

Early Modern Portuguese Jewish Conceptions of *Dominium* and *Libertas* and Constructions of Community

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Abstract

The Atlantic trade in enslaved people became an economic, social, political, and legal issue in the seventeenth century. Portuguese Jews became involved in the trade in enslaved people and the debate about its legality in this same chronology. Portuguese Jews, some of whom had lived as so-called New Christians or *conversos*, blended legal traditions ranging from the Spanish 'School of Salamanca' which was a legal center that grappled with the myriad issues raised by the Spanish colonization of the new territories, Talmudic jurisprudence, Iberian interpretations of Roman Law, and Jewish, Christian, and Greek philosophy, as well as Christian theology. As resident 'foreigners' in the Dutch Republic, some of these people became prominent legal scholars who produced rulings and discussions relating to this Jewish presence in the Dutch Republic. One such jurist was Ishac Athias, who wrote a legal treatise in 1627 with the title of *Thesoro de Preceptos* [Treasure of Precepts]. In this work he expresses his conceptions of *dominium* (lordship/mastery) and *libertas* (freedom from servitude), framed by a discussion of the Talmudic concept of *Canaanite slavery*. The focus of this research article is to explore how Athias contributes to the legal debate on slavery and the slave trade, and the naturalization of the law of nations that was raging in the seventeenth-century Dutch Republic.

Keywords: Ishac Athias, *Nação*, Sephardic Jews, *Libertas*, *Dominium*, *Ius gentium et naturae*, *Thesoro de Preceptos*, Dutch Republic, *halakhah*, slavery, slave trade

Introduction

Although there was no legal consensus within the seventeenth-century Dutch Republic that led to a prohibition on slavery, it was either outlawed or avoided within many cities. Among Christian European states, the institution of the enslavement of prisoners of war had become, essentially, obsolete. In the 1550s, the Great Council of Mechelen contributed to the idea of the ‘free soil’ tradition, which granted freedom to any enslaved person arriving in the Netherlands. After its emergence in the Middle Ages, the ‘free soil’ tradition established important legal foundations for the stance against the institution of slavery. As such, it was understood that the institution of slavery was not permitted on Dutch soil, and that as an institution, it was only practiced within the context of *ius gentium*, and not *ius naturale*. Despite the rejection of the institution of slavery and the trade in enslaved people by some religious groups within the seventeenth-century Dutch Republic, profits produced by the Dutch East (VOC) and West (WIC) India Companies, generated in part by the trade in enslaved people, outweighed any strong opposition. Portuguese Jewish merchants played a vital role in steering the debate on slavery and the trade in enslaved people within the seventeenth-century Dutch Republic.¹ Their skills in commerce proved to be important in the establishment of trade between the Netherlands and the East Indies.² Moreover, the trade in enslaved people in both the West and East Indies inspired a radical rethinking and re-evaluation of established legal ideas, and a vibrant debate ensued.

In the early seventeenth century, some Portuguese Jews arrived in Amsterdam with slaves [*escravos*], though they were called domestic servants [*servos*]. These new arrivals challenged the so-called ‘free soil’ tradition numerous times, leading Amsterdam city authorities to establish a clear decree against slavery in 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].³ The notions which were at the centre of the legal discourse were *dominium* [mastery/ownership/property] and *libertas* [liberty/freedom]. Consequently, when Dutch Republic-based merchants owned enslaved people and sought to sell them outside of the well-established frameworks of ‘just war’, the

1 Allain, *The Legal Understanding of Slavery*, 89.

2 Bloom, *The Economic Activities of the Jews of Amsterdam in the Seventeenth and Eighteenth Centuries*, 33.

3 Ponte, “Tussen slavernij en vrijheid in Amsterdam”, 251.

concepts of *libertas* and *dominium* shifted in meaning and in how they were understood.

