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

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## SUMMARY

In the seventeenth century, some *conversos* living throughout Western Europe, who had been either trained in the School of Salamanca or influenced by it, came to the Dutch Republic in search of religious freedom, where they reverted to the open practice of the Jewish tradition. A select few of them became scholars of rabbinic jurisprudence, while retaining their knowledge of Christian theology. As residents and foreigners in the Dutch Republic, rabbis and philosophers synthesized Greek philosophy, Iberian Roman law, rabbinic reasoning, and Jewish and Christian philosophy, in light of the socioeconomic context of the Dutch Republic, to produce literature on behalf of reverted Jews. At the bedrock of *Nação legal consciousness* lies the jurisprudence of the *Nação* in seventeenth-century Amsterdam.

The main focus of this research project is on the pressing issue: How did the *Nação* in seventeenth-century Amsterdam contribute to the legal-political discussions of *ius naturae et gentium* in the Amsterdam-Dutch Republic debate on slavery and the slave trade? While many have undertaken research on the development of the *ius naturae et gentium*, the contribution of the Sephardim in Amsterdam is insufficiently researched. The aim of this dissertation is to add to the discussion by examining the seventeenth-century Portuguese Hebrew Nation in the Dutch Republic and its colonies, whose ideas of *servitus*, *dominium* and *libertas* were central to the justification of the Dutch Atlantic slave trade, as participants in, and contributors to the law of nature and nations. The goal is to reveal how the *Nação* in seventeenth-century Amsterdam participates in and contributes to the thinking, reasoning, and arguing about slavery and the slave trade, via the language, concepts, and notions of the time, which was dominated by the language of *ius naturae et gentium*.

### Chapter 1—Introduction

The first chapter introduces the main concepts of the research framework through which the thesis examines how the *Nação*, as a community of Iberian Jewish exiles and refugees gain entry to the seventeenth-century Dutch Republic slavery and slave trade debate.

The chapter begins with a brief sketch of the so-called “free soil” tradition, which existed in the Netherlands since the medieval time period. *Nação* merchants challenge the existing legal convention on various occasions by bringing slaves to the Amsterdam throughout the first half of the seventeenth century. The next part of the chapter explains why this study is important to the scholarship of the history of international legal thought and practice. Then, the chapter introduces the debate on *ius gentium et naturae* and the *naturalized* law of nations, as put forth by Peter Haggemacher and Annabel Brett. The chapter ends by establishing the corpus and methodology. This study implements the Cambridge School of intellectual history, focusing on the Roman legal terms: *ius gentium*, *ius naturale*, *servitus*, *dominium*, and *libertas*. This scope and lens permits for the reconstruction of micro-narratives of the actors involved.

## **Chapter 2—The Birth of the *Nação***

This chapter introduces the *Nação* community. It includes a macroscopic historical account of how the *Nação* emerged within the Iberian Peninsula and settled in Amsterdam. The concept “the other within” is introduced. Despite living within Spanish society, Jews were considered to be the “Other.” After the forced conversions to Catholicism from 1391 until 1492, Jews became the “other within,” Spanish society, albeit as “New Christians.” The chapter argues that their double lifestyle granted them access to political and religious official positions. Also, the *Nação* created a trading network between Portugal, Brazil, and the Netherlands in the sixteenth and seventeenth centuries. The commercial route between Recife and Amsterdam allowed for Portuguese *conversos* to openly practice the Jewish tradition in Brazil. Already in the sixteenth century, the *Nação* dominated the slave trade between Western Europe, Africa, and the Atlantic islands. By the time that the *Nação* settles in Amsterdam, they have a ready-made global trade network established. This allows them to be received with favor in Amsterdam. This chapter ends with a brief history on how the *Talmud Torah Ez Haim* community was founded in Amsterdam and what was taught there.

