CHAPTER 10

The "*Livro de Pleitos*": The Leadership of the Spanish and Portuguese Community of London in the Eighteenth Century as a Court of Requests

*Alex Kerner**

1 Introduction

On 15 August 1725, Abraham Tuby appeared before the *Mahamad* of the Spanish and Portuguese community of London, sitting as litigation court, to complain against Ishac Lopes. Tuby accused Lopes of mistreating him and his family. After hearing from both Tuby and Lopes, the *Mahamad* ordered Lopes to ask for Tuby's forgiveness and give ten shillings as charity to be paid before Rosh Hashanah.[1]

Earlier the same year, Abraham Lopes Cardozo, in a heated disagreement with his father-in-law Abraham Alvares Núnes, made the claim that his wife, Alvares Núnes's daughter, was in fact not his legitimate daughter. In other words, he questioned his mother-in-law's fidelity to her husband. After Alvares Núnes stated his grievance against his son-in-law in front of the *Mahamad*,

* This article is based on a research presented at the international conference "Religious Changes and Cultural Transformations in the Early Modern Western Sephardi Communities," held at the Hebrew University of Jerusalem in November 2016. An extended version of the article will be published in two separate articles in: *Jewish Historical Studies: Transactions of the Jewish Historical Society of England*, volumes 49 and 50. This research has received funding from the European Research Council under the European Union's Seventh Framework Programme (*FP/2007–2013*)/*ERC grant agreement no 295352* 11). It was written as part of the "Religious and Cultural Changes in the Western Sephardi Diaspora in the Early Modern Period" project at the Hebrew University of Jerusalem under the direction of Professor Yosef Kaplan. I wish to thank the very helpful staff of the National Archives of the United Kingdom (TNA), and the London Metropolitan Archives (LMA) for facilitating access to relevant materials as well as the staff of the Central Archives for the History of the Jewish People in Jerusalem (CAHJP). Special thanks to the Shaar Hashamayim Spanish and Portuguese Jews' Congregation of London for permission to research and copy its archival materials held at the LMA. Finally, I wish to thank Naomi Tadmor, Edgar Samuel and Yosef Kaplan, for reading a first draft of the article and for their valuable remarks.

1 London Metropolitan Archives, City of London (henceforth: LMA) 4521/A/01/21/001, Tuby v. Lopez, 15 August 1725.

the wardens reconciled the estranged members of the family, convincing Lopes Cardozo to retract his accusations, declare Alvares Núnes's daughter to be his legitimate offspring, and promise that henceforth he will respect his father-in-law.[2]

On 18 April 1784, Joseph Habilho claimed six shillings from Joseph Barda, as payment for five pairs of slippers that Barda had bought from him previously. The *Mahamad* ordered Barda to return the slippers to Habilho. But, at the same time it ordered Habilho to give back to Barda his *tefillin* and two prayer books that Habilho allegedly took from Barda in order to coerce him to pay.[3]

These are only three out of over two thousand three hundred cases that the *Mahamad* of London, sitting as an inner court of law, judged in almost six hundred sessions held between 1721 and 1799. The existence of a legal instance implies a degree of legal autonomy conferred upon the community by the government, in the case of London, by the Queen or the King. However, such a legal autonomy was never officially granted. The closest to any kind of official recognition of the existence of the Sephardic community in the early modern period, which might have implied a kind of legal autonomy, was Charles II's statement given in 1664, shortly after the community was established that the Jews "may promise themselves the effects of the same favour as formerly they have had, so long as they demean themselves peaceably and quietly with due obedience to his majesty's laws and without scandal to his government."[4] This declaration was reaffirmed in 1685 by Charles's brother, James II,[5] and later quoted in various official documents as well as by the congregation itself whenever addressing the authorities. These statements, however important, did not address specifically the issue of legal autonomy, and this naturally affected the character of the inner court of litigation of the congregation, making of it a voluntary instance with no coercion tools, notwithstanding the aspirations of absolute power of the *Mahamad*, as these transpire from the wording of the first *Ascamot* (communal ordinances) issued in 1664.

Article 25 of the *Ascamot* stipulated the establishment of an internal mechanism for settling disputes between members of the community:

> Any person of the *yehidim* [individuals] of this *kahal* [congregation] who may have matters of dispute with his fellow on an affair of business, as

2 LMA/4521/A/01/21/001, Alvares Núnes v. Lopez Cardozo, 18 March 1725.

3 LMA/4521/A/01/21/003, Habilho v. Barda, 18 April 1784.

4 LMA/4521/A/03/01/001–009.

5 LMA/4521/A/03/01/005.

> long as it is not about letters of exchange and detention of goods, wherein delay may be harmful to him, shall be bound to have him summoned by the *samas* [beadle] before the *Mahamad*, into whose presence they shall both have to come and appear; and the said *Mahamad* shall urge them to take arbitrators before whom they may lay their case and give their reasons, in order that on hearing them they may do all that is in their power to bring them to agreement and concord in eight days; and if the parties should not assent to arbitrators being given to them, or if, though they have them, they should not be able to bring them to agreement, they shall be free to seek and defend their rights before whom they may please; and if it happen that without this effort preceding any one summon his fellow, action shall be taken against him as may seem fit.[6]

We can see from the article that the mechanism for settling disputes was established in order to resolve business quarrels between members, making it a tool that could be of benefit mainly to the wealthy members of the congregation. The rationale in this case was not essentially different from similar arbitration mechanisms found in guilds and in other minority religious communities. This was the preferred course for resolving commercial and other disputes in England in the eighteenth century, thus circumventing the slower and more costly route of adjudication in the courts of the land.[7] The *Mahamad*'s involvement in the legal process was limited at this stage to summoning the litigants to appear before it and having them agree to nominate arbitrators who would make the necessary effort to arrive at a compromise.[8] The wardens, then, were not supposed to get involved in the nitty gritty work of the negotiations. The

6 Lionel D. Barnett, *El Libro de Los Acuerdos, Being the Records and Accompts of the Spanish and Portuguese Synagogue of London, from 1663 to 1681* (Oxford: Oxford University Press, 1931), 9–10. I use Barnett's translation. However, a correction is called for. Barnett's translation runs as follows: "such as letters of exchange and detention of goods" while the Spanish original refers to "an affair of business, *as long as it does not concern* letters of exchange and detention of goods" [my italics]: "[…] *como no sea* letras de cambio y aresto de effettos" [my italics]. The Central Archives for the History of the Jewish People [CAHJP] HM2/990, article 25.

