstructs the theological context in the seventeenth-century Dutch Republic surrounding slavery and the slave trade. Here, I argue that the theological premises of Johannes Cocceius gained prominence among the political-economic Dutch Republic elite,

thereby providing a psychological cushion for Dutch traders and investors to enslave and to traffic human beings. To that effect, this section analyzes the sermons and writings of the respective theologians and their followers which have been translated from old Dutch to English by Marcus Vink ("A Work of Compassion"; "The World's Oldest Trade"). The focus is on the theological notions: theft in the Decalogue, the Curse of *Ḥam* and Canaan, *Regnum Dei,* and paying for the sins of one's parents. In this analysis, I discuss the notions of racial difference construction through the "Curse of *Ḥam*" myth, as justifications used by pro-slavery theologians, and the arguments of anti-slavery theologians.

The participation of the *Nação* in the odious trade was crucial, being that they had established trade networks throughout the world about a century before the Dutch got involved and already taken a moral stance on the issue. When Cocceius and other Dutch Hebraists encountered Sephardic thought and classic rabbinic literature, they were then able to construct theological arguments in favor of slavery and the slave trade with the help of Sephardic notions of *halakhic* slavery (to be discussed in Chapter 6). While much of the wealth produced by Dutch colonists was acquired through slave labor in the sugar cane production in Brazil, not everyone in the United Provinces agreed with the institution of slavery and the slave trade.

In the mid-seventeenth century a religious debate erupted over the slave trading activities of the VOC and the WIC. It involved the followers of Gisbertus Voetius (Orthodox Calvinists) and Johannes Cocceius (Moderate Calvinists). Disagreements between the respective parties lead to the so-called Cocceian-Voetian controversy. While the students of the Cocceius saw slavery in the East and West Indies as a work of compassion, the students of the Voetius viewed slavery as a

grave sin, deserving divine condemnation. The debate pivoted around the eighth commandment of the Decalogue ("Thou shalt not steal" *Common English Bible*, Exo. 20:15).

Voetius and his followers were influenced by English and Scottish Puritans. They believed that the Reformed Church doctrines were the key to the interpretation of the Scriptures (Vink, "A Work of Compassion" 3). They rejected a rationalized Calvinism, embracing the *praxis pietatis* lifestyle. The practical piety lifestyle was based on medieval penance and the puritan regiment which instilled systematic discipline into every aspect of society. It was characterized by the Church serving individuals, and not the other way around (Sanneh and McClymond 527). The Counter-Remonstrants [Gomarians] and the Voetians preached the independence of the Church free from state interference and its role in politics. To a large extent, Voetians represented a continuation of the Gomarians, opposing Erasmian philosophy and the toleration for non-Dutch Reformed Protestants. Therefore, they opposed the subordination of the Reformed Church in the Dutch Republic and the overseas world to secular authorities (Vink, "A Work of Compassion" 52). The Voetian preachers: Jacobus Hondius (1629 – 1691), Cornelius van Poudroyen (d.1662), and Georgius de Raad (1625 – 1677) argued that the trade in slaves was a grave sin, and a violation of the commandment of theft in the Decalogue, deserving the punishment and execution of death (Vink, "A Work of Compassion 3). They argued that enslavement implied the stripping of the divine image in humans, i.e. robbing them of their natural-born *freedom*.

Cocceius and his followers, on the other hand, were influenced by Cartesian philosophy, thereby rejecting a rigid and legalist interpretation of the Bible and confessional dogmatism of the Voetians. The Remonstrants and the Cocceians were politically tied to the merchant-regent

elite from the province of Holland (Wall, "Orthodoxy and Scepticism" 124). Cocceius' followers came from Remonstrants, holding dear the teachings of Erasmus and the acceptance of non-Dutch Reformed Protestants. Among seventeenth-century Dutch reformed preachers that defended the peculiar institution were: Johannes Cocceius, Godefridus Udemans (ca. 1581 – 1649), Johan Picardt (1600–1670), and Herman Witsius (1636 – 1708). These Cocceian preachers argued that the "Curse of *Ḥam* and Canaan" was in full effect, and that one's children and their descendants pay for the sins of their ancestors. In addition, a *just war* or a sale by one's parents legitimized slavery (Levecq "Jacobus Capitein"; Groenhuis 224; Schutte, "Bij het schemerlicth van hun tijd"; Vink, "A Work of Compassion").

The pivotal point of the Dutch theological debate on slavery and slave trading in the seventeenth-century depends on the position in interpreting the Bible. Sally Hadden asserts that the Bible provided justifications used by enslavers in the early modern period ("The Fragmented Laws of Slavery" 253-287). European political treatises, such as the *Commentary on the Book of Kings,* by Rabanus Maurus Magnentius (c. 780 – 856) and *De Republica Hebraeorum*, by Peter Cunaeus, utilized the Bible to establish the "law of the land," from the seventh to the seventeenth century (Somos 389).[7] This meant that the Bible, together with Greco-Roman law, was used as a basis for the *law of the land* throughout Europe (Lesaffer, "European Legal History" 265). Indeed, during the *Hebrew Republic* movement, Christians accepted the Hebrew Bible as a political constitution, which God designed on behalf of the children of Israel (Nelson 3).

As discussed in Chapter 3, the *Hebrew Republic* movement was able to flourish in the Netherlands, due to the intensive interaction between some Sephardic rabbis and theologians,

[7] For more details see Firey "The Scholastic turn" and Meens. "The uses of the Old Testament in Early Medieval Canon Law."

and Christian access to printed materials (*ibid*). At the time, a mark of good learning and common practice within the humanist discourse in the seventeenth century was to refer to classical Greek and Roman sources, as well as modern ones like Machiavelli and Bodin, the use of the Hebrew Bible or of Hellenized Jewish sources, more or less contemporary with the birth of Christianity, like Philo and Josephus (Haivry 117). Christian Hebraists in the province of Holland were students of Cocceius, thereby studying his works and whatever rabbinic literature they had access to. Under the influence of Sephardic thought, Cocceians interpreted the Bible in such a way that legitimized the practice of slavery.

Cocceius justified slavery on the basis that the biblical prohibition against thievery did not include slavery (Amponsah 435). Cocceius divided world history into two separate convenants—Old and New Testaments (Elphick and Davenport 18). He utilized the concept of *abrogatio* [abrogation] to reject every Old Testament practice which was not reaffirmed in the New Testament (Asselt 105). According to this understanding, since the New Testament sanctioned the Old Testament institution of slavery [1 Corithian 7:21; 1 Timothy 6:1-2; 1 Peter 2:18; Philemon 16; Ephesians 6:5-9; Colossians 3:22-24; Colossians 4:1; Titus 2:9-10] the death of Christ did not do away with it (Parker 201).

On the opposite side of the spectrum was Gisbertus Voetius, a proponent of orthodox Calvinism and pietism. After the death of Stadholder Willem II in 1650, orthodox Calvinists could no longer count on political support (W. Bunge 96). This led Voetius to initiate a movement called "Further Reformation," which argued in favor of *sacra scriptura* and *liber natura* [the literal interpretation and legalist precept of the Scriptures] (Stronks 5, 130). Voetius'

overall Christian philosophy was to reform oneself from sinning and having a personal relationship with God (Kaplan, "Reformation and the Practice of Toleration" 107).
This individual responsibility of transformation would usher in the Kingdom of God (*ibid*).

In general, Voetius emphasized spirituality above materialism (Rittgers and Evener 390). As such, he emphasized the natural equality of humans and repudiated the kidnapping of humans and their enslavement (Stamatov 88). He based his arguments on biblical texts: Exodus 20:2-17; Deuteronomy 5:6-21; Colossians 4:1; Ephesians 6:9; Philemon 1:8-22; Matthew 7:12 (Vink, "Freedom and Slavery" 32).

Cocceius' opinions gained prominence in the seventeenth century Dutch Republic among the political-economic circles of the port cities of Holland. Leiden professor and Hebraist, Constantijn L'Empereur [Refer to section 3.4] was Johan Maurits' counselor (Groesen 52). L'Empereur's knowledge of rabbinic texts and interpretations were used in constructing justifications in favor of slavery and the slave trade. Moreover, L'Empereur had direct contact with Amsterdam rabbi and diplomat, Menasseh b. Israel (Rooden, "Constantijn L'Empereur's Contacts with the Amsterdam Jews" 51). In their correspondences, they discuss Menasseh's Latin works, especially the *Conciliator,* which includes notions of *just war* and enslavement. (Discussed in section 7.4). Menasseh met with other moderate Calvinists in the home of millenarian, Peter Serraius (Lloyd 47). During their meetings, they discussed the Messianic Age (*ibid*). Without a doubt, Leiden professors, Johannes Cocceius and Contantijn L'Empereur played vital roles in the theological aims of the WIC.

One of Cocceius' followers, Godefridus Udemans argued that the primary motive of overseas trade should be the expansion of the *Regnum Deo* [Kingdom of God] (Udemans "'t

Geestelyck Roer vant't Coopmans Schip"; Hodges, "Encyclopedia of African American History" 433). He maintained that the wealth in the Indies should only be a means for the proclamation of the gospel. He also claimed that trade was "sanctified" when merchants gave to the poor (Noorlander, "For the Maintenance of True Religion" 85). In addition, he claimed that enslavement was a life-saving act of Christian charity and human compassion (Vink, "A Work of Compassion 470).

Cocceius held that the Dutch were God's selected people, and like John Calvin, that spiritual freedom is superior to physical freedom (Calvin, "Institutes of the Christian Religion" Book IV, chap. 20,1). Cocceius asserts, "God set limits to this servitude and carefully ordered how beneficial these servants should be treated" (Heydelbergensis Catechesis 190). This moderate Dutch Calvinist pro-slavery reasoning was known as *christelijcke mededogentheyt* [Christian compassion]. This Christian humanist idea pervaded the Statutes of Batavia (1642). Therein, the States General ordered Christian slaveholders to treat their slaves with "civility, benevolence, and reasonableness, care for them like one's own children, and instruct them in the Christian religion in order that they might come to receive holy baptism" (Chijs I, 96-9).[8] Indeed, the Dutch slaveholders perceived themselves as saviors to unbelievers. In this sense, the seventeenth-century Dutch colonists were not any different than their Iberian counterparts.

The Christian humanitarian theme involved saving people from oppressive regimes and droughts, famines, and epidemics, in the wake of war. Governor Laurens Pit (1652 – 1663) and Council of Coromandel disclosed to the VOC directors in 1660 "It is indisputable that the purchase of these poor people is a work of compassion since they would otherwise perish, as

[8] For Statutes of Batavia of 1642 and 1766 and their amendments, see *Idem*, I, 572-6; IX, 572-92.

happens to those who are turned down" (VOC 1232, OBP 1661, fl. 383).[9] A few months later, Governor General Joan Maetsuycker and the Council of the Indies commented:

> Our intention is that the purchase [of slaves] will occur indiscriminately of both the elderly and the young, especially when they are members of a single family as is often the case. If we only accepted the young and turned down the old, the latter would perish, which we understand has already occurred often. This would not conform with Christian compassion, for to accept the children and leaving the parents to die in their presence, or to accept the men and turn down the women, would be harsh and, we fear, unacceptable to the Lord God (Missive Governor General Maetsuycker and Council of the Indies to Commissioner van Goens at Colombo, 4 Nov. 1660).

Whereas some Dutch theologians condemned the slave traders in the Indies, the merchant class generally justified slavery and slave trade by arguing that it was a Christian act of human kindness and that it promoted the establishment of God's kingdom. So, Dutch Christian slave traders justified slavery and slave trade as a means of establishing God's kingdom (Noorlander, "Heaven's Wrath" 169).

Voetian preacher Georgius de Raad, pressed his case against the merchant elite of Holland, Zeeland, and the directors of the East and West India Companies, stating, "Our country is sinking, and this sin, or rather innumerable injustices, which are occurring daily in the slave trade, may well be the heaviest ballast which will cause the ship to go down" ("*Bedenckingen*

[9] For more primary sources see Missive Governor Pit and Council of Coromandel to Gentlemen Seventeen, 9 Aug. 1660: VOC 884, BUB 1660, fl. 703.

over den Guineschen Slaef-handel" 2-3; 127; 133; 157-158; 182). De Raad alleged that sometimes the "poor pagans were lured to the ships and kidnapped against their will" (Vink, "A Work of Compassion" 469). Moreover, he criticized the cruelties that the enslaved suffer aboard the ships. His main argument was that enslaved peoples were fellow humans, created in the image of God. Thus, Georgius de Raad's thinking was motivated by the notion of *Imago Dei* (*ibid*).

To a similar degree, de Raad raised the same arguments as Fernando de Oliveira and Luis de Molina in the Iberian context [See section 4.4]. Fernando de Oliveira criticized Portugal's claims to territories, commercial exploitation, and the civilizing mission of the peoples therein. Luis de Molina opposed the selling of children on the basis that there was no just wars within the West African kingdoms, and to a lesser extent with Portugal. This is where the Iberian and Dutch discussions meet.

The next Voetian theologian to raise his voice against the peculiar trade was Cornelis van Poudroyen. He was from Utrecht and called for radical Christian action. In his *Catechisatie Over de Leere des Christelicken Catechismi,* he argues against every point and claim of the Cocceians and pro-slavery jurists before him (Vink, "A Work of Compassion" 3). His main argument is that parents cannot sell their children into slavery. This is a direct challenge to Grotius's legal reasoning that an impoverished father can sell his child, and that children of war captives can be sold into slavery ("The Law of War and Peace" 255-259; 690-691; 718; 761-769). Contrary to Grotius, Poudroyen maintained that people offering themselves for sale should be aided through charity and almsgiving, rather than enslavement:

> It is unbefitting for Christians to engage in this rough, insecure, confusing, dangerous, and unreasonable trade, adding to a person's troubles and being an executor of his torments. Instead, if one desire to bring forth good from evil, one should purchase him [the slave] in order to be manumitted and freed from such great servitude to cruel tyrants, and, if possible, instruct him in the Christian religion (993-95).[10]

Poudroyen's evaluation of the trade was deeply pessimistic and disparaging, equating it with evilness. He also highlighted the fact that in order for a slave to become a Christian, he must be manumitted first.

In 1679 Dutch Reformed minister Jacobus Hondius denounced slavery as a sin, in his alphabetical list of sins *Swart Register van Duysend Sonden* [Black List of a Thousand Sins] (Hodges "Encyclopedia of African American History" 433). He excepted no justification for slavery (Kennedy, "A Concise History of the Netherlands" 212). Accordingly, he held that Africans were humans and born in natural liberty as much as the Dutch (Hodges "Encyclopedia of African American History" 433). He also maintained that the fact that Jews, Turks, and Catholics practiced slave trading did not mean that Dutch Protestant Christians had to practice it as well (*ibid*). Overall, he decried the amassing of wealth of the leaders of the VOC and WIC through the suffering of enslaved peoples (Procter-Smith 126-27).

David B. Davis presents a paradox, "although bondage was sanctioned and taken for granted in the Old Testament, the central message and dynamic of the Hebrew Bible involves an *escape* from slavery and a forty-year struggle to find the meaning of freedom" ("Inhuman

[10] Cited in Schute 203-206; See also Vink, "*A Work of Compassion?*"

Bondage" 36). If so, how then did theologians make claims to justify the enslavement of peoples? Undeniably, the Bible and its interpretation was fundamental to the world-vision of the Dutch people, such that it set the political-religious context during the Cocceius-Voetius debate. On the one hand, the Voetians looked into the Bible and saw the unrighteousness of stealing human lives and enslaving them. Yet, on the other, the Cocceians saw in the Bible the legal precedents of the Hebrews in enslaving the Canaanites, because it was understood as a source of divine (voluntary) law (to be discussed at length in section 5.4). Surely, the place given to the Bible was fundamental to the Dutch world-vision in the early modern era, which shaped morality.

Theologian Joan Lockwood O'Donovan asserts that Genesis 1 and 2 was understood to lay the foundations of God's government and meta-commands to all of humanity through Adam. Essentially, the rational creature made in God's image exercises rulership over irrational creatures (O'Donovan 293; Fleteren and Schnaubelt 206; Erreygers and Cunliffe 24). While for some Dutch theologians, *black* Africans and Asians had the *imagine Dei*, others did not ascribe it to them. How did they lose the divine image? While correspondences between Sephardi and Dutch merchants on the morality of slave trading have yet to be found, in Chapter 3 we explored the rabbinic literature and the Sephardic classics that Cocceius and his followers studied and drew from (See section 3.4). Therein, they found rabbinic understandings of ambiguous biblical passages on the institution of slavery.

Most importantly, the Cocceains were connected to the merchant elite in the port cities of Amsterdam, Rotterdam, and Middelburg. The majority of the Companies' financial contributions came from these locations. Whereas the Voetians declared that God would reign through

individual reformation and piety, the Cocceians advocated in favor of the odious trade as a means to usher in God's kingdom. Although initially the WIC committee discussed whether they should engage in slave trade or not, the economic and political interests of the elite class overshadowed the Voetian minority. This is not to say that the WIC directors chose profits over piety. The WIC directors "clearly believed that they were doing God's work by attacking Catholic Spain, cutting off the resources that fed its war chest, and ending its reign of tyranny" (Noorlander 150). The Dutch participation in the systematic enslavement of peoples required the stripping away of their natural rights. The "Curse of *Ḥam*" was the vehicle utilized by the Cocceians to do just that [Refer to Chapter 3]. With the Bible as a source of divine (voluntary) law, the myth of the "Curse of *Ḥam*" contributed to the construction of racial difference that influenced legal consciousness.

In the seventeenth century, many Dutch citizens adopted the same negative attitudes toward *black* Africans that the Spanish had developed about a century before (Handler 237). Whereas the term "Moors" [*mooren*] was used in sixteenth-century Dutch municipal records to refer to dark-skinned Africans, the term "Negros" [*swarten*] became the term that the Dutch utilized to refer to a slave, or at least a person who could be enslaved (Zeeuws Archief, Middelburg: Archief van de Staten van Zeeland, Notulen boeken 15 November 1596; Handler 237, Ponte "De Swarten van de 17de EEUW"). Thus, if the descendants of the biblical *Ḥam* were divinely accursed, then they lack the natural condition of *freedom* which is granted to all humans (to be discussed in depth in the next section).

The amalgamation of Sephardic thought and Christian Hebraism harbored a new era for the Dutch Republic and its legal outlook on slave trade. Consequently, the ideas about the trading

activities of the VOC and the WIC steered morality in Amsterdam and the Republic in a direction that eased the conscience of slave traders, to the dismay of the powerless Voetian minority. Despite the disagreements among the Dutch clergy, historian Danny Noorlander puts forward that they generally supported the trading activities of the Companies, since the spread of Protestantism and the welfare of Reformed Church back at home depended on them ("For the Maintenance of True Religion 85). At the end of the day, what mattered most was the constant flow of money into the Church, at the expense of dehumanized souls overseas (86).

The debate between Cocceius and Voetius continued to the end of the seventeenth century by way of their followers. The position of Voetius represented the theological convention at the time, but the Cocceians had financial and political interests in the successes of the VOC and WIC. Consequently, the practice of slavery and slave trading required "innovative" use of legal concepts and legal reasoning to justify and legitimize illegal practices.

5.4 Seventeenth-Century Legal Slavery Debate in Amsterdam and the colonies: *Dominium*, *Servitus*, and *Libertas*

As mentioned in the introductory chapter, the Great Council of Mechelen had contributed to the notion of the "free soil" tradition, which granted *liberty* to any enslaved person arriving in the Netherlands. The "free soil" tradition emerged in the Netherlands during the Middle Ages, establishing important legal foundations for the stance against slavery therein. The Van der Hagen case challenged this notion when in 1596 a Dutch vessel arrived on the port of Middleburg with a group of over one-hundred African men, women, and children (see infra section 1.1).

Although the owner of the cargo expressed desire to set up a slave trade market therein, the local authorities declared the Africans free, and to be raised as devout Christians (Hondius, "Blackness in Western Europe" 87). Not happy with this ruling, Van der Hagen appealed to the States General in the Hague. He made a request to leave the crew in Portugal, and to transport the Africans to the Spanish West Indies. Initially, the States General denied his request. However, two weeks later, after having appealed a second time, he was granted the liberty to do as he pleased with his cargo of African slaves (Zeeuws Archief, Middelburg: Archief van de Staten van Zeeland, Notulen boeken 15 November 1596). It is difficult to accept the States General's decision, considering that the Great Council of Mechelen already had expressly decided in the sixteenth century that enslaved peoples entering the Low Countries were to be freed, regardless of religion (Verhaegen and Gachard 504-06).[11]

The Leuven professor, Petrus Gudelinus (1550 – 1619), mentions in his book the case of a Spanish merchant whose slave escaped from his possession, while on business in the Netherlands ("Commentariorum de iure novissimo" libre sex.1 :4). The owner of the fugitive slave had requested the Council of Mechelen to command its judges to detain and return the fugitive to his rightful owner. To the owner's dismay, the magistrates denied his petition because *servitus personarum* was not acknowledged as a lawful institution in the Netherlands. According to Gudelinus, the fugitive slave immediately became free *de iure,* even against the will of the owner [*invito domino*], when he entered a territory where slavery was not permitted. Legal historian, Filip Batselé, asserts that "municipal authorities and notaries were unconcerned about the pronouncement of the Great Council of Mechelen, or the nascent 'free soil tradition'"

[11] For the primary source see Grand Conseil de Justice des Pays-Bas à Malines, T. III, 376-379; "Inventaire des mémoriaux du Grand Conseil de Malines." Tome I: XIVe, XVe et XVIe siècles (Weissenbruch 41).

because there is evidence that confirms that slavery did indeed exist in sixteenth-century Antwerp (Batselé 84). Furthermore, he argues that jurists—Groenewegen van der Made (1613 – 1652), Clenardus (1495 – 1542), Molanus (1533–1585), Gudelinus (1550 – 1619)—contributed to the "free soil" idea in the sixteenth century, thereafter disseminating it throughout both the Spanish Netherlands and the United Provinces in the seventeenth century (82).

This section includes a contextualization and a reconstruction of what Dutch lawyers were doing when they used the notions—*dominium, servitus* and *libertas*, thereby contributing to new meanings thereof. This task entails an examination of the works of jurists: Hugo Grotius, Willem de Groot, Ulrich Huber, and Cornelius van Bynkershoek. I argue that the practice of slavery and the slave trade, and as well as the theological discussion concerning them, influenced how these legal concepts were utilized by jurists in order to provide legal justifications in their favor.

The idea of European enslavement of Africans and Asians stirred up legal debates within the seventeenth-century Dutch Republic. In contrast to the notion of the "free soil" tradition in the urban cities of the Netherlands, Willem de Groot maintained that the selling of one's children into slavery during a time of extreme necessity did not pose any challenge to the natural-born *freedom* granted by *ius naturale* (W. de Groot chap. 10). Despite the opposition to slavery from some within the Dutch Republic, the slave trading endeavors and profits of the VOC prevailed. This will be explained further in the following sections. Nonetheless, the VOC forbade slave owners to bring their slaves into the Netherlands in 1636 (Chijs I, 409). Thus, as long as the experience of slavery was not visible within the Netherlands, Dutch morality concerning it remained within the realms of the merchants, politicians, lawyers and theologians.

In the previous chapter I discussed how war captives became enslaved within the Iberian context. However, what legal justifications were used by Iberian humanists and Dutch private entities in order to continue slave trade, despite the absence of a *just war*? By revisiting the sixteenth-century Iberian debate on the law of nations and nature, Grotius theorized that the Dutch had a natural *right* to private property and to trade freely in any of the world's oceans. In other words, Grotius theorized that private trade companies could exercise public authority through the *rights* granted by natural law. In doing so, he provided a legal tool whereby constituents of the VOC and the WIC could enslave and traffic humans under the guise of *just war*.

Essentially, Grotius couched the law of nations on the principles of the natural law which de Vitoria and Vázquez had put forward. Building on Gentili, Grotius held that Roman jurisprudence could be applied in the extra-European world and between sovereign nations (Ittersum, "The Long Goodbye" 387; Pagden, "Gentili, Vitoria, and the Fabrication of a 'Natural Law of Nations'" 361). Most importantly, he conceived of a defensive *just war* theory based on the Natural Law. In *Mare Liberum*, Grotius constructs legal justifications for the VOC, against the monopoly of the Portuguese. Grotius theorized that private trade companies could exercise public authority through the *rights* granted by the natural law. Building on these notions, the Dutch States-General and West India Company lawyers make claims [*de iure*] against the

Spanish and Portuguese, thereby capturing their slave ports in West Africa (Heijer 69-73; Blanken 55).[12]

In *Hugo Grotius on "slavery,"* Gustaaf van Nifterik posits that Grotius' ambiguous use of language concerning *servitus* perhaps allows for the perpetuation of slave trade without the need of a *just war* ("Hugo Grotius on 'Slavery'" 233-43). He even goes as far to say that it might have been deliberate (233). Furthermore, he asserts "Grotius doesn't deal with the legal *persona* of the two types of slaves" (243). As a matter of fact, Grotius' *servitus in ius naturale* does not define if the master can sell the "perpetual servant" as property. Hugo Grotius writes extensively on *servitus* in his *De Iure Belli ac Pacis* [*DIBP*] (1625). He distinguishes between *servitus in ius naturale* and *servitus in ius gentium* [or *ius voluntarium*] (*ibid*).

Grotius disagrees with Aristotelian *servi* by nature "*Servi natura quiden, id est citra factum humanum aut primaevo naturae statu hominum nulli sunt*" (III,7,1). Thus, every human being has the *right* over his or her life, body, limbs, reputation, honor, and freedom to act (The Rights of War and Peace" II, 17, 2, 1).[13] However, a person can forfeit his natural *liberty* as either a punishment or by voluntary act, subjecting himself into *servitus*. In this type of agreement, the master provides the *servus* with food, shelter, and other necessities of life, in exchange for

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[12] For the primary source see Pamphlet Knuttel 9005, 'Afgedrongen en Welgefondeerde Tegen-Bericht Der Coninckliycke Deensche Geoctroyeerde Affricaansche Guineesche, en in de Hooft verstinghe Gluckstadt opgerichte Compagnie. Gestelt tegens. Die van de Hollandtsche West-Indische Compagnie, voor weynich tyts, onder den titul van een Remonstrantie, in opeenbaaren Druck gespargeerde, gantsch onwaarachtige Calumnien en valschen attentaten gemanifesteert, aan alle Weerelt ten ton gestelt, en krachtig gerefuteert werden. Aan die tot Deenemarcken Norweegen, der Wenden en Gotten Coninckliycke Mayesteyt, alderonderdanigst overgegen.' (Gluckstadt 1665), 27.

[13] The edition that I consulted is *The Rights of War and Peace, including the Law of Nature and of Nations,* translated from the Original Latin of Grotius, with Notes and Illustrations from Political and Legal Writers, by A.C. Campbell, A.M. with an Introduction by David J. Hill. M. Walter Dunne, 1901. For an in depth analysis on Grotius' Image Dei anthropology see Nijman, Janne. Grotius' *Imago Dei* Anthropology: Grounding *Ius Naturae et Gentium* in *International Law and Religion.*

perpetual services on his behalf. Grotius puts forward that although this form of *servitus* is not in itself natural, it is can be based according to the natural law and walk in harmony with it:

> *Servi natura quidem, id est citra factum humanum aut primaevo naturae statu hominum nulli sunt, ut et alibi diximus: quo sensu recte accipi potest quod a Iurisconsultis dictum est contra naturam esse hanc servitutem: ut tamen facto hominis, id est pactione aut delicto servitus originem acciperet, iustitiae naturali non repugnat, ut alibi quoque ostendimus*
>
> There are no humans that are by Nature slaves to others, that is, in his original state considered, independently of any human fact, as I have a said in another place; in which sense we may take the Jurists, when they say that enslavement is against Nature, but it is not repugnant to natural justice, that humans should become slaves by a human volition, that is, by Virtue of some Agreement, or in Consequence of some Crime, as we have also said already. (III, 7, 1, 1).

Grotius agrees with Fernando Vázquez that individuals "can be under servitude because they made such a contract…for those who sold themselves into servitude—having exchanged their *liberty* at will and for a price, they have abdicated their *right* in themselves permanently" (Brett, "Liberty, Right, and Nature" 195-96).

In chapter 4 we saw that Luis de Molina argued, contrary to Vázquez and Grotius, that an African who offered himself to others in perpetual servitude was not legally permitted to be

bought as property [*dominium*] on the slave markets ("Tractatus de Iustitia et de Iure" col. 189, E). While Luis de Molina did not agree that someone could relinquish his natural *liberty* to be sold into *slavery* and enslave his descendants *ad perpetuam,* Grotius maintained that a *servus in ius naturale* relinquished his or her rights to *freedom* (Hespanha 955;). According to de Molina, even in the presence of just wars in Africa, the Arab and European buyers did not certify that the slaves were true slaves. This leads me to think that many people were actually selling themselves and their children (Peabody, "Slavery, Freedom, and the Law in the Atlantic World" 604). If so, then Grotius' *servus in ius naturale* could serve as a legal justification for these cases.

Van Nifterik asserts that a better translation for this type of *servitus* is "perpetual service," rather than *slavery* ("Hugo Grotius on 'Slavery'" 236). This suggests that the contractual nature of the agreement is perpetually relevant. Why did Grotius need *servitus in ius naturale* [perpetual servitude] when he could provide *servitus* as in accordance with the law of nations? Slavery according to the law of nations requires a *just war*, whereas *perpetual servitude* according to the law of nature requires the voluntary handover of one's *liberty*.

Ultimately, Grotius' *servus in ius naturale* is the crux upon which the Dutch Atlantic slave trade stands. There was no true war in accordance with *ius gentium* between West Africans and the Dutch. Neither was there any record of WIC merchants and investors verifying the legal condition of African slaves upon purchase (*ius gentium*). However, due to poverty of condemned *criminals*, they sold themselves and their children to the Dutch (Emmer, "The Dutch Slave Trade" 12; Maluleke 56). As such, according to Grotius' conception of *servitus in ius naturale*, the *servi* relinquished their rights and freedoms *ad perpetuam*.

It is possible that the Protestant Dutch Reformed Church clergy convinced the *servi* that it was better for them to voluntarily give up rights to freedom, undergo baptism, and receive eternal bliss at the Resurrection. This would grant the *servi* an opportunity to escape from those seeking to kill them locally. In the Upper Guinea Coast in the late seventeenth century, a convicted commoner would clamor, "Señor, don't kill me, sell me for rum" (Peabody, "Slavery, Freedom, and the Law" 604). One could argue that those West Africans who accepted baptism, became voluntary slaves [*servi in ius naturale*] to their masters. What remains unclear is if as "perpetual servants" they could be sold legally and their descendants enslaved forever.

Grotius held that nature invests every individual with the *right* to punishment, an ancient *liberty* which remains in force where courts of justice are lacking (Koskenniemi, "Imagining the Rule of Law" 46). In doing so, he provided a justification for the VOC to exact punishment on the Portuguese in the East Indies. Poverty forced many Asians to sell themselves and their children into *slavery* to survive. In addition, slaves were part of the booty [law of nations] collected by the Dutch from the Portuguese in the East Indies.

In chapter seven of the third book of his *De Iure Belli ac Pacis* [DIBP], Grotius supplies the traditional justification for *servitus in ius gentium,* i.e. a captor has the right to make his *just war*-captive a *servus*. Thus, Grotius agrees that according to the law of nations, a master can transfer his *right* over the *servus*, in a similar way that he can transfer ownership of other property [*dominium*] ("The Rights of War and Peace" III, 7, 5, 2). This is what he calls *servitus vera*, i.e. a real right over the *servus*. Herein, Grotius agrees with de Vitoria's conception of *dominium*: lordship and sovereignty, in the same way that princes are called *domini*; owning

property, whether an object or a person; a right (Brett, "Liberty, Right, and Nature" 128-29). As such, this *right* belongs only to *rational* and *spiritual* beings. Janne Nijman asserts:

> Arminian *imago Dei* anthropology is foundational to Grotius' theory of the law of nature and nations in (at least) three ways…He saw God's image reflected in the natural human capacities of reason and free will, thanks to which humans are able to know natural law and justice, are able to reason, judge, and to make free choices on the basis of this knowledge…*imago Dei* has human beings live in a society and care for others (*appetitus societatis*)…Finally, from its creation in the image of God follows that humanity is called to represent God on earth and intrusted with the function of *dominium*
> ("Grotius' Image Dei Anthropology" 89).