In 1550, after receiving royal protection and the right to trade freely in enslaved people by King Henri II in Bordeaux, the so-called *Nação* or 'Hebrews of the Portuguese Nation' wanted to receive these same privileges in the Dutch Republic.⁴ The Portuguese term *Nação* refers to Iberians of Jewish descent, some of whom had converted to Catholicism (or whose ancestors had), while others continued to practice Jewish traditions in secret (crypto-Jews). Sometimes the Old Christians (people with no known Jewish ancestry) would refer to this group as *gente da Nação hebraica* [The people of the Hebrew Nation].⁵ In 1595, an enclave of *Nação* merchants re-established themselves in the Dutch Republic. At that time, a group of Iberian *conversos* left Antwerp and built their community and expanded their economic networks within the Dutch Republic. By 1639, under the direction of rabbinic authorities from Germany, Venice, Morocco, and the Ottoman Empire, they managed to build an intellectual centre in Amsterdam named *Talmud Torah Ez Haim*. Once the *Talmud Torah Ez Haim* Seminary in Amsterdam was founded, many Sephardi legal scholars translated *halakhah* [Jewish jurisprudence] into Roman legal language and vice versa. The amalgamation of Graeco-Roman law and philosophy, Jewish law and philosophy, and Christian theology is what characterized the scholarship which came out of the *Talmud Torah Ez Haim* Seminary. Overall, *Nação* jurists were well-versed in Hebrew literature, the Classics, and Christian literature.

Some of *Ez Haim's* jurists constructed legal arguments in favour of the community's merchants, which is perhaps not surprising considering the involvement of the community in Atlantic commerce, much of which was based on enslaved labour. One prominent rabbi who contributed to the debate on enslavement and the trade in enslaved people in the Dutch Republic was Ishac Athias (Dias).⁶ The aim of this article is to reconstruct the Ibero-Dutch debate on enslavement and the trade in enslaved people, and then to highlight Ishac Athias' contribution to this discourse. The ultimate goal is to contribute to a Jewish model of international law, something that scholars such as Betina Kuzmarov⁷ and Shabtai Rosenne⁸ argue for.

4 Graizbord, "Becoming Jewish in Early Modern France," 147-180; Benbassa, *The Jews of France: A history from Antiquity to the Present*, 49.

5 Bodian, *Hebrews of the Portuguese Nation*, 147.

6 Elazar-DeMota, "The Concept of Liberty and Freedom in the Bible Commentary of Ishac Athias."

7 Kuzmarov, "Recapturing" the "Other": Jewish Laws of War and International Law," 47-65.

8 Rosenne, "The Influence of Judaism on the Development of International Law," 119-149.

Kuzmarov asserts ‘to tell the story of international law on Jewish law’s own term, and not as the Other, can allow us to rethink the origins of international law.’⁹ In the same vein, Rosenne argued that ‘European jurists appropriated Jewish legal thought on just war in order to develop modern international law.’¹⁰ With this goal in mind, I will contextualize *dominium* and *libertas* within this debate and bring Athias’ legal conceptions to the forefront.

Since this article relates to a particular time when Europeans encountered sub-Saharan Africans, the Spanish terms *negro* [black] and *mulatto* [mixed] are utilized to describe how the *Nação* merchant community depicted the phenotypes of African slaves. In a similar fashion, the term *black* [swarte] is utilized because that was the term used by Dutch people at the time.

Early modern *Dominium-Libertas* debate

Prior to the sixteenth century, European jurists associated the metaphysical expression, *imago Dei*, with the Roman legal notions, *dominium* and *libertas*.¹¹ Thomas Aquinas (1225-1274) linked *libertas* with *imago Dei*, arguing that humans can participate in the natural law [rational eternal law of God] since they are created in the image and likeness of God.¹² Accordingly, humans possess free-will, right reason, and *dominium* [lordship/mastery] of the created world. John Pecham (d. 1292) also equated freewill with *libertas*.¹³ Agreeing with Aquinas, Giovanni di Fidanza (1221-1274) posited that brute animals did not possess internal liberty nor *dominium*, thus being excluded from spirituality.¹⁴ Overall, *dominium* and *libertas* are intrinsic to all humans because of their *imagine Dei*. Once Europeans encountered so-called ‘New World’ indigenous peoples, the concepts of *libertas* and *dominium* were reworked in different ways.

