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

Elazar De Mota, Y.

Publication date
2021

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

---

[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

---

[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

---

[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

---

[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.

---

[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.