That humans are created in the "image and likeness of God' served as the basis in Grotius" legal anthropology. Nijman holds that "we need dig deeper and examine the theological anthropology grounding Grotius' ideas on the law of nature and nations ("Grotius' Image Dei Anthropology 88). In the same vein, jurist Christoph Stumpf and historian Sarah Mortimer maintain that at the heart of Grotius' political and legal project was his ecumenical point of view of what minimum principles Christians should share in common, thereby harboring a political environment based on Christian ethics (Stumpf 32; Mortimer 38).

Grotius distances himself from divine law, arguing that humans have access to natural law through right reason. However, despite Grotius' theology, I argue that Grotius lays the groundwork for jurists after him to construct arguments in favor of slavery and slave trade

according to *ius naturale*. The ambiguity in Grotius' conception of *servitus in ius naturale* paves the way for a legal justification for the reality of voluntary enslavement in the East Indies and West Africa (Cairns 201). So even though all humans have *dominium* and are born with *libertas*, they can relinquish this, according to *ius naturale* (Nifterik "Hugo Grotius on 'Slavery'" 236). The natural law of nations is binding upon Christians and non-Christians alike. In turn, Grotius conceives of a *naturalized* law of nations which accepts all human legislations as customs which have a natural and universal character (Brett, "Natural Right and Civil Community" 35). Since it became customary for Asians and Africans to sell themselves into slavery, then this practice became part of Grotius *naturalized* law of nations.

Some questions still remain, what purpose does *servitus in ius naturale* serve in Grotius' legal thought and what are the legal parameters of it? For Grotius, the Pentateuch is a source of divine law, which testifies of natural law in accordance to Arminian interpretation. He held that war was in agreement with natural law, since God could not have legislated against it; this is the reason why the Hebrews were permitted to engage in lawful wars ("The Rights of War and Peace II,17-18). He states "[a]part from a human act, or in the primitive condition of nature, no human beings are slaves" (III, 7, 1, 1). Thus, he argued that it is correct to accept that slavery goes against natural law (III,7,1,690). Indeed, in his *Meletius* (1611), Grotius clearly rejects Aristotle's *natural slavery* theory. He even says that the Jews have erred in this regard (Grotius, "Meletius" 126).

Based on these early years his position in the Republic and with contacts in Amsterdam (soon to be asked to write the Remonstrance for the Jews) makes it very likely that he was aware of the slave trading activities of contemporary Jews and that they subscribed to *natural slavery*

theory (Wilde "Offering hospitality to strangers"). This is a clear indication of the racial difference which was constructed through the "Curse of *Ḥam*" myth, being an amalgamation of Aristotelian thought and biblical interpretation. So it would seem that Grotius did not subscribe to this myth, especially because he held that all humans were created in the divine image (Nijman, "Grotius' Image Dei Anthropology" 3).

In *DIBP* he insists that *servitus in ius naturale* is not illegitimate (II, 5, 27, 255; II, 22, 11, 551). Grotius consulted Justinian's *Institutes* law to explain that although slavery violated natural law, it has been established by the law of nations (I.2; I, 3; I, 5). In addition, he argued that human law was necessary for the survival of society [This is what Suárez calls expediency, i.e. slavery had been revealed by the almost universal practice of nations] (Davis, "The Problem of Slavery" 109). Hence, Grotius argued that human law tightened the moral laxity of the natural law. What remains a questions is if whether according to Grotius a *servus in ius naturale* can be sold or if the offspring of this *servus* are born as *servi*.

The kinsman of Hugo Grotius, Willem de Groot, puts forward his legal conceptions in his work *De Principiis Iuris Naturalis Enchiridion,* during his time as a jurist for the VOC (1639) (Ahsmann 376) .Therein, he argues that *servitus* is in agreement with the law of nature, stating:

> Nature conceded that some men to be free, which were born in liberty (we will only discuss these here) and also liberty was born unto them…It suffices to say that it [slavery] does not go against the *ius naturale,* and where liberty is granted, it cannot be alienated in any way. Being that liberty is of inestimable value and its price is of infinite value; therefore, it should be understood indeed that the appraisal of liberty should not

extend itself indefinitely [*ad infinitum*]

(W. de Groot chap. 7, para. 5; translation by Húdson Canuto).

According to this passage, one could argue that if Nature concedes that some humans are born *free*, this implies that some humans are born as slaves by the same Nature. For that matter, *servitus* cannot go against the *ius naturale*. In chapter ten, he argues:

> It is the intention here to know if it is licit for a father to trade or sell his children, to which we deem to be lawful through the *ius naturale* in time of necessity. A father should feed his child, since he is the cause through which man exists, he should take care of him, which is also seen in the animals. Justinian states: Parents are exhorted through natural stimulus to educate their children. And elsewhere: It is necessary that the son or daughter feed his father by force of nature. If he becomes impoverished, such that he cannot feed himself nor his children, it is not unjust that they take from what is left in order to sustain him. It is better to lose innocence than life…(chap. X, para. 1).

Here, W. de Groot agrees that it is lawful to sell one's children in agreement with natural law principles, since animals and parents are the cause through which their offspring subsist. However, he posits that the greatest law against the *liberty* of humans is that one can sell himself in slavery [*apparet quod seipsos in servitutem vendere possunt*] (chap. VII, para. 5).

This conception of *servitus in ius naturale* stands in opposition to Luis de Molina's position, which denied and thus argued that an African who offered himself to others in perpetual

servitude was not legally permitted to be bought as property [*dominium*] on the slave markets. In harmonizing natural law with *slavery,* jurists for the VOC were able to justify Dutch slave trade operations in the East Indies. These natural law theories certainly provided the legal framework by which the WIC functioned thereafter.

According to the *ius gentium*, a prisoner of war can be enslaved and then sold to another. W. de Groot espouses this idea:

> It is true that it has something of the *ius civile*, surely in the *ius gentium*, by way of imprisonment during war [*in ius bello*], it is evident that anyone's liberty can be taken away, however not one's life, which the victor can take from the defeated through law. This is what the poet states [Horacio, Epístolas, Lib. I, XVI, 69-70]: *Vendere cum possis captiuum, occidere noli; seruiet utiliter; sine [mediis] pascat durus [mercator] aretque* etc. Even though one can sell the prisoner, one cannot kill him; he will serve in the most useful fashion; with food and drink so that he does not suffer thirst (chap. VII, para. 5).

Indeed, one can enslave a war captive, sell the *servus*, but not kill him or her through starvation or thirst. Despite this legal permission, W. de Groot esteems *liberty* and asserts that "it is legal for all to struggle until death for it" (*ibid*). This echoes Vázquez's *naturalis libertas laxitasque:* the natural condition of man which is both free from captivity and free from servitude. In arguing thus, *libertas* can best be understood as freedom from slavery, or having "*dominium* of one's will" (Brett, "Liberty, Right, and Nature" 14). Overall, Willem de Groot's legal conceptions

exemplify the conventions among Dutch jurists, known as the Dutch school [*Hollandse Elegante School*] (Nifterik, "Arguments Related to Slavery" 2).[14]

After the establishment of the WIC charter, the involvement of merchants and companies operating from Amsterdam and the Republic in slave trade, became ubiquitous in the West Indies. Slavery as an institution became part of the Dutch colonial lifestyle an economy. The use of slaves on South American plantations, and the slave markets in Brazil and Curaçao, cemented a new morality for the Amsterdam and Dutch Republic merchant elite. Deviating from the *free soil* tradition in the Netherlands, new laws were instituted in the colonies in order to promote civil order, while jurists in the Netherlands theorized about the legality of slavery within the context of *just war*.

Another important Dutch jurist was Ulrich Huber. Huber was born on March 13, 1636 in Dokkum, in the Gasthuisstraat. His father Zacharias was the local notary and secretary to the rural municipality of Westdongeradeel. Initially, Ulrich attended Latin school at Dokkum, then at Leeuwarden (Hewett 79). In 1651, he began studying at Franeker, where he studied at the Faculty of Arts, concentrating on Greek, philosophy, history, and rhetoric. In addition, he had a working knowledge of the Hebrew language. During his second year, he studied law under Johannes Jacobus Wissenbach, while also studying history and other languages. On April 9, 1657, he defended his thesis *De Iure Accrescendi*, and on the 14th of May, was promoted *Iuris Utriusque* Doctor. Two years later he married Agneta Althusia in December. In 1679 he decided to leave the university at Franeker for the Hof van Friesland in Leeuwarden, assuming the position as Senator (Hewett 80). Huber upheld a strict position, i.e. that Cartesian reasoning [all

[14] This paper has not been published. I received permssion from the author.

matter, beliefs, ideas, and thoughts should be put into doubt and proven] was not applicable to law or law teaching (Hewett 82). In 1672, he published his first major work, *De Iure Civitatis libri tres,* assuming its final form in 1694. Ulrich Huber passed away in November 1694, at the age of fifty-eight (83).

Huber considered captivity in war, criminal conviction, the voluntary renunciation of *liberty*, and being born from a female slave as legal grounds for *servitus* (Vink, "A Work of Compassion"). In chapter six of *De Iure Civitatis libri tres* (1694), entitled, *De Dominis et Servis, Atque Famulis,* he deals exhaustively with the notion of *servitus*. In paragraph five, he discusses *servitus in ius gentium*. In the sixth paragraph, he says that *servitus* is *contra naturam,* contrary to the natural state or primitive condition of humans, but it is not against natural law*,* nor against the dictates of natural reason, nor the dictates of the law of nations [*Unde efficacius Juris Civitatis, servitutem esse docent; constitutionem juris gentium, qua quis dominio alieno contra naturam subjicitur*] (chap. VI). Thus, he posits, "As we just said, slavery is not necessarily at odds with reason. For the Christians themselves only late disapproved of slavery, nor is it disapproved of in the Old or New Testament" [*Contra naturam id est, contra statum naturae, non contra ius naturae, sive dictamen rectae ration*] (Watson, "Seventeenth-Century Jurists" 1353). This statement echoes the humanists who argued: "Like the physical degeneration of old age, slavery was a useful and necessary, if somewhat painful, means of fulfilling the purposes of nature. It was agreeable to man's natural reason, which determined the specific meaning and consequences of natural law in the world of nations" (Davis, "The Problem of Slavery 96).

Huber reconciled the institution of *servitus* with natural law and divine law. In the seventh paragraph, Huber expounds on many just causes for *servitus,* in agreement with Roman and Mosaic [voluntary divine] law. He cites Exodus 32:6 as a justification for *servitus,* according to Mosaic law [*Multae enim servitutis justae possunt esee causae, veluti conventio, cum quis impos sui tuendi se dedit alii defendendum aut alendum; hace lege, ut in ejus potestate sit, & imperata faciat, quod iure Roman & Mosaico permissum*] (chap. VI).[15] This synthesis between Roman law with voluntary divine law is paramount within the Dutch discourse on the morality of slavery and slave trade. To that effect, Sally Hadden asserts "The Bible, natural law, and *just war* theories provided the rationales used by enslavers to legitimize the capture or retention of bondsmen in the early modern period" (253-87). Therefore, by utilizing the language of the Bible to justify the trade, Dutch mercantilists and opportunists were able to silence and ease consciences from the horrors of Atlantic slavery and slave trade.

In the ninth paragraph, Huber discusses *servitus in ius bello,* stating, "*Tertio ius belli, nam quod occidere honestum est, ut iure belli notissimo constat, eos servare ad serviendum non potest esse inhonestum neque injustum*," [The third right of war, killing is honest, as usually the laws of war are honest, their is no evil in enslaving nor retaining the unjust], i.e. that *slavery* as a result of a *just war* is not a moral evil, since it is a right according to *ius gentium* (Huber II, VI, 9, 334). This statement can only make sense amid the seventeenth-century Dutch theological debate on slavery. Dutch Christians questioned whether it was lawful and moral for Christians to enslave humans? (Vink, "The World's Oldest Trade" 152). Furthermore, in paragraph twelve,

[15] It appears that he made a mistake in his citation of the Bible. Exodus chapter 21 makes more sense according to the context, because it is the only chapter in the Book of Exodus that discusses slavery/servitude.

Huber explains how someone can be enslaved as punishment for a crime committed (*ibid*). From paragraphs thirteen until twenty-one, he discusses *servitus in ius bello* in further depth:

> Likewise laws of Charlemagne, Louis the Pious, and Lothar on slaves survive in the Laws of Charlemagne and the Lombards. Indeed, there exist rulings of King William of Sicily and of the Emperor Frederick on runaway slaves in Neapolitan Decisions. But from that time, that is 1212 A.D. or not much later, Christians stopped enslaving one another, which is also the case among the Muslims and Turks according to Busbequius, Letter 3, where he also argues that slavery was not rightly removed from among us. The specious pretext of charitableness was adduced, but in vain. The result was a flood of free persons whose wantonness and need drove them to wickedness or beggary. The ministrations of the enlarged family were reduced. Add that slaughter in war became more frequent when slavery was removed, which the Romans put to the test in civil wars in which the captives were not made slaves. Tacitus, Histories 2, chap. 44, Plutarch, Otho, and D49.15.21.1. This reasoning is not without weight. See Berneggerus on Tacitus, Germania, question 134 (Watson, "Seventeenth-Century Jurists" 1353).

Huber implies that outlawing *slavery* among Christians was an act of kindness, albeit producing a wanton of *free* persons to crime or beggary. Evidently, Huber agreed that it was better to enslave prisoners of war than granting them their *freedom* (*ibid*). The amalgamation of Dutch

Christian theology and legal thought is evident in the legal works of Ulrich Huber, where morality is translated into legal terms.

In the latter half of the seventeenth century, legal ideas vis-à-vis slavery and slave trade continued to develop within the framework of a *naturalized* law of nations. In 1667, under the Treaty of Breda, Suriname was reclaimed by the States of Zeeland from the English. Amsterdam and Zeeland rivaled for the control of Suriname, since the colony of Suriname laid within the area charted to the WIC. Zeeland had issues in maintaining the colony. Thereafter, under the leadership of Cornelis Aerseen van Sommeldsdyck, Amsterdam founded the Suriname Company. The Suriname Company and the WIC shared the colony costs and benefits together (Fatah-Black 20). During that time, many Jewish settlers left for nearby English islands, but returned within a short time period (*ibid*). Already in 1668, there were nine plantations therein, consisting of 233 slaves, 55 sugar kettles, 106 head of cattle, and 28 white men. These plantations belonged to the Portuguese Jews surnamed: Mesa, Pereira, da Costa, de Silva, Casseres, and de Fonseca (Gordon 41). In 1674, the WIC reorganized itself under the Heren X. The board of directors made policy decisions, meeting once or twice per year, while the daily activities were governed by its largest chambers in Amsterdam and Zeeland (Postma 22). Five years later, a group of *Nação* plantation owners appear in the records of the WIC in Curaçao: David Levy and Jacob Nunes da Fonseca, and others (Goslinga 169). Amsterdam-born Philipe Henriquez (a.k.a. Jahacob Senior) was the only Jew to whom the Holland Board of Admiralty ever granted a concession to purchase slaves from Africa directly and to transfer them to Curaçao on his ship [*De Vrijheid*]. After the loss of Brazil, Curaçao became an entrepôt for marketing slaves to the Spanish territories of the New World. Moreover, Jacob Calvo d'Andrade, the director of the Jewish communal burial society in

Curaçao, was appointed (1701–1705) as an expert by the WIC to examine the slaves upon their arrival (77; West India Company Archives 200, 242, 277). Dutch jurist and justice, Cornelius van Bynkershoek, presented his legal ideas within this social reality.

Cornelius van Bynkershoek was born on May 29, 1673 in Middelburg. He studied humanities and Roman law at the University of Franeker, in Friesland. He received the highest praise from Ulrich Huber. Afterwards, he moved to the Hague where he worked as a lawyer. He initiated his work on Dutch municipal law, *Corpus juris Hollandici et Zelandici*, and published various dissertations on Roman law (Phillipson 27). In 1737, he published *Quaestiones de Iuris Publici* [Questions of Public Law], where he discusses various topics on *ius gentium* and Dutch law (Akashi chap. 51). He sat as a Supreme Court judge of Holland, Zeeland, and West Friesland for nearly forty years. His life expired on April 16, 1743.

Whereas his predecessors [Gentili, Grotius, W. de Groot] couched the law of nations on natural law, Bynkershoek argued that the will of the nations was more important than elaborate theories of natural law (Phillipson 32). He posited that the law of nations was derived from customs, usages, and traditions, and the *consensus gentium* [expressed consent of the State], as expounded in treaties. Usage was also based on evidence of agreements and *pacta et edicta*. In his understanding of jurisprudence, consent played a crucial role, such that in the absence of written law, the existence of long-established universal customs and practices was a presumption of their legal nature, and of their obligation upon everyone, "*Si…ratione utantur*" (Bynkershoek "*Deforo legatorum*" c. iii., Vicat. II. 12). Overall, Bynkershoek attempted to reach at a harmonized synthesis of reason and custom as the whole basis of international law (Phillipson 32).

Bynkershoek was the first jurist to acknowledge that the Dutch practiced slavery and participated in slave trading (Allain, "Slavery in International Law 49). Bynkershoek states:

> To the right of killing our enemies has succeeded that of making them slaves, which was formerly exercised during many ages. But this custom of making slaves of prisoners has now fallen into disuse among most nations, in consequence of the improvement of their manners. Slavery has now generally fallen into disuse among Christians. While this is so, others may be enslaved…we might still make use of it, if we so desire, and the Dutch usually sell as slaves to the Spanish the people of Algiers, Tunis, and Tripoli…that they capture, for the Dutch do not use slaves except in Asia, Africa, and America ("A Treatise on the Law of War 21).

Bynkershoek holds that the disuse of making slaves of war captives is due to the advancement of human nature, thereby assuming a linear view of human anthropology. One can conclude here that it was not lawful for the Dutch to enslave other Dutchmen or Christians. However, the enslavement and selling of North African prisoners fell within the legal limits of the Dutch law. This type of enslavement and the selling thereof is in agreement with the Roman conception of *servitus in ius gentium*. Therefore, one can infer that during the latter half of the seventeenth century, the Dutch did not practice slavery within the Netherlands, except in the colonies.

Although Bynkershoek does not provide any legal justification for the taking of slaves from Africa, he evidenced that slaves were purchased there. If taking war captives as slaves had fallen in disuse among most nations, what legal justification existed for the enslavement and

selling of African and Asian peoples, in the absence of *just war*? (Allain, "Slavery in International Law" 49). The silence on this matter leaves one to think that the answer lies in the realms of economics, politics, and racism. In this sense, Dutch public policy concerning slavery and slave trade was no different than the Spanish and Portuguese. Whereas in the Iberian context there were a few jurists that raised their concerns about the odious trade, with my limited knowledge, I have not found any jurist within the seventeenth-century Dutch Republic speak against it. More research with primary Dutch sources is needed to reconstruct a fuller picture.

The difference between scholastic and humanist thought is crucial in the debate, since humanist jurists [elites with vested economic interests] in the sixteenth century gravitated toward Aristotle's theory of natural slavery [See chapter 4]. Consequently, those peoples that violated the law of nature were identified as "barbarians" by Europeans, and thereafter punished with enslavement. Even though in his *Meletius* Grotius takes a stance against slavery, in *De Iure Belli ac Pacis*, he expounds on *servitus in ius naturale* and *servitus in ius gentium*. Thereafter, Ulrich Huber constructed pro-slavery arguments via Grotius, and subscribed to the "Curse of *Ḥam*" theory. I have demonstrated this in Chapter 3, and how it played a role in the Iberian context. It is here where it plays a role within the Dutch context.

By the second half of the seventeenth century, the "Curse of *Ḥam*" theory had become solidified in the rhetoric of Johannes Cocceius' followers. Consequently, the Dutch confiscated enslaved Africans and Asians as confiscated *property* from the Portuguese. The destructive theory eventually impacted legal thinking. How did the myth of the "Curse of *Ḥam*" construct racial difference then influence legal consciousness? Such is evidenced in the legal works of Emmanuel van der Hoeven (ca. 1660 – ca.1728). During that time, the synthesis between

Sephardic thought, Dutch Protestant theology, and natural law-thinking, began to steer Dutch legal discourse concerning *servitus, libertas,* and *dominium,* on a path that normalized the legality of the Atlantic slave trade until the end of the eighteenth century.

In his *Hollands Aeloude Vrijheid* (1706), Dutch jurist Emmanuel van der Hoeven (ca. 1660–ca.1728) juxtaposes the "ancient freedom" of Holland with the biblical rationale of slavery based on the "Curse of *Ḥam.*" By "ancient freedom", Van der Hoeven compares the biblical narrative of Hebrew freedom from Egyptian bondage to Dutch freedom from the Habsburg Empire. Accordingly, Van der Hoeven asserts "The pride and impudence of Canaan was deserving of the curse, which it incited. He was foretold to leave behind a servile people, whose body from the eighth day of their birth will be covered by black paint to distinguish them from the free, along with their despondent and ungainly facial features" (Vink, "A Work of Compassion?"). This comment supposes that African *blacks* are not only ugly, but a people who are also the cursed descendants of *Ḥam.* This echoes the commentaries of Rashi, Radak, and Abarbanel (see infra section 3.3). The allusion to the eighth day is important, since the biblical Abraham was commanded to circumcise his children on the eighth day after birth.[16] This juxtaposition of biblical ideas conveys that African *blacks* are cursed by divine decree, destined to natural bondage by *whites*. Thus, Van der Hoeven suggests that *Ḥam's* descendants acquire *black* skin on the eighth day after birth and the "curse" of slavery thereafter.

The "Curse of *Ḥam*" myth and Aristotelian *natural slavery* played critical roles in the development of the natural law of nations within the Dutch context. According to Grotius'

[16] God said to Abraham, "As for you, you must keep my covenant, you and your descendants in every generation. This is my covenant that you and your descendants must keep: Circumcise every male. You must circumcise the flesh of your foreskins, and it will be a symbol of the covenant between us. On the eighth day after birth, every male in every generation must be circumcised, including those who are not your own children: those born in your household and those purchased with silver from foreigners (Genesis 17:9-12).

understanding of the law of nations, a master can transfer his right over a *servus* to another person as property ("The Rights of War and Peace" III, 7, 5, 2). He also put forth that according to natural law, a person can voluntarily give up his or her *libertas/dominium* and hand it over to someone else. After the establishment of the WIC, one evidences a change of the conception of the law of nations and nature within the works of W. de Groot and Ulrich Huber, such that *servitus* is reconciled with *ius naturale*. However, it is not until Van der Hoeven that the "Curse of *Ḥam*" myth is reconciled both with voluntary divine law and natural law. At that stage, the natural law of nations within Dutch legal thought marches in concert with the slave trading activities of the WIC and the VOC. The ambiguity of Grotius' *servitus in ius naturale* became normalized by Van der Hoeven.

By the end of the seventeenth century, shareholders, brokers, merchants, and everyone with an interest in the VOC and WIC were heavily steeped in slave trade. At that time, Cornelius van Bynkershoek appeared on the scene and declared that enslavement within the context of war had fallen into disuse among Christians, and that the Dutch sometimes sold North African Muslims to the Spanish and that the Dutch only use slaves except in Asia, Africa, and America. The fact that he did not provide a legal justification for the slave trading activities of the VOC nor WIC leads one to conclude that African and Asian slaves were dehumanized, thereby lacking natural rights.

5.5 Conclusions: The Effects of the Atlantic Slave Trade on the Dutch Legal Understanding of the Law of Nations and Nature

At the outset of this chapter I sought to contextualize the legal, political, and theological discourse surrounding the Dutch Republic debate on slavery and the slave trade, with the aim of understanding how the law of nations and nature and its key concepts were used or mobilized. In this chapter I have shown that reverted Jews and Dutch merchants in Amsterdam created business partnerships in order to establish a trade network between the United Provinces, Africa, and the East and West Indies. When the VOC engaged in slave trade between Africa and the East Indies, and the WIC in the Atlantic slave trade, the *Nação* and Dutch Christians constructed arguments in such a way that they were espoused by a politically-dominant majority.

I substantiated my claims by weaving together the theological, political, and legal debates on slavery and slave trading in the seventeenth-century Dutch Republic. Section 5.2 demonstrated that after the debate on the status of slaves within the Synod of Dordrecht, slaveholders had the power to decide whether to liberate, enslave, or baptize slaves.[17] Section 5.3 highlighted the debate between the Voetians and Cocceians on slavery and slave trade. The former was vehemently against the enslavement of African and Asian peoples in the Dutch colonies, while the latter justified it on the Bible. The Voetians condemned those that enslaved others, on the grounds that the Decalogue equated it with theft.

One learns that the Cocceius' interpretations of the Bible gained supremacy in the debate on slave trade in the West and East Indies pushed by economic elites connected with Constantijn

[17] The VOC prohibited the bringing of East Indies slaves into the Netherlands. As such, whenever an enslaved Asian came into the Netherlands, he or she was immediately manumitted. See (Welie 49) and (Mbeki and Rossum 96) for more details.

L'Emprereur, Menasseh b. Israel, and Johan Maurits. Cocceius and his followers influenced the lawyers (and vice versa). Finally, section 5.4 discussed the influence of the Voetius-Cocceius debate and the "Curse of *Ḥam* and Canaan" myth on the Amsterdam legal debate on slavery and slave trade. I analyzed selected works of four seventeenth-century Dutch jurists, namely, Hugo Grotius, Willem de Groot, Ulrich Huber, and Cornelius van Bynkershoek. All of them agree that the institution of slavery is possible within the legal realms of the law of nations. With the exception of Bynkershoek, the others argue that slavery is not against the natural law. Moreover, they all agree that slavery had diminished or had been abolished among Christians. While Willem de Groot asserts that war captives can be enslaved and sold according to natural law, only van Bynkershoek acknowledges that the Dutch trade in slaves throughout its colonies. By the early eighteenth century, jurist Emmanuel van der Hoeven mobilizes the "Curse of *Ḥam*" theory as a theological and legal justification for the enslavement of *black* persons.

Nevertheless, the question still stands, what legal justification did Dutch jurists construct in order to trade and enslave the West Africans? The legal innovation that Grotius introduced to the discourse was that natural *rights* could be applied not only to individuals and states, but also to private entities, such as the VOC and the WIC. In doing so, he provided a legal concession for these companies to confiscate Portuguese property under the premise of defensive war. Hence, Portuguese slave ports, and slave systems became property of the VOC and WIC.

The Atlantic slave trade influenced the debate on the law of nations and nature within the Dutch Republic. Grotius' concept of *servitus in ius naturale* was an innovation at the time. International legal scholar and justice, Hersch Lauterpacht (1897 – 1960) suggested that Grotius had reflected "the essential needs of the times" and that his approval of people selling themselves

into slavery was in fact “humanitarian,” because enslavement was preferable to other ways of treating captives (“Grotian Tradition” supra note 9, at 44, 45). If so, this would mean that even though he was against Aristotelian *natural slavery*, he did accept that individuals sell themselves into slavery. Being that he utilized *servitus in ius gentium* for war slavery, according to Roman legal convention, he would then have to suggest another legal basis for voluntary enslavement.

If individuals can give up their freedom and become enslaved perpetually, then there is somewhat of a legal basis for their enslavement without the premise of a *just war*. However, Grotius did not clarify if these slaves could be sold or if their children acquired the enslaved status *ad perpetuam*. If truth be told, the European buyers did not verify if the sellers had legitimate *rights* of ownership over their slaves. By the end of the seventeenth century, theologians and jurists amalgamated ideas and notions to forge Dutch legal theory, such that slavery and slave trade became an integral part of the culture and economy (Noorlander "For the maintenance of the true religion” 85; Amposah 434).

During the Dutch Republic seventeenth-century debate on slavery and slave trade, the Portuguese Jews’ community in Amsterdam made significant contributions to that end, as I will demonstrate in the following chapters. Some of the reverted (ex) *conversos* thereof synthesized legal notions from the “School of Salamanca” with Biblical and rabbinic jurisprudence on slavery, and the “Curse of *Ḥam*,” in order to justify their activities in the Atlantic slave trade. How they accomplished this will be the topic of the next two chapters.

6.

The *Nação* in Amsterdam: Intra-Communal Discussions on Slavery and Slave Trade

"Twas mercy brought me from my Pagan land
Taught my benighted soul to understand
That there's a God, that there's a Savior too;
Once I redemption neither sought nor knew.
Some view our sable race with scornful eye,
'Their color is a diabolic die.'
Remember, Christians, Negros, black as Cain
May be refin'd, and join th'angelic train."
(Wheatley 13)

Slavery Halakhah—Perpetual Slaves—Siervo vs Esclavo—Communal Regulations Against the Inclusion of Slaves—Messianism—Conclusions

6.1 Introduction

After having reconstructed the legal, theological, and ideological debates in sixteenth-century Iberia and the seventeenth-century Dutch Republic concerning slavery and the slave trade, this chapter continues with an examination of *Nação* jurists' *halakhic* rulings within the same time period. Some scholars have researched the involvement of Jews in slavery and slave trade during the medieval and early modern periods. The first academic scholar on the issue of slavery in the Muslim world within the Jewish community was Simcha Asaf (91-125). Then in 2004, Jonathan Schorsch revived the Jewish slavery debate in *Jews and Blacks*. Therein he argues that the Portuguese Jews that were involved in the African slave trade did so because of their Iberian culture, and not due to their understanding of *halakhah*. In 2006, Yaron ben-Naeh explores the slaveholding phenomenon of Jewish households in the urban centers of the Ottoman Empire between the sixteenth and nineteenth centuries (315-332). He maintains that female manumitted slaves of Slavic origin became an integral part of the Ottoman Jewish community in the early modern period. In a similar fashion, this chapter explores the same phenomenon among the *Nação* communities in West Africa, Amsterdam, and the West Indies, in which *black* African manumitted men and women became part of their respective communities.

Filipa Ribeiro da Silva reconstructs a historical narrative of the participation of the Amsterdam Jewish community in the trade with western Africa and the organization of these activities and their articulation between various ports in both continents. She seeks to "fill the gap in the historiography" by examining the mechanisms used by the Sephardi merchants living in the Dutch Republic to finance and insure the ships operating in this trade network ("Portuguese Sephardi of Amsterdam"). Her research is crucial to this chapter as it supplements the archival material contained herein. Upon examining the Zeeland WIC archives, Jessica Vance Roitman asserts that Jews were supplied a sufficient quantity of slaves if they chose to migrate from the Zeeland province of the Netherlands to the Wild Coast (296). She further maintains that "the competition for Jewish settlers in the Americas must be placed in its global economic, political, and religious context" (294). Although I agree with Schorsch that the *Nação* participated in the African slave trade due to their Iberian *hidalgura* [attitudes of nobility], I posit that a study on their *halakhic* discourse is crucial for understanding their legal consciousness, since it shaped the moral lens through which they operated and was also shaped through it. Accordingly, this chapter entails an analysis of relevant texts which I chose in order to reconstruct the seventeenth-century context concerning Jewish attitudes and slavery practice. The chosen texts deal with the intra-communal discussions and justifications for slavery and slave trading of the *Nação* in Amsterdam. They exhibit the terms *siervo/servo and esclavo/escravo*. Isaac S. Emmanuel (1899 – 1972), Rabbi and chronicler of the Sephardic community in Curaçao, stated that Jews in the New World started their slave trading endeavors in Brazil and continued to

do so in Amsterdam as either buyers or sellers (75).[18] Building on this fact, this chapter proceeds to examine how *Nação* rabbis in Amsterdam mobilized the "Curse of *Ḥam*" theory and *halakhic* notions to justify their own *modus operandi* concerning slave trading, and that of their congregants. To my knowledge, no one has gone into depth on the *halakhic* slavery discourse of the Portuguese Jewish community in seventeenth-century Amsterdam.