The *dominium-libertas* debate receded for about two centuries, until the dawn of what Europeans called ‘the age of discoveries’ which included the Americas. Spanish imperial lawyers were motivated by questions that centred around conquest and colonization. Domingo de Soto (1494-1560) proposed the

9 Kuzmarov, “Recapturing” the “Other”: Jewish Laws of War and International Law,” 65.

10 Rosenne, “The Influence of Judaism on the Development of International Law,” 119-149.

11 Bell, “From Ancient to Modern in Victorian Imperial Thought,” 742; Skinner, *Visions of politics* (Volume II).

12 Aquinas, *Summa Theologiae*, I, Q. 3, Art. I.

13 Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought*, 13.

14 *ibid.*

universalization of the idea of *dominium* [private property] in order to increase human power over the environment.¹⁵ John Mair (1467-1550) agreed with Aristotle's theory of natural slavery, and claimed that the 'Indians' (indigenous peoples) of the Americas were 'savages and cannibals, incapable of *dominium* [self-governance].'¹⁶ In the same vein, Palacios Rubios (1450-1524) held that these indigenous peoples were incapable of *dominium*.¹⁷ As such, according to these humanists, the indigenous peoples of the Americas were in need of stewards, namely the Spaniards. Contrary to the ideas of the aforementioned humanists, Francisco de Vitoria (ca.1492-1546) argued that indigenous peoples of the Americas possessed the inalienable right to *dominium*, and that if they did not cede it voluntarily, the only way to subjugate them would be through just war.¹⁸ Recalling the *imago Dei* anthropology, Bartolomé de las Casas (ca.1484-1566) posited that every human being possessed *dominium* [self-governance] and *libertas* [freedom].¹⁹ Essentially, Spanish humanists reformulated *dominium* as private rights, thereby legalizing and legitimizing Spanish rule over native peoples and control over their resources.²⁰

When Portuguese explorers began entering the West African basin, with the authorization of Papal bulls, they stripped dark-skinned Africans of their *imago Dei*. Theories of natural slavery and the so-called 'Curse of Cham' contributed to the construction of racial difference which then led to the legitimization of systematic enslavement and disenfranchisement of black Africans.²¹ The 'Curse of Cham' myth posits that dark-skinned African persons are destined to perpetual enslavement due to their genealogical connection to Cham and Canaan, the descendants of the biblical Noah. Although Dominican friar Tomás de Mercado (1525-1575) condemned the way that the Portuguese conducted the trade of African slaves, Portuguese jurist Fernando Perez (1530-1595) posited that the divine image was corrupted in the postlapsarian state.²² Therefore, black Africans were condemned to what was considered a 'natural' and perpetual enslavement. Eventually,

15 Jiménez Fonseca, "*Jus gentium* and the Transformation of Latin American Nature," 129.

16 Pagden, "Human Rights, Natural Rights, and Europe's Imperial Legacy," 171-199.

17 Neff, *Justice Among Nations: A History of International Law*, 118.

18 Victoria, *The First Relectio on the Indians Lately Discovered*, q.1, art. 2; q.1, art. 3; Brett, "People in Portrait, Francisco de Vitoria (1483-1546) and Francisco Suárez (1548-1617)"; Gutiérrez, *Las Casas: In Search of the Poor of Jesus Christ*, 321.

19 Almeida de Souza, "Las Casas, Alonso de Sandoval and the Defence of Black Slavery," 25-59.

20 Obregón, "International Legal Theory: Empire, Racial Capitalism and International Law," 598.

21 *ibid.*

22 Russell-Wood, "Iberian Expansion and the Issue of Black Slavery," 35; Stegmüller, "Zur Literargeschichte der Philosophie und Theologie an den Universitäten Évora and Coimbra im XVI," 10.

this debate came to the Netherlands through the migration of Sephardic Jews to the Dutch Republic.²³

The commercial endeavours of the Dutch East Indies Company [VOC] and First West Indies Company [WIC] provoked theological and political debates within the seventeenth-century Dutch Republic. As was already mentioned, the Christianization of Europe gave rise to the 'free-soil' tradition. Indeed, 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.'²⁴ Accordingly, in 1636, the VOC barred owners of enslaved people from bringing their enslaved people on Dutch soil.²⁵ Paradoxically, this contributed to a moral consciousness which accepted plantation slavery abroad but felt profound discomfort about it in the Netherlands.²⁶ Thus, when Portuguese Jewish merchants arrived in Amsterdam with black African slaves, city authorities were forced to revisit the existing legal codes and to question their morality.