7 Angus J.L. Winchester, ed., *The Diary of Isaac Fletcher of Underwood, Cumberland, 1756–1781* (Winchester, UK: The Cumberland and Westmorland Antiquarian and Archaeological Society, 1994), xxvii.

8 A good example of this kind of arbitration mechanism can be seen in a case from 1693, found by Edgar Samuel in the Amsterdam City Archives [PA334/684/50], in which two arbitrators were nominated in order to rule on a dispute between Francisco de Cáseres and Francisco de Córdova over a sum of 110 Guinees (see Edgar Samuel, *At the End of the Earth. Essays on the History of the Jews of England and Portugal* [London: The Jewish Historical Society of England, 2004], 233–34).

resulting ruling of the arbitrators was not binding. If a compromise was not found, the litigants were free to seek a solution elsewhere. Although not stated in so many words, this meant license to proceed to the courts of the land. The only obligatory stage was for the litigants to address themselves to the *Mahamad* before any other legal steps were taken.

Later versions of the *Ascamot* reveal a gradual change in the logic and scope of the article, making more central the involvement of the *Mahamad* in the legal procedure. In the 1693 version, *Mahamad* members were to make "all the diligences and means possible" to arrive at a compromise between the litigants, or, alternatively, to convince them to agree upon arbitrators to resolve the dispute. Importantly, while the 1664 version referred specifically to business disputes, this version broadened the scope to "doubts and disagreements," which in fact could imply any kind of disagreement. A rationale was offered in this version for the condition of appealing to the *Mahamad* prior to any approach to the courts of the land: "[…] and the gentlemen of the *Mahamad* shall by all ways available strive to adjust the controversies that can cause scandal and profanation of the name of God."[9] Thus, we see how disputes between individuals developed into communal concerns. They were perceived as a threat to the wellbeing of the community and as such, the concern of the *Mahamad*. "Dirty laundry" was to be aired within the congregational walls, only to be taken to a court of the land with the express permission of the *Mahamad*. An important addendum was made in 1700 following a resolution by the elders of the community: if a compromise was not reached between the litigants, the *Mahamad* was to try to convince them to apply to *din torah*, that is, to agree to be judged by a religious court (not necessarily a rabbinical one) according to Jewish law.[10] This could have meant the formation of an ad hoc religious court whenever agreed between the litigants. However, in 1705, the *Mahamad* decided to form a permanent religious court in order to judge in accordance with Jewish law between litigants who would agree to resort to this kind of adjudication. This religious court, whose members were to be elected by the *Mahamad*, was to judge cases in the manner customary in other diaspora communities. That is, the adjudication was to follow the model of communities in which legal autonomy was translated into the establishment of courts whose terms of reference were halakhic principles.[11] This religious court ought not to be confused with

9 LMA/4521/A/01/01/003—*Livro Das Ascamot*—nf [no folio]—4 Tishry 5454 [4 October 1693].

10 Ibid.

11 LMA/4521/A/01/02/001—Orders and Resolutions of the *Mahamad*, Nisan 5438 to 28 Elul 5484, fol. 52b, 29 Shevat 5465 [23 February 1705].

the regular rabbinical *beit din*, which dealt with purely religious issues such as dietary laws, marital relations, and so on. However important the establishment of such a religious court was, it was seldom used, as we will see below. The secular legal instance of the *Mahamad* remained the procedure available to the vast majority of those community members who opted to use the legal services of the *Mahamad*.

A further refinement of the *Ascama* was issued in 1733 stressing that license to approach a court of the land was to be made by the *Mahamad* as an entity. License granted by a single member of the *Mahamad* was not enough. The litigants had to go through the motions as detailed in the *Ascama*, and sanctions were to be applied against any member of the *Mahamad* who unilaterally granted such license.[12]

The first version of the *Ascama* was drafted when the community was just established and numbered not more than a few dozen members.[13] The challenge then, was more of a theoretical one and, in any case, the measures in the 1664 version were sufficient to settle disputes between its few adherents. By the end of the eighteenth century, the community was much bigger, and its fabric had changed. From a few wealthy merchants it had become a community comprised mainly of poor people who had endless petty arguments. The 1784 version of the *Ascama* reflects this wider scope of disputes brought to the judgment of the *Mahamad*. Now it encompassed "doubts and disputes, be it due to offences or insults received or because of debts or differences over accounts." The role of the *Mahamad* also was broadened and the sanctions against violators hardened. If in the past the *Mahamad* would seek for arbitrators to make, or would itself make, the effort to reach a compromise between litigants, now it became its sole responsibility "to see if they can settle that dispute through amicable means." While the scope of disputes and the responsibility of the *Mahamad* were enlarged, the rulings still were not binding and when a solution was not reached, the *Mahamad* was to grant the sides the right to appeal to the courts of the land.

In all four versions of the *Ascama*, an exemption was made for cases involving letters of exchange or any issue involving serious financial loss, but in the

12 LMA/4521/A/01/01/005—*Livro Das Ascamot A.M. 5493–5535*—nf—23 Elul 5492/approved 6 Iyar 5493 [21 April 1733].

13 Until the last part of the seventeenth century, the community never numbered more than five hundred members. By the mid eighteenth century, the Spanish and Portuguese Jews' congregation in London numbered about two thousand five hundred people (see Todd M. Endelman, *The Jews of Britain, 1656 to 2000* [Berkeley: University of California Press, 2002], 41).