Section 6.2 highlights the *halakhic* commentaries that *Nação* rabbis used in Amsterdam and the New World in order to justify the enslavement and trade of *black* Africans across the Atlantic. To this end, a focus on the Babylonian Talmud (*Gittin*), Moses Maimonides' [Rambam] (1135 – 1204) *Mishneh Torah,* David Ibn Abi Zimra's [Radbaz] (1479 – 1573) *responsum* [a rabbinic response to questions pertaining to Jewish law] on slaves, and a *responsum* by Raphael Meldola (1685–1748) dealing with a case concerning Caribbean slavery. I argue that *Nação* rabbis developed *halakhic* justifications for slavery and slave trading through a synthesis of texts, which were motivated by socioeconomic factors within the Iberian peninsula, and the Dutch Republic and its colonies.

Section 6.3 explores the linguistic conventions used by the *Nação* regarding slavery. Many primary sources are included in this section, some of which are preserved in their original hand-written format. These manuscripts are located within the *Livraria Montesinos* from the *Eẓ Ḥaim* Jewish community and the *Studia Rosenthaliana*, which house texts that have been preserved for over 200 years. One must keep in mind that the transmission of texts is unusual. They were printed by authorized printers in Amsterdam, with the approval of the board of

[18] In 1673 N. & N. Deliaan offered the Company 500 African slaves for consignment to its Cadix agents. Two years later Jan de Lio (João de Yllan), as the agent of others, proposed selling the Company 1,500-2,000 slaves from Rio Calabary. West India Company Archive [WICA] 330, meeting of March 7, 1675, 111.

directors of the *Eẓ Ḥaim* Jewish community. If anyone printed a literary work in Spanish or Hebrew, without the authorization of the board of trustees, the congregant would forfeit his right to receiving communal funds (GAA 334, No. 19, fol. 110, *ascama* No. 37). Within the literary works, one will find all kinds of knowledge: astronomy, psychology, theology, medicine, Greco-Roman philosophy and law, rabbinic books, and Spanish poetry, to name a few. For the purposes of this research, the Ferrara Bible (1553) was chosen as a target text because it is the official Spanish Bible translation used by Sephardi Jews in the sixteenth and seventeenth centuries. Much attention is given to the word *siervo* in pertinent passages in the book of Genesis and Leviticus. I then analyze a few Biblical commentaries of *Nação* rabbis and scholars, to see how they interpreted these passages. The chosen texts are as follows: Abraham Pharar's *Declaração das 613 Encomendanças* (1627); Menasseh b. Israel's *Thesouro dos Dinim* (1645–1647); Isaac Athias' *Thesoro de Preceptos* (1649); and Isaac Aboab da Fonseca's *Parafrasis comentado del Pentateuco* (1681). These texts demonstrate how the terms *siervo* and *escravo* were used throughout the course of the seventeenth century. The argument is that the terms *esclavo* and *escravo* were used especially after the *Nação* became prominent in the slave trade between the West Indies and South America. Also, the linguistic change from *siervo* and *servo* to *esclavo* and *escravo* correlates to the modifications in the Spanish-Portuguese medieval slavery codes, as discussed in Chapter 4.[19]

Section 6.4 explores the communal stance regarding the manumission of slaves within the *Nação* community in Amsterdam and abroad. For that matter, the communal ordinances from the *Nação* communities in Amsterdam, Brazil, and Suriname are examined in order to

[19] All translations from the Hebrew/Aramaic, Spanish, and Portuguese texts are mine.

reconstruct the Jewish attitudes toward persons of African origin and slaves, within the respective communities.

Section 6.5 details how Jewish messianism in the seventeenth century was a motivating factor for the use of slaves on plantations. Funds were collected from all the *Nação* communities and distributed to the poor of Jerusalem. This section highlights the sociological justifications for the use of slaves in the *Nação* community, whether domestically or on the plantations. Finally, there is a discussion on how *hidalgura* was integral to the *Nação's* ethos, such that certain labors were considered beneath them. Overall, this chapter demonstrates how *Eẓ Ḥaim's* Jews contributed to the legal-political discussions of *ius naturae et gentium* within the Amsterdam-Dutch Republic debate on slavery and slave trade.

6.2 An Analysis of Slavery *Halakhah*: From the Bible until Seventeenth-Century Amsterdam[20]

In Sephardic Jewish jurisprudence all *halakhah* [practical law] is derived from the Pentateuch and the Prophets. *Halakhah* is established through the thirteen hermeneutical rules as expounded by Rabbi Ishmael (95 – 135 C.E.). The legal discussions and decisions are found in the Jerusalem Talmud (c. 375 C.E.) (Zelcer 49). and the Babylonian Talmud (ca. 500 C.E.) (Neusner ix). National *halakhah* was decided within the framework of the Jewish Senate, namely the Sanhedrin [seventy one Supreme Court judges]. After judges Rab Ashi (352 – 427 C.E.) and Rabina (d. 427 C.E.) compiled the Babylonian Talmud, there could be no new national legislations for the Jewish People. With the destruction of the Jewish commonwealth in the Holy

[20] This section contains some information from my blog *Legal Aspects of Jewish Slavery Law in Eighteenth-Century Amsterdam* on the Global Cities Project website: https://www.asser.nl/global-city/news-and-events/legal-aspects-of-jewish-slavery-law-in-eighteenth-century-amsterdam/, reproduced here with permission.

Land in 70 C.E., the center of Jewish academia moved to Babylon, where three schools of Jewish legal thought flourished until about the end of the tenth century: Pumbedita, Nehardea, and Ẓura. The *Geonim* were the rabbinic authorities and teachers from these three schools, following the period after the closing of the Talmud; they answered the novel cases of *halakhah* that emerged, serving as interpreters of Talmudic legislation. They also contributed to the social and political construction of Jews in the diaspora (Abrahamas chap. V). The *Geonim* composed hymns and invocations, thereby fixing the order of the liturgy. Although Hebrew and Aramaic were the main languages used by Jews, Arabic eventually became the *lingua franca*. Jews from all over the world directed their questions on the Bible and *halakhah* to the heads of the school in Babylon and Persia. The questions and answers were compiled in the body of literature known as *she'eloth u-Teshuboth* [שו"ת]. The *Geonic* period (550 – 1050) gave rise to Judeo-Arabic literature, which linked the rabbinic academies of Babylon with those in Islamic Spain (Brody, "Gaon, Geonim, Gaonic Academies" 196; "The Geonim of Babylonia" chap. 20). Toward the end of this period, Moses b. Ḥanokh left Ẓura for Al-Andalus along with three other scholars. His intellectual contribution led to the eminence of the Lucena Talmudic academy. After the devastation of Babylonian Jewry in the eleventh century, Córdoba became the *Mecca* of Jewish scholarship. Jewish education included not only religious knowledge, but also knowledge of Greek and Arabic philosophy, mathematics, and metaphysics.

The Moors invaded Spain in 711 C.E., controlling most of the Iberian Peninsula for many centuries thereafter, initially under the Umayyad Caliphate. Jews had been settling there already since before the first century C.E.. Under Christian rule, they were subject to forced conversions, massacres, and persecution from the fifth century C.E.. As *dhimmis* [protected citizen of the

Islamic State] under Muslim rule, the Iberian Jews were protected as *ahl kitab* [people of the Book (Arabic: أهل الكتاب ʼAhl al-Kitāb) An Islamic term referring to Jews, Christians, and Sabians and sometimes applied to members of other religions such as Zoroastrians]. According to some scholars, the Golden Era for the Spanish Jews was between 912 – 1090. The great Sephardi luminaries, such as Moses Maimonides, Judah Halevi (c. 1075 – 1141), Abraham b. Ezra (1089 – 1167), Ḥasdai Ibn Shaprut (910 – 970), Samuel Ibn Naghrillah [HaNaGid] (993 – 1056), Solomon Ibn Gabirol (1021 – 1058), and Dunash b. Labrat (920 – 990) lived during the Golden Era in Spain. Córdoba became a center for learning, Jewish scholars came there from all parts of the world to learn philosophy, astronomy, mathematics, physics, logic, and Jewish jurisprudence. The death of Al-Hakam II Ibn Abd-ar-Rahman in 976 marked the beginning of the dissolving of the Córdoba Caliphate. The 1066 Granada massacre on 30 December was the first great major persecution of Jews. A Muslim mob overtook the royal palace in Granada, crucified Jewish vizier Joseph Ibn Naghrela and massacred most of the Jewish population of the city. Over 4,000 Jews perished in one day. This was the end of the Córdoba Caliphate and the Jewish Golden Age in Spain (Gottheil et al. "Granada").

The *Geonic* literature was disseminated throughout Islamic Spain by way of the two students of the last *Geonim* of Babylon: Ḥananel B. Ḥushiel [Rabbenu Ḥananel] (990 – 1053) and Nissim Gaon [Rabbenu Nissim] (990 – 1062). Both of them authored commentaries on the Babylonian Talmud, but Rabbenu Ḥananel also offered some commentary on the Jerusalem Talmud. Algerian-born Talmudic scholar, Isaac Ha-Cohen Alfasi [Rif] (1013 – 1103) studied under both Rabbenu Ḥananel and Rabbenu Nissim. After embarking on a ten-year endeavor, the Rif managed to compile the practical conclusions of the Talmud (*Sefer he-Halakhoth*) in a clear

and concise way. In 1089, after living in Fez for forty years, he relocated to Al-Andalus where he became the head of the Talmudic Seminary in Lucena (Dubnov 643). Alfasi's work had a profound affect on Maimonides, which led him to author the *Mishneh Torah* published in 1180 C.E. (Kraemer 60).

Talmudic-legal thought in Spain was characterized by three main schools: Andalusia, Aragón, and Catalonia. The Andalusian conceptions of Talmudic thought came directly from the G*eonim* in Babylon and North Africa. However, the legal thought of the Catalonians came from the rabbis of Provence and the Rhineland regions. The Aragonese School was a hybrid between Andalusia and Catalonia. Whereas the Andalusian School implemented the *'iyun* [scrutiny] method of the Babylonian Talmud, the Catalonian School derived law with the *pilpul* [casuistry] method from the Jerusalem and Babylonian Talmud, as characterized by the *Tosaphist* method. This difference of methodological approach produced different theoretical understandings and *halakhic* applications among the Spanish communities. The champion of the Andalusian school was Maimonides [Rambam], Nahmanides [Ramban] for the Catalonians, and Shelomo b. Abraham Ibn Aderet [Rashba] (1235 – 1310) for Aragonese Jewry.

After being expelled from Iberia, many Jews relocated to places in Italy with preexisting Jewish communities. Prior to the reception of Iberian exiles, the Jewish legal tradition in Italy had a long-established approach to *halakhic* reasoning. Many Italian jurists based their decisions on the understanding of the Franco-German *Tosaphists* and the tenth-century *Arukh*, a lexicon written by Nathan b. Yeḥiel of Rome (Tirosh-Rothschild 255). Moreover, Italy was very important for Jewish scholarship in general, due to the printing press in Ferrara. The first printed versions of classic Jewish texts appeared there. A distinguishing fact of Padua was that Jews

were allowed to study at its renowned university (Eisenberg 12). While there, they combined Jewish studies with humanities. Such an atmosphere encouraged *halakhic* reasoning expressed in Roman legal language (Bonfil, "Rabbis and jewish Communities in Renaissance Italy"). In the seventeenth century, some Italian-trained jurists relocated to Amsterdam and disseminated the Italian legal tradition at the *Eẓ Ḥaim* Seminary.

Slavery *halakhah* was constantly modified, from the Biblical period until the modern period. Slavery *halakhah* initiated in the biblical time period until the second commonwealth of the Jews in the Holy Land. Some scholars claim that rabbis living in the Holy Land during the Roman era were not only familiar with Roman law, but also influenced by it (Hezser "The Impact of Household Slaves on the Jewish Family in Roman Palestine"; Likhovski, "Recent Trends in the Study of the Intellectual History of Law and Jewish Law Scholarship"; B. Cohen 274). If so, then these influences would be reflected in slavery *halakhah*. It was then transformed during the Talmudic period. Thereafter, during the *Geonic* period (589 – 1040), slavery *halakhah* changed due to interactions with Christians and Muslims. Next, in the medieval time period, Jewish authorities developed slavery *halakhah* within Islamic Spain and the Christian Rhineland region. Then, after the initiation of the Iberian-African trade of slaves, rabbinic authorities wrote *responsa* involving slavery *halakhah*. In the early modern period, *Nação* rabbis constructed legal arguments in light of the Atlantic slave trade. Overall, Hebraic legal scholars reworked slavery *halakhah* over a period of two thousand years.

During the biblical period, there were two types of *slavery*: Hebrew servitude and Canaanite slavery. Hebrew servitude refers to the service that a biblical Israelite underwent for a period of six years to get out of debt. At the beginning of the seventh year, the Hebrew servant

was released from his or her service and clear all debts. Canaanite slavery refers to those non-Hebrew slaves who were held captive as prisoners of war from the seven nations of the land of Canaan. The latter can be equated to *servitus in ius gentium* in Roman law. As in Roman law, where slaves are taken as captives within the context of war, so it is biblical Canaanite slavery. After the devastation of the first Israelite commonwealth (ca. sixth century B.C.E.), Hebrew slavery became obsolete (Elazar-DeMota, "Legal Aspects of Jewish Slavery Law"). During the second Jewish commonwealth (ca. second century C.E.), three jurists discussed the limits of "Canaanite" slavery. This term was applied to any non-Jewish person who was purchased as a slave by Jews (b.Horayyoth 13a), regardless of descent. Henceforth, in order to avoid confusion with this linguistic conundrum, when referring to this type of slavery, I will refer to it as *postbiblical slavery* (Elazar-DeMota, "Legal Aspects of Jewish Slavery Law"). The Torah precept states:

> "Moreover of the children of the strangers that do sojourn among you, of them may ye buy, and of their families that are with you, which they have begotten in your land; and they may be your possession. And ye may make them an inheritance for your children after you, to hold for a possession: of them may ye take your bondmen forever; but over your brethren the children of Israel ye shall not rule, one over another, with rigor" (*ibid*, *Common English Bible*, Lev. 25:45-6).

Canaanite slaves were not freed throughout the Biblical time period. However, during the Talmudic period, manumission resulted in "nationalization" to the Jewish People:

> The Sages taught in a *baraita* [an authoritative tradition]: One may maintain slaves that are not circumcised under one's control; this is the statement of Rabbi Ishmael. Rabbi Aqiba says: One may not maintain such slaves, even for a moment…Rabbi Joshua b. Levi said: In the case of one who purchases a slave from a gentile and the slave does not wish to be circumcised, he abides with him up to twelve months. If, after this period, he will still not be circumcised, he then sells him on to gentiles (b.Yebamoth 48b).

This legal discussion is the basis upon which *postbiblical slavery* rests. To every Talmudic discussion of jurisprudence, there are at least two legal opinions. This discussion includes the opinion of three jurists, namely, Rabbi Aqiba, Rabbi Ishmael, and Rabbi Joshua b. Levi. Rabbi Aqiba states that a male slave must be circumcised immediately, upon purchase. Rabbi Ishmael states that one can keep his male slave while uncircumcised. Rabbi Joshua b. Levi states that the Jewish owner has up to twelve months to convince his male slave to undergo circumcision, after which he must be immersed in a ritual bath. *Postbiblical slavery* in the Talmudic period and thereafter, had a fundamental difference from biblical Canaanite slavery: the former was (1) not restricted to ethnic Canaanites, (2) permitted the emancipation of slaves, and (3) could result in the nationalization of the former slave to the Jewish People (b.Horayyoth 13a; b.Yebamoth 48b).

During the *Geonic* period, Jews had slaves mainly for domestic purposes. Rabbi Hai Gaon (939 – 1038) rules "In a place where [Jews] fear that unconverted slaves will reveal Jewish secrets to those who seek after Jewish souls and blood and bring danger or war upon Jews, unconverted slaves should not be retained at all" ("Shaare Ẓedeq: Teshuboth HaGeonim" No.

431). However, *a priori*, one should follow the *halakhah* according to the ruling of Joshua b. Levi, i.e. sell him after twelve months. Evidently, Hai Gaon ruled the *halakhah* according to Ishmael, keeping the slave uncircumcised due to bitter experiences with insincere Jewish proselytes. Rabbi Amram Gaon (810 – 875 C.E.) rules that "one cannot keep a slave that does not want to voluntarily join the Jewish People. One should understand that upon manumission, the slave had full status within the Jewish community" ("Shaare Ẓedeq: Teshuboth HaGeonim" No. 18). Rabbi Cohen Ẓedeq Gaon (ca. 935) maintains that the Jewish master must circumcise the male slave immediately, upon purchase. On the other hand, if the purchaser had made a stipulation to circumcise the male slave at a later date, he had up to twelve months to do so. Otherwise, the master must sell the slave ("Shaare Ẓedeq: Teshuboth HaGeonim*"* No. 20). Isaac Ha-Cohen Alfasi rules that the "application of these laws do not apply unless the slave voluntarily accepts to become a Jew or Jewess" (Teshuboth Rif). Both Amram Gaon and Ha-Cohen Alfasi held the strict position to limit *postbiblical slavery*, whereas, Cohen Ẓedeq Gaon maintained the lenient ruling of Aqiba.

Prior to 1492, Sephardi rabbinic deciders of *halakhah* also made rulings on *postbiblical slavery* in different ways. Moses Maimonides codifies the law:

> When a person purchases a slave from a gentile without making a stipulation beforehand, and the slave does not desire to be circumcised or to accept the precepts incumbent upon slaves, he is given leeway for twelve months. If at the end of this period, he still does not desire, the master must sell him to a gentile or to the diaspora. If the slave made a stipulation with the master at the outset that he did not have to circumcise himself, the

> owner may maintain him as a gentile for as long as he desires and may sell him to a gentile or the diaspora (Mishneh Torah, Laws of Slaves, chap. 8).

According to this ruling, one can keep an uncircumcised male slave, if and only if the owner made a stipulation at the beginning, and if the slave keeps the seven Noahide laws [The seven Noahide precepts are: not to commit idolatry, not to commit adultery, not to kill, not to steal, not to blaspheme the God's name, not to eat a limb of a live animal, to institute judges and tribunals. (Israel, "Thesouro dos Dinim" Tractate No. 3 On the laws of the Sabbath, 282). The Rambam also states that "a slave can be kept without any time constraints." Initially, the Rambam codifies the *halakhah* according to the legal opinion of Cohen Ẓedeq Gaon, but adds that the slave must keep the seven Noahide laws [Refer to section 7.2 on the seven Noahide laws and natural law]. Next, Asher b. Jehiel [Rosh] (1250–1327) decides the law: In these countries where it is prohibited to convert any non Jew, he is like the slave whose master stipulated *a priori* to not circumcise him, and the master may keep him uncircumcised as long as he desires("Shulḥan Arukh" YD 267:9)[21]. This *pesaq halakhah* [rabbinic legal opinion] reflects the political context within the Spanish Christian kingdoms, where Jews were prohibited from proselytizing. Instead of deciding according to the lenient opinion of Aqiba, the Rosh decided slavery *halakhah* according to the legal opinion of Ishmael.

Throughout this development of postbiblical slavery *halakhah*, one witnesses a divergence from Iberian scholasticism. Scholastics held that slaves were those prisoners captured within the context of a *just war and that servtius* was not a natural condition (Brett, "Liberty,

[21] He was a German-born rabbi who later moved to Toledo, Spain.

Right, and Nature" 184). In postbiblical slavery *halakhah*, there is no discussion on the acquisition of slaves. It is assumed that the Jewish People can purchase slaves *de iure*, i.e. as a legally recognized practice. According to *Las Siete Partidas* those persons that could be enslaved were: non-Christian prisoners of wars, persons condemned for crimes, indebted persons who succumbed to voluntary slavery, and the offspring of enslaved mothers ("Las Siete Partidas" Code 4:XXI:1). On the other hand, postbiblical slavery *halakhah* permits the Jewish People to only purchase persons foreign to them, with the intention of introducing them *ab initio* to the Hebrew covenant. When Maimonides codifies that a slave must keep the seven Noahide laws, he essentially lays the ground for a Jewish version of the natural law of nations [This will be discussed at length in Chapter 7]. Overall, in the medieval time period slavery *halakhah* underwent some modifications, due to socio-political factors.

By the time of the Alhambra Decree of 1492, the Spanish and Portuguese kingdoms were already engaging in West Coast African slavery, taking slaves to the Iberian Peninsula and the Atlantic islands. The involvement of Iberian Jews in slave trading was minimal before the fifteenth century (Schorsch, "Jews and Blacks" 50). Sephardic Jews were accustomed to purchasing *black* Africans to use as domestic servants. Non-Jewish servants formed part of Jewish households, since they could perform tasks on the Sabbath which were forbidden to Jews (78). According to the Inquisition records of the Canary Islands and Portugal, there are many cases of African ex-slaves who were accused of being judaizers, implying that they had been proselytized by their Jewish owners (Wolf 22). In his *Historia da Riti Ebraice* (1637), the Venetian rabbi, Leone da Modena states one can keep a slave without circumcision and without immersion, and only after freeing him could the ex-slave become a Jew (Drescher 13). Da

Modena bases his *pesaq halakhah* on the understanding that circumcision and the first ritual immersion of a male slave only gave him a quasi-Jewish status, obligating him to the same precepts as a woman. Only after the second immersion does the slave become a full-fledged Jew. Ergo, da Modena gives a lenient legal opinion. This ruling became the basis by which post-Expulsion Sephardi rabbinic scholars determined slavery *halakhah* for their respective communities. The Radbaz, while residing in Egypt, decides just like Maimonides, but adds, "in the Land of Israel, all slaves must be converted; outside the Land of Israel, it is permitted to keep them without conversion" (Responsa Radbaz" 4:50). The Radbaz's *pesaq halakhah* is what ultimately Portuguese Jews used to justify their transferring thousands of African slaves across the Atlantic, as reflected in the *responsa* of Raphael Meldola in the *Peri Eẓ Ḥaim.*

Rabbinic scholars at the Seminary of *Eẓ Ḥaim* produced a journal of legal *responsa*, spanning from the seventeenth to the eighteenth centuries. These twelve volumes consist of questions and legal analyses on various *halakhic* matters, which were addressed to rabbinic students from the *Eẓ Ḥaim* Seminary. It is of no surprise that the issues of slavery and slave trading were addressed in this journal. One such case involved a slave owner in one of the colonies of the Dutch Antilles who addresses his concern to the Amsterdam rabbi, David son of Raphael Meldola in 1767:

> A Jew [Reuben] lives on one of the islands and plans to travel to Amsterdam, but does not want to travel with his maidservant (slave) because of the legal prohibitions there regarding holding slaves or trading in slaves, and lest she runs away and escapes from him while traveling there. A close friend [Shimeon] of Reuben offers to take care of the

> maidservant while he [Reuben] is away. Two years later, the maidservant became pregnant and her master [Reuben] hears about this and wants to know about her and the child. Shimeon returns the maidservant to Reuben, but keeps the child, since he was born under Shimeon's care. The issue is that the Reuben's maidservant became pregnant from Shimeon's male slave, while Reuben was away. Reuben, regards the child as an extension of the maidservant, and therefore also his property
>
> ("Responsa Peri Eẓ Ḥaim" Vol. 5, 239).

It is usual and customary for scholars of *halakhah* to use the generic names *Reuben* and *Shimeon* in order to set up a hypothetical situation or to avoid embarrassing the actual parties involved. The rabbinic response to this case reflects legal precedents dealing with marriage and slavery *halakhah* from the Talmud, and the legal decisions of Maimonides. The verdict is that any child born from the maidservant under the care of *Shimeon*, belongs to *Reuben*, since the mother is his property. In addition, David Meldola states that his opinion is in compliance with the laws of the islands, where the entire trade consisted of slaves and slave labor. His ruling reflects the Talmudic principle *diná deMalkhutá diná,* i.e. the law of the land is the law, when financial matters are involved. Even though this case is from the eighteenth century, it reveals a number of realities of the seventeenth century Dutch Republic.

With over a thousand years of the practice of slavery, the use of slaves and slave trade was part of the *modus operandi* of the Jewish People. Based on my experience with the archives of the *Eẓ Ḥaim* community, I have yet to find any indications of anti-slavery sentiments from any rabbi or thinker in the seventeenth century. In fact, it was not until 1767 that a rabbi from the

community issues statement against the application of *postbiblical* slavery: "the precept to work the [Talmudic] Canaanite slave forever does not apply at this time" ("Responsa Peri Eẓ Ḥaim" 4/5: 227a, no. 474). First, the case reveals the reality of slavery and slave trading by the *Nação* in the West Indies. Second, it highlights that slavery and slave trading were not allowed in the Netherlands. Third, it demonstrates that slaves were considered legal property of their owners [*dominica potestas*] and that the children follow the status of the mother [*ancilla*]. Herein, seventeenth-century Dutch Roman law and *halakhah* converge. Finally, it reveals that *Nação* rabbis in Amsterdam issued communal legal rulings, according to the civil law of the country of jurisdiction.

Upon examining the biblical and Talmudic discussions on slavery, it is evident that the biblical Canaanite war slave became a legal generic term for any non-Jewish slave regardless of descent (b.Horayoth 13a). Whereas in the biblical time period, Canaanite slaves were to be perpetually enslaved, Talmudic law permitted the manumission of slaves. Upon examining post-Talmudic rulings on *postbiblical slavery*, one can see how Rabbi Ishmael's legal position became more prevalent, such that it became possible to maintain a perpetual slave. As Jews transitioned out of the Islamic kingdoms of Babylon and into the Christian lands of Western Europe, the rabbinic rulings concerning slavery reflected the *law of the land*, i.e., the prohibition of circumcision of non-Jews and their conversion. Hence, with so much legal history and practice in slavery and slave trade, *Nação* merchants in the seventeenth-century Dutch context were able to engage in Atlantic slave trade, without much debate among themselves, due to their understanding of slavery *halakhah*. In the Netherlands they had to present their slaves as household servants, but abroad they maintained both plantation and domestic slaves. The latter

were usually women who gave children to their masters and sometimes were manumitted, forming part of the family unit and the community (Ben-Ur, "A Matriarchal Matter"). On the other hand, the former were destined to work in the sugar cane fields, without hope of emancipation. Slavery *halakhah* afforded masters to own their slaves as property, and stipulate a condition not to manumit them, if the law of the land did not permit proselytization [through circumcision]. This explains why most manumitted slaves were women. Ergo, *Nação* plantation owners did not ritually-immerse their male slaves *a priori,* in order to meet the demand for plantation labor. As such, the *Nação* forged a conception of law which permitted *servitus* and slave trade outside of the context of a *just war*. This is where Grotius' conception of *servitus in ius naturale* [Refer to section 5.4] may have served the *Nação* in its endeavor.

6.3 Intra-Communal *Halakhic* Discussions

In Chapter four I argued that the terms *siervo* and *servo* were commonly used in the Spanish and Portuguese medieval and early modern civil codes, until the reality of the Atlantic slave trade pressed for the adoption of *esclavo* and *escravo.* In this section, I analyze the same key concepts and force used in various Jewish texts, to gain insight into the *Nação'*s ideas about New World plantation slaves and domestic servants in the Netherlands and West Africa. The first text to be analyzed will be the Ferrara Bible. I argue that the use of *siervo* in the Ferrara Bible and its revisions produced by Sephardi scholars in seventeenth-century Amsterdam served as a protective fence from outsiders of the Jewish community, lest the city authorities accuse the Jews of violating the civil law against slavery. Herein, *halakhah* intersects with the law of nations and nature, as understood by Dutch jurists at the time.

Next, I examine Abraham Pharar's use of *siervo kenahanita* and *servo* in his *halakhic* treatise in *Declaração das 613 Encomendanças da nossa Sancta Ley* (1627)[22]. Moreover, I bring to the forefront how Isaac Athias uses *siervo pagano* to refer to the non-Jewish slave in his *Thesoro de Preceptos.* Finally, I analyze how Menasseh b. Israel used the terms *servo* and *escravo* to distinguish between two types of slaves: one that was manumitted after twelve months and adopts the Jewish tradition, and the one that rejected the voluntary naturalization into the Jewish Nation and is sold after twelve months of servitude. In doing so, I substantiate the claim that language was manipulated in order to create different categories of servitude, and in some cases to bypass anti-slavery laws in the Netherlands. Thus, *halakhah* prevails over legal conceptions of *libertas*, which express that no one is born in *servitus* and that *dominium* belongs to those created in *imagine Dei*.

After the expulsion of the Jews from Spain (1492) it became necessary for the exiles to produce a Spanish translation of the Hebrew Bible for the sake of *conversos* who did not have access to the Bible in Hebrew (Rodrigue Schwarzwald 119). The Ferrara Bible was printed in Italy in 1553 in the Spanish language (Wiener 41-3). The preface of the Ferrara Bible begins: *Biblia Hebrayca, en lengua Española, traduzida palabra por palabra de la verdad Hebrayca, por muy excelentes letrados, vista y examinada por officio de la Inquisición, con privilegio del Yllustrissimo Señor Duque de Ferrara* [Hebrew Bible, in the Spanish language, translated word-for-word from the true Hebrew, by very excellent lettered persons, seen and examined by the office of the Inquisition, through the privilege of Lord Duke of Ferrara] (Lazar 345). The learned men that prepared the translation were fifteenth-century Sephardi exiles: Abraham Usque [Daniel

[22] Consult the Ets Haim Library for a printed copy.

Pinel] and Yom-Tov Levi Atias [Jerónimo Vargas] (Vainfas 521). In 1611, the first edition of the Ferrara Bible was printed in Amsterdam. It was revised and reprinted in 1630, 1646, and 1661, the latter of which included a revision by Menasseh b. Israel (524).

All of the Ferrara Bible versions used by the *Nação* in Amsterdam, use *siervo* throughout. In Genesis 9:25 the text reads: *Y dixo, maldito Kenaan: siervo de siervos, sea a sus hermanos* [And he said, cursed be Canaan: a servant of servants shall he be to his brothers] (my translation). In Leviticus 25:44–46 it reads:

> *Y tu siervo y tu sierva que seran a ti de con las gentes que en vuestros derredores, dellos compareys siervo y sierva. Y tambien de hijos de los moradizos, los peregrinantes con vos, de ellos comprareys y de su linage que con vos, que fueron nacidos en vuestra tierra: y seran a vos por possession. Y hareys heredar a ellos para vuestros hijos empos vos, para heredar possession; para siempre…*

> Regarding male or female servants that you are allowed to have: You can buy a male or a female slave from the nations that are around you. You can also buy them from the foreign guests who live with you and from their extended families that are with you, who were born in your land. These can belong to you as property. You can pass them on to your children as inheritance that they can own as permanent property (*Common English Bible*).

The use of *siervo* in these verses and not *esclavo* raises an interesting question: Why do neither the Ferrara Bibles published in Amsterdam, nor the burial register of the Portuguese Jewish cemetery in Amsterdam reflect the use of *esclavo or escravo,* as seen in the *Ordenações Manuelinas* and *Ordenações Filipinas*? (Hagoort 39). A possible answer to these questions could be what Dienke Hondius (2008) notes, i.e., that the Portuguese *escravo* disappears from the *Beth Ḥaim* records around "the beginning of the seventeenth century, possibly to avoid controversy about the ambivalent status of slaves" and the free soil tradition (Hondius, "Black Africans in Seventeenth-Century Amsterdam" 96). The intentional choice of language concealed the *halakhic* notions of *postbiblical slavery*, reserving the use of *esclavo* and *escravo* to intra-communal discussions at the *Eẓ Ḥaim* rabbinic Seminary.