Slavery among the Jews

Jewish legal scholars developed *halakhah* [Jewish law] regarding slavery over a period of two millennia. Slavery *halakhah* was fluid, changing from the biblical period until the nineteenth century of the Common Era. The first period of slavery was from the conquest of Canaan until the end of the first commonwealth (1405 BCE-586 BCE). The second period of slavery was from the second commonwealth of the Jews in the Holy Land until the Bar Kokhba Revolt (450 BCE-135 CE). The third period was during the Talmudic period (c. 200 CE-c. 500 CE). Under the influence of Christian and Islamic cultures, *halakhah* around slavery changed during the *Gaonic* period (589 CE-1040 CE). Medieval Jewish legal scholars continued the development of *halakhah* regarding slavery in Islamic Spain and the Christian Rhineland region. Thereafter, Jewish jurists in Western Europe, the Ottoman Empire, and the Americas contributed to the final stage of development of *halakhah* about slavery until its practice was abolished.

When Jews were expelled from Spain (1492), Iberian explorers had already been bringing captives to the Atlantic islands and the Iberian Peninsula

23 Elazar-DeMota, "Nação legal consciousness and its contribution to the seventeenth-century Dutch Republic debate on slavery and the slave trade."

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

25 Chijs, *Nederlandsch-Indisch Plakkaatboek, 1601-1811*, 16 vols, 409.

26 Hondius, "Black Africans in Seventeenth-Century Amsterdam," 86-87.

from the coast of Africa, albeit in very small numbers. Before the fifteenth century, slave trading was minimal among Iberian Jews.²⁷ Sephardic Jews purchased sub-Saharan African slaves to perform tasks on the Sabbath which were forbidden to Jews. However, these non-Jewish African servants were treated as part of the household.²⁸ In compliance with Jewish law, sometimes Jewish slave owners converted their servants to the Jewish faith. In point of fact, during the period in which the Inquisition was active, *conversos* regularly converted their domestic servants to protect the hidden Jewish identity of the family from the Inquisition.²⁹

Athias' conception of *Libertas*

Ishac Athias was a former *converso*, born in Lisbon in 1585, who fled to Castile, and then to Venice.³⁰ Upon relocating to Amsterdam he studied under rabbi Saul Levi Mortera.³¹ He was appointed as the first rabbi of the *Nação* community in Hamburg. Later, in 1622, he was appointed rabbi of the Sephardic community in Venice.³²

While in Venice he prepared his work entitled the *Thesoro de Preceptos* [1627]. A second edition was published in Amsterdam in 1649.³³ The preface explains his inspiration in preparing this work, 'due to the many Jews throughout the Sephardic diaspora who did not have knowledge of Arabic, Hebrew, nor Aramaic to be able to understand the Talmud nor the commentaries thereof.' [sic].³⁴ Thus, he wanted Spanish-speaking *conversos* to understand the tenets of Jewish jurisprudence.³⁵ At the time when Ishac Athias published *Thesoro de Preceptos*, the *Nação* had been engaging in colonial slavery and taking part in the trans-Atlantic slave trade, albeit in relatively small numbers. It was therefore necessary to include *halakhah* about slavery to facilitate the practical application of Mosaic law within the community's mercantilist endeavours.

27 Schorsch, *Jews and Blacks in the Early Modern World*, 50.

28 *ibid.*, 78.

29 Wolf, *Jews in the Canary Islands*, 22.

30 Athias, *Memorias de litteratura portugueza. Academia das ciências de Lisboa*, 310; Elazar-DeMota, "The Concept of Liberty and Freedom in the Bible Commentary of Ishac Athias."

31 Leone Leoni and Salomon, "La Nation Portugaise de Hambourg en 1617 d'après un document retrouvé."

32 Gottheil et al., "Athias, Atia, or Athia."

33 *ibid.*

34 Athias, *Thesoros de Preceptos*; Elazar-DeMota. "The Concept of Liberty and Freedom in the Bible Commentary of Ishac Athias."