1784 version this exemption is further stressed.[14] These exemptions were evidently convenient for the upper classes of the community, probably those of its members who were regular *finta* and *imposta* payers, the only ones who might find themselves involved in such kinds of disputes. By exempting them from the legal procedure at the *Mahamad*, the community was in fact creating two classes, the rich merchant elite and the poor rank and file members, with at least de facto, different internal legal privileges. As we will see below, the wealthier members of the community did not care at all to go through the motions and applied directly to the courts of the land, especially the Chancery Court, without passing through the *Mahamad*. All the versions of the *Ascama* include the option to apply to the courts of the land in the absence of suitable compromise. In some cases, litigants came to the *Mahamad* in agreement to request license to resolve their dispute in court, skipping the arbitration stage within the community.[15] In other cases, defendants did not appear before the *Mahamad* when summoned, but sent a message through the beadle asking the *Mahamad* to grant the plaintiff license to sue the defendant in the court of the realm.[16] Application to court, then, was considered legitimate, provided it was done with the permission of the *Mahamad*. This is especially so because the *Mahamad* lacked coercive powers to summon members as parties to a suit, or as witnesses.

2 The Rabbinical Court (*Beit Din*)

The members of the congregation in London could opt to resolve their disputes in a religious court, a *beit din*. Such institution, as we saw above, was established in 1705, although apparently it was not frequently used. An appeal to *din torah* was optional, but the rules of the *beit din* were clearly delineated by the *Mahamad*. Apparently, its rulings became binding once this procedure was willingly entered into by the litigants. The basic legal terms of reference of the *beit din* were to be "*din torah*" (as Jewish law was described in this context), and in addition, what is customary for its function in the Diaspora of Israel ("o q' se estila lhe sua função no galut de Israel").[17] This last addendum is important,

14 LMA/4521/A/01/01/007, Book of Ascamot Passed 5545—fols. 40–41–1 Tishry 5545 [16 September 1784].

15 LMA/4521/A/01/21/001, Méndes Monforte v. Rodrigues, 9 Tevet 5506 [1 January 1746].

16 LMA/4521/A/01/21/002, Méndes do Valle v. Pinheiro Furtado, 27 Adar I 5537 [6 March 1777].

17 LMA/4521/A/01/02/001 - Orders and Resolutions of the *Mahamad*, Nisan 5438 to 28 Elul 5484 – fol. 52b–29 Shevat 5465 [23 February 1705].

because it takes into account issues not expressly addressed by religious law, and especially issues related to modern commerce and the like. The reference to what is customary in other communities probably relates to the policy of ruling according to "din o carob la-din," as was customary in other Sephardic centers, such as Livorno, for instance.[18] In other words, when an issue with no corresponding article in Jewish law was adjudicated, the aim was to issue a ruling that reflected, to the greatest extent possible, the spirit of Jewish law.

The *hakham* was the head of the *beit din*. Its other members were elected by the elders. These were to be three members of the community (or more, depending upon the gravity of the dispute) considered to be "competent and deserving." Importantly, according to halakha, a *beit din* can be made up of any three observant, worthy, adult male members of the community. In principle, a rabbinical authority is not needed. It seems that the addition of the *hakham* to the religious court was intended to ensure that the rulings were made with the active participation of one erudite in Jewish law. The *hakham* functioned as a sort of religious-legal advisor, a duty defined by the *Ascamot*. In cases that required more than three "judges," the members of the *beit din* (and not the elders) were to choose the additional members. If the post of *hakham* was vacant (as was often true in London), the *beit din* itself could issue rulings. This meant, from a practical point of view, that rulings could be issued without proper legal-religious advice. Apart from that, the *hakham* was to issue halakhic rulings ("declare the *din*," meaning give his binding opinion on religious matters) whenever enquired of by members of the community. He was also to rule on disputes between members of the community, in accordance with Jewish law ("according to *din*"), either when the litigants opted for the *din torah* course or when the case was referred to him by the *Mahamad*.[19]

In practice, as occurred in other Sephardic communities (e.g., Amsterdam), the religious court became a rabbinical court composed of *hakhamim* who were on the payroll of the community. This implied a degree of subordination of the religious authorities to the wardens of the congregation. No orderly records of the *beit din* exist (they either did not survive, or, more probably, were not kept). Yet, from the minutes of the *Mahamad* and from the records of the legal cases dealt with by it we can gain a fairly clear picture of its areas of activity. Naturally, the *beit din* dealt with purely religious issues: supervision over

18 Milano, "L'Amministrazione Della Giustizia Presso Gli Ebrei Di Livorno Nel Sei-Settecento," 144.

19 LMA/4521/A/01/01/006, *Ascamot* as revised by committee appointed 13 and 17 Heshvan 5542 (November 1781), fols. 52–53.

the slaughtering of beasts and the supply of kosher meat to the community,[20] legal issues related to matrimony and divorce,[21] oaths,[22] and oversight of the religious conduct of members of the congregation (when instructed to do so by the *Mahamad*).[23] It also assisted the *Mahamad* in approving the publication of books by members of the congregation.[24]

Since no records exist, it is difficult to say whether or not the option of *din torah* was widely chosen. Judging from what we know about the general fabric of the community, most probably it was not. Yet, the *beit din* assisted the court of arbitration of the *Mahamad* and complemented its activity. In some cases what started as a dispute in the Mahamad was referred either by common agreement or by the decision of the *Mahamad* to the *beit din*.[25]

3 The Arbitration Mechanism at Work

When we try to look at the model according to which this court of *Pleitos*, as it was named, built its mechanism of work and verdict policy, we find that

20 See Ishac Nieto, *Recopilação de Varias Cartas & Actos Autenticos Concernentes a Bedica Ou Examinação Das Rezes Publicadas, a Fim Que Cada Hum Possa Vir, a Conhecimento Da Verdade* (London [Salonika], 1761); Albert Montefiore Hyamson, *The Sephardim of England. A History of the Spanish and Portuguese Jewish Community 1492–1951* (London: Methuen & Co., 1951), 182; Evelyne Oliel-Grausz, "Patrocinio and Authority: Assessing the Metropolitan Role of the Portuguese Nation of Amsterdam in the Eighteenth-Century," in *The Dutch Intersection*, ed. Yosef Kaplan (Leiden: Brill, 2008), 149–72, esp. 163.