Abraham Pharar (Francisco Lopes d'Azevedo), a former *converso*, was born in Porto, Portugal in 1582. He had practiced as a physician in Lisbon before arriving to the Netherlands. While in Amsterdam, he engaged in the commerce of sugar, grain, and wax. Pharar was one of the founding members of the Beth Jacob community, and became the president of *Talmud Torah Eẓ Ḥaim* community in 1639. Abraham Pharar was known for opposing some views of the rabbinate, nonetheless, he was a close friend of Menasseh b. Israel (Pharar, "Studia Rosenthaliana" 50-1).

As many Portuguese-speaking *conversos* arrived in Amsterdam, it was necessary to provide them with a formal Jewish education in Spanish and Portuguese [the key languages of instruction], since they were without a working knowledge of Hebrew. One of the earliest *halakhic* texts written in Portuguese for the newcomers was Abraham Pharar's *Declaração das 613 Encomendanças da nossa Sancta Ley* [Declaration of the 613 precepts of our Holy Law]

(Bodian, "Hebrews of the Portuguese Nation" 106-7). In this *halakhic* treatise, Pharar enumerates the 613 precepts of the Torah and explains each one with their *halakhic* ramifications and contemporary interpretations and applications. He organizes the precepts according to positive and negative categories, i.e., 248 precepts to fulfill or accomplish, and the 365 prohibitions, according to the tradition of Moses Maimonides in his *Mishneh Torah*.

In the positive precept number 235, the heading states: *Servirse del siervo kenahanita* [To serve oneself with a Canaanite servant]. Interestingly, this title is in Spanish, while the explanation of the precept is in Portuguese. This demonstrates the use of both languages by the intended audience. The positive precept to "serve oneself with a Canaanite servant" is based on the verse in Leviticus 25:46. Pharar cites directly from the Ferrara Bible, "*Y hareys heredar a ellos para vuestros hijos empos vos, para heredar possession; para siempre con ellos vos serviredes*" [And you shall cause them to be inherited by your children after you, to inherit them as a possession; you shall serve yourself with them forever]. Then he explains, "the nature of this precept is; that we serve ourselves with Canaanite servants, and that we do not emancipate them, except when the owner damages the servant's tooth, an eye, or another organ; in that case, one is obliged to set the servant free; as the Law states, in its place." Up until this point his explanation is strictly an explanation of what was the *modus operandi* of the Israelites until the destruction of the first Temple in Jerusalem (457 B.C.E.).

According to this Torah precept, the Israelites were not supposed to ever manumit Canaanite slaves, but rather possessed them as property forever, and left them as inherited property for their posterity. Pharar continues his explanation: if the master marries his *servo* to a Jewish woman, or places *tefillin* [Also called phylacteries, are a set of small black leather boxes

containing scrolls of parchment inscribed with verses from the Torah] on his head, or calls him to the public Torah reading to read three verses, or other things such as these, which are not obligated to him [the *servo*], except to *free* persons; such a *servo* will be *free* and it will be incumbent upon the master to write the *servo* a bill of manumission (b.Gittin 40a).

Joseph Dov Soloveitchik (1903 – 1993) asserts that "slavery cannot harmonize with God's unity and the acceptance of his commandments expressed in the four parchments contained in the *tefillin*" (85). Also, if a slave is called up to read the Torah in public and says the blessing for the reading, he annuls his slave status, because he becomes bound to the Creator (*ibid*). One learns from this explanation that Pharar understood freedom [*libertas*] to be unburdened with enslavement [*servitus*], whether born or liberated. Thus, having the *right* to govern oneself [*dominium*] and do as one pleases implies *freedom*.

Moreover, Pharar continues his explanation, "Therefore, everyone should be careful not to do any of these things, lest he come to annul this positive precept" (positive precept No.235). Here he issues a warning to slave holders that they be careful in not manumitting their slaves by giving them participation in the holy communal rituals. It should be duly noted that the application of this precept does not specify the nature of female Canaanite slaves. The silence on this matter grants leniencies to Sephardi slave owners to marry female slaves, by manumitting them according to Talmudic *halakhah*. José da Silva Horta explains this phenomenon in sixteenth and seventeenth-century Senegal "A species of Portuguese, people who refer to themselves in this way because they used to serve, and are descended from, those who first lived along this coast…From the negresses whom they married, were born these *mulattos*, from whom in turn came even darker ones" (65). This practice of freeing African slave women in the

Portuguese colonies for the purposes of marriage became widespread in seventeenth-century Dutch Brazilian and Surinamese Jewish communities (Ben-Ur, "A Matriarchal Matter"; Davis, "Regaining Jerusalem" 11-38; Wolff, "Diconário Biográfico").

Pharar concludes his explanation on the precept to not manumit one's slave:

> The obligation of this precept applies everywhere, at all times; to men and women. Still, it is prohibited for women to purchase male slaves, and if they do, it is a sin to give them *freedom*; therefore, they shall sell them. Whoever transgresses freeing his *servo,* except for the occasion of a need of the community; has annulled a positive precept (positive precept No. 235).

Here, Abraham Pharar censures a slave owner who liberates a slave by stating that doing so is a sin. In order to avoid transgression due to the manumission of a slave, one should sell the slave to a fellow Jew. A former *converso,* having been raised in a Catholic environment would surely have experienced the psychological effects of what it meant to sin. Upon reading this explanation, a Sephardi colonist would understand that slaves are not to be manumitted, but either used or sold to someone else. The language implemented by Pharar reveals that he interprets this precept *de iure* [a right] of Jewish law. Thus, according to Jewish divine law, his justification for the institution of slavery is twofold: it is a positive precept, and a transgression of the Torah if one frees a slave. Hence, Pharar's *siervo kenahanita* is an unpaid worker that is destined to serve Jews until he or she expires.

As Portuguese *conversos* continued to migrate to the Amsterdam, it became necessary to provide them with comprehensive *halakhic* works in Portuguese. Consequently, Menasseh b. Israel translated Yosef Karo's (1488 – 1575) entire *Shulḥan Arukh* into Portuguese, under the name *Thesouro dos Dinim* [A Treasury of the Laws] (1645). He organized *halakhah* according to tractates, sections, and chapters. Apart from being a translation of the Hebrew original, Menasseh added cultural nuances that lend insight to the sociology of Portuguese Jews at the time. *Thesouro dos Dinim* reveals the reality of New World slavery and slave trading. Indeed, Menasseh b. Israel has much to say about the treatment of slaves.

In chapter one of the third tractate, which deals with Ownership and Possession, Menasseh b. Israel details the laws of the *escravos*, i.e. slaves. The use of *escravo* as opposed to *servo* reveals his deliberate choice and use of the same political language found in the *Ordenações Manuelinas* and *Ordenações Filipinas*. Menasseh begins his explanation on these laws:

> The goods that humans possess in this world can be reduced to two types: animate and inanimate. The animate are divided into two categories; rational, like *escravos e escravas* [men and women in bondage]: irrational, like birds and quadrupeds. The inanimate are organized according to three types, and they are, fields, houses, and movables. We will speak about these things [each] in their [own] section, regarding their laws, which is our interest in this work [My translation]
>
> ("*Thesouro dos Dinim"* Tractate No. 3 On Slaves, 181).

The use of "animate" and "inanimate" demonstrates that he was familiar with the legal language of the *Lex Aquila* (ca. 3 B.C.E.), which was applicable in the Roman Republic. The third chapter of the *Lex Aquila* deals with damages to animate and inanimate property, except for the killing of slaves or cattle (Melville 428). This use of language is crucial because it reveals that the author is familiar with Roman law.

Alan Watson asserts, "Killing and wounding another's slave, whether deliberately or negligently, also gave the owner a civil action for damages under a statute called the *Lex Aquila*" (Watson, "Slave Law in the Americas" 32). Moreover, he argues that one should not think that slaves do not necessarily lack legal personality in a slaveholding society, even though a slave is property he is nonetheless a human being, and some of his "human characteristics can be taken into account by law" (*ibid*). In saying "human characteristics," Watson means that slaves have rational capabilities, thereby recognizing the slave's humanity by placing restraints on cruel mastery. In the same vein, Menasseh states:

> Even though a master can rule harshly over his slaves, nevertheless it is a work of compassion to treat them kindly in deeds and words, utilizing all kinds of softness and benevolence. Even though they are slaves, not deserving any respect from their master, they are humans, and one should keep all the laws of humanity toward them (Tractate No. 3 On Slaves, 183-84).

One should take note that this addition does not exist in the original Hebrew version of the *Shulḥan Arukh.* Surely, these words were addressed to the Sephardi merchants who engaged in the Atlantic slave trade.

Herein I raise two arguments, depending on the ritual status of the slaves: one that has been circumcised and immersed; and one that lacks both. In the case of the former, one could argue that, according to Menasseh, slaveholding is a privilege and not a right, since according to *halakhah,* a ritually-immersed slave can be emancipated in the case of certain types of abuse (Maimonides, "Mishneh Torah" Laws of Slaves 5:8). However, this emancipation only applies to the *servo de Israel*, as will be explained, and not the *escravo não-banhado.* Menasseh's insistence that "they are humans" potentially adds to the argument that enslaved people have natural legal personality [*persona*] since they can appear before the Jewish courts to report abuse [This recalls the *Imago Dei* doctrine]. So, even though a slave owned by a Jew is considered to be property, nevertheless, the slave possesses minimal rights and protection. On the contrary, the prevailing view of the Roman slave was that he was a *thing* and not a *person*. In fact, he could not appear in court. Nonetheless, there were numerous provisions that protected Roman slaves from harsh treatment (Shumway 636-53). However, according to *halakhah*, a slave that has not been circumcised and ritually immersed is not emancipated upon abuse from his master. Thus, a master that owns this type of slave possesses the *right* to do so, demonstrating that this type of slave lacks legal *persona,* very much like the Roman slave. Hence, it is evident that this addendum is an exhortation to plantation slaveholders who have not ritually-immersed their slaves. Ergo, the fact that *halakhah* requires Jews to perpetually enslave their human property, it

is necessary to warn slave owners requires to keep the "laws of humanity towards them" [my translation] (Israel, "*Thesouro dos Dinim"* Tractate No. 3 On Slaves, 183-84).

But what are these laws of humanity? Where are they stipulated? Who determines them? If they refer to natural rights deserving of all humans, then are those rights determined by reason, nature, or divine law? If Menasseh implies *ius gentium*, is he alluding to customary law or agreements made by a majority of nations on how slaves are to be treated? In the next chapter (7.2), I explain how Abraham Pereyra utilized the term *La Ley de Humanidad* in his writings. Therein, I argue that in linking natural law with the law of nations, that Pereyra was familiar with primary and secondary categories of *ius naturae et gentium*, as utilized by Cicero and Gaius. Since Menasseh cites authors such as Gaius, Cicero, Thomas Aquinas, and Francisco Suárez, one can infer that his conception of *La Ley de Humanidad* is founded on Roman law. Suárez held that *ius gentium* was comprised of unwritten law based on the customs of all or almost all nations [*iura gentium, quae magis traditione et consuetudine quam constitutione aliqua introducta sunt*] (Focarelli 47). Furthermore, building on de Vitoria, Suárez distinguished between *ius gentium intra gentes* and *ius gentium inter gentes* (Vitoria, "*De Indis*" III, 1, 151). The former entailed the laws of individual states within themselves, whereas the latter was understood as a law between peoples and nations. Hence, slavery laws must fall under the category of *ius gentium intra gentes* (Barragán Yañéz 10). Pereyra's utilizes *La Ley de Humanidad* [*ius gentium*] to denote secondary natural law. If Pereyra classifies slavery under the voluntary law of nations, then it is mutable, thereby dependent on the will of an individual state to permit or abolish slavery (Lesaffer, "The Classical Law of Nations" 21).

According to the rules of Thomas Aquinas, even though slaves were considered property, they were simultaneously regarded as persons, being granted the right to marry (Berg 178). Evidently, Menasseh synthesizes *halakhah* and Salamanca reasoning to create his own convention: a ritually-immersed slave that has almost full rights, and a slave without ritual immersion who lacks rights. Being that the non-immersed slave lacked legal personality before Jewish courts, Menasseh recommends Jewish slave owners to remember *La Ley de Humanidad.*

Menasseh introduces a linguistic novelty in this section to distinguish between two types of slaves owned by Jews: *servo de Israel* and *escravo não-banhado,* i.e.*,* the servant of Israel and the non-immersed slave. In the eighth law, chapter one, on Ownership and Possession, he explains:

> Someone that buys a gentile slave from another Israelite, or from a gentile or a non-Jew that sells himself to an Israelite, or that sells his sons or daughters, keeps his or her *Canaanite slave* [postbiblical] status. All of those that did not immerse themselves ritually [*não-banhado*], are to be considered gentiles in every matter; but those that have been ritually-immersed are called servants of Israel, and are obligated in all the precepts which behoove Israelite women to fulfill (Berg 178).

The *servo de Israel* undergoes a ritual immersion at the beginning of his or her service and at the end of it, after which he or she will be manumitted and become a full-fledged Jew or Jewess. This process must be voluntary. Indeed, Menasseh states therein, “When one purchases a gentile slave, one should not force him to change his religion, but shall tell him, *you have the*

opportunity to enter the community of servants of Israel, and will be counted among the good ones" (182). If the gentile slave accepts to enter the covenant then he is circumcised and immersed in a ritual bath. The slave is then warned about the rewards and punishment for keeping and violating the precepts of the Torah.

On the other hand, the *escravo não-banhado* is not circumcised and not immersed in the ritual bath. According to *halakhah* his owner must try to convince his slave to voluntarily accept the precepts of the Torah during a period of twelve months, after which he will be obligated to sell him to the gentiles (b.Yebamoth 48b). This *escravo* is only obligated to observe the seven precepts given to Noah, i.e. *La Ley Natural*. In fact, the *escravo não-banhado* is not obligated to rest on the Sabbath. This would imply that this *escravo* could potentially work on the plantation fields and manipulate fire on the Sabbath. Under the status of *Canaanite servant*, the *escravo não-banhado* is destined to be a perpetual slave, whereas the *servo de Israel* will serve a limited time, then obtain *freedom* as a member of the Jewish community. Thus, Menasseh calls the former *escravo* and the latter *servo*. Hence, his use of *escravo* conforms to the *Ordenações Manuelinas e Filipinas* on slaves in the New World.

Another important rabbi who contributed to the debate was Isaac Athias (Dias).[23] He was a former *converso*, born in 1585 in Lisbon, Portugal. He fled to Castile, and then to Venice (Elazar-DeMota, "Liberty and Freedom"; Athias 310). Afterwards, he moved to Amsterdam, where he "became a rabbinic scholar under the tutelage of Isaac Uzziel, during the same time as Menasseh b. Israel" (*ibid*). He was the first rabbi of the Portuguese congregation in Hamburg,

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[23] This section contains some information from my blog *The Concept of Liberty and Freedom in the Bible Commentary of Ishac Athias* on the Global Cities Project website: https://www.asser.nl/global-city/news-and-events/the-concept-of-liberty-and-freedom-in-the-bible-commentary-of-ishac-athias/, reproduced here with permission.

and after 1622, became the rabbi of the Sephardi community in Venice (*ibid*; Gottheil et al. "Athias").

In 1627, while still in Venice, he prepared *Thesoro de Preceptos, "*and printed a second edition in Amsterdam in 1649" (*ibid*). In the preface of his work he writes that he was inspired to prepare this treatise due to the "many Jews throughout the Sephardic diaspora did not have knowledge of Arabic, Hebrew, nor Aramaic to be able to understand the Talmud nor the commentaries thereof" (Elazar-DeMota, "Liberty and Freedom"). Writing in Spanish, he intended his audience to understand how the Oral Torah works together with the Written Torah (*ibid*). *Thesoro de Preceptos* follows the same format of the 613 positive and negative precepts in accordance with the tradition of Moses Maimonides (*ibid*).

The heading for the positive precept number 235, states: *Que nos sirvamos en perpetuo, del siervo Pagano* [That we serve ourselves perpetually with the Pagan servant]. Athias explains:

> We cannot give him freedom, like we do with Hebrews…we call him Pagan, not because of his nationhood, and not because of his religion, because it is understood that he who has been circumcised and ritually immersed is a *siervo;* but the idolatrous Pagan that we purchase, if he doesn't abandon his rites, we cannot keep him for more than a year (Elazar-DeMota, "Liberty and Freedom"; positive precept No. 235).

The context utilizes *pagan* instead of *gentile*. Athias explains that the "epithet *pagan* is not due to the slave's religion, but the mere fact that he does not want to become a Hebrew" (*ibid*). In a similar fashion, Spanish scholastics utilize the term *saracen* for non-Christians (*ibid*; Somos

385). Athias' discourse supports the idea that a non-Jewish person can potentially serve the Jewish People through *slavery*. As such, those slaves which do not embrace the Hebrew covenant are called *siervos paganos,* or *paganos idólatras* [idolatrous Pagans], while the rest are called *siervos* [servants]. In utilizing the term *siervo* throughout, Athias agrees with the linguistic convention of the Ferrara Bible (Elazar-DeMota, "Freedom and Liberty").

Next, Athias adds his own comments which do not appear in Maimonides' *Mishneh Torah*:

> That men can govern themselves without servitude and *criados* [houseboys] is impossible, because he [a Jew] lacks what is needed for human life; the Congregation of Israel is so occupied with holy labors, that they require others to give them rest. And using one's kinsmen for service is not just, because they are taken away from what their souls need. For that matter the LORD conceded and even obligated, that these would be perpetual *siervos,* since they, as foreigners, are exempt from the holy services…whoever serves the LORD should not serve men [my translation]
> (*ibid*; "Thesoro de Preceptos" positive precept No. 235).

Athias justifies the use of slaves with three reasons: (1)That Jews are obligated in the holy services of the Congregation of Israel; (2) That Jews cannot serve two masters simultaneously; and therefore (3) That Jews cannot be slaves. Ultimately, Athias argues without servitude, self-governance is impossible. Undeniably, Isaac Athias endorses the "institution of perpetual slavery through the use of the *siervo pagano*" (Elazar-DeMota, "Freedom and Liberty"). Essentially,

Athias asserts that "Jews cannot be *free* without slaves" (*ibid*). Indeed, Athias agrees with Immanuel Aboab and Isaac Cardoso, who both maintain that having *dominium* signifies freedom from slavery and self-governance" (*ibid*).

This begs the question whether Athias puts forward that Jews cannot truly exercise freedom [*libertas*] without being *domini* [masters]? In the seventeenth century, commerce and free trade were the driving forces behind the notion of the natural right to private property and to exact debt (Straumann, "Natural Rights and Roman Law" 344). Certainly, the Dutch Atlantic slave trade transformed the previously-held legal conceptions of *dominium* and *libertas*, such that Dutch Protestant colonialists were granted by the Estates General the right to own slaves (Portuguese Jewish Community Amsterdam Archives 240, pp. 102-103), whereas Jews had to bargain for the privilege to do so (West Indies Company Archives [WICA] 566, pp. 574-76; WICA 205, p. 157; WICA 216; Old Archives of Curaçao at the Hague [OAC] 2, no. 224; WICA 243, pp. 171-72; OAC 315, no. 780). Before the Dutch engaged in the Atlantic slave trade, *libertas* was not understood in terms of *freedom* and *slavery* because the practice of slavery had gone out of use among Christians in the Netherlands. Also, for the same reason, *dominium* was not understood in relationship to ownership of people as property. The Atlantic slave trade influenced the concept of rights and privileges on behalf of Dutch Protestant Christians and Jews, respectively. It is evident that Athias drew on de Vitoria's conception of *dominium*, i.e., to possess *dominium* over things, and to be a *dominus* or *princeps* of things and people [including one's own person] (Bunge 53).[24]

[24] Refer to section 4.2.

De Vitoria's conception of *dominium* suggests unity between "a concept of self-determination of a person based on legal allocation of private property claims on the one hand, and the *dominium* rights of a political community on the other" (*ibid*; Koskenniemi, "Vitoria and Us"). This political community is the *Nação* in Amsterdam, albeit, an immigrant one. It is possible that the feeling of *otherness* influenced Athias' interpretation of this precept. Just as de Vitoria utilized Aristotle's natural slavery argument in defense of the New World *Indians*' sovereignty, Isaac Athias followed suit in providing a rationale for the self-governance of the *Nação*, in the wake of the expulsion from Spain and amid the Inquisition. What is striking is how Athias can make such a claim, being that the story of the Exodus from Egyptian bondage serves as a touchstone for Jewish ethical reflection (Walzer, "Exodus and Revolution"). Ultimately, Athias' interpretation of *halakhah* was construed in such a way that it provided a legal and theological justification for the *Nação* to engage in slavery and slave trade.

The next rabbi to introduce to the slavery debate is Isaac Aboab da Fonseca (Simão Fonseca), a former *converso.* He was born in Casto D'Aire, Portugal in 1605 to David Aboab and Isabel da Fonseca (Yakserling 125-36). Out of fear of the Inquisition, he and his family fled to St. Jean de Luz, France, and then arrived in Amsterdam circa 1612, where they became members of the *Neveh Shalom* congregation. He became a student of Isaac Uzziel, together with Menasseh b. Israel and Isaac Athias. In 1626, he became the spiritual leader of *Neveh Shalom*. In 1641, Aboab da Fonseca went to Recife, Brazil to lead the nascent congregation, *Ẓur Israel*, becoming the first rabbi of the New World (Orfali 215). He returned to Amsterdam after 1654, and in 1656, he was appointed as the director of *Talmud Torah,* until his death in 1693 (216).

Many *conversos* continued to arrive in Amsterdam with the need to be educated as openly-practicing Jews. Amsterdam's seventeenth-century Sephardic community saw many works dedicated to this end. Aboab da Fonseca made a great contribution to the education of the newly-observant Jews in 1681 with his *Parafrasis comentado del Pentateuco* [Paraphrased commentary on the Pentateuch] (*ibid*). Jews have an obligation of reading the weekly Torah portion in Hebrew twice and the Aramaic translation of Anqelos once. In the Prologue of this work, he expressed his hope to provide an alternative to reading the *targum* Anqelos and Rashi's commentary of the Torah weekly readings. Since *conversos* arriving in Amsterdam did not have knowledge of Hebrew nor Aramaic to read those commentaries, Aboab da Fonseca provided a commentary in contemporary Spanish to be read in tandem with the Hebrew of the Pentateuch (222). When he prepared *Parafrasis comentado del Pentateuco,* the *Nação* in Amsterdam had been involved in the Atlantic slave trade for over forty years. This commentary reflects moreover his own experiences in Brazil and that of his coreligionists in the New World colonies (Israel, "Religious Toleration in Dutch Brazil" 29).

In his *Parafrasis comentado del Pentateuco*, Aboab da Fonseca uses the Spanish *esclavo* in reference to the biblical Canaanite slave. As mentioned earlier, Exodus 21 states, "When a slave owner hits and blinds the eye of a male or female slave, he should let the slave go free on account of the eye. If he knocks out a tooth of a male or female slave, he should let the slave go free on account of the tooth" (*Common English Bible*, Exod. 21: 26-27). Aboab da Fonseca comments on this verse:

> *Así lo dispuso la Piedad Divina, porque como estos eran esclavos perpetuos, de todo no desesperasen de la libertad, y para que su amo considerase el modo como los trataba, pues su dinero estaba tan contingente, y así eso no se entendía sino con el esclavo propio, porque siendo ajeno, pagaría a su amo el daño, pues era justo perdiese el amo su esclavo por causa de otro, y todo lo dicho se entiende con el esclavo Kenaanta.*
>
> This is what Divine Providence arranged, since these were perpetual slaves, that they would not despair completely, and so that their master would consider the way in which he treats them, and since his money was contingent, he would not understand except through his own slave, [say for instance] if the caused damage to someone else's slave, he would have to pay the owner for the [property] damages, as such, it was not fair that an owner loses his slave [set him free] on the cause of another [through damage]; and everything said here is understood of the Canaanite slave (249).

This explanation is crucial because the Hebrew text does not specify if the person to go free on account of damaged limbs refers to a Hebrew servant or a Canaanite slave. While the former goes free during the Sabbatical Year, the latter is perpetually enslaved (*Common English Bible*, Exod. 21:1-3). This explanation reflects the commentary of the French exegete, Rashi: "Of a Canaanite slave; but the Hebrew servant does not got free on account of his tooth or his eye having been knocked out by his master, as we have stated in our comment on the passage" [See earlier on the discussion on Pharar] (Herczeg Exod. 21:26-27). In other words, because the owner has invested money in purchasing his Canaanite slave, he would take extra care not to

damage his property, i.e. the *esclavo*. Hence, as reverted Sephardic Jews in Amsterdam read the weekly Torah portions, the use of terms in Isaac Aboab da Fonseca's *Parafrasis comentado del Pentateuco*—perpetual, Canaanite, and *esclavo*—became an automatic paradigm, connecting the holy text with contemporary *halakhah* amid the Atlantic Slave Trade.

In this section, I scrutinized the language used in various Jewish texts to reconstruct the ideological and linguistic context pertaining to slavery *halakhah*, as put forth by *Nação* rabbis in Amsterdam. The first text analyzed was the Ferrara Bible. This Spanish translation of the Hebrew Bible always uses the term *siervo* when related to slavery. When the *conversos* brought it to the seventeenth-century Dutch Republic, they made some modifications to it, but never changed *siervo* to *esclavo*, like Isaac Aboab da Fonseca does in *Parafrasis comentado del Pentateuco*. I posited that this use of language in the Ferrara Bible serves as buffer from outsiders of the Jewish community, since it was illegal to own slaves in the Netherlands. In order to hide their violation of this law, the *Nação* had stopped using all references to slaves in the burial registry in the early seventeenth century (Hondius, "Black Africans in Seventeenth-Century Amsterdam" 96). Abraham Pharar uses *siervo kenahanita* in his *halakhic* treatise in *Declaração das 613 Encomendanças da nossa Sancta Ley* (positive precept No.235). Therein, he derives practical applications based on the biblical passage not to free the Canaanite slave. He concludes that it is a sin and a grave violation to free a slave. In his *Thesoro de Preceptos*, Isaac Athias uses *siervo pagano* to refer to the non-Jewish slave who is to be perpetually-enslaved. He posits that it is impossible that Jews can to be *free* without the use of slaves to do domestic duties on their behalf. As such, *halakhah* prevails over the natural law of nations. Menasseh b. Israel uses *servo* and *escravo* to distinguish between two types of slaves: the one that abandons his

religion and accepts the Jewish tradition, resulting in manumission; the one that doesn't abandon his religion and must be sold after a year of service. The latter is resold from owner to owner, unless he accepts to become a Jew. Menasseh evokes the notion of *imago Dei*, arguing that slave owners should treat their slaves with kindness and give them respect as all humans deserve. It can be concluded that *Nação* rabbis manipulated language in order to create different categories of servitude in the colonies, and in the case of the Netherlands, to circumvent local law.

6.4 Communal Ordinances & Manumissions of Slaves[25]

Each *Nação* community was led by its board of directors via ordinances, decrees, and bans and censorship. Hereafter, I will argue that the board of directors of *Eẓ Ḥaim* in Amsterdam and the respective board of directors in the Dutch colonial Sephardic communities enacted ordinances to justify the systematic enslavement of *black* Africans. For this purpose, I selected several enactments from the *Nação* leaders in Amsterdam and abroad in order to reconstruct the political context within the community, i.e. how they dealt with African slaves on Dutch soil and in the colonies. In the case of the former, we witness a development of communal policy, reflecting the ambiguity of the *free soil tradition.* In the colonial context, the enactments are made *a priori* in order to ensure the survival of plantation economy.

In the *Libro dos termos da ymposta da nação*, *principado em* 24 de Sebat 5382, on the 20th of Tammuz 5387 [1627], the leaders of the three Portuguese Jewish communities convened

[25] This section contains some information from my blog *African blacks and Mulattos in the 17th-Century Amsterdam Portuguese Jewish community* on the Global Cities Project website: https://www.asser.nl/global-city/news-and-events/african-blacks-and-mulattos-in-the-17th-century-amsterdam-portuguese-jewish-community/, reproduced here with permission.

at the house of Benjamin Israel to discuss various matters and agree on ordinances for the Amsterdam Jewish community. They agreed the following:

> First, that no *negro* or *mulatto* will be able to be buried in the cemetery except for those who had buried in it a Jewish mother;…And further…that none shall persuade any of the said *negros* and *mulattos*, man or woman, or any other person who is not of the nation of Israel to be made Jews; and it is particularly recommended to all men of the Law that they not admit them, just as people who have a [private] *miqveh* [ritual bath] not immerse them without the permission of the Gentlemen of the Board of Directors, for in this way…results in only scandal and offense to God; he who does the contrary, measures will be taken against him as disobedient (GAA 334, No. 13, fol. 42; Elazar-DeMota, "African blacks and Mulattos").

This ordinance highlights the interactions between Amsterdam Sephardim and sub-Saharan Africans therein (*ibid*). Indeed, some Amsterdam Sephardim fathered *mulatto* children. Prior to this communal ordiance, members of the *Nação* in Amsterdam proselytized their African servants, initiating them into the Hebrew covenant by way of ritual immersion in private *miqvaoth* [ritual-bath houses]. Why was this ruling necessary for the emerging Sephardic community in Amsterdam? One could conclude that Sephardic merchants in Amsterdam must have owned *slaves,* since burial preparations in the Jewish cemetery were made on behalf of their *slaves* (*ibid*; Faber 16). Since it was not customary to use dark-skinned African slaves in the seventeenth-century Dutch Republic, the "Sephardim probably wanted to draw as little attention

to themselves as possible" (*ibid*). Importantly, this communal ordiance highlights the power of communal control under the direction of the *parnassim* which was enforced through penalties. The phrase, "results in only scandal and offense to God" projects the desires and feelings of the *parnassim* onto the Divinity (GAA 334, No. 13, fol. 42). Is this really an offense to God? The Hebrew term *Elohim* [God] is applied to the local Jewish tribunal of three judges. Essentially, the force of this language produces fear and trepidation in the hearts of the congregants so that they will obey the edict.

After the three Portuguese Jewish communities in Amsterdam merged in 1639, they established the ordinances for the newly-founded community. Similar to the 1627 ordinance, they established the following:

> No person shall, except with the permission of the Gentlemen of the Board of directors, circumcise any person that is not of our Hebrew Nation, under the penalty of being separated from the *Nação*. The Gentlemen of the Board of directors do not grant permission to circumcise anyone, unless he is Portuguese or Spanish. And if the contrary became known, he will be obligated to declare it before the Gentlemen of the Board of Directors, under the said penalty (GAA, NA. nr. 334, inv. 19, pg. 56, ordinance no. 39; Schorsch, "Jews and Blacks" 175-76).

This communal ordinance is more specific than the previous one, such that it limits circumcision only to men of Iberian origin. However, this prohibition singles out men of non-Iberian origin, but not females, since only males are circumcised for the purposes of reverting or converting to

the Jewish People. The penalty for violating this ordinance is excision from the community. Jonathan Schorsch posits that circumcision was compared to the possession of *hidalguía,* which had become part of the internal identity of the *Nação* ("Jews and Blacks" 178). Moreover, he asserts that the Portuguese Jewish community was affected by "Portuguese Chauvinism," thereby rejecting psychosomatic and somatic *blackness*, by prohibiting the entry of *blacks* into the community (202).