35 *ibid.*

Thesoro de Preceptos is structured according to the tradition of Moses Maimonides' list of 613 precepts within the Law of Moses.³⁶ This list divides the Mosaic law into 365 negative precepts (don'ts) and 248 positive precepts (do's). Each precept is derived from a verse found in the Pentateuch. Positive precept number 235 in Maimonides' *Mishneh Torah* states:

לעבוד בעבד כנעני לעולם, שנאמר: "לעולם, בהם תעבדו."

"To keep the Canaanite slave forever, as it is said: "They shall be your bondmen for ever."³⁷ This biblical injunction was reworked by Talmudic rabbis during the Roman period. According to the priestly code of the Torah [P Document], Canaanite slaves were prisoners of war and were to be enslaved *ad infinitum*. However, Talmudic law permitted the manumission of slaves which led to their integration into the Jewish People through naturalization. Talmudic jurists utilized 'Canaanite' as a legal generic term for any non-Jewish slave, regardless of descent.³⁸ The Babylonian Talmudic discussion states:

The Sages taught in a *baraita* [an authoritative tradition]: One may maintain slaves that are not circumcised under one's control; this is the statement of Rabbi Ishmael. Rabbi Aqiba says: One may not maintain such slaves, even for a moment... Rabbi Joshua b. Levi said: In the case of one who purchases a slave from a gentile and the slave does not wish to be circumcised, he abides with him up to twelve months. If, after this period, he [the slave] does not want to be circumcised, he then sells him on to gentiles [*sic*].³⁹

Rabbi Ishmael holds the lenient opinion, whereby Jews can keep non-Jewish slaves who will never become citizens of the Jewish People.

Athias translates positive precept number 235 in Spanish, *Que nos sirvamos en perpetuo, del siervo Pagano* [That we serve ourselves perpetually with the Pagan servant]. Even though the Talmudic discussion between the three jurists permits for three different approaches, Athias rules according to the opinion of R. Joshua b. Levi and codifies it as law. As such he clarifies the precept:

We cannot give him freedom, like we do with Hebrews... we call him Pagan, not because of his nationhood, and not because of his religion,

³⁶ *ibid.*

³⁷ Common English Bible, Leviticus 25:46.

³⁸ *b.Hor.13a.*

³⁹ *b.Yeb.48b.*

because it is understood that he who has been circumcised and ritually immersed is a *siervo*; but the idolatrous Pagan that we purchase, if he does not abandon his rites, we cannot keep him for more than a year [*sic*].⁴⁰

Athias utilizes the term *pagan* instead of *gentile* if the enslaved person does not want to be naturalized as a Hebrew citizen. Athias' discourse upholds the idea that non-Jews can serve Jews through the institution of slavery. Therefore, such slaves are called *siervos paganos* [pagan slaves], or *paganos idólatras* [idolatrous pagans], while the rest are called *siervos* [servants]. Around the same time, Menasseh b. Israel utilizes the term *escravo não-banhado* [non-ritually immersed slave] and *servo de Israel* [servant of Israel] to make the same differentiation.⁴¹ This dichotomy was utilized by *Nação* jurists in seventeenth-century Amsterdam to couch Jewish law within the reality of the plantation slave economy and Atlantic slave trade.

Athias holds that to possess *dominium* and *libertas* means to serve God through the assistance of slaves who perform tasks which are impediments to the divine service. He adds in his explanation to positive precept number 235:

That men can govern themselves without servitude and *criados* [house-boys] is impossible, because he [a Jew] lacks what is needed for human life; the Congregation of Israel is so occupied with holy labours, that they require others to give them rest. And using one's kinsmen for service is not just, because they are taken away from what their souls need. For that matter the Lord conceded and even obligated, that these would be perpetual *siervos*, since they, as foreigners, are exempt from the holy services...whoever serves the Lord should not serve men [*sic*].⁴²

Athias gave his coreligionists three justifications for the use of slaves: (1) That Jews are obligated in the holy services of the Congregation of Israel; (2) That Jews cannot serve two masters simultaneously; and therefore (3) That Jews cannot be slaves. Essentially, Athias posits that self-governance [*dominium*] and *libertas* [freedom from slavery] are not possible without servitude. Ultimately, within the context of Atlantic slavery, the *siervo pagano* was most likely a sub-Saharan African male or female between the ages of fifteen and twenty-five years old, what contemporaries called '*piezas de Índia*'.