21 See, for example: CAHJP/HM2/1088, Minutes of the Elders 1784–1795, 12 Tamuz 5555 [29 June 1795], fol. 340. Another good example is the unhappy marriage of David Genese and Benvenida Mendoza, which will be dealt with below (see LMA/4521/A/01/21/002, Genese v. Mendoza Genese, 20 Heshvan 5533 [16 November 1772] and 30 Sebat 5533 [23 February 1773]).

22 See, for example, the oath that Joseph Mizrahi was required to give regarding his debt to Barukh Sultan and David Zamiro. In this specific case, the option of the oath before the *hakham* was suggested by the *Mahamad*. However, the suggestion was not accepted by the litigants and therefore license was given to them to go to court (LMA/4521/A/01/21/002, Sultan and Zamiro v. Mizrahi, 12 Tevet 5536 [4 January 1776]).

23 Such was the case with Abraham Rodrigues. In March 1793, following the instructions of the *Mahamad*, the members of the *beit din* demanded that Rodrigues cease desecrating the Sabbath in a "scandalous way." Since he did not change his behavior, the *beit din* recommended that the *Mahamad* no longer consider Rodrigues a Jew. The *beit din*'s proposal was approved by the council of Elders on 8 May 1793 (LMA/4521/a/01/02/004, *Livro de velhos*—5545/1784–5555/1795, fol. 286).

24 See, for example: CAHJP/HM2/996, Minutes of the *Mahamad*, 5554–5563 (1794–1803), fol. 286, 14 Elul 5560 [4 September 1800].

25 See, for example, LMA/4521/A/01/21/004, Velasco v. Benatar (29 January 1794).

it was not following any Jewish custom or any other specific Jewish community (even if such institutions did exist in other communities). In fact, it was a duplicate of the English Court of Requests—a court that dealt with petty litigations over small sums of money, mainly used by poor people, in which there was no legal representation by solicitors, each side appearing in person to expose his or her case.

While the decision that disputes between members of the community were to be presented to the *Mahamad* was approved upon the establishment of the congregation in 1664, we can only detect systematic activity of the *Mahamad* as a court of arbitration from 1721 on, when the cases brought before it started to be kept in a separate register. Before that year, it seems that the *Mahamad*, by and large, did not concern itself with litigation. Hence, we can safely say that the first steps of the court of arbitration were taken in 1721, and even then, not as a regular matter.[26] Edgar Samuel writes that before 1721 the cases brought to the ruling of the *Mahamad* were recorded in minute books.[27] From 1664 until 1721 however, only three cases can be found in the minutes.[28] Bearing in mind the very few cases registered in the first years after 1721, we may conclude that before 1721 the *Mahamad* dealt with very little litigation. We recall, in this context, that until the first decade of the eighteenth century the congregation in London did not number more than five hundred people, most of them wealthy merchants, who in the event of commercial disputes may have directly applied to court, as permitted by the *Ascama*. Only from the second decade of the eighteenth century and on do we see a rapid growth in numbers, by now mainly of poor Sephardim, which naturally made the demand for a working legal mechanism more acute.

This mechanism was active at least until 1864.[29] In the first years it was not widely used. In 1721 the *Mahamad* convened as a court of arbitrations only five times and dealt with only five cases. In each of the subsequent years the

26 On the other hand, prior to 1721 we find members of the congregation at the Chancery Court (see TNA/C/9/319/49, Gomes da Costa v. Henriques Bernall, 15 November 1698).

27 Samuel, "The Mahamad as an Arbitration Court," 10.

28 LMA/4521/A/01/02/001, Bueno v. Rodrigues, 12 December 1678, De Leon v. Abendanon, 4 Elul 5454 [25 August 1694], and Mahamad v. Musaphia on the issue of Pestana, 4 Kislev 5467 [10 November 1706].

29 The records of the arbitration court are kept at the London Metropolitan Archives (ref. LMA/4521/A/01/21/001–006). It is a corpus of six volumes in which a very brief abstract of the case and the ruling are inscribed. There is no volume for the years 1830–1836, and it seems that it was lost. As a matter of rule, during the eighteenth century the records were kept in Portuguese, and in a few cases in English. In the early years of the nineteenth century the records begin to be kept in English.

number of cases never counted more than fifteen (in 1735 and in 1738), and there were several single and sometimes consecutive years in which no sessions or cases are to be found at all (1730–1734, 1761–1768).[30] Only from 1771 onwards do we see a regular use of the courts. The peak years were 1783–1784. In 1783 the *Mahamad* convened as an arbitration court twenty-eight times dealing with 121 cases, and in 1784 there were nineteen sessions during which 128 cases were heard. In the whole of the eighteenth century (the period under research here), a total of 2,307 cases were recorded in 591 sessions.[31]

As a rule, the court convened immediately after the weekly meeting of the *Mahamad*. In the first years, the court sessions took place at the beginning of the Hebrew month (*rosh hodesh*). In later years, the rate was approximately every two weeks. The sessions were held at the synagogue building, where the offices of the *Mahamad* were located.[32] The court was made up of three members of the *Mahamad*. If for some reason three members of the *Mahamad* were not available, complementary "judges" from the elders were called to sit in their place. As can be seen, the court met regularly, and throughout the whole year. Furthermore, this was a service provided gratis. The option to go to an external court was far less attractive. Not only did a fee have to be paid, but courts met only for four (multiple-day) sessions during specific periods throughout the year. It could take up to two years until a case was heard in a court of common law.[33] As against this, at the court of the *Mahamad* one could resolve a dispute almost immediately and in a quite efficient way, without the complications that recourse to an external court could entail. At this stage we already can see that besides being a control tool of the *Mahamad* over the congregation and a device to "avoid scandal," the court was first and foremost a service provided for the benefit of the members of the congregation.

30 These are not years for which the records were lost. The gaps are found in single volumes with the last record of a year immediately followed by the first record of the next.