On the other hand, Dienke Hondius states, "Blackness is not always mentioned in the European records…in the Netherlands, unlike the situation in the colonies, a tinge of color did not define a person as black" ("Black Africans in Seventeenth-Century Amsterdam" 87). I agree with Allison Blakely, who asserts that the lack of explicit attention to *blackness* "may also be due to a lingering uneasiness with the participation in the African slave trade and slavery, which remained outlawed at home" (230). For that reason, the *Nação* community was most likely at ease to own *black* slaves in the colonies, as long as they were not reminded of their own *blackness* in the Netherlands. The "Curse of *Ḥam*" myth The "Curse of *Ḥam*" myth and these communal ordinances contributed to racial difference, which then influenced postbiblical slavery *halakhah*. This myth had formed part of Sephardic thought since the medieval Spanish Jewish period, as demonstrated in the writings of Sephardic biblical commentators (see infra section 3.3). The above ruling in 1627 "that none shall persuade any of the said *negros* and *mulattos*, man or woman, or any other person who is not of the nation of Israel to be made Jews; and it is particularly recommended to all men of the Law that they not admit them," was established the same year that Pharar wrote his *Declaração das 613 Encomendanças* (GAA 334, No. 13, fol. 42). This goes to show that the *Nação* in Amsterdam constructed racial difference through their

halakhic works and interpretations of biblical passages dealing with slavery. The use of *negro* and *mulatto* alludes directly to the "Curse of *Ḥam*."

Finally, in 1650, the trustees banned outright the circumcision or immersion of *negros* and *mulattos* who didn't fit a narrow (and *halakhically* incorrect) definition of a *yehid bayit*, *i.e*., a slave born in the house of the master (Schorsch, "Jews and Blacks" 176). If it was unclear in 1639 ordinance that not only men of African origin, but also women, were banned from entering the *Nação*, the 1650 ordinance sealed the verdict. Yosef Kaplan estimates that there were about one-thousand Portuguese Jewish families in Amsterdam with only twelve dark-skinned servants by the late 1630s; these twelve were manumitted (ex)slaves (98). Despite this ruling, Schorsch maintains that the sources on this issue do not reveal the reality of the full context of slavery with Mediterranean and European Jewish communities and of African *blacks* ("Jews and Blacks" 101). Yet, archivist Mark Ponte claims that there were more than 200 persons of African origin living in Amsterdam in the seventeenth century, who were connected to the Portuguese Jewish community in some way ("De Swarten van de 17de EEUW"; "Tussen slavernij en vrijheid in Amsterdam" 253). Consequently, it is possible that between 1639 and 1650, the community of African (ex)slaves living in Amsterdam had exceeded the expected numbers for the *Nação* community, such that the Board of directors felt compelled to modify its rulings, conforming to the social-political context.

The minutes of the two Sephardic congregations in seventeenth-century Dutch Brazil: *Ẓur Israel* (Recife) and *Magen Abraham* (Maurícia) grant insight as to how the communal leaders managed Jewish identity in Brazil. When the Dutch were conquered by the Portuguese in northeastern Brazil, the Board of Directors fled, taking the minute book back to Amsterdam to be

archived. Prior to that event, however, the Gentlemen of the Board had convened on the first day of Kislev, 5409 (November 16, 1648), and enacted forty-two regulations for the communities. The thirty-second regulation reads:

> No person shall, except with the permission of the Gentlemen of the Board—circumcise a stranger [non-Jew] or admit a strange woman [non-Jewess] to the *Tebilah* [ritual immersion], under penalty of being separated from the *Nação* and fined fifty florins. And if that person be a slave, he shall not be circumcised without first having been freed by his master, so that the master shall not be able to sell him from the moment the slave will have bound himself [to Judaism] (GAA, NA. nr. 334, inv. 1304, pg. 5, ordinance no. 32; Wiznitzer 271).

Contrary to Schorsch who argues that the *Nação* wanted to preserve its ethnic identity, Arnold Wiznitzer argues that the Gentlemen of the Board prohibited the circumcision of male slaves prior to their manumission in order to make it impossible for a Jewish owner to sell a slave who had been ritually converted to the Jewish tradition ("Jews and Blacks" 238). Notably, this ruling reveals the care in which the *Nação* community took to ensure that no Jewish person was a slave or servant of another person. In contrast to both Schorsch and Wiznitzer, I argue that this ruling reflects Abraham Pharar's condemnation of slave owners who freed their slaves, considering manumission a sin. Pharar recommended that *Nação* slave owners sell their slaves to their coreligionists, and not transgress on the cause of releasing them. Surely, the *Nação* in Brazil would have been familiar with Pharar's *Declaração das 613 Encomendanças da nossa Sancta*

Ley since it was published in 1627, over a decade before the establishment of the Brazilian Sephardic communities.

Similarly to the 1639 ordinance in Amsterdam, the Board of Directors in Brazil prohibited non-Jews from entering the *miqveh* [ritual bath] to perform *tebilah*. This ruling is crucial, since not only does it curtail the entrance of non-Jews into the community, but also controls with whom Jewish males can have sex (according to *halakhah*). In Egon and Frieda Wolff's *Dicionário Biográfico I: Judaizentes e Judeus No Brasil* (1986), there are many inquisitorial entries describing judaizing women in Brazil as being *mulatta*, *parda*, *preta*, *escrava*, and coming from Guinea (Wolff 21, 112, 194; GAA, Notary Adriaen Lock, Inv.Nr. 2267, folio 643: Rahel Monsalto). Evidently, these women were owned by Jewish men, had been taught the Jewish traditions, and perhaps had been naturalized through conversion. Moreover, the *Mishnah,* which comprises the whole of the Oral Torah, states that any Jewish male who has sexual relations with a menstruating woman will be spiritually excised from the People of Israel (m.Keritoth 1:1).

Furthermore, the *halakhah* stipulates that a woman is considered to be *teme'a* [ritually-impure], therefore prohibited from sexual intercourse with her husband, until she has immersed in a *miqveh* (M.T., Issure Bi'ah 4:3). Ergo, as long as a female slave does not have access to the communal ritual bath, she can neither become a Jewess nor remove the ritual impurity due to her menses. Herein, I posit that the control of the ritual bath reflects Menasseh b. Israel's notion of the *escravo não-banhado,* who is not circumcised and who has not immersed in the *miqveh*. Menasseh's *Thesouro dos Dinim* was published only three years before this ruling was enacted in Brazil. Surely, the use the *escravo não-banhado* was an absolute necessity on the sugarcane

plantations. Hence, the *parnassim* secured the economic future of the community through ordinance number thirty-two.

Sephardim had been in Suriname since the English conquest of that colony. They had received many privileges, thus making it a haven for Jewish merchants. After the Dutch conquered Suriname in 1667 from the English, Sephardim started to flock there from Livorno and the neighboring Dutch colony in Guyana, while others left for Jamaica with the English (Klooster "Networks of Colonial Entrepreneurs" 31-49). In addition to being granted burgher status, the *Naçāo* was granted the liberty to govern their synagogues and administer the general affairs of their nation. These Jewish plantation owners settled and established a community in Thorarica. Already in 1662, the Board of Directors of the community convened and decreed the following ruling:

> *Em Este kaal ay huma escama feita no ano 5423* (1662/63) *que Prohibe a cual quer Jahid so pena de herem a circonsidar os filhos do que sedespidue de Jahid. Esta escama que foy feita com Prudencia pelos Primeiros fundadores deste kaal (adterorem)*
> In this congregation there was a ruling made in the year 5423 (1662/63) which prohibits any *yaḥid* [community member], under the penalty of excision, to circumcise the children of anyone that has lost the status of *yaḥid*. This ruling was made with prudence by the first founders of this congregation (GAA, NA, nr. 334, inv. 1029).

This ruling distinguishes between two types of members of the Suriname Jewish community: *yaḥid* and *congregante* (Ben-Ur "Peripheral Inclusion" 188). The former is a full-fledged

member of the community by virtue of European descent, whereas the latter denotes either a Eurafrican Jew, or a *yaḥid* which has been demoted as a penalty for marrying a female of African descent. Moreover, Portuguese Jewish men married their African slave women and manumitted them, introducing them into the Jewish community (Davis, "Regaining Jerusalem" 11-38). Thus, this ruling reveals a sociological reality of unions between Sephardic men and African women in Suriname. By prohibiting the circumcision of the children of the *congregante* there was no possible way to manumit them according to *halakhah.* Certainly, this ruling reflects the Talmudic decision of Rabbi Ishmael, who ruled that one can leave his male slaves uncircumcised. Ergo, I posit that this ruling establishes the perpetual enslavement of African males on the Suriname sugarcane plantations.

In this section, I argued that the Board of Directors of the *Nação* community in Amsterdam and abroad in the colonies regulated the Portuguese identity of the community by prohibiting the circumcision of African slaves, and also by controlling who can immerse in the ritual bath for the purposes of naturalization to the Jewish People. To support this claim, I examined the minutes and the regulations of *Nação* communities in Brazil, Suriname, and Amsterdam. It is evident through the similarity between the ordinances established in the *Nação* colonial communities and those rulings from the *Eẓ Ḥaim* community in Amsterdam, that the latter established the model for its daughter communities in the colonies. The fact that the rulings include the penalty of excision reveals the gravity of the matter on the one hand, and the harsh reality of perpetual enslavement on the other. As the *Nação* became prominent in Brazil and Suriname through the sugarcane plantation economy, they had no choice but to construct arguments in favor of the non-manumission of their slaves, against the Talmudic legal ruling of

Rabbi Yehoshua b. Levi, i.e. to free them after twelve months in the case of an involuntary conversion. Hence, slavery *halakhah* became more stringent in regards to the manumission of slaves to accommodate the need of labor in the colonies.

6.5 Seventeenth-Century Messianism

The dependency of the Jewish plantation economy on slave labor went hand-in-hand with messianism in the seventeenth century. The *Nação* in the New World colonies played a crucial role in promoting the eminent arrival of the Jewish messiah through their profits gained through slave labor. There was/is a belief among Jews that if prayer ceases for a moment from Jerusalem, the world will return to its primeval chaos. In order to ensure that this never happens, no matter how small the population, Jews must be ever-present in the Holy City.

Before the fifteenth century, there were not many Jews living in Jerusalem. It was not until after the Sephardi exiles went to the Holy Land that Jerusalem became a center of Jewish scholarship. Beginning from 1510, more information is extant on the presence of Spanish exiles in Jerusalem, next to their counterparts from the other congregations (Avraham 65). Sephardim rose to dominance in Jerusalem from the 1520s to the mid-to-late 1570s, even absorbing some of the other congregations (*ibid*). Indeed, there were so many Sephardim in Jerusalem that the Arabic-speaking Jews therein adopted the Sephardi culture and languages. Furthermore, the influx of Iberian scholars and Kabbalists to Jerusalem revitalized Jerusalem as the center of Jewish scholarship (Levy 39). Sixteenth-century Jerusalem witnessed prominent scholars such as Levi ibn Ḥabib (ca. 1483 – 1545), David Ibn Abi Zimra (ca. 1479 – 1573), Beẓalel Ashkenazi

(ca. 1520 – 1591) and Ḥaim Vital (ca. 1479 – 1573). Hence, the tragedy of the expulsion from *Sepharad* brought a blessing in disguise for the Jerusalemite Jewish communities.

Through their money and influence, the *Nação* in South America and the Caribbean managed to send financial support to the Jews living in Jerusalem. The capital of the Ottoman Empire served as the center of a "far-flung philanthropic network in support of the Jews' in *Ereẓ Israel*, 'linking Jewish communities throughout the empire and beyond, from the Caribbean in the west to India in the east, and from England in the north to Yemen in the south'" (Lehemann 1). Rabbinic emissaries were sent throughout the Jewish world, collecting pledges and contributions, which were then sent to Istanbul, and distributed in Jerusalem (2).

When the Ottoman Empire took over the region of the Holy Land, Jews were charged a tax, due to their *dhimmi* [non-Muslim citizens] status. In the latter part of the sixteenth century, when the Ottoman Empire began experiencing a revenue crisis, Jewish taxes increased, thus the task of taking care of the poor became heavier. Consequently, more centralized community structures began to mark their influence (Levy 65). For the purposes of taxation, the Ottomans instituted the office of *Ḥakham Bashi* [Chief Rabbi]. A lot of Jews' money went to the poll tax for non-Muslim citizens, and toward bribing of Ottoman officials in the Holy Land. This created a deficit that haunted the Jewish communities therein. Sometimes the *qaḍi* [Islamic judge] in Jerusalem asked for more money. This became an increasing problem from the seventeenth until the nineteenth century.

According to Raphael Mordecai Malki (d. 1702), the Jews of Jerusalem were paying about 5,000 *kuruş* a year in taxes, even though Ottoman documents suggest that only about 2,000 *kuruş* of *djizya* were collected in the early 1700s. Malki also provided an estimate of the

financial needs of the Jerusalem community, indicating, on the one hand that the bulk of the budget was needed to keep up with the poll tax and other payments to the Ottoman provincial authorities and, on the other hand, that only the ongoing support from the Jewish Diaspora could sustain the Jerusalem community financially (Lehmann 24). This led Sephardi scholars from the Land of Israel to travel to the tropics of South America and the Caribbean, and to ask the *Nação* to support a continual existence of the Jewish community in Jerusalem.

Schorsch states, "it is clear that the slaves produced the income for their masters in the colonies" ("Jews and Blacks" 68). Most importantly, the communal records of charities and distribution of funds demonstrate that the *Nação* in Recife used to make regular contributions to the Holy Land via Amsterdam (Emmanuel 484). It was on *Shabbath Naḥamu* [The Sabbath after the Ninth of *Ab*] that Recife congregants made pledges for donations on behalf of the poor of the Holy Land (Wiznitzer 243). Hence, I argue that slave-trading profits in Brazil afforded the *Nação* the ability to sustain the economically-dependent Jewish community of Jerusalem.

Besides solidarity, what motivated and pressed the *Nação* to maintain the Jerusalem Jewish community? A year after the Jews of Recife were forced to emigrate to other places [1655], Menasseh b. Israel published his famous messianic writing, *Piedra gloriosa o de la estatua de Nebuchadnesar,* where he expresses his belief in the imminent establishment of the Fifth kingdom, i.e. the messianic kingdom (Wall, "The Dutch Hebraist Adam Boreel" 168). An influential factor in Jewish life about 1630 to 1640 was Lurianic Kabbalah, which promoted the messianic atmosphere of the time (173). One trigger for this revolution was the testimony of Antonio de Montezinos in 1644, who informed the Portuguese Jews in Amsterdam that he had discovered a remnant of the Lost Ten Tribes of Israel in South America (Miller 474).

In 1650, Menasseh published *Esperança de Israel*, a treatise on the forthcoming arrival of the Messiah. Therein, Menasseh mentions the tragic expulsion of the Jews from Iberia, the rare moment of European philo-semitism, and the recent discovery of the lost tribes of Israel in South America. His main premise is that the Israelites had been scattered to all the parts of the world, being the sign that the prophecy of Daniel 12:7 has been fulfilled, "when he saith, And when the dispersion of the Holy people shall be completed in all places, then shall all these things be completed" (*Common English Bible*) The result of this messianic frenzy led to the Shabbethai Ẓebi movement in 1665, when major rabbis of the Holy Land and the Ottoman Empire had declared Shabbethai Ẓebi to be the promised messiah (Goldish 136).

The maintenance of a Jewish presence in Jerusalem increased in importance due to the imminent establishment of God's kingdom in Zion. Thus, while Sephardi merchants were accumulating huge profits through slave trading and the production of sugarcane, emissaries were being sent to Brazil and Amsterdam from the Holy Land to collect the *finta* [communal tax] in support of the poor of Jerusalem. Plantation slave economy and slave trade were also a means to an end. One of the motivating factors for the *halakhic* and legal justifications in favor of slave trade was the imminent arrival of the Jewish Messiah.

6.6 Conclusion: Slavery *Halakhah* Was Influenced by the African Slave Trade

This chapter explored the *halakhic* and theological justifications of the *Nação* in the Amsterdam seventeenth-century context. In section 6.2, the codification and application of slavery *halakha* was analyzed by exploring the *halakhic* commentaries used by *Nação* Rabbis to

justify the enslavement and trade of Africans across the Atlantic: the Babylonian Talmud, the *Mishneh Torah,* the Radbaz *responsum* on slaves, and Raphael Meldola's *responsum* in the *Peri Eẓ Ḥaim*. Therein, I argued that *Nação* Rabbis developed *halakhic* justifications for slavery and slave trading by synthesizing a number of texts.

In section 6.3, the intra-communal *halakhic* discussions on slavery were brought to the forefront by examining the use of *siervo* and *escravo* terms used by the *Nação,* as seen in the Ferrara Bible and its revisions. The word *siervo* in relevant passages in the book of Genesis and Leviticus that deal with the enslavement of the Canaanites were examined. Then followed an analysis of the Biblical commentaries of *Nação* Rabbis and scholars: Abraham Pharar's *Declaração das 613 Encomendanças*, Menasseh b. Israel's *Thesouro dos Dinim*, Isaac Athias' *Thesoro de Preceptos*, and IsaacAboab da Fonseca's *Parafrasis comentado del Pentateuco*. These commentators highlight the use of the terms *siervo* and *escravo* throughout the entire seventeenth-century. The argument was that after the *Nação* engaged in the slave trade across the Atlantic, they adopted the terms *esclavo* and *escravo* instead of *siervo* and *servo.* This adoption correlates to the changes in *Ordenações Manuelinas* and *Filipinas,* as discussed in chapter 4.

Section 6.4 argued that slavery *halakhah* became more stringent in order to secure the work force on the colonial plantations. I reconstructed this context through an examination of the communal rulings from the *Nação* communities in Amsterdam, Brazil, and Suriname. I highlight how African slaves and persons of non-Iberian origin were kept away from entering the community through the control of the *miqveh* and circumcisions.

Moreover, section 6.5 explained how Jewish messianism in the seventeenth century was a driving force in maintaining the Jerusalemite community via a communal tax [*finta*]. Indeed, the

money used for such a purpose came directly from slave-trading profits in Brazil and Suriname. The *Nação* literature discussed herein and the communal rulings are telling.

Overall, the chapter at hand unveils the intra-communal discussions, justifications, and argumentations of the seventeenth-century *Nação* in Amsterdam and abroad to justify slavery and slave trading. At this stage it is evident that the *Nação* participated in the legal debate on slavery and the slave trade as the *other within*. As Jews, they established an international network based on kinships and religion. As Dutch residents, they contributed to the economy of the Republic and to the development of Dutch legal thought. As active participants in the slave trade, whether central or peripheral, they can no longer be ignored from the history of the development of early modern international law.

The next chapter will demonstrate how seventeenth-century Portuguese rabbis contributed to the slave and slave trade debate in Amsterdam, by translating slavery *halakhah* into Roman legal jargon. Therein, I will demonstrate how seventeenth-century *Nação* slavery *halakhah* relates to *ius naturae et gentium, dominium*, *libertas*, and *servitus*. In demonstrating these connections, one will be able to see how the *Nação* contributed to the *naturalization* of the law of nations.

7.

Extra-Communal Discussions: *Nação* Legal Consciousness in the Slavery and Slave Trade Debate

"All of this follows from humans recognizing we are made in the image of the active Creator-God and thus made to imitate God who takes responsibility for His creation."

(Maimonides, "The Guide for the Perplexed" 1190)

La Ley Natural—The Noahide Laws—Just War in the Hebrew Bible—Ownership and Rule—Freedom and Liberty

7.1 Introduction

At the beginning of this study, I raised the question "How did *Eẓ Ḥaim's* Jews contribute to the legal-political discussions of *ius naturae et gentium* as the *other within* the Amsterdam-Dutch Republic debate on slavery and slave trade?" This chapter substantiates my overall argument that as the "other within," the *Nação* contributed to the development of early modern international law by mobilizing legal notions: *dominium* [property/self-governance], *potestas* [ownership], *servitus* [slavery], and *libertas* [liberty and free-will] to justify their position regarding slavery and e slave trade. Until this point in time, the *Nação* has been invisible to legal historians due to their ascribed *otherness* in the seventeenth-century Dutch Republic and the inaccessibility to the pertinent literature. This chapter brings out *Nação* rabbis, philosophers, and merchants out of the periphery, and grants them a central place in the development of *ius nature et gentium.*

After the sixteenth-century Valladolid debate on the rule of the New World *Indians*, many questions emerged as to whether the institution of slavery was governed by natural law or the law of nations [Discussed in Chapter 4]. Furthermore, by the end of the sixteenth century, the conception of the law of nations inclined toward natural law principles and scholastic virtue ethics, as advanced by Luis de Molina and other late scholastic theologians. As newcomers to the Dutch Republic, it is crucial to analyze the natural law theories of the *Nação* within that context.

The previous chapters reconstructed the ideological contexts and the legal discourses in sixteenth-century Iberia and the seventeenth-century Dutch Republic, focusing on the debates

concerning slavery and slave trade. In both Iberian Roman law and the Dutch Roman law, the legal language was dominated by the law of nations and nature, human nature and natural reason, and *just war* discourse. Jurists and theologians who profited from slavery and slave trade redefined legal notions to their benefit [Chapters 4 and 5]. They accomplished this by focusing on private property and *just war*. At the end of the sixteenth century and the beginning of the the seventeenth, some Iberian *conversos* came to the Netherlands in search of religious freedom, where they reverted to the open practice of the Jewish tradition [See section 2.1]. A select few of them became scholars of *Talmudic* jurisprudence, while retaining their knowledge of Christian theology and Salamanca legal reasoning [See section 2.4].

Talmudic jurisprudence at the *Talmud Torah Ez̨ Ḥaim* Seminary was characterized by an emphasis on the *Tanakh* [Hebrew Bible] and biblical medieval commentaries as sources of law, and not necessarily the Talmud and its commentaries. Amsterdam Sephardim relied mainly on the biblical commentaries of Rashi, Ibn Ezra, and Radak, which focused on a literalist and contextual interpretation, as opposed to casuistry. With the Bible as a source of authority, it provided a meeting point between Sephardim and Protestants. The Talmudic tractate editions [Lublin edition (1579 – 1580); Basel edition (1618 – 1622); Hanau edition (1618 – 1628); Benveniste edition (1644 – 1647)] consulted in the seventeenth century included Rashi's commentary, the *Tosaphoth* and their commentaries, the Rosh, and the Rambam's *Mishnah* commentary [Refer to section 6.2].

As the *other within* in the Dutch Republic, Sephardic jurists and thinkers synthesized Greek philosophy, Iberian law, rabbinic reasoning, Jewish and Christian philosophy, in light of the socioeconomic context of the Dutch Republic [See section 2.2]. As more *conversos* managed

to escape the Inquisition, the rabbis of the community aimed to produce educational literature on behalf of recently reverted Jews and for those who were stuck between and betwixt two religious identities. This unique style of learning and practice of Jewish legal conventions is what I call the "School of *Eẓ Ḥaim.*"

Sephardic merchants controlled the *asientos* and dominated the slave trade market in Lisbon, Seville, the Atlantic islands, and the West Indies [Refer to section 2.3]. The issue at stake was how they could justify a move from prohibition of slave trade and slavery in the Republic to legitimation of slave trade overseas. What is trivial about this entire story is how they enslave and sell Africans, while rescuing their brethren from the clutches of the Inquisition. The legal slave trade debate influenced Western Sephardic thought, such that Roman legal language was utilized to transmit *halakhah* and rhetoric. In the same vein, Western Sephardic thought also influenced the legal slave trade debate. Already by the end of the fifteenth century, Sephardic scholars rendered Latin theological and philosophical works into Hebrew (Zonta 181). Under the influence of Salamanca and Jesuit training, seventeenth-century *Nação* rabbis and thinkers at *Eẓ Ḥaim* utilized the language and legal theories of Iberian scholastics in their writings.

Several scholars have attempted to explain natural law theories within Jewish thought. At the forefront, Leo Strauss avoided forming a theistic conception of natural law as universal law, which can be discovered by humans through reasoning (Strauss 81). Indeed, natural law which is connected to a specific religious worldview is not accessible to all humans, since not all share the same religion nor metaphysical understandings of the world. Thus, natural law was an attempt to move away from one religion only by recognizing the sacred spark in all humans. Furthermore, Strauss maintained:

> The idea of natural right must be unknown as long as the idea of *natura* is unknown. The discovery of nature is the work of philosophy. Where there is no philosophy, there is no knowledge of natural right as such. The Old Testament [voluntary law], whose basic premise may be said to be the implicit rejection of philosophy, does not know "nature" (Emon, et al. 5).

David Novak disagrees with Leo Strauss, arguing for a different meaning of *Nature* and *law* —"Natural law is what God has wisely willed every human person to do, but in itself is not divine" (Emon et al. 6). Furthermore, he posits:

> Unlike revealed law, though, where God is experienced as the source of the law, and where the social context can be found in the world…in natural law both God as the source of the universal law and the universal social or communal context of the law are only inferred as presuppositions of the law. Universality can only be thought; it cannot be directly experienced…When the reason of the command is universal and thus immediately evident to all *a priori*, the command can be considered a natural law precept (12).

Novak's suggestion is difficult to grasp, being that whenever "command" is used, it supposes volitional law. Thus, in accordance with the understanding of Iberian scholastics, Novak considers the Torah (voluntary divine law) to be natural law. Similar to Strauss, Ofir Haivry agrees that the biblical Hebrews did not take into account any of the institutions nor definitions

of natural law of other nations (Haivry 121). In the same vein, José Faur argued that the concept of natural law is inexistent in Hebrew jurisprudence. He posits that there is one universal law for both Jew and non-Jew, i.e. the Noahide law, which is positive divine law given by God ("La Doctrina de la Ley Natural" 218-24). If Hebrew jurisprudence is founded on divinely revealed positive law to all humanity, how can the Noahide precepts be deduced by natural reason and be considered part of *ius naturale*? Evidently, Jewish scholars do not agree on the relationship between the Hebrew Bible and *natural law.*

Nação philosophers synthesized Talmudic jurisprudence and Roman law to conceive of the law of nations and nature. *Nação* rabbis and thinkers in seventeenth-century Amsterdam call the universal principles of the seven Noahide laws *La Ley Natural*. Just as *Nação* jurists and philosophers, jurist John Selden assumed that the seven Noahide laws constituted the law of reason, i.e. natural law. In his *De Iure Naturali et Gentium Iuxta Disciplinam Ebraeorum* (1640), Selden expresses his thesis that *ius naturae et gentium* can be deduced from and derived from the seven Noahide laws contained within the Hebrew Bible, which then testifies to an underlying universal natural law (Salomon 260-61).

Within the legal consciousness of the *Nação*, notions of property and slavery are linked within the conception of *La Ley Natural*. Their involvement in slave trade and plantation slavery shaped the idea of who is a free person [*liber*]. In this section, I examine how several *Nação* rabbis and philosophers conceived of the law of nations and nature, *dominium*, *servitus*, and *libertas.* I then explain how they created their own legal notions through the amalgamation of Iberian and Hebrew jurisprudence. In the philosophical works of *Nação* rabbis and philosophers one witnesses the natural law theories based on the seven Noahide laws.

While some research has been undertaken concerning the contributions of *conversos* to the "School of Salamanca" legal tradition [Refer to section 2.2], few authors have delved into the realms of the jurisprudence of Sephardic Jews in seventeenth-century Amsterdam. Stephen Gilman and Américo Castro assert that the Salamanca School had a large percentage of faculty and student body who were *conversos* (Gilman 342). In the same vein, Robert Maryks asserts that the Jesuit order in the mid-sixteenth century was a "synagogue of Hebrews" (Maryks 133). He states that the Jesuits of Jewish ancestry influenced the curriculum, being based on Greco-Roman culture (xxii). At the forefront of research on the *Nação* in the Dutch Republic is Herman Prins Salomon, who wrote on legal thought of *Nação* rabbi, Rafael d'Aguilar (ca.1615 – 1679) in his *Baruch Spinoza, Ishac Orobio de Castro and Haham Mosseh Rephael D'Aguilar on the noachites: a chapter in the history of thought* (1975).

Furthermore, Irene Zwiep claims that ex-*conversos* in seventeenth-century Amsterdam were "indebted to Late Scholastic methodologies" (Miert et al. 147). While these authors have done mostly historical research on (ex) *conversos*, to the best of my knowledge, no research has been undertaken on a legal consciousness of the Sephardic Jews in seventeenth-century Amsterdam, regarding the law of nations and nature, which deal with relations among nations, trade relations, war, and slavery. As explained at the beginning of this book [see section 1.2], there is a lacuna when it comes to the legal consciousness of the *Nação* and their contributions to international legal thought. The aim of the this chapter is to highlight the intellectual debate among the Sephardim in Amsterdam, how they created their own jurisprudential understandings, and how they played out these notions to change the conventions surrounding the *free soil* tradition, which prohibited slavery and slave trade within the Netherlands.

The main argument here is that the convention at the *Eẓ Ḥaim* Seminary was to equate the "Noahide laws" with *ius naturae et gentium*, where secondary natural law is equivalent to primary law of nations [section 7.2]. *Nação* rabbis and philosophers use *natural law* in this sense, conforming Fernando Perez's doctrine of the intermediate condition of *ius gentium*, i.e. its relation to both natural and positive law (see section 4.1). Accordingly, this chapter reconstructs the natural law and just war theories of four prominent *Nação* actors, voiced as part of the general debate. Section 7.2 discusses the natural law theory of Immanuel Aboab and Saul Levi Mortera, as expounded in *Nomologia o Discursos Legales* (1629) and *Tratado da Verdade da Lei de Moisés* (1659 – 1660), respectively. This section focuses on their legal understandings in regards to: *dominium, servitus,* and *libertas.* Accordingly, I argue that their conception of the Talmudic notion of the Seven Universal Noahide laws conformed to the legal convention at the time, i.e. the equivalence between secondary natural law and primary law of nations. The positive legal aspect of the Noahide laws—*dinim*—allowed for slavery to exist within an order of natural law-thinking, as expressed in the writings of the aforementioned *Nação* actors in Amsterdam and the Dutch Republic. This understanding came directly from the Portuguese universities, where many (ex) *conversos* were trained in theology and jurisprudence.

Before the *Nação* was established in Amsterdam, sixteenth-century scholastic and humanist scholars debated about the legal underpinnings of *just war*. To that end, section 7.3 discusses Menasseh b. Israel's *just war* theory in his *Conciliator* (1632). Therein, I highlight how holy war in the Hebrew Bible was justified on the grounds of a violation of natural law [the Seven Universal Noahide laws]. What is more, this legal conception became the foundation upon which *postbiblical slavery* functioned, which I will discussed at length in the Chapter 6. Most

importantly, Menasseh b. Israel discussed this idea in his *Conciliator*, which he dedicated to the Magistrates of Holland and West Frisia, and to the directors of the Dutch West India Company. Hence, I argue that the latter were influenced by the *just war* theory of the Biblical Israelites*, vis-`a-vis* Menasseh's explanation in the *Concilator*, as a justification in seizing the slave ports owned by the Portuguese in West Africa.

Section 7.4 details Isaac Cardoso's and Abraham Pereyra's conceptions of the law of nations, as expounded in *Espejo de la vanidad del mundo* (1671) and in *Excelencia de los Hebreos* (1679), respectively. In addition, these *Nação* actors are compared to Dutch Protestant jurists: Hugo Grotius, Willem de Groot, and Ulrich Huber [Refer to section 5.4]. Each *Nação natural law* theory in this chapter is juxtaposed to a case involving *Nação* merchants who arrive to Amsterdam with slaves [see section 1.1]. Herein, *Nação* legal consciousness comes to life through the extra-communal discussions between the Sephardic merchants and the municipal authorities in Amsterdam and the Hague. Essentially, the *Nação'*s contribution to the development of the law of nations and nature will be evidenced in this chapter, by focusing on how *servitus*, *dominium*, and *libertas* are conceived by the community.

The aforementioned *Nação* actors were chosen because their theories concerning the relationship between the *naturalized law of nations* and *libertas*, *dominium*, and *servitus* are very clear and evident within their works. In addition, these jurists and thinkers either studied or taught at the *Eẓ Ḥaim* Seminary in seventeenth-century Amsterdam. The Roman legal notion of *libertas* is prevalent in the literature of Menasseh b. Israel and Abraham Pereyra. The idea of *freedom* or *liberty* acquired a particular use and meaning amid the activities of the Atlantic slave trade.