### **Chapter 3—The Curse of Ḥam Theory in the Ibero-Dutch Context: Sephardic Rabbis and Dutch *Predikanten***

This chapter contextualizes the idea of the biblical Ḥam to examine how the Sephardim (before the fifteenth century) and the Dutch (seventeenth century) came to identify Ḥam with sub-Saharan Africans. Rabbinic texts written between the eleventh and sixteenth centuries and seventeenth-century Dutch Christian texts are examined. The chapter aims to substantiate the claim that the the “Curse of Ḥam” theory did not exist in the early seventeenth-century Dutch Christian context, and that Dutch Christian Hebraists appropriated Sephardic thought through rabbinic literature to generate a theological justification for the enslavement of black Africans. The chapter claims that after the mid-seventeenth century, this ideology became widespread within the Netherlands, to the effect that Dutch jurists mobilized pro-slavery arguments under the influence of the "Curse of Ḥam" theory. Ultimately, this destructive myth (as an amalgamation between Aristotelian natural slavery and Jewish, Christian, and Islamic theology) contributed to the legal debate on *servitus*, *dominium* and *libertas* in the Iberian sixteenth-century context and the seventeenth-century Dutch Republic context.

The chapter begins with an analysis of the biblical origin of the myth of the “Curse of Ḥam” and how it was disseminated by European travelers. Then, there is a survey of the myth among Sephardic Jews. This survey goes through the commentaries of Rashi, Abarbanel, Radak, and Ibn Ezra. The chapter then develops with an account of the Hebrew Republic tradition in the Netherlands and how Jewish literature influenced Dutch theology. There is a section on partnerships between rabbis and Dutch Christian Hebraists. The chapter ends arguing that Dutch theologians and jurists appropriated the "Curse of Ḥam” through Sephardic thought.

## Chapter 4—The Iberian Legal & Political Ideas on Slavery and Slave Trading: Fifteenth and Sixteenth Centuries

The aim of this chapter is to reconstruct the theological, legal, and political context concerning the practice of slavery and slave trade in early modern Iberia. This is the context in which the *Nação* developed its modus operandi in African and Asian slave trade. Legal conventions, around *servitus*, *dominium*, and *libertas*, were ever-developing in Spain and Portugal in the sixteenth century. In the sixteenth century, after almost two centuries of stagnation, the debate on law of nations and nature had been revived by Francisco de Vitoria and other Spanish Scholastics. At that time, *converso* merchants dominated the Atlantic slave trade, commanding a network that connected Iberia, Africa, and the West Indies.

This chapter focuses on the *imago Dei* idea, i.e., that all humans are created in the image of God, thereby endowed with the ability to make rational and right choices. The chapter argues that prior to the sixteenth century Iberian scholastic thought associated *imago Dei* with the Roman legal notions, *dominium* and *libertas*. The opening section gives an account of *libertas* and *dominium* within the Greco-Roman context and how it evolved during the Renaissance and in the early modern time period. The climax of this chapter includes the natural slavery debate of the *New World Indians*. Then, the chapter moves to the debate on *servitus* and *imago Dei* in the Portuguese context. The legal and theological opinions of Luis de Molina, Fernando de Oliveira, and Francisco Suárez on the slave trade are presented thereafter in order to highlight the change in meanings and understandings previously held before the Atlantic slave trade. Spanish and Portuguese ordinances dealing with slavery are discussed in order to substantiate the thesis' argument that racial difference was constructed through language and law to justify the systematic enslavement of dark-skinned Africans. After the Reconquista (722–1492), *moro* [Moor] as an idea was equated with slavery within the Spanish Christian context, and thereafter, against the background of the Atlantic slave trade, the negative attitudes toward the Moors were imputed on all dark-skinned Africans. The chapter revisits the myth of the “Curse of Ham” and how it contributed to the depreciation of dark-skinned Africans and to their association with

enslavement. The argument is that this destructive myth contributed to the construction of racial difference which influenced Iberian legal consciousness. Thus, the Spanish colonial codes and councils render *negros* and *mulattos* to be heathens and slaves, thereby lacking the divine image.