31 In comparison, in the years 1670–1709, a period of about forty years, the wardens in Livorno dealt with 5,666 cases, an average of 142 cases per year. In London the average was almost thirty cases per year for a period of almost eighty years (1721–1799). Although the data from Livorno is from an earlier period than the one analyzed in this article, the numbers can provide us with some idea of the magnitude of the use of the court. The number of Sephardim in Livorno was not much bigger than that of London (approx. 3,000 in Livorno, approx. 2,500 in London), but in Livorno, it seems, the arbitration court of the community was used much more widely (the Livorno data was taken from Milano, "L'Amministrazione della giustizia presso gli Ebrei di Livorno nel Sei-Settecento," 156).

32 See LMA/4521/A/01/21/002, Fernandes v. Núnes de Lara, 27 Elul 5533 [15 September 1773].

33 Baker, *An Introduction to English Legal History*, 66.

When a dispute arose between community members, they could agree to come to the arbitration court. Often, the plaintiff would ask the beadle of the congregation to summon the defendant. Generally speaking, both sides appeared on the date accorded. However, in not a few cases, one of the parties, usually the defendant, did not show. Nonattendance was expected to occasion a written or oral excuse, to be delivered through the beadle. Such excuses varied. For instance, some excuses offered very little explanation.[34] In other cases, the litigant stated that he or she was busy with merchandise or at work, or even was out of the city or abroad.[35] Health problems were often recruited to explain nonattendance.[36] And, in some cases, the litigant simply refused to appear.[37] Most of the excuses were accepted but there were exceptions too.[38] In general, whenever one of the parties did not attend for a first time (even if no excuse was provided), the *Mahamad* postponed the hearing for the next session. If one of the parties did not show up upon the second summons, the *Mahamad* gave the plaintiff license to proceed to a court of the realm, almost without exception.[39] Contrary to what was stipulated in the *Ascama*, nonattendance, with very few exceptions, was not punished with any kind of pecuniary or other sanction. Here the advantages of the arbitration court of the community in comparison with the Court of Requests are obvious. In the Court of Requests nonattendance without a satisfactory excuse could end in the imprisonment of the defendant.[40] What is more, the two-call procedure, which was

34 See, for example, LMA/4521/A/01/21/002, Porto v. Belisario, 28 Kislev 5537 [9 December 1776]; Méndes do Valle v. Pinheiro Furtado, 28 Shevat 5537 [5 February 1777]; Boltibol and Israel v. Sultan, 28 Shevat 5537 [5 February 1777].

35 See, for example, LMA/4521/A/01/21/003, Tedesquy v. Bernal, 26 Nisan 5545 [6 April 1785]; LMA/4521/A/01/21/004, Ish Yemini v. Belisario, 28 Tishry 5558 [18 October 1797]; LMA/4521/A/01/21/002, Núnes Martines v. Vaz Martines, 28 Iyar 5538 [25 May 1778]; LMA/4521/A/01/21/ 002, Núnes Martines v. Habilho Fonseca, 26 Shevat 5543 [29 January 1783].

36 See, for example, LMA/4521/A/01/21/003, Caneo v. Cohen, 28 Heshvan 5547 [18 November 1786]; LMA/4521/A/01/21/003, Fonseca v. Baruh, 26 Iyar 5547 [14 May 1787]; LMA/4521/A/01/21/004, Levy v. da Costa, 26 Tamuz 5557 [20 July 1797]; LMA/4521/A/01/21/ 002, Henriques v. García, 26 Tevet 5538 [25 January 1778].

37 See, for example, LMA/4521/A/01/21/ 003, Belilo v. Álvares, 27 Shevat 5546 [26 January 5546].

38 See, for example, LMA/4521/A/01/21/003, Alvarenge Franco v. Sanguinetti, 28 Av 5549 [20 August 1789].

39 During 1788 there were several cases in which the litigants were summoned three times and not two, as accustomed (see LMA/4521/A/01/21/003, Sarfaty v. Álvares, 27 Tevet 5548 [7 January 1788]; Mendoza v. Núnes Martines, 11 Adar 5548 [20 March 1788]; Shanon v. Cohen, 25 Tamuz 5548 [30 July 1788]; Paz de Leon v. Soares, 25 Tamuz 5548 [30 July 1788]).

40 David Deady Keane, *Courts of Requests, Their Jurisdiction and Powers* (London: Shaw & Sons, 1845), 106.

used by the Court of Requests and seemingly adopted by the *Mahamad*, was discontinued sometime in the late 1770s,[41] while it continued to be used by the *Mahamad* in subsequent years as well.

Yet, nonattendance was widespread. In approximately a third of the cases in the period between 1721 and 1799, one of the sides did not appear. In some years more than half of the summonses were ignored by one of the sides.[42] Lacking any enforcement measures, the *Mahamad* was left to hope that both sides would show up. Its only leverage was the policy of almost automatically granting license to the plaintiff to go to court if the defendant did not show up at court at the second summons. The high level of nonattendance is indicative of the limited practical and moral sway held by the *Mahamad* over its members. As long as litigants found it convenient, they went to the communal arbitration court. If, however, their interests dictated such, they resolved their disputes at the Court of Requests or at any other court (such as the Chancery Court) without taking into account the *Mahamad*. In any case, the two-call procedure among Sephardic communities seems to have been unique to London, probably because it mirrored the English practice.[43]

Once convened, the court functioned as a typical alternative dispute resolution mechanism. Each of the litigants presented his or her case, and, with very few exceptions, no solicitors were involved in the process.[44] If needed, witnesses were called. These could be called at the initiative of one or both of the sides, or summoned by the wardens.[45] Interestingly, non-Jews could be brought as witnesses too.[46]

Although the original aim of the creation of the arbitration mechanism was to resolve small business disputes between members of the community along

41 The summoning form used by the Court of Requests in the late 1770s has a note stipulating that contrary to what was previously customary, the summoned have to come on the date stated in the form since a second court day is no longer allowed (see LMA/CLA/038/03/002, unbound sheet; LMA/CLA/038/02/7, unbound sheet).