The French jurist, François Connan (1508 – 1551), asserted, "Liberty was born with servitude…there was no one free, when no one was a slave: as among Christians no one is called free, since none of them is a slave" (72-73). Jean Allain is surprised that "authors such as Grotius and Pufendorf had much to say about slavery, given that the institution had already disappeared from the areas where they lived for several hundreds of years" ("Slavery in International Law" 54-55). Indeed, in the seventeenth-century Dutch Republic, it is not possible to speak of *liberty* without *slavery*. This is not only true of Dutch jurisprudence, but also in the legal consciousness of the *Nação*.

Libertas was reworked by European jurists in the early modern period. In the Roman legal tradition *libertas* is defined as "one's natural power of doing what one pleases, save insofar as it is rules out either by coercion or by law" [*Libertas est naturalis facultas eius quod cuique facere libet, nisi si quid vi aut iure prohibetur*] (Justinian "Digest" 1, 5, 4; Guerra Ribeiro de Oliveira 78; Plessis, Ando, and Tuori 350; Kennedy 492). Thus, the Romans viewed *freedom* as a natural right granted to humans, unless some law or a more powerful person coerced the individual; as such, Roman slaves did not possess *libertas*. Centuries later, Aquinas linked *libertas* with the anthropological idea of *Imago Dei,* arguing that man can participate in the rational eternal law of God, being made in the image of God and sharing divine reason, i.e. natural law (Canning 128).

Accordingly, de Vitoria argued that *dominium* is established on the *Imago Dei,* but that transgressors do not have this image and are deprived of this *dominium* (Vitoria, "De Indies" 1, para. 318). Subsequently, Grotius described *libertas* as the power over oneself [*potestas in se*] (Blom and Winkel 235). Similarly, Pufendorf conceived of *libertas* as the power over one's own

person and actions (Haara 156). However, Hobbes conceived of *libertas* as the state of not being subject to *imperium* (Skinner, "From Humanism to Hobbes" 258). Thus, he states, "In every commonwealth and household where there are slaves [*servi*], what the free citizens and children of the family have more than the slaves is that they perform more honorable services in commonwealth and family, and enjoy more luxuries" (Hobbes 111). How do *Nação* jurists and philosophers contribute to the debate on *libertas* in seventeenth-century Amsterdam?

In the legal consciousness of the *Nação, libertas* has two implications: (1) *Imago Dei* anthropology, and (2) deliverance from slavery. Overall, Menasseh's and Abraham Pereyra's conceptions of *libertas* are related to Immanuel Aboab's conception of *dominium.* In other words, one exercises freedom and self-governance by imitating the merciful and gracious Creator. Commenting on Hobbes' conception of *dominium*, Mary Nyquist states that war slavery is signified by the loss of liberty and self-governance (3). By this token, one could then argue that a slave has be stripped of his natural freedom and divine image, making him a subhuman or an animal.

This chapter explores how *Nação* jurists and thinkers conceived of *servitus*, *dominium*, and *libertas* as governed by *La Ley Natural* and *La Ley de Humanidad*. Just as legal historians speak of the "School of Salamanca" legal tradition, it is possible to speak of the legal thought of the "School of *Eẓ Ḥaim.*" Herein, my aim is to detail how Iberian scholasticism was amalgamated with rabbinic ideas and how these ideas where then translated in Iberian languages for the sake of *conversos* who reverted to the open Jewish practice in Amsterdam. The focal point of this chapter is how the law of nations and nature is synthesized with rabbinic law in order to construct arguments in favor of war, slavery, and slave trade. *Nação legal consciousness*

emerges through an alchemy of discourses in the seventeenth-century Amsterdam legal-political debate on slavery and slave trade.

7.2 *Nação* Natural Law Theories and Conception of Ownership, Liberty, and Freedom: 1600-1630

In February 1626 four *Nação* merchants—Izak Barzilai, Antonio Mendes, Rodrigo Alvares Drago, and Antonio Enriques Alvin—challenge the evolving idea of the "free soil" tradition in the Netherlands. The Antonio Enriques Alvin case highlights a few underpinnings within the seventeenth-century legal policies of the Netherlands [See section 1.1. for details on the case]. It is conspicuous that the *Nação* owners of slaves entering the Netherlands had *potestas* [ownership] of slaves as property, and were not forced to free their slaves. The fact that Alvin was allowed to move freely within the Netherlands with his slaves for a period of three months, evidences that he had full ownership. The four merchants appeared before the Amsterdam notaries in order to have this recorded (Hondius, "Access to the Netherlands of Enslaved and Free Blacks 380). Simultaneously, the privilege to own slaves in the Netherlands, albeit a short time, leads to the logical conclusion that the notion of *libertas* [freedom] was also influenced within the context of the peculiar trade. In other words, a person who owned a slave was by default "free" [*liberi*], and a person who was a *servus* was not "free." What about a person that was neither a slave, nor a slave owner? In the seventeenth-century Dutch Republic, an urban *white* Christian from the Reformed Church was born a *free* person by default (Allain, Slavery in International Law" 49; Bynkershoek, "A Treatise on the Law of War" 21; Watson, "Seventeenth-Century Jurists" 1353). At the Synod of Dordrecht, theologians debated whether

baptized slaves needed to be manumitted, being that it was not acceptable that a Christian could be enslaved (Hodges, "Slavery and Freedom" 35). Overall, it is evident from this case that idea of the "free soil" tradition did not guarantee automatic freedom to slaves upon touching Dutch soil (Welie 49; Mbeki and Rossum 96). Being "free" in the Netherlands was either a natural-born right for *white* Christians of the Reformed Church, or a privilege that was granted to non-Christians [such as the Portuguese Jews].

How did the rabbis of the Portuguese community conceive of the law of nations and nature, regarding *slavery* and *freedom*? Immanuel Aboab (born circa 1555) was a *converso* scholar and descendant of the illustrious Aboab Sephardic lineage from thirteenth-century Spain. He was the descendant of Isaac Aboab of Castile, who negotiated for thirty Jewish households to relocate to Oporto, Portugal, after the Expulsion of the Spanish Jews. His grandparents were forcibly converted to Catholicism in Portugal in 1497. Even though he was raised as a Christian in Portugal, after moving to Italy, he was educated in the Jewish tradition, in Pisa (1587) and Venice (1603) (Roth, "Immanuel Aboab's Proselytization" 123-25).

As a polemicist, Aboab debated with *conversos* about the divine origin of *La Ley Mental,* i.e. the oral tradition of the Torah. Written in Italy and published in Amsterdam a year after his death, in his monumental work *Nomologia o Discursos legales,* he debates over the fundamental (dis)agreement of the Talmud and the Hebrew Bible (Miert et al. 146). Therein, he argues that the Holy Law is perfect, despite its ambiguity in some passages. And just as in common jurisprudence, scholars of all times and nations had consulted legal commentaries, so too Jews can resort to the Sages of the Talmud to understand the particulars of the Law. Only with these two *discursos legales* can one "grasp *el alma de la ley*, the spiritual essence of Jewish

law" (147). In his final chapter, Aboab draws a parallel between the exegetical process and the scientific practice of employing "universal rules that […] mediate our knowledge" (*ibid*). These *rules* refer to the 13 rules of Rabbi Ishmael to derive *halakhah* from the Torah and the Prophets. Just as the Romans had developed rules for the interpretation of legal codes, the Sages too had developed a set of objective *reglas, o modos de filogizar*, which warrant their true apprehension of the Holy Scriptures.

In the first chapter of *Nomologia o Discursos legales,* Aboab equates the seven Noahide principles with the Natural Law, stating:

> …Adam communicated to his son Seth, and taught him everything that he knew: the precepts, details concerning service and divine worship, which the LORD had commanded him [because as it is proven from the Holy Writ in regards to the seven precepts of Nature, Adam received six, and Noah only received one] (Aboab 10).

These laws were transmitted orally from Adam to Noah, but revealed by God to Adam and Noah. In another chapter, he specifies that "one of the seven precepts [given] to the sons of Noah (which they call the natural law) is the precept of the [prohibition of] homicide" (47). Aboab posits that natural reason demands that someone who kills another must be also killed, measure for measure. He expounds on this precept from the Noahide Laws, which he calls *La Ley de Naturaleza*. He recalls the Roman legal notion "*Animus, et propositum destinguunt maleficium*" [sic. *voluntas enim et propositum maleficia distinguunt*]. In other words, the intent

of the accused determines the severity of the punishment (Thorne, "Bracton on Laws and customs of England" II, 27-28).

Henry of Bracton (1210 – 1268) emphasized the paramount importance of assessing intent: Remove will [*voluntatem*] and every act will be indifferent. It is your intent [*affectio*] that differentiates your acts, nor is a crime committed unless an intention to injure [*voluntas nocendi*] exists; it is will and purpose [*voluntas et propositum*] which distinguish *maleficia* (*ibid*). In citing Bracton, Aboab demonstrated that not only did he have knowledge of European jurisprudence, but also translated Hebrew jurisprudence in Latin legal terminology. This implies that Aboab's intended audience was also familiarized with Roman law. This suggests that the majority of his students had received training in Roman jurisprudence while either in Spain or Portugal (Maryks 108).

Aboab reveals that he agreed with Thomas Aquinas and Domingo de Soto, inasmuch as "the natural law is connected with natural reason and therefore applicable to human activity alone" (Brett, "Liberty, Right, and Nature" 142). This distinction is vital since natural law was classified as primary and secondary. Learned jurists called the instinct of nature (right reason) primary natural law (Böckelmann on Digest 1:1). A final point to be made is that Aboab equates the *La Ley de Naturaleza* with divine law—God taught the first human [Adam] with all the details for application of the precept of murder. He posits that just as God taught Moses all of the details for the Torah Law, he [God] also taught Adam in the same manner (Aboab 49). This indicates that his conception of *La Ley de Naturaleza* is not only divine, but also revealed positive law. Haggenmacher asserts that this equation is found in the beginning of Gratian's *Decretum* (12th century) ("The Histories of the Sources of International Law"). Herein, Aboab

disagrees with de Soto, since he equates the eternal law with natural law. Whereas de Vitoria and Suárez tended to separate divine law from natural law, Aboab constructed his natural law theory on earlier scholastics. Overall, Immanuel Aboab conceived of *La Ley de Naturaleza* as instinctive, rational, divine, eternal, and simultaneously natural and positive.

In the literature of Immanuel Aboab one can find clear instances of the Roman legal notion of *dominium*. In Roman law, *dominium* relates an owner with his property (Lee, "Private Law Models" 379). Brian Tierney states that the Romans had a concept of mastery, power over persons or things, expressed by the word *dominium* ("The Idea of Natural Rights" 16-17). Daniel Lee explains that *dominium* in the Roman civil context was simply "man's total control over his physical world—his land, his slaves or his money" (378).

In the early modern period, *dominium* acquired different meanings and understandings. Lee asserts that French jurists conceived of *dominium* as *pouvoir royal* (381). Similarly, Thomas Hobbes (1588–1679) defined *dominium* as being free from absolute subjection (Nyquist, "Hobbes, Slavery, and Despotical" 8). He translated the Latin *servus* as *servant*, and reserved *slave* for a political subject of tyranny (10). In contradistinction, Straumann posits that Grotius had conceived of *dominium* as private property related to natural possession, i.e. the acquisition of possession of an unowned thing *ab initio* ("Natural Rights and Roman Law in Hugo Grotius" 354).

How do *Nação* jurists conceive of *dominium* within the same context? Is it ownership of property, sovereignty, or both? Is it based on natural or positive law? Overall, *dominium* has two meanings: mastery over oneself and mastery over others.

In the opening chapter of *Nomologia o Discursos Legales*, Immanuel Aboab gives many examples of the laws of nature. He singles out humankind as the sole creation that has been endowed with absolute control and free will over one's thoughts and actions; no other being can force humans to do otherwise (10). He posits that humans have total power over their appetites and desires, being able to indulge in them completely or incline themselves to what is good, through the repression of the very same (11). Since humans have the capacity of choosing between right and wrong, they are beneficiaries of rewards and punishments, according to their actions.

Aboab's conception of *dominium* echoes Cicero's, "Do we not observe that *dominium* has been granted by Nature to everything that is best, to the great advantage of what is weak? For why else does God rule over man, the mind over the body, and reason over lust and anger and the other evil elements of the mind?" (Tuck, "The Rights of War and Peace" 40). Grotius also drew on Ciceronian philosophy and the concept of *imago Dei* (*dominium* as given by Nature), describing the rights that naturally belong to humans:

> *Homo naturaliter ius habet in actiones et res suas tum retinendi tum abdicandi: vita autem et corpus retinendi tantum. Hoc tamen ius a iure Dei dimanans ab eodem restringitur, per legem naturalem et per verbum tum extrinsecum tum intrinsecum, id est Scripturam et Revelationem.*
>
> A human being naturally [*naturaliter*] has a right [*ius*] to his actions [*actiones*] and his possessions [*res*], a right both to retain them and to alienate them: regarding life and

> body, only to retain them. This right, flowing from the law of God [*ius Dei*], is restricted by the law of God, by the law of nature [*per legem naturalem*], and by the Bible and the revelation ("Theses Sive Quaestions LVI" fols. 287-292, fol. 287 recto, thesis 2).

It is remarkable how Aboab and Grotius constructed their conceptions on Cicero in order to describe the natural right to determine one's actions. For Aboab and Grotius, these natural rights spring forth from natural law. Jason Rosenblatt claims that both John Selden and Grotius viewed the Noahide laws as universal law (147). If so, one could argue that they both drank from the same waters for a similar purpose. I argue that this purpose is international commerce, considering the political economic context within the Dutch Republic at the time. Hence, Aboab conceived of *dominium* as the natural right to self-governance.

In seventeenth-century European jurisprudence not all humans had the right to self-governance. Indeed, sub-Saharan Africans did possess *dominium* [self-governance] in the eyes of Dutch Sephardim nor the shareholders of the WIC. African *blacks* were described as wild, cruel, voluptuous barbarians in the travel literature of the seventeenth-century Dutch Republic. For example, even though Willem Usselincx had initially expressed disdain for the practice of colonial slavery (Bloom 124), he nonetheless exclaimed that "Some people were so vile and slavish by nature that they were of no use either to themselves or to others and had to be kept in servitude with all hardness" (Boogaart and Emmer 377). This statement echoes Aristotle's theory of *natural slavery*. In antiquity, slaves could be "recognized by clothing, branding, collars, and other symbols," but the "millennia-long search for ways to identify 'natural slaves' was eventually solved by the physical characteristics of sub-Saharan Africans" (Davis, "Inhuman

Bondage" 34). In other words, having *black* skin became a signifier of enslavement (Boogaart and Emmer, 355-56; Thompson 29-59).

Even though Aboab posits that all humans were created with total *dominium* over their appetites and desires, evidently, this did not apply to dark-skinned Africans (11). Certainly, during the seventeenth-century Atlantic slave trade, the natural rights of *black* Africans were diminished through legal theory which was becoming normative at the time. After the Valladolid debate, Bartolomé de la Casas argued that the *Indians* were subjects of the Spanish crown and should be protected, while Africans should replace them as slaves because of their idolatrous practices (Obregón 601). I have explained in Chapter 4 how humanists were increasingly in favor of the theory that *barbarians* were natural slaves. With such ethnographical descriptions of West Africans, it is of no surprise that they could be viewed as lacking self-governance, in the same way that Juan Ginés de Sepúlveda argued of the New World *Indians* ("Demócrates Secundus" 30A).

Another prominent *Nação* jurist was Saul Levi Mortera (ca. 1596 – 1660). He was from the German Jewish community in Venice and a pupil of the acclaimed Jewish scholar, Leone de Modena (1571 – 1648). He arrived in Amsterdam from Paris in 1616 after the death of his friend, Elias Montalto; Mortera brought his body to Amsterdam for burial. Three years later he was appointed *Ḥakham* [rabbi] of *Beth Jacob*. Later, he founded the school *Keter Torah*, where he taught advanced studies in Talmud and Jewish philosophy (Mortera, "Tratado xi-xiii").

One of Mortera's most important works was *Tratado da Verdade da Lei de Moisés* [Tractate on the Truth of the Law of Moses]. In his Tractate Mortera attempts to encapsulate a Jewish perspective of Christianity which is directed toward Protestants and Catholics. Therein,

he demonstrates his vast knowledge of the Classic, Church Fathers, Catholic theology, and Calvinism. After Isaac Orobio de Castro's (1617 – 1687) celebrated correspondence on theological matters with Dutch Remonstrant theologian, Philippus van Limborch (1633 – 1712), Mortera discovered that he needed to take on another approach in refuting the views of specific Calvinist groups, such as the doctrine of the Virgin birth, predestination, the Holy Trinity, and the abrogation of the Mosaic Law (Salomon, "On Saul Levi Morteira"). In his *Tratado*, Mortera demonstrates his vast knowledge of Roman jurisprudence and Christian theology. Therein, one encounters his conception of *A Lei da Natureza* [natural law].

Firstly, Mortera equates the seven Noahide principles with the natural law. In the first chapter of his *Tratado*, he states:

> …therefore, they are not of the chosen seed of Israel (to whom the Law of Moses was given to through obligation)…by observing the seven natural principles which we call 'of the children of Noah'[the non-Jews] can be saved in the same way that the benevolent of the world were saved, before the Blessed God gave the Law to His people at Mount Sinai ("Tratado" 418).

Mortera states that the Law of Moses was given to the Israelites at Sinai, whereas the seven universal principles were given to all of humanity through Noah. Mortera asserts that non-Jews can be saved in keeping the natural law precepts. Interestingly, Mortera recalls the Christian idea of salvation to convey the Jewish concept of *Olam HaBa* [The World-to-Come]. However, this idea contradicts the Christian theological notion of salvation, since theologians such as

Augustine and Aquinas argued that salvation is a gift of God. If it is a divine gift, then law does not play any role in acquiring it. If non-Jews are *saved* by keeping the seven Noahide laws, then there is no need for them to either be baptized as Christians, nor converted to the Jewish tradition. As such, slaves owned by Jews can keep the Noahide laws, as *escravos não-banhados*, and still obtain salvation of their souls [Refer to section 6.3].

Like de Vitoria and Grotius, Mortera posits that *A Lei da Natureza* is a type of universal law, which existed before the revelation of the Torah at Mount Sinai. In the seventy-first chapter of his *Tratado* he asserts:

> After having proven through a forced consequence of grace and mercy, which the Blessed God bestowed upon humans when they still governed themselves by the natural precepts, which we call Noahide, the Law of Moses, being a Law of grace and benevolence with much more excellency, He then chose a nation among the rest in order to perform greater benevolence and favors, therefore, He manifested His will to them and gave them His Law and precepts ("Tratado" 418).

Mortera suggests here that humans used to govern themselves by the Noahide laws before the Children of Israel were endowed with the Law of Moses. Clarifying this point, in his *Discourses of the ecclesiastical and civil polity of the Jews, Nação* rabbi, Isaac Abendana (ca. 1640 – 1699) argues the seven precepts handed to Noah are found throughout the Law of Moses. He bases his claim on various practices evidenced throughout the Book of Genesis, such as: Noah's offerings, the pact of circumcision, levirate marriages, and punishing an adulterous with death.

Furthermore, he maintains that Abraham taught the Egyptians some of these precepts, and that some of those precepts were transmitted to other nations to some degree. Consequently, they were generally accepted by those nations, but strayed away from the worship of the true God. Therefore, he posits that many practices are similar to the non-Jews only because they inherited them from the Patriarchs, but distorted them thereafter (Abendana 40-44). Accordingly, Mortera argues that the Torah was revealed to the Israelites to enlighten them on the correct and original worship, which was taught within the dispensation of *A Lei da Natureza*.

Finally, in the biblical story dealing with a war between five kings in the land of Canaan, Abraham, the patriarch of the Hebrews, rescues his nephew who had been captured and enslaved amid the war. After rescuing him, Abraham appears before Melchizedek, the king of Salem (*Common English Bible*, Gen. 14). In reference to this story, Mortera holds that Melchizedek administered righteous rulings according to the precepts of the Law of Nature and virtue that existed at that time. According to the rabbinic conception of natural law, there is a positive precept to establish courts to exact judgment [*dinim*]. In the biblical account, Melchizedek has the authority to exact punishment and demand righteousness from the subjects of Salem. The biblical narrative about the capturing and enslavement of Abraham's nephew goes to show that if under this dispensation humans kept the Noahide precepts, then according to Mortera's natural law theory, slavery is possible as a result of a war.

That a human institution such as slavery can be governed by the Law of Nature was discussed in sixteenth-century Salamanca, Coimbra and Évora. Sixteenth-century scholastic thought reconciled natural law with slavery, as evidenced in the writings of Luis de Molina and Francisco Suárez [Refer to section 4.3]. Robin Blackburn argues that the doctrine of Molinism

impacted the views of Suárez, such that Suárez argued that while natural law permitted slavery, human law could positively require it (179-80). Without question, Mortera's conception of *A Lei da Natureza* sits comfortably within the context of late scholastic thought, permitting war and slavery as institutions of punishment, which are conducive to the functioning of a society ruled by the seven Noahide principles. Thus, for Mortera, the seven Noahide laws are a positive of natural law. Mortera's dual nature of natural law is very similar to Fernando Perez's (1530 – 1595) doctrine of the intermediate condition of *ius gentium*, i.e. its relation to both natural and positive law (Oliveira e Silva, "The Concept of Ius Gentium" 119). The nuance in Mortera's conception is the synthesis between Talmudic and Salamanca legal thought, whereby the seven Noahide laws constitute *ius naturae et gentium*, i.e. laws that benefit humans and animals, albeit accessible through human reason.

In analyzing Saul Levi Mortera's treatment of *A Lei da Natureza* through the biblical narratives dealing with war and enslavement, one can conclude that a violation of natural law can lead to punishment in the form of enslavement. Also, Mortera agrees with Menasseh b. Israel, in that a *escravo não-banhado* can be *saved* in the World-to-Come if he or she keeps the precepts of the seven Noahide laws. Thus, similar to the Synod of Dordrecht ruling concerning the baptism of slaves, Jewish slave owners can decide whether to immerse their slaves or not [See section 5.2]. However, by 1650, the Board of Directors of the *Eẓ Ḥaim* had prohibited the ritual immersion of anyone who was *black* or *mulatto* [Refer to section 6.4]. This means that sub-Saharan African slaves owned by members of the *Nação* community in Amsterdam were destined to be perpetual slaves, due to their natural condition of *blackness* (Nemser 128). The *Nação*'s legal consciousness was influenced by the racial difference constructed via the myth of

the "Curse of *Ḥam.*" Ergo, within the framework of *Nação* legal consciousness, a violation of *A Lei da Natureza* can lead to a *just war* and punishment in the form of enslavement.

7.3 The *Just War* Theory of the *Nação*

During the Eighty Year's War, European Christian Hebraists revisited the Roman legal concept of *just war* within the Bible. The Reformation opened up space for new interpretations and applications of the Bible within Christian Europe. Previously, I argued that Hebrew jurisprudence influenced the political and legal thought of the seventeenth-century Dutch Republic [Refer to section 3.4]. Herein, I will answer the question: How did *Nação* jurists understand the right to declare war in the seventeenth century? This vital to debate since Moderate Calvinists utilized the Hebrew Bible to construct their political world vision [Refer to section 3.4]. For this purpose, I examine Menasseh's *Conciliator* since he dedicated it to the directors of the WIC, and the Magistrates of Holland and West Frisia concerning the right to declare war in the Hebrew Bible. I will argue that it served as a model and justification for battling against those peoples that violated the natural law, i.e. the seven Noahide principles.

Menasseh b. Israel (Manuel Dias Soeiro), a former *converso*, was born in Lisbon, Portugal in 1604. He and his family escaped the Inquisition fleeing to La Rochelle, France, then to Amsterdam in 1610. Menasseh studied under Isaac Uzziel (d. 1622) of Fez, who had been the Rabbi of the congregation *Neveh Shalom*. In 1624, Menasseh was appointed teacher of Talmudic studies at the rabbinic Seminary of the Portuguese Jews in Amsterdam. He opened the first Hebrew printing press in Amsterdam (1626). In 1632 he prepared his *opus magnum* in Spanish, *El Conciliador*, which enumerates and discusses all of the passages contained in the Hebrew

Bible which seemingly contradict each other. It is worthy to note that he dedicated the second volume to the directors of the Dutch West India Company. (Fischer 160). Then in 1639 Menasseh was appointed as one of the rabbis for the merger between the three Sephardi congregations. After five-hundred years of expulsion, in 1651 he met with Oliver Cromwell and lobbied on behalf of the reentry of the Jews into England (Roitman 304). While in Amsterdam, he corresponded with and met various Christian Hebraists and was influential voice among the Hartlib Circle (See section 3.5). Menasseh passed away in Middelburg in 1657 on the 20th of November.[26]

In May 1632 the *Parnassim* [Trustees] of the Amsterdam Portuguese Jewish communities established a censorship over publications by Jews, in order to promote the safety of the community (Katchen 106). Already in 1598, the burgomasters of Amsterdam agreed that no public worship outside of the recognized churches would be allowed (Vlessing 48). Menasseh's *Conciliator* proved to be controversial at that time. Under the influence of Erasmian and Cartesian philosophy, humanist scholars raised serious questions and doubts about the textual inconsistency, anachronism, and manuscript corruption that existed within the Bible.

This time period harbored a "historical moment in which the infallibility of the Bible was acutely important—and often contested—doctrine among a variety of Christian movements" (Fischer 108-55). Indeed, several Jewish and Christians scholars which attested to the infallibility and integrity of the Bible, were startled upon discovering errors, inconsistencies, and contradictions in the biblical text that seemed to weaken these assumptions (Fischer 156). For that reason, Menasseh devoted himself to the reconciliation of apparent biblical contradictions.

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[26] For more details on Menasseh's biography, see Nadler, "Menasseh ben Israel: Rabbi of Amsterdam (Jewish Lives)."

While “the Bible was the law of the land from the seventh to the seventeenth century in European political treatises,” the scientific discoveries of Copernicus and Galileo challenged the understanding of Biblical passages that assumed a geocentric model of the Universe (Somos 389). Protestant and Catholic thinkers struggled with the new theories of astronomy (Miert et al. 162).

With the support of the two leading professors of the Amsterdam Athenaeum, Gerardus Vossius (1577–1649) and Caspar Barlaeus (1584–1648), Menasseh dedicated the Latin translation [*Conciliator*] to the Magistrates of Holland and West Frisia. (Katchen 138). In reality, the *Conciliator* had only brought a “detractor of the Jews into a position of responsibility” (144). The second volume was dedicated to the directors of the Dutch West India Company. As an ex-*converso* and Jewish scholar immersed in the Christian world of seventeenth-century Europe, Menasseh followed the norm of composing “systematic reconciliations of biblical contradictions,” as various Christian scholars had done (Fischer 159). Not only did Menasseh cite Jewish scholars who had tried to solve the textual problems, but also the Classics and Christian authors, such as: Plato, Aristotle, Augustine, Aquinas, and Francisco Suárez (Miert et al. 149). The Trustees of Amsterdam’s Portuguese Jewish community did not agree with Menasseh’s *Conciliator* because of his clear political and theological motives, which could in turn jeopardize the peace of the Jewish community (Koen 41).

Various scholars have researched the *just war* theories contained within the Hebrew Bible. Shabtai Rosenne put forward that the biblical exposition of the *ius ad bellum* bears a slight resemblance to the Roman and Christian theory of the just and unjust war (Rosenne 139). Similarly, Norman Solomon argues that the distinction between Biblical holy war on the

Canaanites and other wars is analogous to the distinction made in early modern Europe between wars of the Church and wars of the Prince (296). The Bible has been used as a tool in justifying all kinds of atrocities.

Anthony Anghie holds that "versions of the civilizing mission were used by all the actors who participated in imperial expansion" ("Imperialism, Sovereignty, and the Making of International Law" 96). Benjamin Straumann asserts that Grotius developed his doctrine of punishment so that the Dutch East India Company, as a private actor, could engage in war on the Portuguese fleet in Southeast Asia ("The Right to Punish" 13). Expounding on Grotius' theory of *just war*, Straumann lists the four natural rights that may give rise to a just cause of war: the right to self-defense, to property, to collect debt, and to punish ("Is Modern Liberty Ancient" 55-85). As Protestant interpretations of the Bible emerged during the Reformation, jurists such as Hugues Doneau (1527 – 1591), Pierre du Faur (1540 – 1600), Alberico Gentili (1552 – 1608), and Hugo Grotius, constructed *just war* theories based on *ius naturale*.

How did Menasseh b. Israel present his *ius ad bellum* theory of the Hebrew Bible, and how did it relate to the *Nação*'s theory of natural law? When the Talmud was compiled, Jews had lost political sovereignty in the Holy Land. As such, rabbinic discussion of war did not reflect the political reality, but legislation on warfare as a reconstruction of history or messianic speculation (Solomon 298). The Talmudic Rabbis distinguished three kinds of war: *milḥemeth ḥoba* [obligatory war on the seven Canaanite nations], *milḥemeth ha-reshuth* [optional war], and pre-emptive/preventive war. The fourth century Babylonian rabbi, Raba maintains, "All agree that Joshua's war of conquest was *ḥoba* and the expansionist wars of David were *reshuth*. But they disagree with regard to the status of a pre-emptive war intended to prevent idol worshippers from

attacking" (b. Sotah 44b). Concerning the "Holy War" against the 7 Canaanite nations, Menasseh states:

> It must be observed, that in the wars of Israel, whether with the seven nations or any other, they always first offered peace; for it was a precept from God, that when siege should be laid to a city, they should first offer it peace, which is to be understood generally in any war; and if such proposal of peace was accepted, the inhabitants remained tributaries…but these were bound to receive the precepts of Noah…but if they would not accept peace, then there was to be this distinction: in the casual wars with other nations they were to put all to the sword, except the woman and children; in the obligatory ones with the seven nations and Amaleq, the LORD decreed that all should be slain (Conciliator 293).

Menasseh explains that the Israelites had to offer peace to their enemies *a priori.* Offering peace implies that they were given the opportunity to accept the seven Noahide laws. Since the seven Noahide laws constituted natural law within *Nação* legal consciousness, a violation of *La Ley Natural* demanded punishment through warfare.

In his *De Iure Belli ac Pacis*, on the laws of war, Grotius comments on this very same passage of the Torah:

> Where delinquencies indeed are such as deserve death, but the number of offenders is very great, it is usual, from motives of mercy, to depart in some degree from the right of

> enforcing the whole power of the law: the authority for so doing is founded on the example of God himself, who commanded such offers of peace to be made to the Canaanites, and their neighbors, the most wicked of any people upon the face of the Earth, as might spare their lives upon the condition of their becoming tributaries ("The Rights of War and Peace" 11: 17).

Both Menasseh and Grotius maintained that the Israelites' offering of peace before war, and permitting the Canaanites to become their tributaries, was an act of mercy.

Commenting on property rights of the Holy Land and its parameters thereof, Eric Nelson asserts:

> For Rashi, the whole purpose of the first book and a half of the Pentateuch is to establish a set of propositions about the nature of property in order to vindicate the Israelite claim to the land of Canaan…The vision of property rights that he [Rashi] articulates is indeed at the very center of the Biblical text, and it explains the distinctive land laws to be found within it (65).

Rashi (1040 – 1105), the eleventh-century French exegete, conceived of property rights in regards to the Holy Land, which rest upon the condition that its inhabitants must keep *La Ley Natural.* Since the Canaanites had violated the principles of the seven Noahide laws, the Israelites, as guardians of Divine law, were given the right to declare war on the Canaanites for

their crimes against God and His creatures. Hence, if the Canaanites did not accept to follow the precepts of the seven Noahide laws as a token of peace, they were to be punished through war.