40 Elazar-DeMota, "The Concept of Liberty and Freedom in the Bible Commentary of Ishac Athias."

41 Ben-Israel, *Thesouro dos Dinim*, Tractate No. 3 On Slaves, 181.

42 Athias, *Thesoros de Preceptos*, positive precept No. 235; Elazar-DeMota, "The Concept of Liberty and Freedom in the Bible Commentary of Ishac Athias."

Whereas Dutch Protestant colonialists were granted by the Estates General, the governing body of the Dutch Republic, the right to own slaves, Jews had to negotiate for the privilege to do so.⁴³ In exercising this privilege, the *Nação* proclaimed its *dominium* [self-governance] and *libertas* [freedom from slavery]. In his *De Indis* (1532), Francisco de Vitoria (1483-1546) holds that to possess *dominium* means to have mastery/ownership over things, as a *dominus* or principle of things and people [including one's own person].⁴⁴ Thus, de Vitoria's conception of *dominium* suggests a link between 'a concept of self-determination of a person based on legal allocation of private property claims on the one hand, and the *dominium* rights of a political community on the other.'⁴⁵ Because commerce and free trade were the driving forces behind the notion of the natural right to private property in seventeenth-century Europe, the *Nacão* satisfied both definitions of *dominium*.⁴⁶ As resident foreigners in the Netherlands, Athias positions the *Nacão* as a self-governing political community. This is crucial in the aftermath of the expulsion of the Jews from Spain and amid the terrors of the Inquisition. Essentially, Athias constructs arguments of *dominium* and *libertas* through the institution of slavery to emancipate the *Nacão* from its ascribed otherness. In summation, in interpreting *halakhah* around slavery, Ishac Athias provided *Ez Haim's* community with a legal and theological justification for engaging in the 'peculiar trade' and the practice of domestic and colonial slavery.

Constructing *Libertas* in the *Ascemoth* against the conversion of Black Africans

Athias' *Thesoro de Preceptos* influenced the legal thought and practice of the *Nação*. In fact, on the twentieth day of the month Tammuz of the year 5387 [1627], the leaders of the Portuguese Jewish congregations in Amsterdam convened at the house of Benjamin Israel to discuss the matter of blacks within the community. They agreed to the following *ascemoth* [communal bylaws]:

43 WICA 566, 574-76; WICA 205, 157; WICA 216; OAC 2, no. 224; WICA 243, 171-72; OAC 315, no. 780.

44 Bunge, "Francisco de Vitoria: A Redesign of Global Order on the Threshold of the Middle Ages to Modern Times," 53.

45 Koskenniemi, "Vitoria and Us: Thoughts on Critical History of International Law," 119-138.

46 Straumann, "Natural Rights and Roman Law in Hugo Grotius's *These LVI, De iure praedae and Defensio capitis quinti maris liberi*," 344.

First, that no *negro* or *mulatto* will be able to be buried in the cemetery except for those who had buried in it a Jewish mother... And further... that none shall persuade any of said *negros* and *mulattos*, man or woman, or any other person who is not of the nation of Israel to be made Jews; and it is particularly recommended to all men of the Law that they do not admit them, just as people who have a [private] *miqveh* [ritual bath] not immerse them without the permission of the Gentlemen of the Board of Directors, for in this way...results in only scandal and offense to God; he who does the contrary, measures will be taken against him as disobedient [*sic*].⁴⁷

These *ascamoth* attest to the fact that the *Nação* not only had black servants [*negros*] and black wives [*negras*], but also had children with them [*mulattos*]. This ordinance was crucial to the establishment of the *Nação* community in Amsterdam since it was understood that slavery was not allowed within the community. By limiting the ritual circumcision and the ritual immersion of African blacks, the *Nação* community was able to not only preserve its Iberian ethnic identity, but also to construct racial difference which, in turn, influenced the community's legal consciousness. This happened the very same year that the *Thesoro de Preceptos* was published (1627).