42 These numbers include first and second call.

43 However, it seems to have existed also in Amsterdam, as currently researched by Evelyne Oliel-Grausz. On the measures used by other communities and in earlier times in order to coerce defendants that did not want to cooperate with the inner legal procedure, see Assaf, *Batei Ha-Din U-Sidreihem Acharei Chatimat Hatalmud*, 25–34. On the number of summonses to court in the English legal system in the eighteenth-century see Baker, *An Introduction to English Legal History*, 65.

44 See, for example, LMA/4521/A/01/21/002, Pereira v. Franco, 5 Kislev 5543 [11 November 1782] and 12 Kislev 5543 [18 November 1782].

45 LMA/4521/A/01/21/ 003, Núnes Martines v. Sagui, 15 Av 5546 [9 August 1786]; Jonah v. Finzi, 28 Nisan 5547 [16 April 1787]; Cardoso v. Méndes, 26 Heshvan 5549 [26 November 1788]; LMA/4521/A/01/21/004, Moyal v. Ben Zeraf, 28 Tishrey 5558 [18 October 1797].

46 LMA/4521/A/01/21/003, Finzi v. Sebolla, 27 Elul 5550 [6 September 1790].

the lines of the Court of Requests and the County Court,[47] the wardens rapidly found themselves settling arguments on the most varied range of matters: financial, business, and property disputes, employer-employee relationships, familial and marital conflicts, neighbor relations, defamation, and minor cases of non-criminal violence. Compared to the judicial instances that the general public in England had at their disposal during the eighteenth century, the arbitration court of the *Mahamad* comprised all the fields covered by the Court of Requests, the Summary Courts, the Hearing Courts and to a lesser degree, the Chancery Court. With the exception of the formal Chancery Court, which depended on the Crown, the procedures of the *Mahamad* as an arbitration court were similar to those of the other English legal instances, characterized by their "rather administrative informality, their semi-private nature, their fluidity and flexibility and their tendency to become forums of negotiation and mediation rather than of formal prosecution."[48]

Some fields remained out of bounds. The most obvious was the criminal area. When Abraham Hernandes Dom Fernando accused Judith Romano and Sarah Hernandes Julião of stealing from him, the wardens referred the case to a court of the land, explaining that this was a matter of major crime ("couza de crime mayor"), hence not under the jurisdiction of the *Mahamad*.[49] Another area that was not dealt with by the wardens in their capacity as an arbitration court concerned offences against the *Mahamad* or infractions of *Ascamot* by members of the congregation. These were handled by the *Mahamad*, not as a legal instance but as the congregation's supreme authority. Members, however, could sue the *Mahamad* or more frequently other communal institutions such as charity fraternities, in financial disputes and the like. On these occasions, which were very few (only two percent of the cases from 1721 to 1799), the case was dealt with indeed by the *Mahamad* as a court of arbitration. In these cases, the *Mahamad* tended to rule for the fraternity.

In the period between 1721 and 1799, forty-five percent of the cases were related to business in their widest meaning (financial, business, property, employer-employee relationships, etc.). The most frequent though were debts. The policy of the *Mahamad* was very similar to that of the Court of Requests. Namely, it tried to diminish the economic damage caused to the plaintiff due

47 Baker, *An Introduction to English Legal History*, 24.

48 Peter King, *Crime, Justice, and Discretion in England 1740–1820* (Oxford: Oxford University Press, 2000), 83–84.

49 LMA/4521/A/01/21/002, Hernandes Dom Fernando v. Romano and Julião, 26 Nisan 5542 [10 April 1782].

to the defendant's insolvency. Hence, many times the debt was reduced and spread out in installments. This was better than losing the entire sum.

Coming to the court of the *Mahamad* had its advantages. While at the Court of Requests the verdicts were final, here there was some room for compromise and negotiation. If a defendant could not pay his debt, money could be reduced from the charity he or she received from the community and the sum was transferred to the plaintiff. Scheduled payments could be postponed. In some extreme cases, members of the *Mahamad*, who as a rule belonged to the rich merchant elite of the community, would step in and cover the debt themselves. This was unimaginable at the Court of Requests.

The rest of the cases were related to what we could define as human relations (brawls, violence, insults, defamation, etc.). The *Mahamad* always sought to conciliate, mediate, and smoothen relations. Almost no dictates can be found, what stands in contradiction with the image generally held of the *Mahamad* as an autocratic institution. Recommendations such as "the sides were advised to live in peace as good neighbours," or the same but between wives and husbands or parents and children abound in the records.

Seven percent of the cases were related to family issues, many of them associated with marital relations. Couples could divorce according to religious law (*get*) and could separate without divorcing, parallel to the *mensa et thoro* solution in the non-Jewish realm. We have to remember that divorce in England during this period was possible only by a specific ruling of Parliament. However, within the congregation we know that divorces did happen. What we find in the *Pleitos* are not a few cases in which women separated from their husbands claimed alimony from their spouses. In other words, couples could separate without divorcing, but alimony was still granted to women even if not divorced with a *get*. This was similar to the custom among the English. This is interesting from a gender point of view, since it grants women economic rights even without going through the legal religious process of divorce. At the same time, this is an interesting phenomenon, because the *Mahamad* gave couples the permission to live apart and granted alimonies, a field that should have been reserved for the rabbinical authorities of the community. This is an excellent example of the supremacy of the *Mahamad* over the rabbinical authorities.

Marital relations brings us to the matter of gender relations. Roughly a quarter of the cases involved women in one or another way. Eight percent of lawsuits were brought by men against women, a remarkable thirteen percent of the cases were complaints filed by women against men and five percent of cases were between women. These are impressive figures especially if we bear

in mind the legal status of women in English society in the eighteenth-century. Women were not regarded as independent legal entities. They depended on their father when of minor age or single, and on their husband when married. However, in the records of the *Pleitos* we find single, married, and widowed women filing complaints, even against their husbands. In a number of cases, women came to the *Mahamad* representing their own interests or those of their husbands in disputes against other men or women. Their testimonies were accepted. In short, women were a recognized and independent legal entity in the eyes of the *Mahamad*, enjoying a better status than their Gentile likes.