If the directors of the WIC, and the Magistrates of Holland and Friesland read Menasseh's *Conciliator*, in addition to Grotius' *De Iure Praedae Commentarius* (1604) and *Mare Liberum* (1609), by synthesizing the two ideas, they could have built a rationale for declaring war against the Iberian powers in the Atlantic—the Dutch as "Israelites" and the Habsburg Empire as "Canaanites." More research with primary sources is required to demonstrate this fully. While the Dutch identified the Habsburg Empire as "Canaanites," the *Nação* identified the seventeenth-century *Canaanites* with *black* Africans, who were thought to be under the "Curse of *Ḥam.*"

If *Nação* rabbis deem dark-skinned Africans as descendants of the accursed *Canaanites*, then enslaving them becomes a divine precept under biblical and Talmudic law [Refer to sections 6.2 and 6.4]. Under the same laws, *Canaanite* slaves can be traded as property. Ergo, the legal justification for *Nação* merchants and brokers in the odious trade was the result of an amalgamation of ideas, namely, Aristotelian *natural slavery*, the "Curse of *Ḥam*" myth, natural law theory, and *just war* theory. Consequently, in enslaving and trading humans as property, the *Nação* exercised its freedom [*libertas*].

Menasseh b. Israel's *Conciliator* and prayer book lend insight into his conception of *libertas*. Day after day, traditional Jews declare their *freedom* by mentioning the Exodus theme throughout the morning and evening prayers. At the beginning of Menasseh b. Israel's Prayer Book (1630), it states, "Bendito tu Adonay, nuestro Dio, Rey del Mundo, que no me hizo esclavo" [Blessed are You Eternal, God of the Universe, who did not make me a slave] (14;

b.Menahoth 43b). Menasseh comments that the reason for saying this benediction is "for having preserved us from the most degraded and abject state of human nature" ("Conciliator 324). The force and use of Menasseh's language reveals that he repudiates the status of being a slave. Surely this is because he had either seen or heard about the horrors of Atlantic slavery.

Slave trading was one of the most important Jewish activities in seventeenth-century Suriname and elsewhere in the colonies (Bloom 159). Certainly, these slaves were from the sub-Saharan regions of Africa. Many Europeans argued that *black* Africans could be bought and sold, whether legally, morally, or on the basis of religion (Obregón 598). It is of no wonder that Jewish slave traders tried to prove their *whiteness,* amid the exploitation of sub-Saharan Africans in the odious trade (Schorsch, "Jews and Blacks" 166-75). In essence, when seventeenth-century *Nação* merchants proclaimed themselves as *liberi* by blessing God every morning, they were implying that they were not enslaved *black* Africans.

Menasseh b. Israel unfolds his theory on the right to declare war within his *Conciliator.* In dedicating it to the political elite of his time, one can infer that his work served as a model and justification for declaring "Holy War" against the Habsburg Empire. Since Dutch Protestant theology at the time held a supersessionist view, whereby the Dutch as the "New Israel" had been given a divine mandate akin to the biblical Israelites, one can argue that Menasseh's work was vital to the politico-theological debate on war (Abolafia, "Spinoza, Josphesim").

Due to the controversies on the infallibility of the Bible, the idea of a "New Israel" declaring *Holy War* was challenged by humanists at the time. However, Menasseh's *Concialiator* silenced the Bible critics who sought to challenge its validity. Assuming their role as the "New Israel," the Magistrates of Holland and Friesland, in collaboration with the directors of the WIC,

understood that the Dutch Republic could declare war on those peoples that violated the natural law, i.e. the seven Noahide principles. In synthesizing Grotius' *Mare Liberum* and *De Iure Praedae* and Menasseh's *Conciliator*, WIC investors, merchants, and brokers had a ready-made legal justification for the systematic enslavement of Africans. With the Bible as a common ground between Sephardim and Dutch Protestants, together theologians and jurists could forge a *naturalized* law of nations, with the seven Noahide laws as its moral compass [Refer to 5.4].

7.4 *Nação* Natural Law Theories and Conception of Ownership, Liberty, and Freedom: 1650-1680

The 1656 case between *Nação* merchant, Eliau Burgos, and his servant Juliana, provoked a number of outcomes and implications for the future [Refer to section 1.1. for details on the case]. Most importantly, it was possible to bring an enslaved person from abroad to the Netherlands in the mid-seventeenth century Dutch Republic, as long as the owner moved with his slaves elsewhere. Legal agreements made in the colonies between masters and slaves, did not hold water in the Netherlands. Indeed, when *Nação* slave owners entered the Netherlands with their slaves, they inherently took issue with public policy.

European jurisdiction decided the legal domain of *libertas*. Although slaves were considered to be property, there was no legal slavery in the Netherlands. The Amsterdam book of rules, *Keuren en Costumen* [Approvals and Customs], contains an official stipulation against the practice of slavery since 1644: *Binnen der Stadt van Amstelredamme ende hare vrijheydt, zijn alle menschen vrij, ende gene Slaven* [Within the city of Amsterdam and her freedom, all people are free, and the former slaves] (Ponte, "Tussen slavernij en vrijheid in Amsterdam" 251).

However, Ponte asserts that the *free soil* tradition did not guarantee automatic freedom for a slave; the slave had to fight for his or her rights to freedom before the municipal authorities (*ibid*). Ultimately, the Burgos 1656 case and others, led scholars such as Simon van Leeuwen (1626 – 1682) to produce blanket statements alluding to the *free soil* tradition "*de Slaaven ende Lijf-eygnen, die van andre Wijken hier gebragt warden, so haast als sy de Grensen van onze Landen genaakten, metter data, in weer-wil van hare Heeren ende Meesters, voor vrye lyden verklaart werden*"[27] (Leeuwen, "Het Rooms-Hollands-Regt"). Overall, even though *white* Dutch Reformed Christians were by default *liberi,* and there was no legal slavery in the Netherlands, enslaved *blacks* arriving there would have to become aware of their right and defend themselves before the court of law.

Even though slavery was not allowed in the Netherlands, the *Nação* community circumvented this prohibition by calling them *siervos* [domestic servants] before the city authorities, considering them as part of the extended family (Antunes and Ribeiro da Silva 53). Dienke Hondius argues that the words *escravo/escrava* disappear from the burial records of the Portuguese Jewish cemetery in Amsterdam after 1617, as a way to undermine the legal status of slaves on Dutch soil ("Blackness in Western Europe"). The archivist Lydia Hagoort asserts that records of manumissions among the *Nação* in Amsterdam are non-existent because slavery did not exist officially in the Netherlands (32).

By 1659 dark-skinned Africans had been considered subhumans and "natural slaves" throughout Western Europe. In the colonies of the West Indies, *blacks* and *mulattos* were presumed to have been enslaved at some point (Hadden 260). Indeed, possessing African negroid

[27] Slaves brought from other places are automatically freed upon their arrival to our borders, regardless of their lords and masters. My translation.

phenotypes required them to have to prove their *freedom* when traveling, lest becoming enslaved again (Scott and Hébrard, “Freedom Papers”). The "Curse of *Ḥam*" myth contributed to that end. It was a destructive idea that developed over a period of six centuries, first in North Africa and Iberia, then was introduced to Dutch Republic theological circles by way of Sephardic literature and correspondence between Sephardic rabbis and Christian theologians. Sephardim identified sub-Saharan Africans with the accursed descendants of the biblical *Ḥam.* When Dutch Christian Hebraists appropriated Sephardic thought in the seventeenth century, this ideology became the moral basis for pro-slavery arguments within the Republic.

What insights can we gain from the legal ideas of *Nação* philosophers during the period when the Eliau Burgos case took place? One of the leading seventeenth-century *Nação* thinkers was Isaac (Fernando) Cardoso (ca. 1603–1683). He was born in Trancoso, in the province of Beira, Portugal, to a family of *conversos*. He was educated in the University of Salamanca in medicine, philosophy, and natural sciences. Cardoso functioned as a physician in Valladolid in 1632. He reverted to the open practice of the Jewish tradition in Venice, Italy, where he adopted the Hebrew name Isaac. He published *La Excelencia de los Hebreos* (1679) in Amsterdam. Cardoso fought against the Shabbethai Ẓebi movement, which had swept the Jewish world. He moved to Verona in his latter years, where he expired (Barrios 189; Rossi 66; Graetz 301).

Similar to Aboab and Mortera, Isaac Cardoso conceived of a natural law theory founded on the seven Noahide laws. He posited that the nations [non-Jews] follow the precepts of *La Ley Natural* for salvation*,* and if they want more glory [in the World-to-Come], they can accept the Divine Law [Mosaic law] by joining the Children of Israel (9). He explains that righteous individuals, “Adam, Seth, Enoch, Metushelah, Noah, and others, followed the precepts of the *La*

Ley Natural. Rabbinic tradition calls these precepts the seven Universal principles; six existed before the Flood, and the seventh was added after the Flood" (b.Sanhedrin 56a-b). These natural law precepts were understood to be a consequence of human nature and common sense [Refer to section 4.2], not requiring the stricter Biblical procedures of twenty-three judges [for civil crimes] or seventy-one judges [for capital crimes] (Rakover 1087).

Cardoso's conception mirrors Grotius' formulation: "natural law is an injunction of right reason indicating that an action, by its concordance or discordance with rational nature itself, involves either moral baseness or moral necessity, and is in consequence either forbidden or commanded by God, the author or nature" (Haggenmacher, "The Histories of the Sources of International Law"). Thus, Cardoso equated natural law with divine law based on right reason. Concerning the matter of salvation, Isaac Cardoso and Iberian scholastics were at odds with each other, since the latter argued that the perfect morality of the natural law was insufficient in obtaining salvation. The *conversos* who read *Excelencia de los Hebreos* surely understood that Cardoso desired to convey that the death of Christ was of no effect, since salvation could be attained by following the precepts of *La Ley Natural.* It follows that Mosaic law was of a higher order and divine revelation, granted to the Children of Israel and to those that voluntarily aspired to join them. Overall, Cardoso's formulation of *La Ley Natural* served as a refutation to the Christian dogma that he learned in Salamanca, albeit utilizing similar language.

Next, in *Excelencia de los Hebreos*, Isaac Cardoso states that God created two universal fathers for the human species to look upon as models of virtue within *La Ley Natural*: Adam and Noah. In Jewish thought, the notion of the Fall does not receive importance as in Christian theology, since Adam and Eve repented of their transgression and received the grace of God

thereafter (Benamozegh 117). Despite the example of Adam's repentance, humans did not follow his example, giving themselves to carnal lusts and theft (Cardoso 25). After the Flood, despite the righteous example of Noah, humans gave themselves to pride, lordship [*dominium*], and idolatry (*ibid*).

A brief reordering of the post-Diluvian narratives in the Hebrew Bible would suffice to demonstrate how humans subscribed to lordship over others. Right after the Flood, Noah proclaims that Canaan will be a servant of servants, subdued by the descendants of Shem and Japheth (*Common English Bible*, Gen. 9:25). The Hebrew Bible includes narratives of the use of slaves in the house of Abraham. At the pivotal point in the Book of Genesis, Joseph, the son of Jacob, is sold to the Ishmaelites and the Midianites (Gen. 15; 37). Essentially, this is what Cardoso is alluded to when in stating that humans gave themselves to lordship over others. Thus, Cardoso equated *dominium* as exercising lordship over others, which is not a natural right, but the result of sin.

About a century before Cardoso, Bartolomé de las Casas posited that humans had lost their original *dominium* as a consequence of the original sin (Jiménez Fonseca 141). Cardoso drew on Augustine's idea that *slavery* is unnatural because it is a consequence of sin (Davis, "Inhuman Bondage 44). Hence, it was God's intention that all humans exercise their free will and treat each other equally, but due to the indulging in of their evil desires, they began dividing societies into groups of class, i.e. masters and slaves.

While some Spanish humanists made use of Aristotle's theory of natural slavery in defending Spanish *imperium* and *dominium*, Cardoso maintained that humans were created by nature in God's image, with rational faculties, and that *dominium* was not lost as a result of sin

(Capizzi 33).[28] Indeed, Domingo de Soto (1494 – 1560) asked whether Christians, in virtue of the natural right of *dominium,* could invade infidel nations, who seem to be natural slaves. His answer was no! (Davis, "Humanist Ethics and Political Justice" 202). I argue that Cardoso would agree with de Soto. If all humans have self-governance, how is it possible for *Nação* merchants to engage in slavery practices and slave trade? Though *Nação* jurists and thinkers considered all humans to be born *free* under *La Ley Natural* [the seven Noahide laws], due to wickedness, judges can mete out punishment to those who violate the universal code. Essentially, in the legal consciousness of Cardoso, slavery is either a result of sin or as punishment for a crime. In turn, slavery as a punishment influences the idea of who is *free*.

Another important *Nação* thinker was Abraham Israel Pereyra. He was a former Portuguese *converso,* also known as Tomás Rodríguez Pereyra, born in Vila Flor in Portugal in 1606, who came to Amsterdam circa 1644. He was a wealthy merchant, *asentista*, and successful financier, having served as the royal banker in Madrid for a time. Together with his brother Isaac, he established a long-distance trading firm and sugar refinery. He was among seven Amsterdam Jews that invested in the slaving endeavor on an English vessel from West Africa to Venezuela in 1647 (Klooster, "Jews in the Early Modern Caribbean" 6). Pereyra reverted to the Jewish tradition in Amsterdam as a mature man (Kaplan, "Spanish Readings" 322). Even though he lacked the mastery of the Hebrew language, his devotion to holy wisdom kept him pressing forward in piety (Kaplan, "The Portuguese Jews in Amsterdam" 47). He married into the wealthy Pinto family and became one of the leaders of the Portuguese Jewish community in Amsterdam

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[28] See Vitoria, De Indis et De Iure Belli Relections I. *Dominium fundatur in imagine Dei; sed homo est imago Dei per naturam, scilicet per otentias rationales; ergo non perditur per peccatum mortale*.

(Kaplan, "Spanish Readings" 337). Upon hearing that the messiah had arrived, he sold his house and planned to move to the Holy Land. He passed away in 1674.[29]

After publicly assuming his Jewish heritage, Pereyra authored two books on repentance and divine providence. In *Espejo de la vanidad del mundo* [Mirror of the Vanity of the World, printed by Alexandro Janse] (1671), he cites a number of classical sources to teach (ex) *conversos* how to change their ways and to revert to their ancestral faith and practice. Therein, one can find many theological ideas from Fray Luis de Granada's (1505 – 1588) writings, and ideas from the Franciscan mystic and theologian, Diego de Estella (1524 – 1578). He used their ideas in order to combat the heresy that was plaguing many Sephardim in Amsterdam, i.e. anti-rabbinic attitudes (Kaplan, "Spanish Readings" 338). Throughout the seventeenth century, some recently-reverted Jews sought to undermine rabbinic authority and even argue that rabbinic law was not necessary in the true worship of God. Like many *conversos* that reverted to the Jewish tradition in Amsterdam, Pereyra had internalized an entire library of ideas and doctrines on Greco-Roman law and Christian theology, and expressed them in Jewish confessional arguments. Indeed, he had appropriated Iberian Catholic texts for his rhetorical purposes (340-41).

Abraham Pereyra also conceived of a natural law theory via the philosophical discourse on morals, virtues, and natural law of the Classics, including: Cicero, Aristotle, Pythagoras, and Cleanthes. He uses these authors to relate them to Jewish philosophy, intercalating them with texts from the Hebrew Bible ("Espejo de la Vanidad" 69). His natural law theory was based on revealed positive law, as opposed to being based on human reason, as Aquinas had suggested

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[29] To view the primary sources visit

https://www.dutchjewry.org/portuguese_israelite_cemetery/popup.htm?../P.I.G./image/01079001.jpg
https://www.dutchjewry.org/portuguese_israelite_cemetery/popup.htm?../P.I.G./steen/01145002.JPG

("Summa Theologica", Q. I-II 90, Art. 4). Pereyra argued that brute animals are born with natural instinct, knowing what causes them harm, but humans must be taught (Pereyra 253). Therefore, humans cannot become virtuous through natural means, rather through the divine law of God. This statement demonstrates a direct attack against heretical Jews in Amsterdam who sought to undermine rabbinic authority.

Pereyra cites Mortera, stating "Plato and other philosophers made mistakes in regards to the universal order, living in the darkness of their imagination; only the Law of God as His light, teaches us how we should know Him" (82). Thus, revealed divine law is the vehicle to ultimate knowledge, and not human reasoning alone. Therefore, *La Ley Natural* is not sufficient for humans to know the will of God. Pereyra posits that the natural instinct in humans allows them to repent after having been chastised (47).

Furthermore, Pereyra maintains that natural instinct in humans, apart from all divine law and human law, leads children to honor, love, and fear their parents, as it benefits Nature, having received from them (384). In addition, he states, "No matter how many people are under an individual, that individual, as a child must demonstrate reverence towards his parents, not being exempted from *La Ley Natural*" (305). Pereyra's assertion is strikingly similar to de Vitoria's conception of *dominium,* "by natural law mankind is free save from paternal and marital dominion—for the father has *dominium* over his children and the husband over the wife by natural law" ("De Indis" II, para. 2). This denotes Pereyra's conception of *dominium* [rule] is related to *La Ley Natural*.

Subsequently, Pereyra was perplexed with how animals, being ruled by natural instinct, can exemplify more orderly behavior than humans, which are ruled by *La Ley de Humanidad*

[law of nations] (Pereyra 77-78). The juxtaposition between natural instinct and the law of nations demonstrates that he was familiar with convention of classifying *ius naturae et gentium* as either primary or secondary. The interchange of language indicates that animals are ruled by primary natural law, whereas humans are ruled by secondary natural law, or primary law of nations. Accordingly, Pereyra uses the term *instinct* for primary natural law, whereas he considers divine law to be secondary natural law, which leads humans toward repentance and virtue. Pereyra is in accordance with Bonaventure, de Vitoria, and de Soto, in that animals lack the capacity to reason, thereby excluded from spirituality and *dominium* (See section 4.2).

Abraham Pereyra's conception of *ius naturae et gentium* indicates that (1) primary natural law applies to animals, (2) secondary natural law applies to humans, (3) the Hebrew Bible contains natural law, and that (4) humans create laws for the betterment of society through the law of nations. Similar to Grotius who developed a *naturalized* law of nations, Pereyra also formulated a *naturalized* law of nations, based on the principles of the Hebrew Bible. One can then conclude that Pereyra did not concur with Iberian jurists that conceived of a strictly positive [*ius positivum*] *ius gentium*. In synthesizing the law of nations and nature, he followed the convention of Fernando Perez (intermediate condition of the law of nations). This is crucial in the debate on slavery and slave trade, since it allowed for the law of God to include aspects of natural and positive law. It goes to show that war and slavery are warranted within the divine revealed law. Finally, this formulation lends to the conclusion that war and slavery are the result of a violation of the natural law, i.e. the divine and universal seven Noahide laws.

Abraham Pereyra expounded on how humans are similar to plants in material aspects, to brute animals in the senses, to angels in cognition, and to God in *liberty* ("Espejo de la Vanidad"

4). This *liberty* refers to the unique privilege to choose between what is right and wrong, i.e. free will. It was granted to humans, being created in the *imagine Dei*. As such, having the capacity to reason and possessing free will also requires humans to be responsible for taking care of each other and the Earth (being a particular understanding of *dominium* and understanding of *imago Dei*) (*ibid*). Pereyra argued that when humans contemplate on the goodness endowed to them by the Creator, they would be inspired to copy the Divine example, thereby demonstrating benevolence to others (Pereyra 4). In a similar fashion, Menasseh b. Israel states "nature seems that man should be free, that their eyes will see so many wonders that they will readily incline themselves to virtue, and not to material mundane things and unrestrained passions" ("The Conciliator" 183). He agrees with Aristotle, proving that "man is free in all his actions, whether just or unjust" (215).

Notwithstanding, Pereyra criticizes the deplorable use of this *freedom* of many who indulge in their vain pleasures, comparing them to brute animals; they give up their use of reason (108). In this regard, Pereyra asserts, "we are made in the image of the active Creator-God and thus made to imitate God who takes responsibility for His creation" (Emon et al. 11). Essentially, *Imago Dei* anthropology served as the basis in arguing that humans possess free will. Ergo, as beings that exercise right reason, they are held accountable for their actions. In this sense, possessing *libertas* yields to having *dominium* (Nijman, "Grotius' *Imago Dei* Anthropology" 94).

7.5 The School of of *Ez Ḥaim: Nação* Legal Consciousness

This chapter included a reconstruction of the Roman concepts: *servitus*, *dominium*, and *libertas*, as related to the natural law theories of prominent *Nação* jurists and philosophers in seventeenth-century Amsterdam. At the beginning of this chapter I sought out to answer the question: How did *Nação* philosophers synthesize Talmudic jurisprudence and Iberian Roman law to conceive of *ius naturae et gentium*? Upon examining the philosophical writings of prominent *Nação* rabbis and thinkers in seventeenth-century Amsterdam, I laid out their conceptions of the law of nations and nature; the Talmudic notion of the universal seven Noahide laws are equated with natural law. I highlighted the fact that this natural law theory allowed for *dominium* [lordship and rule] and *servitus* [servitude and slavery] as a result of human transgression or a result of crimes. Ultimately, upon examining the legal conceptions of important *Nação* rabbis and thinkers, I demonstrated how they amalgamated "School of *Ez Ḥaim*" jurisprudence with Salamanca jurisprudence, thereby shaping their own legal consciousness, which was dominated by notions of *ius naturae et gentium* that were closely linked to the natural legal-thinking in the universities in Évora and Coimbra at the time. All of them equate the seven Noahide laws with the natural law.

With the exception of Abraham Pereyra who uses *Ley de Humanidad* in a few instances, Aboab, Mortera, and Cardoso always use law of nature or natural law. Their natural law theories have overtones of [*ius positivum*] positive law (*dinim*), which permit meting out punishment through tribunals, war, and slavery. Indeed, the legal linguistic convention at the time was to equate primary law of nations with secondary natural law. Essentially, *Nação* rabbis and thinkers

constructed similar theories to Dutch jurists around the same time [Refer to section 5.4]. The difference is that Grotius ascribed natural subjective rights to the VOC to exercise public power in the High Seas, whereas *Nação* jurists ascribed these very same rights to the *Nação*, as a polity in exile [Refer to section 6.5]. While Hebraic philosophy does not contain a natural law per se, *Nação* jurists and philosophers reworked the rabbinic concept of the seven Noahide laws into a Jewish version of natural law. Therefore, just as European jurists reworked Greco-Roman legal notions in the early modern period, so did *Nação* rabbis and thinkers follow suit.

Sections 7.2 and 7.4 examined the legal conceptions of Immanuel Aboab and Saul Levi Mortera, Isaac Cardoso, and Abraham Pereyra. They conceived of natural law through a synthesis of Salamanca School doctrines and rabbinic reasoning. Indeed, they call the seven Noahide laws *La Ley Natural*. This legal conception mirrors Fernando Perez's doctrine of the intermediate condition of the law of nations, being partially natural and partially positive law. The intermediate condition of the law of nations is rightly called natural law because of the linguistic convention at the time to call it secondary natural law, or primary law of nations.

Nação rabbis and thinkers conceived of *dominium* as mastery over oneself or mastery over others. Hence, it is either property or ownership. The idea of slaves as property form part of *La Ley Natural* as a result of human transgression, and not due to a natural condition. I also analyzed *libertas* in the legal consciousness of the *Nação,* having two meanings: one metaphysical and another physical. The former was heavily influenced by the legal thought of the "School of Salamanca," while the latter coalesced during the activities of the *Nação* in the Atlantic slave trade. I argued that although the "School of *Eẓ Ḥaim*" jurists maintained that all humans are born free [*liberi*], they tended to bar sub-Saharan *blacks* from these rights, due to the

Atlantic slave trade. Therefore, *libertas* was understood as being free from slavery. I also analyzed *libertas* in the legal consciousness of the *Nação,* having two meanings: one metaphysical and another physical. The former was heavily influenced by the legal thought of the "School of Salamanca," while the latter coalesced during the activities of the *Nação* in the Atlantic slave trade.

Section 7.3 argued that Menasseh's *Conciliator* played a critical role in legal and political underpinnings in the mercantile activities of the port cities of the Netherlands. The board of directors of the Portuguese Jewish community banned the printing of this monumental work, lest the privileges granted to them would be put in peril. Nevertheless, he circumvented the ban by way of Frankfurt and dedicated his work to key political-economic figures within the Dutch Republic. I argued that the *just war* theory in the Hebrew Bible, which he expounds on, links the natural law conception of the seventeenth-century *Nação* with the Protestant Christian understanding of contemporary "Israelites." Consequently, the synthesis between "fulfillment theology" and Grotius' justification of war, as a result of violating the natural law, produced an array of ideas, leading to the attack of the Portuguese ports in West Africa and the confiscation of their legal property, i.e. the slaves and slave ports.

Surely, the "School of *Eẓ Ḥaim*" contributed to Dutch Republic-Amsterdam legal debate on slavery and the slave trade in seventeenth-century. Overall, *Nação* jurists and philosophers equated the Noahide laws with the natural law, thereby linking Roman legal notions with *halakhic* notions. While, secondary natural law was equated with primary law of nations, the jurists from the "School of *Eẓ Ḥaim*" utilized *La Ley Natural*, in accordance with the Iberian legal convention at the time. Ergo, *Nação* legal consciousness sanctioned war and slavery under

the rights and responsibilities of *La Ley Natural*. When combined with Aristotelian natural law-thinking and the "Curse of *Ḥam,*" *Nação* jurists are able to develop a social order involving a dichotomy of individuals: Jews belonging to a higher order and non-Jewish *black* Africans belonging to a lower order, which can become enslaved by the former. This racial difference influences law and morality well into the postcolonial time period.

8.

The Emergence of *Nação* Legal Consciousness

"The problem is not changing people's consciousnesses—or what's in their heads—but the political, economic, institutional régime of the production of truth."

(Foucault 171-2)

8.1 Introduction

I have attempted in the largest part of this book to explore the legal consciousness of the seventeenth-century *Nação* [Hebrews of the Portuguese Nation] in Amsterdam, vis-à-vis the slavery and slave trade debate. In the introduction, I put forward that the Portuguese Jewish community contributed to the Dutch Republic slavery and slave trade legal debate. The intra-communal discussions within the *Talmud Torah Eẓ Ḥaim* Seminary and the extra-communal interactions with the Amsterdam and the Hague city authorities sufficed to substantiate my claim. However, this contribution was not recorded in the history of international law until this time.

Inspired by Yirmiyahu Yovel, I chose to focus on the *Nação* from the perspective of the "other within" the Euro-Christian hegemony. In utilizing the lens of the "other within," I argued that while European Christians were at the forefront of legal debates and colonial expansion, the Portuguese Hebrew Nation also contributed to that end, via their trade networks and their literature from the *Talmud Torah Eẓ Ḥaim* Seminary. The highlighting of these marginalized contributions was directed by two questions: How did *Eẓ Ḥaim's* Jews contribute to the legal-political discussions of *ius naturae et gentium* as the "other within" the Amsterdam-Dutch Republic debate on slavery and slave trade? Furthermore, how can an emphasis of these narratives make the *Nação* more visible in the history of international law than it is today?

Iberian Jews which were forcibly converted to Christianity between the fourteenth and fifteenth centuries, thereby becoming the "other within." As New Christians [within] they gained access to political and economic positions which were refused to them a Jews, prior to their conversion. However, as *conversos* [*The Other*] they were often time stigmatized by Old

Christians as having tainted blood, and branded as disloyal subjects of the Spanish Catholic Empire. This liminal identity [“other within”] afforded them to forge a global trade network with their Sephardic brethren throughout the Ottoman Empire, Western Europe, and the New World. *Conversos* controlled the *asientos* [contracts permitting the sale of slaves within the Spanish colonies] in the sixteenth century, therefore dominating the slave trade in Seville, Lisbon, and the Atlantic islands.

Given this circumstance, their material contribution to the slavery and slave trade political-legal debate forced several legal, ideological, and linguistic notions to change in order to accommodate the political-economic pursuits of the Habsburg Empire. After the devastation of Iberian Jewry at the end of the fifteenth century, the *Nação* sought ways to not only rebuild itself, but also to establish the messianic kingdom in the Holy Land. Accordingly, they instituted a global financial network, with Jerusalem as its capital. Bearing this in mind, *Nação* communities in Amsterdam, Brazil, and Suriname sent monetary assistance to their brethren in Jerusalem. In due time, the presence of Sephardim in Jerusalem grew to a majority, thereby revitalizing the community as a center of Jewish scholarship.

Simultaneously, *conversos* in *las tierras de idolatria*, i.e. the Iberian mainland, reached high levels within the clergy and became faculty members at universities in Salamanca, Alcalá de Henares, Coimbra, and Évora. As such, they participated in legal and theological debates concerning the law of nations and nature. In the seventeenth century some *conversos* reverted to the public practice of their ancestral heritage in the Dutch Republic.

After establishing the *Talmud Torah Eẓ Ḥaim* Seminary in Amsterdam, they translated Jewish jurisprudence [*halakhah*] into Roman jurisprudence by synthesizing the two legal

traditions. The alchemy of Christian theology, Greco-Roman law and philosophy, and Jewish law and philosophy is what characterized the scholarship which emerged from the *Talmud Torah Eẓ Ḥaim* Seminary. Rabbis and students were not only well-versed in Hebrew literature, but also the Classics and Catholic canonic literature. The product thereof is what I coined as *Nação legal consciousness*.

8.2 *Nação* Merchants and Rabbis Challenge the "Free Soil" Tradition

Throughout the course of the seventeenth century *Nação* merchants and rabbis challenged the pre-established notions in the Netherlands. It is precisely in highlighting the contradictions and conflicts that the agency of the *Nação* becomes visible. The municipality of Amsterdam had established (1) that slavery was not allowed on Dutch soil, and (2) that slavery as an institution was only allowed within the context of *ius gentium*, but not *ius naturale.* Dutch jurists*,* Hugo Grotius, Willem de Groot, Ulrich Huber, and Cornelius van Bynkershoek agreed the *slavery* was possible under the tenants of *ius naturale.* However, Bynkershoek agreed that the institution of *slavery* opposed the *ius naturale* and was only permissible in accordance to the law of nations. Bynkershoek was the only jurist to explicitly acknowledge that the Dutch engaged in slave trading in the East and West Indies. At the time when Portuguese Jews began to settle in the Netherlands, Dutch policy regarding slavery held that any enslaved person entering the Netherlands was *free*. The understood legal notion was called the "free soil" tradition.

The Great Council of Mechelen decided in the sixteenth century that enslaved peoples entering the Low Countries were to be freed, regardless of religion. This idea was developed by Dutch jurists throughout the course of the sixteenth and seventeenth centuries. Within the

theological circles of the United Provinces, the slavery and slave trade activities of the East India Company [VOC] and the West India Company [WIC] provoked a split between the followers of Johannes Cocceius and Gisbertus Voetius.

The Cocceians justified the institution of slavery based on Biblical, Rabbinic, and Roman law. On the other hand, the Voetians argued that slavery was equivalent to stealing. The political-economic connections of the Cocceians allowed for their interpretations of the Bible to take the leading role in the debate. At the same time, Grotius had introduced a crucial legal innovation, wherein he ascribed natural rights to private entities. In turn, the VOC and WIC acted as public authorities, in the name of the Dutch Republic. Even though Grotius was against the practice of slavery, trading companies constructed arguments with his legal ideas to engage in war with the Portuguese and confiscate their property, including slaves and slave trading posts (in accordance with *ius gentium*). Ergo, the economic endeavors of the guilds in the port cities of Friesland, Holland, and Zeeland overruled any argumentation against the practice of slavery and slave trade in the Dutch colonies.

