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

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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.