Nação merchants from Amsterdam migrated to north-eastern Brazil, and established two Jewish communities, namely, *Zur Israel* (Recife) and *Magen Abraham* (Maurícia). The Gentlemen of the Board of Directors in both communities issued an ordinance similar to the 1627 ordinance at the house of Benjamin Israel in Amsterdam:

No person shall, except with the permission of the Gentlemen of the Board—circumcise a stranger [non-Jew] or admit a strange woman [non-Jewess] to the *Tebilah* [ritual immersion], under penalty of being separated from the *Nação* and fined fifty florins. And if that person be a slave, he shall not be circumcised without first having been freed by his master, so that the master shall not be able to sell him from the moment the slave will have bound himself (to Judaism) [*sic*].⁴⁸

47 SAA, No. 13, fol. 42; Elazar-DeMota, "African blacks and Mulattos in the 17th-Century Amsterdam Portuguese Jewish community."

48 SAA, NA. nr. 334, inv. 1304, 5, ordinance no. 32; Wiznitzer, "The Minute book of Congregations Zur Israel of Recife and Magen Abraham of Murcia, Brazil," 271.

This ordinance bolsters Athias' idea that Jews cannot be servants to other people because they must be occupied with the service of God. Indeed, if a slave is to be naturalized as a Jew, he or she must first be emancipated then become a member of the *Nação*. Thus, if one converts a slave and sells him or her thereafter, it is a crime in the legal understanding of the *Nação*. One also learns that the Gentlemen of the Board have the executive power to ban its members from the community and to fine them for misconduct. Moreover, the Gentlemen of the Board have the final word regarding whether an African slave man or woman can become members of the *Nação*. Ultimately, these *ascamoth* unveil the role and influence which Ishac Athias' *Thesoro de Preceptos* played in the legal consciousness and practice of the *Nação*.

Athias' Contribution to the Legal Discourse after him

As modern states emerged in seventeenth-century Europe, the promotion of peace from religious conflict and civil unrest were imperative. Benedict Kingsbury and Benjamin Straumann make an assertion that 'Grotius, Hobbes, and Pufendorf were all part of one enterprise, and must be read together,' since they were interested in the *salus populi*.⁴⁹ Ishac Athias should be included in this enterprise, because his theories of *dominion* and *libertas* contributed to the construction of the *Nação* as an autonomous sovereign polity within the general *populus*.

Athias and Thomas Hobbes (1588-1679) agree on the advantage of using enslaved people as a means in attaining *dominium* [freedom from absolute subjection]. Just as Athias argues that Jews must be free to serve God, Hobbes puts forward, '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 honourable services in commonwealth and family, and enjoy more luxuries.'⁵⁰ Thus, one class of humans lose their liberty and self-governance in order to grant freedom to another group. Accordingly, one could argue that enslaved people have been deprived of their natural freedom and the *imagine Dei*. Overall, Athias fits perfectly within the legal and political discourse at the time.

For the most part, Ishac Athias contributes to what Annabel Brett calls the 'naturalization of the law of nations.'⁵¹ By the end of the sixteenth century,

49 Kingsbury and Straumann, "Chapter 1," 35.

50 Hobbes, "Elements of Law 2.9.9," 111.

51 Brett, *Changes of State*, 82.

humanists equated *ius gentium* with *ius naturale*. The naturalized law of nations assumes that all human legislations are customs which are of universal and natural character. This convention then leads to the debate on natural rights and their diminishment in the postlapsarian state. Ergo, after the Fall, slavery and lordship emerged as the result of sin. Then follows the theological debate regarding the ‘Curse of Cham,’ and where Cham’s descendants are located.

When Europeans entered the West African basin and began to trade in enslaved people, many justifications in favour of their *modus operandi* were constructed. Some theologians and jurists subscribed to the myth of the ‘Curse of Cham.’⁵² As such, they posited that African blacks were barbarians, savage, and belonged to a subhuman category. Consequently, sub-Saharan Africans were denied natural rights due to their phenotypes and geography. In the quest for self-preservation and self-interest, Athias provided a legal and theological basis by which the *Nação* was then able to buy, utilize, and sell black Africans as chattel. It was not until 1767 when a *Nação* jurist in Amsterdam stated that such justifications no longer applied.⁵³ Generally speaking, Ishac Athias’ conceptions of *dominium* and *libertas* led to the emancipation of the *Nação*, while disenfranchising *negros* and *mulattos*.

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⁵² Obregón, “International Legal Theory,” 598.

⁵³ Meldola, *Responsa Peri Ez Haim*, no. 474.

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