At the turn of the sixteenth century the city leaders of Middelburg recalled the "natural liberty" of African slaves captured from a Portuguese vessel by Dutch skipper, Melchior van den Kerckhoven. Decades later, this precedent held no weight in other similar incidents in Amsterdam. Indeed, the notion of *res dominica* [ownership of goods] fashioned the concept of *libertas* [freedom]. Fundamentally, plantation owners in the Dutch colonies, who enjoyed tax-exemption for a stipulated time, were considered to be *free*, while their slaves—African *blacks*—were owned by them.

Even though some *Nação* merchants manumitted their African slaves, the reality in the Netherlands and the West Indies was that *black* or *mulatto* persons had been enslaved or descended from enslaved mothers. According to *halakhah*, manumitted slaves became Jews and formed part of the *Nação*. Crucial to the legal debate concerning slavery and slave trade in seventeenth-century Amsterdam was the rabbinic understanding of slavery *halakhah* within the *Eẓ Ḥaim* Seminary.

I argued that the moral lens by which the *Nação* operated in the slave trade was shaped by *halakhah*, as reflected in the writings of Abraham Pharar, Menasseh b. Israel, Isaac Aboab da Fonseca, and Isaac Athias. These scholars utilized their command of language in order to innovate *halakhic* notions that did not exist before: s*ervo de Israel* [servant of Israel]*, escravo não-banhado* [non-immersed slave]*, siervo pagano* [pagan slave]*, pagano idólatra* [idolatrous pagan]*,* and *esclavo* [slave]. Whereas the Ferrara Bible [official Spanish translation used by Sephardic Jews at the time] translates the Hebrew עֶבֶד, as *siervo* [servant]*,* in the literature of *Eẓ Ḥaim*'s jurists, one finds an array of translations, depending on the status of the slave.

Those slaves that had been circumcised and ritually-immersed held a quasi-Jewish status [*servo de Israel, servo bahado*], until they were emancipated as full-fledged Jews. On the other hand, slaves that had not been ritually-immersed [*siervo pagano, escravo não-banhado, esclavo*] had the status of non-Jews. I posited that the Atlantic slave trade influenced the understanding and implementation of *halakhah*, since prior to that time, Jewish slave owners accustomed to have domestic servants and freed them after 12 months of service.

However, the lucrative sugar cane industry in the West Indies required not only domestic servitude in facilitating a comfortable lifestyle, but manpower on the plantations. As one

contextualizes slavery *halakhah* from the Iberian medieval time period until the early modern period in the Dutch Republic, it is evident that Jewish plantation slave owners operated with new understandings of *halakhah.* No longer did they have to emancipate their slaves, nor try to convince them to become a part of the Jewish Nation.

Cases involving *Nação* merchants entering the Netherlands [sections 1.1, 7.2 and 7.4 discuss the cases in detail] with their servant/slaves highlight how *Nação* jurists and thinkers mobilized linguistic and legal conventions stemming from the "Salamanca School," Évora and Coimbra. Once they established themselves in Amsterdam, they synthesized Iberian legal notions with notions of Jewish slavery law. Prior to the odious trade, West African peoples were punished by local monarchs for their crimes in a number of ways. However, slave trade with Europeans became the primary punishment for all types of crimes, and even included innocent persons.

Before the sixteenth century, the *the law of the land* in Spain and Portugal was that enslavement was the result of a *just war*. While natural law theories were ubiquitous in the early modern period, humanists reshaped Aristotle's theory of *natural slavery* to fit the socio-economic context [discussed in Chapter 5]. The involvement of the *Nação* in the Trans Atlantic slave trade challenged the legal conventions put forward by Luis de Molina, Fernando de Oliveira, and Francisco Suárez. These jurists rendered the African slave trade illegal and immoral.

Eẓ Ḥaim's jurists and philosophers contributed to the understanding of *ius naturae et gentium* through their participation in the slavery and slave trade debate *Nação* scholars: Immanuel Aboab, Saul Levi Mortera, Isaac Cardoso, and Abraham Pereyra reworked the Roman

legal terms—*dominium, servitus, libertas*, and *ius bellum,* as they related to the slavery and slave trade debate. What is clear in their writings is how they conceived of natural law by combining Iberian rabbinic reasoning with scholastic legal reasoning from the "School of Salamanca."

Indeed, they created their own outlook of divine voluntarist law, which was based on the Talmudic notion of the seven Noahide universal principles. In doing so, they called it *La Ley Natural*, while at a foundational level, containing elements of positive law stemming from human volition. Thus, I argued that *La Ley Natural,* as conceived by *Nação* rabbis and philosophers resembled Fernando Perez's doctrine of the intermediate condition of law of nations [partially natural and partially positive] very closely. Moreover, I posited that when the aforementioned *Nação* scholars utilized the term *Ley Natural,* they conformed to the convention at the time of calling the primary law of nations by secondary natural law [*naturalized* law of nations].

Aboab and Cardoso held that *dominium* was the mastery over oneself [sovereignty] or mastery over others [ownership of property/lordship]. Within this legal framework, slaves were considered to be property of their masters, due to human transgression. Ergo, even though slavery formed part of *La Ley Natural,* it was not due to a natural condition of the individual. Furthermore, even though all human beings are born *free*, the Atlantic slave trade affected the legal understanding of the *Eẓ Ḥaim* scholars, such that the natural-born *freedom* of *black* Africans was restricted. In this context *libertas* was defined by being *free* from slavery, in virtue of either being born [*ingenus*] a *white* Dutch Reformed Christian or Jew, or having been emancipated [*liberti*] from it.

Nação jurists conceived of *just war* theory within their legal consciousness. Menasseh b. Israel made a great contribution to that effect in his monumental work, *Conciliator,* which proved to be controversial due to his political connections with the directors of the West India Company and the Magistrates of Holland and Friesland [Chapter 7]. In fact, the communal leaders of *Eẓ Ḥaim* did not approve of this work. To their dismay, he published a Latin version in Frankfurt and disseminated among the elite class throughout the Dutch Republic.

I postulated that Menasseh's *just war* theory provided Dutch theologians with material that connected natural-law thinking [*La Ley Natural*] with the Protestant theological notion of supersessionism [Replacement theology held by Christians in which the covenants between the Jewish People and God are superseded by a new covenant through Jesus Christ]. In this scenario, the aforementioned Dutch leaders understood that as the *New Israel,* they could confiscate the Portuguese slave ports and systems of slavery in West Africa for having violated the Law of Nature.

Ultimately, the scholars from the "School of *Eẓ Ḥaim*" synthesized Roman legal notions with *halakhic* notions. It can be concluded that their conception of *La Ley Natural* was divine, yet partly natural (human reason) and positive (human volition). Ergo, in the legal consciousness of the *Nação*, war and slavery are governed by *La Ley Natural.*

8.3 How Does This Study Contribute To The History of International Legal Thought?

At the beginning of this dissertation I stated the claim that the contribution of the Sephardim in the slavery and slave trade legal debate was overlooked, due to their ethnoreligious

identity. In saying this I am careful not to succumb to the misuse of anachronism, and labeling legal historians as anti-Semites. Indeed, Norman Roth argues that many writers [Jewish and non-Jewish] use the label of "anti-Semitism" for any "real or imagined manifestation of anti-Jewish sentiment in any period of history" (229). He is adamant that this is anachronistic on two accounts: (1) because the term and the concept did not come to emerge until the nineteenth century, and (2) in a descriptive sense because it refers to the hatred of the Jewish people because of imagined "racial" characteristics which are deemed to be inferior or subversive.

Nonetheless, there has been a lacuna in the field of intellectual history, vis-à-vis the Sephardim's role in early modern European legal discourse. Nineteenth-century Protestant legal historians viewed themselves as progressing from freedom from the Catholic Church. Thus, the narratives of ethnic and religious minorities were not included in the history and development of international law.

Martti Koskenniemi puts forward that "All significant history is inspired by contemporary concerns and carried out through the lenses provided by the present… a history from which we learn nothing is a waste of time" ("Imagining the Rule of Law" 20). He further puts forward, "the point is not to write 'global history' in which everything is visible-and impossible undertaking--but to diminish the power of blindness, and thus to act in a more acceptable way in the future" ("Histories of International Law" 21). Whereas some scholars have argued that international law began as a European Christian *civilizing mission*, herein, I have put forward that the *Nação* contributed to that end as the "other within" this hegemony.

In 1958, Shabtai Rosenne argued that the historical evolution of public international law was essentially the product of European Christian civilization, and part of Western civilization. He claimed that the Jews were not recorded as active participants in its development and emphasized that there was no attempt to reconcile or include *halakhah* with international law. Rosenne maintained that Jewish legal thought had a lot to contribute to the solution of problems which public international law dealt with. He substantiated his claim by demonstrating how medieval Jewish works were crucial to Christian Hebraists, such as Grotius and Selden. Finally, he concluded that the modern system of international law cannot ignore other aspects of international law which appear in Jewish sources (119-49).

Similary, Betina Kuzmarov argues that Jews were constructed as the "Other" through the appropriation of Jewish law by international legal scholars. Accordingly, she claims that the image of Jewish law can be "recaptured by critical scholars today" (48). Her fundamental premise is that Jewish law cannot be viewed as natural law because it is not meant to be universal, but personal ethic bound by an adherence to a covenant with God. In other words, Jewish law is divine voluntary law which is given by God's will through Moses. As such, Kuzmarov maintains that the Jewish tradition is unique, as an internally rule-bound legal system (56). In other words, Jewish law is a "nomocratic" system of law, applicable to the Jewish people alone (*ibid*).

Nação legal consciousness emerged as a response to the challenge of "recapturing the Other," through a synthesis of the theoretical frameworks utilized by Arnulf Becker-Lorca and Liliana Obregón. Becker-Lorca and Obregón approach international law by contributing to the history of its development through the production of subaltern narratives. Becker-Lorca argues

that semi-peripheral, non-Western lawyers, adopted international law and, while simultaneously internalizing European legal thought, and contributing to the development of nineteenth-century international law. In turn, they added to it a non-Western legacy.

In a similar fashion, I have sought to highlight the narratives and legal ideas of *Nação* jurists and philosophers in Amsterdam, and how they mobilized legal principles within and without their institutions. In doing so, my purpose has been twofold: (1) to challenge preconceived notions about the early modern European consciousness in regards to slavery and slave trade; and (2) to acknowledge agency of the *Nação*. While global histories of legal thought typically begin with philosophical traditions stemming from the Stoics, Cicero, and Grotius, herein I assumed the lens of Moses and the Prophets, Talmudic jurists, and Maimonides, peaking with *Nação* lawyers and philosophers. In this sense, *Nação legal consciousness* is my attempt to grant Jews agency in the development of the history and theory of *international* law. It is my hope that *Nação legal consciousness* will serve as a model in affording other minorities agency and emancipation in international legal history and theory.

Placing the archival data and relevant texts within their political, ideological, economic, legal, and religious contexts has proven to be useful in understanding not only the meaning of what was said or done, but also what the actors in question were doing in the legal debates with their linguistic utterances. That is where the innovation and the change of conventions were visible, permitting me to see the manifestation of agency. Ultimately, the Cambridge School method allowed me to reconstruct the fundamental concepts and abiding questions of morality, politics, religion, and social life in the seventeenth-century Dutch Republic and its colonies.

On this basis, I was able to examine the linguistic dynamics and interactions. The descriptive-evaluative notions [*servitus*, *dominium*, *potestas*, *libertas*, *siervo*, *escravo*, and the biblical narrative between Noah and *Ḥam*] were reworked to justify the systematic enslavement of human beings. This task was posed with the challenge of focusing on the arguments and examining what the texts and actions have to tell us about the perennial issues at stake.

Nação legal consciousness highlights the changes and contributions of Amsterdam's Portuguese Jewish community to the seventeenth-century Dutch Republic debate on slavery and slave trade in three major ways. First, *Nação* rabbis introduce Sephardic literature and thought to Dutch theologians. They intervene in the theological debate on slavery by providing a justification for the enslavement of *black* Africans via the myth of the "Curse of *Ḥam.*" Moderate Dutch Calvinist theologians then utilize this idea to construct *whiteness* and *blackness* within Dutch culture. In doing so, they deprive *black* Africans of their *dominium* [self-governance], *libertas* [freedom], and *Imago Dei* [divine image].

Next, *Nação* merchants continuously bring enslaved *black* Africans to Amsterdam, taking issue with public policy which understood that there was no slavery in the Netherlands. The so-called "free soil" tradition was put to the test various times. It was not until the mid-seventeenth century that the city of Amsterdam issued an official ruling on the prohibition of slavery. At that time, the *Eẓ Ḥaim* communal leaders establish a ruling that no *negro* or *mulatto* will be circumcised nor immersed in ritual baths for the purpose of entering the Congregation of Israel. Consequently, this ruling was implemented among the daughter communities throughout the Dutch colonies, thereby contributing to the construction of racial difference. In turn, *black*

Africans on the plantations were destined to become perpetual slaves. Plantation slavery economy contributed to a moral consciousness which was at ease with slavery abroad, and discomfort in the Netherlands.

Finally, *Nação* jurists and thinkers influence the legal debate on *ius naturae et gentium*. Legal discourse previously held that prisoners of war could be held captive and enslaved in accordance with the law of nations. However, chattel slavery appeared new to the scene and forced jurists to reconsider preconceived notions of *Imago Dei*, natural law, and *dominium*. *Nação* jurists make it possible to reconcile slavery with natural-law thinking. The seven Noahide laws, as put forward in the Talmud, provided the legal parameters to establish a universal code, similar to de Vitoria's and Grotius' conceptions.

In the case of de Vitoria, natural law as a universal code permitted the Spaniards to declare war on the New World Indians. Grotius' universal natural law permitted the VOC to declare war on the Spanish in the East Indies. The *Nação* intervenes in this debate by reinforcing the natural law theories of de Vitoria and Grotius. The ambiguities and questions raised by Grotius' notion of *servitus in ius naturale* [perpetual servitude] are answered within the legal understanding and *modus operandi* of the *Nação.* In creating the *servo de Israel* and *escravo não-banhado*/ *siervo pagano,* the legal consciousness of the *Nação* allows slaves in accordance to *La Ley Natural* to be sold as property and to be enslaved perpetually. Although *servitus* derives from human legislation and custom, it acquires natural and universal character. *Nação legal consciousness* bridges the gap between *ius naturale, ius gentium*, and divine law, where *servitus* is in agreement with the natural law of nations.

One can no longer claim that slave trade in the West Indies during the early modern period was the sole production of a European consciousness. It involved a very complex network of actors and events: African-Arab merchants, African monarchs, judges and arbitrators in the Caribbean, Spanish and Portuguese monarchs, *asientistas* in Spain, insurance lawyers in Flanders and the Netherlands, European guilds and investors, *lançados* in West Africa, government officials across European cities, Christian preachers and jurists, and rabbis and Jewish philosophers. This was a collective collaboration which shaped an entire era. What I have presented in *Nação legal consciousness* entails a micro-history of selected actors who maneuver themselves in and out of Europe through the odious trade.

Nação legal consciousness brings to light the dynamics between politics, law, economics, and religion. Koskenniemi asserts, "International law is a process of articulating political preferences into legal claims that cannot be detached from the conditions of political contestation in which they are made" ("The Politics of International law" 221). The focus on religion is crucial, being that the world-vision of the people at the time was based on it. When looking at slavery and slave trade in the early modern era through the lenses implemented in this study, one can see that there are key factors: the Fall of Constantinople in 1453, the Protestant Reformation, the Spanish and Portuguese Inquisitions, the Shabbethai Ẓebi messianic movement, and Christian millenarianism. Each one of these factors played a role in the trafficking of people across the globe. Law has been implemented as a tool to promote a wide assortment of "religious, culturalist, and ethical, or economic ideas and arguments" (Banerjee and Lingen 1-4). Often time, the tension between politics and religion was mended by law, whether a dissenting minority agreed or not. Undeniably, in the early modern period, large parts of Europe were

defined by state formation, via the constitution of state power by the agency of law. As a Jewish polity in exile, the *Nação* developed its legal consciousness in search of political autonomy and emancipation.

In writing this intellectual history, I hope to open up a critical space which will lead to dialogue between past and present international legal thought. Consequently, we should question our contemporary conceptions and political sensitivities, and how they shape our morals and ethics. My goal has been to tackle Eurocentrism and the construction of racial difference. Moreover, this study supports the much argued claim that international law developed to a very large extent, out of the colonization of non-European territories. Without this context, *Nação legal consciousness* would have missed the political, *halakhic,* and linguistic innovations that emerged out of Amsterdam and the Dutch colonies. Furthermore, the production of historical knowledge is never neutral and is always political. Without a doubt, even this work represents a political exercise—to bring out the voices of *Nação* lawyers and thinkers. Finally, *Nação legal consciousness* reminds us not to forget the dark past of European trade wars and slave trade and their justifications. Unquestionably, the "School of *Eẓ Ḥaim*" merits its place alongside the "School of Salamanca."

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Selah

SUMMARY

In the seventeenth century, some *conversos* living throughout Western Europe, who had been either trained in the School of Salamanca or influenced by it, came to the Dutch Republic in search of religious freedom, where they reverted to the open practice of the Jewish tradition. A select few of them became scholars of rabbinic jurisprudence, while retaining their knowledge of Christian theology. As residents and foreigners in the Dutch Republic, rabbis and philosophers synthesized Greek philosophy, Iberian Roman law, rabbinic reasoning, and Jewish and Christian philosophy, in light of the socioeconomic context of the Dutch Republic, to produce literature on behalf of reverted Jews. At the bedrock of *Nação legal consciousness* lies the jurisprudence of the *Nação* in seventeenth-century Amsterdam.

The main focus of this research project is on the pressing issue: How did the *Nação* in seventeenth-century Amsterdam contribute to the legal-political discussions of *ius naturae et gentium* in the Amsterdam-Dutch Republic debate on slavery and the slave trade? While many have undertaken research on the development of the *ius naturae et gentium*, the contribution of the Sephardim in Amsterdam is insufficiently researched. The aim of this dissertation is to add to the discussion by examining the seventeenth-century Portuguese Hebrew Nation in the Dutch Republic and its colonies, whose ideas of *servitus*, *dominium* and *libertas* were central to the justification of the Dutch Atlantic slave trade, as participants in, and contributors to the law of nature and nations. The goal is to reveal how the *Nação* in seventeenth-century Amsterdam participates in and contributes to the thinking, reasoning, and arguing about slavery and the slave trade, via the language, concepts, and notions of the time, which was dominated by the language o*f ius naturae et gentium.*

Chapter 1—Introduction

The first chapter introduces the main concepts of the research framework through which the thesis examines how the *Nação*, as a community of Iberian Jewish exiles and refugees gain entry to the seventeenth-century Dutch Republic slavery and slave trade debate.

The chapter begins with a brief sketch of the so-called "free soil" tradition, which existed in the Netherlands since the medieval time period. *Nação* merchants challenge the existing legal convention on various occasions by bringing slaves to the Amsterdam throughout the first half of the seventeenth century. The next part of the chapter explains why this study is important to the scholarship of the history of international legal thought and practice. Then, the chapter introduces the debate on *ius gentium et naturae* and the *naturalized* law of nations, as put forth by Peter Haggenmacher and Annabel Brett. The chapter ends by establishing the corpus and methodology. This study implements the Cambridge School of intellectual history, focusing on the Roman legal terms: *ius gentium, ius naturale, servitus, dominium*, and *libertas*. This scope and lens permits for the reconstruction of micro-narratives of the actors involved.

Chapter 2—The Birth of the *Nação*

This chapter introduces the *Nação* community. It includes a macroscopic historical account of how the *Nação* emerged within the Iberian Peninsula and settled in Amsterdam. The concept "the other within" is introduced. Despite living within Spanish society, Jews were considered to be the "Other." After the forced conversions to Catholicism from 1391 until 1492, Jews became the "other within," Spanish society, albeit as "New Christians." The chapter argues that their double lifestyle granted them access to political and religious official positions. Also, the *Nação* created a trading network between Portugal, Brazil, and the Netherlands in the sixteenth and seventeenth centuries. The commercial route between Recife and Amsterdam allowed for Portuguese *conversos* to openly practice the Jewish tradition in Brazil. Already in the sixteenth century, the *Nação* dominated the slave trade between Western Europe, Africa, and the Atlantic islands. By the time that the *Nação* settles in Amsterdam, they have a ready-made global trade network established. This allows them to be received with favor in Amsterdam. This chapter ends with a brief history on how the *Talmud Torah Ez̤ Ḥaim* community was founded in Amsterdam and what was taught there.

Chapter 3—The Curse of Ḥam Theory in the Ibero-Dutch Context: Sephardic Rabbis and Dutch *Predikanten*

This chapter contextualizes the idea of the biblical Ḥam to examine how the Sephardim (before the fifteenth century) and the Dutch (seventeenth century) came to identify Ḥam with sub-Saharan Africans. Rabbinic texts written between the eleventh and sixteenth centuries and seventeenth-century Dutch Christian texts are examined. The chapter aims to substantiate the claim that the the "Curse of Ḥam" theory did not exist in the early seventeenth-century Dutch Christian context, and that Dutch Christian Hebraists appropriated Sephardic thought through rabbinic literature to generate a theological justification for the enslavement of black Africans. The chapter claims that after the mid-seventeenth century, this ideology became widespread within the Netherlands, to the effect that Dutch jurists mobilized pro-slavery arguments under the influence of the "Curse of Ḥam" theory. Ultimately, this destructive myth (as an amalgamation between Aristotelian natural slavery and Jewish, Christian, and Islamic theology) contributed to the legal debate on *servitus*, *dominium* and *libertas* in the Iberian sixteenth-century context and the seventeenth-century Dutch Republic context.

The chapter begins with an analysis of the biblical origin of the myth of the "Curse of Ḥam" and how it was disseminated by European travelers. Then, there is a survey of the myth among Sephardic Jews. This survey goes through the commentaries of Rashi, Abarbanel, Radak, and Ibn Ezra. The chapter then develops with an account of the Hebrew Republic tradition in the Netherlands and how Jewish literature influenced Dutch theology. There is a section on partnerships between rabbis and Dutch Christian Hebraists. The chapter ends arguing that Dutch theologians and jurists appropriated the "Curse of Ḥam" through Sephardic thought.

Chapter 4—The Iberian Legal & Political Ideas on Slavery and Slave Trading: Fifteenth and Sixteenth Centuries

The aim of this chapter is to reconstruct the theological, legal, and political context concerning the practice of slavery and slave trade in early modern Iberia. This is the context in which the *Nação* developed its modus operandi in African and Asian slave trade. Legal conventions, around *servitus, dominium*, and *libertas*, were ever-developing in Spain and Portugal in the sixteenth century. In the sixteenth century, after almost two centuries of stagnation, the debate on law of nations and nature had been revived by Francisco de Vitoria and other Spanish Scholastics. At that time, *converso* merchants dominated the Atlantic slave trade, commanding a network that connected Iberia, Africa, and the West Indies.

This chapter focuses on the *imago Dei* idea, i.e., that all humans are created in the image of God, thereby endowed with the ability to make rational and right choices. The chapter argues that prior to the sixteenth century Iberian scholastic thought associated *imago Dei* with the Roman legal notions, *dominium* and *libertas*. The opening section gives an account of *libertas* and *dominium* within the Greco-Roman context and how it evolved during the Renaissance and in the early modern time period. The climax of this chapter includes the natural slavery debate of the *New World Indians.* Then, the chapter moves to the debate on *servitus* and *imago Dei* in the Portuguese context. The legal and theological opinions of Luis de Molina, Fernando de Oliveira, and Francisco Suárez on the slave trade are presented thereafter in order to highlight the change in meanings and understandings previously held before the Atlantic slave trade. Spanish and Portuguese ordinances dealing with slavery are discussed in order to substantiate the thesis' argument that racial difference was constructed through language and law to justify the systematic enslavement of dark-skinned Africans. After the Reconquista (722–1492), moro [Moor] as an idea was equated with slavery within the Spanish Christian context, and thereafter, against the background of the Atlantic slave trade, the negative attitudes toward the Moors were imputed on all dark-skinned Africans. The chapter revisits the myth of the "Curse of Ḥam" and how it contributed to the depreciation of dark-skinned Africans and to their association with

enslavement. The argument is that this destructive myth contributed to the construction of racial difference which influenced Iberian legal consciousness. Thus, the Spanish colonial codes and councils render *negros* and *mulattos* to be heathens and slaves, thereby lacking the divine image.

Chapter 5—The Seventeenth-Century Dutch Republic Legal &Theological Ideas On Slavery and the Slave Trade

This chapter continues with the legal, political, theological, and ideological debate concerning slavery and slave trade within the seventeenth-century Dutch Republic. Each with their own interests, Sephardim and Moderate Calvinists constructed pro-slavery and slave trade arguments in such a manner that they were accepted by the authorities in the port cities of Holland, Friesland, and Zeeland. The aim of this chapter will be to reconstruct the debate on slavery and slave trade, in order to understand how the *Nação* intervenes within the dimensions of theology and law. Time after time, merchants came into the different port cities of the Dutch Republic with slaves, which caused much upheaval. The consensus understood that slavery was not practiced in the Netherlands due to the "free soil" tradition. However, the activities of the VOC and WIC thereafter, challenge this consensus. By the 1630s, the WIC grants charters allowing slave trade in New Amsterdam.

The chapter begins with narratives which give accounts of the participation of Dutch and Sephardic merchants in slave trading. The next section introduces the political-religious context, bringing to the forefront the confrontation between Johannes Cocceius and Gisbertus Voetius, the role of the “Curse of Ḥam” myth, and their respective schools of thought on the slave trading activities of the Dutch East India Company [VOC] and Dutch West India Company [WIC]. Therein, an analysis of a few sermons and letters build the context concerning the theological justifications for and against slavery. Afterwards, the chapter discusses how these justifications informed the legal discourse at the time.Then, there is a reconstruction of how *dominium, servitus* and *libertas* were understood by Dutch jurists. The chapter ends with an examination of the legal debate on *ius naturae et gentium* and *servitus* in a just war, through the lens of Hugo de

Groot, Willem de Groot, Ulrich Huber, and Cornelius van Bynkershoek. Overall, the chapter argues that the Atlantic slave trade influenced the debate on the law of nations and nature within the Dutch Republic. Grotius' concept of *servitus in ius naturale* was an innovation at the time. As such, even though he was against Aristotelian natural slavery, he did accept that individuals sell themselves into slavery. However, Grotius did not clarify if these slaves could be sold or if their children acquired the enslaved status *ad perpetuam*. By the end of the seventeenth century, theologians and jurists amalgamated ideas and notions to forge Dutch legal theory, such that slavery and slave trade became an integral part of the culture and economy.

Chapter 6—The *Nação* in Amsterdam: Intra-Communal Discussions on Slavery and Slave Trade

This chapter continues with an examination of *Nação* rabbis' *halakhic* rulings in the seventeenth century. It argues that a study on their *halakhic* discourse is crucial for understanding their legal consciousness, since it shaped the moral lens through which they operated and how their legal consciousness was shaped through it. This chapter entails an analysis of relevant texts which I chose in order to reconstruct the seventeenth-century context concerning Jewish attitudes and slavery practice. The chapter focuses on the terms: *siervo*/*servo* and *esclavo*/*escravo* and how the Nação utilizes them to create different meanings and understandings. As such, they manage to circumvent the "free soil" tradition in the Netherlands.

The first section highlights the *halakhic* commentaries that *Nação* rabbis used in Amsterdam and the New World in order to justify the enslavement and trade of black Africans across the Atlantic. The second section explores the linguistic conventions used by the *Nação* regarding slavery. The third section explores the communal stance regarding the manumission of slaves within the *Nação* community in Amsterdam and abroad. The fifth section details how Jewish messianism in the seventeenth century was a motivating factor for the use of slaves on plantations. Funds were collected from all the *Nação* communities and distributed to the poor of Jerusalem. The chapter argues that some of these funds came from New World plantation slave labor. Overall, this

chapter demonstrates how Eẓ Ḥaim's Jews contributed to the legal-political discussions of *ius naturae et gentium* within the Amsterdam- Dutch Republic debate on slavery and slave trade

Chapter 7—Extra-Communal Discussions: *Nação* Legal Consciousness in the Slavery and Slave Trade Debate

This chapter substantiates my overall argument that as the "other within," the *Nação* contributed to the development of early modern international law by mobilizing legal notions: *dominium, servitus,* and *libertas* to justify their position regarding slavery and slave trade. This chapter brings out *Nação* rabbis, philosophers, and merchants out of the periphery, and grants them a central place in the development of *ius nature et gentium*. This chapter explores how *Nação* rabbis and thinkers conceived of *servitus*, *dominium*, and *libertas* as governed by *La Ley Natural* and *La Ley de Humanidad*. These rabbis and philosophers conceived of a natural law theory based on the Talmudic notion of the "Seven Noahide laws." Just as legal historians speak of the "School of Salamanca" moral theological tradition, whereby *ius gentium et naturae* are mobilized and developed, it is possible to speak of the moral theological thought of the "School of *Eẓ Ḥaim*."

The aim of this chapter is to detail how Iberian scholasticism was amalgamated with rabbinic ideas in Semitic languages, and how the latter were then translated in Iberian languages for the sake of *conversos* who reverted to the open Jewish practice in Amsterdam. The first section of this chapter examines *Nação* natural law theories and conception of ownership, liberty, and freedom from 1600 to 1630. There is a focus on the natural law theories of Immanuel Aboab and Saul Levi Mortera. The next section discusses the just war theory of the *Nação.* There is a special focus on Menasseh ben Israel. This section examines Menasseh's *Conciliator*, which he had dedicated to the directors of the WIC, and the Magistrates of Holland and West Frisia. The argument is that Dutch politicians studied it and understood that the Hebrew Bible contained the moral theological grounds for just war. The chapter makes a claim that in synthesizing Grotius' *Mare Liberum* and *De Belli Ac Pacis* and Menasseh's Conciliator, WIC investors, merchants, and

brokers had a ready-made legal justification for the systematic enslavement of Africans. With the Bible as a common ground between Sephardim and Dutch Protestants, together theologians and jurists could forge a *naturalized* law of nations, with the seven Noahide laws as its moral compass. The next section discusses *Nação* natural law theories and conception of ownership, liberty, and freedom from 1650 to 1680. There is a focus on the natural law theories of Isaac Cardoso and Abraham Pereyra. Overall, *Nação* rabbis and philosophers equated the Noahide laws with the natural law, thereby linking Roman legal notions with *halakhic* notions. While, secondary natural law was equated with primary law of nations, the rabbis from the "School of *Eẓ Ḥaim*" utilized *La Ley Natural*, in accordance with the Iberian legal convention at the time. Ergo, *Nação* legal consciousness sanctioned war and slavery under the rights and responsibilities of *La Ley Natural*. When combined with Aristotelian natural law thinking and the "Curse of Ḥam," *Nação* rabbis are able to develop a social order involving a dichotomy of individuals: Jews belonging to a higher order and non-Jewish black Africans belonging to a lower order, which can become enslaved by the former. This racial difference influences law and morality well into the postcolonial time period.

Chapter 8—The Emergence of *Nação* Legal Consciousness

The final chapter summarizes the previous chapters and returns to an analysis of the cases mentioned in the first chapter. The is a return to the importance of this study, i.e. the lacuna in the field of intellectual history, vis-à-vis the Sephardim's role in early modern European legal discourse. The chapter returns to the initial purposes: (1) to challenge preconceived notions about the early modern European consciousness in regards to slavery and slave trade; and (2) to acknowledge agency of the *Nação*. Next, there is a discussion on the usefulness of the Cambridge School method in this study and what is learnt. *Nação legal consciousness* brings to light the dynamics between politics, law, economics, and religion. Overall, this intellectual history aims to open up a critical space which will lead to dialogue between past and present international legal thought, to question our contemporary conceptions and political sensitivities, and how they shape our morals and ethics.