## **Chapter 5—The Seventeenth-Century Dutch Republic Legal & Theological Ideas On Slavery and the Slave Trade**

This chapter continues with the legal, political, theological, and ideological debate concerning slavery and slave trade within the seventeenth-century Dutch Republic. Each with their own interests, Sephardim and Moderate Calvinists constructed pro-slavery and slave trade arguments in such a manner that they were accepted by the authorities in the port cities of Holland, Friesland, and Zeeland. The aim of this chapter will be to reconstruct the debate on slavery and slave trade, in order to understand how the *Nação* intervenes within the dimensions of theology and law. Time after time, merchants came into the different port cities of the Dutch Republic with slaves, which caused much upheaval. The consensus understood that slavery was not practiced in the Netherlands due to the "free soil" tradition. However, the activities of the VOC and WIC thereafter, challenge this consensus. By the 1630s, the WIC grants charters allowing slave trade in New Amsterdam.

The chapter begins with narratives which give accounts of the participation of Dutch and Sephardic merchants in slave trading. The next section introduces the political-religious context, bringing to the forefront the confrontation between Johannes Cocceius and Gisbertus Voetius, the role of the "Curse of Ham" myth, and their respective schools of thought on the slave trading activities of the Dutch East India Company [VOC] and Dutch West India Company [WIC]. Therein, an analysis of a few sermons and letters build the context concerning the theological justifications for and against slavery. Afterwards, the chapter discusses how these justifications informed the legal discourse at the time. Then, there is a reconstruction of how *dominium*, *servitus* and *libertas* were understood by Dutch jurists. The chapter ends with an examination of the legal debate on *ius naturae et gentium* and *servitus* in a just war, through the lens of Hugo de

Groot, Willem de Groot, Ulrich Huber, and Cornelius van Bynkershoek. Overall, the chapter argues that the Atlantic slave trade influenced the debate on the law of nations and nature within the Dutch Republic. Grotius' concept of *servitus in ius naturale* was an innovation at the time. As such, even though he was against Aristotelian natural slavery, he did accept that individuals sell themselves into slavery. However, Grotius did not clarify if these slaves could be sold or if their children acquired the enslaved status *ad perpetuam*. By the end of the seventeenth century, theologians and jurists amalgamated ideas and notions to forge Dutch legal theory, such that slavery and slave trade became an integral part of the culture and economy.

## **Chapter 6—The *Nação* in Amsterdam: Intra-Communal Discussions on Slavery and Slave Trade**

This chapter continues with an examination of *Nação* rabbis' *halakhic* rulings in the seventeenth century. It argues that a study on their *halakhic* discourse is crucial for understanding their legal consciousness, since it shaped the moral lens through which they operated and how their legal consciousness was shaped through it. This chapter entails an analysis of relevant texts which I chose in order to reconstruct the seventeenth-century context concerning Jewish attitudes and slavery practice. The chapter focuses on the terms: *siervo/servo* and *esclavo/escravo* and how the *Nação* utilizes them to create different meanings and understandings. As such, they manage to circumvent the “free soil” tradition in the Netherlands.

The first section highlights the *halakhic* commentaries that *Nação* rabbis used in Amsterdam and the New World in order to justify the enslavement and trade of black Africans across the Atlantic. The second section explores the linguistic conventions used by the *Nação* regarding slavery. The third section explores the communal stance regarding the manumission of slaves within the *Nação* community in Amsterdam and abroad. The fifth section details how Jewish messianism in the seventeenth century was a motivating factor for the use of slaves on plantations. Funds were collected from all the *Nação* communities and distributed to the poor of Jerusalem. The chapter argues that some of these funds came from New World plantation slave labor. Overall, this

chapter demonstrates how Ez Ḥaim’s Jews contributed to the legal-political discussions of *ius naturae et gentium* within the Amsterdam- Dutch Republic debate on slavery and slave trade