4 *Lei de Terra* (Court of the Realm)

In a remarkable thirty-two percent of the cases, one of the sides, generally the defendant, did not care to appear. This tells us something about the rather limited actual authority of the *Mahamad*. In later years, the percentage of nonattendance increased hinting to the *Mahamad*'s further diminishing status. In 1788, 1794 and 1797, half of the cases were "no shows."

In about twenty percent of the cases, the *Mahamad* opted to allow the litigants to proceed to an external court. These were, as a rule, the Court of Requests for small sums,[50] and the Chancery Court for more significant cases. The *Mahamad* did not specify to which courts the litigants could proceed. Such a decision was considered beyond their purview and was to be made in accordance with the laws of the country. The propensity of the *Mahamad* to allow the use of external courts is of course indicative of its constraints. As it was a voluntary organization, the leverage wielded by the *Mahamad* over the members of the congregation was limited; hence, it understood the importance of flexibility. This was a well-known and long-standing problem among Jewish communities that enjoyed a certain level of legal autonomy. The authority of the community over its members was founded on the premise that it was voluntarily accepted by its members who could always opt out of the community, leaving a plaintiff, for example, with no alternative but to address him- or herself to the courts of the land.

This flexibility did not imply that the members of the London congregation always, if at all, cared to go through the motions and receive license from the

50 Originally the Court of Requests was authorized to hear cases on small debts not exceeding forty shillings. In the late eighteenth-century the sum was updated to sums not over ten pounds.

Mahamad to go to an external court. Quite the contrary, many, if not most members, belonging to all the social strata of the community, went directly to external courts, not bothering to receive first license from the *Mahamad*. Unfortunately, the court records for London during this period are incomplete; hence reliable statistics are not available. However, the records that survived for the second half of the eighteenth century show a significant participation of members of the community in legal processes at the Court of Requests and at the Chancery Court.[51] We find in the records of the court of the *Mahamad* many complaints against members of the congregation who went to court without license. Surprisingly, however, no sanctions are to be found in cases where *both* litigants went to court without first requesting license to do so.[52] It seems that the unwritten rule was as follows: If both sides to a dispute agreed a priori to solve their problem at an external court, the *Mahamad* did not involve itself in the process (in all likelihood, it did not even know when such agreements were made). If, however, one of the sides made a unilateral move to court, then the other side (the defendant, generally), could file a complaint at the court of the *Mahamad*. Still, in these cases as well, the reaction of the *Mahamad* was mild. This fact can help explain the numerous appeals made without license to the Court of Requests and to the Chancery Court.

Mahamad members were careful not to render any decision that might stand in opposition to a decision made by a court of the land, and in some cases they even updated the external courts about their internal cases. When the *Mahamad* decided to allow Samuel Santillana and Jacob Palache to continue with their dispute at court, the beadle (*samas*) was ordered to appear in court and relate the hearing that took place within the community boundaries.[53] In not a few cases, when a complaint was already filed at a court, the court of the *Mahamad* allowed the process to continue.[54] For example,

51 For the Court of Requests see for example: LMA/CLA/038/02/004, Moravia v. Cohen, 5 May 1762; LMA/CLA/038/02/005: Rodrigues v. Suarez, 19 September 1772; Levy v. Mendoza, 12 July 1777; LMA/CLA/038/02/009, Shannon v. Jessurun, 12 June 1783. For the Chancery Court see for example: The National Archives of the United Kingdom (henceforward: TNA): TNA/C/12/1911/74, Rodrigues v. Namias, 17 February 1762; TNA/C/11/2108/41, Robles v. Paiba et al. 23 March 1746; TNA/C/11/698/22, Cortisos v. da Costa, 1729 (first document).

52 See for example: LMA/4521/A01/21/002: Ximenes v. Franco, 5 Sivan 5543 [5 June 1783]; Núnes Martines v. Romano, 24 Sivan 5535 [22 June 1775]; Formento v. Genese, 14 Tamuz 5536 [1 July 1776]; LMA/4521/A/01/21/003, Habilho v. Boltibol, 26 Elul 554 [12 September 1784].

53 LMA/4521/A/01/21/003, Santillana v. Palache, 14 Tishry 5548 [26 September 1787].

54 See, for example, LMA/4521/A/01/21/003, Núnes Martines v. Habilho, 9 Kislev 5551 [14 November 1790]; Mendes Chumaceiro v. Cardoso, 25 Av 5551[25 August 1791]; Núnes Martines v. Albo, 8 Iyar 5552 [30 April 1792].

Abraham Baruh summoned Ester Lacour to the court of the *Mahamad* for several disputes. However, since the issue was already being dealt with by the Court of Conscience (another name for the Court of Requests), the *Mahamad* "did not find it wise to deal with the case."[55] When considered fair and possible, plaintiffs were asked to suspend their complaint at the courts of the land.[56] Yet, there were cases in which the *Mahamad* even permitted creditors to initiate an arrest procedure against debtors.[57] License to proceed to court might be granted conditionally, that is, if the ruling of the court of the *Mahamad* was not fulfilled. In these cases, no further permission was needed, and upon non-fulfillment the plaintiff could automatically proceed to an external court.[58]

Thus, the *Mahamad* did not object to appeals to the court of the land. On the contrary, this appears to be one of the paths it adopted to promote conflict resolution. Moreover, at the Chancery Court we find members of the *Mahamad* as parties to legal processes, either as individuals or even representing the communal institution.[59] However, sometimes the *Mahamad* could not tolerate members' independent legal procedures. When in August 1783 Moseh Spenco and Joseph Uzily unsuccessfully summoned the *Mahamad* to the Lord Mayor's Court, they were ordered to publicly request the *Mahamad*'s forgiveness, standing at the *tebah* of the synagogue between the afternoon (*minha*) and evening (*arbit*) prayers.[60] This was no minor humiliation, but such sanctions enabled the wardens to preserve their prestige.