## **Chapter 7—Extra-Communal Discussions: *Nação* Legal Consciousness in the Slavery and Slave Trade Debate**

This chapter substantiates my overall argument that as the “other within,” the *Nação* contributed to the development of early modern international law by mobilizing legal notions: *dominium*, *servitus*, and *libertas* to justify their position regarding slavery and slave trade. This chapter brings out *Nação* rabbis, philosophers, and merchants out of the periphery, and grants them a central place in the development of *ius nature et gentium*. This chapter explores how *Nação* rabbis and thinkers conceived of *servitus*, *dominium*, and *libertas* as governed by *La Ley Natural* and *La Ley de Humanidad*. These rabbis and philosophers conceived of a natural law theory based on the Talmudic notion of the “Seven Noahide laws.” Just as legal historians speak of the “School of Salamanca” moral theological tradition, whereby *ius gentium et naturae* are mobilized and developed, it is possible to speak of the moral theological thought of the “School of *Ez Ḥaim*.”

The aim of this chapter is to detail how Iberian scholasticism was amalgamated with rabbinic ideas in Semitic languages, and how the latter were then translated in Iberian languages for the sake of *conversos* who reverted to the open Jewish practice in Amsterdam. The first section of this chapter examines *Nação* natural law theories and conception of ownership, liberty, and freedom from 1600 to 1630. There is a focus on the natural law theories of Immanuel Aboab and Saul Levi Mortera. The next section discusses the just war theory of the *Nação*. There is a special focus on Menasseh ben Israel. This section examines Menasseh's *Conciliator*, which he had dedicated to the directors of the WIC, and the Magistrates of Holland and West Frisia. The argument is that Dutch politicians studied it and understood that the Hebrew Bible contained the moral theological grounds for just war. The chapter makes a claim that in synthesizing Grotius’ *Mare Liberum* and *De Belli Ac Pacis* and Menasseh’s *Conciliator*, WIC investors, merchants, and

brokers had a ready-made legal justification for the systematic enslavement of Africans. With the Bible as a common ground between Sephardim and Dutch Protestants, together theologians and jurists could forge a *naturalized* law of nations, with the seven Noahide laws as its moral compass. The next section discusses *Nação* natural law theories and conception of ownership, liberty, and freedom from 1650 to 1680. There is a focus on the natural law theories of Isaac Cardoso and Abraham Pereyra. Overall, *Nação* rabbis and philosophers equated the Noahide laws with the natural law, thereby linking Roman legal notions with *halakhic* notions. While, secondary natural law was equated with primary law of nations, the rabbis from the “School of *Ez Haim*” utilized *La Ley Natural*, in accordance with the Iberian legal convention at the time. Ergo, *Nação* legal consciousness sanctioned war and slavery under the rights and responsibilities of *La Ley Natural*. When combined with Aristotelian natural law thinking and the “Curse of *Ḥam*,” *Nação* rabbis are able to develop a social order involving a dichotomy of individuals: Jews belonging to a higher order and non-Jewish black Africans belonging to a lower order, which can become enslaved by the former. This racial difference influences law and morality well into the postcolonial time period.

## **Chapter 8—The Emergence of *Nação* Legal Consciousness**

The final chapter summarizes the previous chapters and returns to an analysis of the cases mentioned in the first chapter. There is a return to the importance of this study, i.e. the lacuna in the field of intellectual history, vis-à-vis the Sephardim’s role in early modern European legal discourse. The chapter returns to the initial purposes: (1) to challenge preconceived notions about the early modern European consciousness in regards to slavery and slave trade; and (2) to acknowledge agency of the *Nação*. Next, there is a discussion on the usefulness of the Cambridge School method in this study and what is learnt. *Nação legal consciousness* brings to light the dynamics between politics, law, economics, and religion. Overall, this intellectual history aims to open up a critical space which will lead to dialogue between past and present international legal thought, to question our contemporary conceptions and political sensitivities, and how they shape our morals and ethics.