Furthermore, the Court of Requests had, as a rule, four to six Jewish brokers officially registered as facilitators who would assist members of the community at court. There were generally two Ashkenazim and two Sephardim, always appearing on the last rows of the list of brokers, notwithstanding the alphabetical order in which the rest of it was rendered, marking them as "specialists"

55 LMA/4521/A/01/21/003, Baruh v. Lacour, 27 Elul 5550 [6 September 1790].

56 LMA/4521/A/01/21/003, Arobas v. Martines, 28 Tamuz 5546 [24 July 1786]; Rodrigues Habilho v. Habilho, 15 Av 5546 [9 August 1786]; da Costa v. Rodrigues, 28 Tevet 5550 [3 January 1790].

57 LMA/4521/A/01/21/001, Bensancho v. Halfon, Levy, Machado & Lópes de Oliveira, 7 Tamuz 5498 [25 June 1738].

58 See, for example, LMA/4521/A/01/21/001, de Leao v. Ramos, 4 Sivan 5485 [16 May 1725]; LMA/4521/A/01/21/002, Cortisos v. Hesquiau, 27 Heshvan 5533–23 November 1772; LMA/4521/A/01/21/003, Leon v. García, 28 Nisan 5550 [2 April 1790]; LMA/4521/A/01/21/003, Leon v. Valentin, 2 Elul 5550 [12 August 1790].

59 See, for example, TNA/C/11/668/66, da Costa Alvarenga v. de Paiba, Fernandes et al., October 1725. Echoes of the case can be found in the minutes of the *Mahamad* as well. See: LMA/4521/A/01/01/001, 27 March 1724 and 2 January 1726 (nf).

60 LMA/4521/01/02/002, 26 Av 5543 [24 August 1783], fol. 211.

in affairs related to the members of the Jewish community.[61] The Sephardim were always of the rich merchant elite of the congregation, frequently former or future members of the *Mahamad*.[62] This state of affairs only reinforces our assessment that in London the legal autonomy of the Sephardic community was not part of a separate identity-building effort, but a practical tool at the service of the community members, well-coordinated with external courts. Simply put, it was an additional—albeit unofficial—legal instance to which the members could turn to find solutions to their disputes in a cheaper and more efficient way.

As mentioned above, not infrequently, the Court of Requests was approached without license. Nonetheless, in many cases the procedure was duly followed. Let us consider a typical case. On 6 September 1779, the widow of Isaac Carcas was granted license to proceed to court against Judah Boltibol and two days later, they appeared at the Court of Requests.[63] Some litigants were less straightforward. Perhaps fearing a negative response from the *Mahamad* or in order to tie up any loose ends, they appealed for license only *after* they actually addressed the Court of Requests. Gabriel Taitasach and David Aboab appeared at the Court of Requests on 13 June 1795.[64] However, Taitasach requested license from the *Mahamad* only two days later. The same happened in the case of Simson Genese and Isaac de Castro.[65]

These last two cases are interesting for another reason. Both appearances at the Court of Requests took place on a Saturday. These were members of the congregation, as their appeal for license proves, and yet they appeared in court on the Sabbath. And these two cases were no exception. The Court of Requests held hearings on Wednesdays and on Saturdays. A party to litigation had to appear exactly at eleven o'clock in the morning on the date he or

61 On the brokers' functions see, Deady Keane, *Courts of Requests, Their Jurisdiction and Powers*, 100.

62 LMA/CLA/038/03/002, Court of Requests—Summons Book, 1779–1780, nf; LMA/CLA/038/03/004, Court of Requests—Summons Book, 1781–1782, nf; LMA/CLA/038/03/005, Court of Requests—Summons Book, 1782–1783, nf; LMA/CLA/038/03/006, Court of Requests—Summons Book, 1783–1784, nf; LMA/CLA/038/03/008, Court of Requests—Summons Book, 1785–1786, nf.

63 LMA/4521/A/01/21/002, Carcas v. Boltibol, 27 Kislev 5540 [6 December 1779] and LMA/CLA/038/02/007, Court of Requests, City of London—Accounts 1784–1785, Carcas v. Bottibol, 8 December 1779, fol. 61.

64 LMA/CLA/038/03/013, Court of Requests—Summons Book 1795–1796, Taitasach v. Aboab, 13 June 1795 and LMA/4521/A/01/21/004, Taitasach v. Aboab, 28 Sivan 5555 [15 June 1795].

65 LMA/CLA/038/03/013, Court of Requests—Summons Book 1795–1796, Genese v. de Castro, 9 January 1796 and LMA/4521/A/01/21/004, Genese v. de Castro, 29 Tevet 5556 [9 January 1796].

she was summoned. Postponements were possible, but at a certain point in the late 1770s this ceased to be an option.[66] For a Jew, this meant that if summoned by a court to come on a Saturday, he or she was compelled to do so.[67] And indeed Jews did. By the late eighteenth century, the level of religious observance among the Sephardim in London was not particularly high. As such, it would not be utterly shocking to find them attending sessions of court on the Sabbath. Evidently, one could be a member of the congregation, attend synagogue, and abide by the authority of the *Mahamad*, but at the same time attend to one's own interests, even if this was at the expense of keeping the Sabbath to the letter.[68] More unexpected though, and even more indicative of the general level of religiosity of the congregation, would be to find at court on the Sabbath preachers (*darsantes*), and members of important rabbinical families whom we would expect to have observed the Sabbath strictly.[69] All of them came to the court on the Sabbath, and so seemingly did the brokers, who as indicated above, were former and sometimes incumbent members of the *Mahamad*. Thus we are dealing with a widespread phenomenon that, while evidently known to the *Mahamad*, was not addressed by them.[70]

Unlike the Court of Requests, where we find the poor of the community seeking justice for their petty affairs, some with the license of the *Mahamad*,

66 This can be learned from the citation form used in the late 1770s. See LMA/CLA/038/03/002, unbound sheet; LMA/CLA/038/02/7, unbound sheet.

67 In contrast, since 1659, Amsterdam Jews were officially exempt from attending the courts on the Sabbath. See Daniel M. Swetschinski, *Reluctant Cosmopolitans, The Portuguese Jews of Seventeenth-Century Amsterdam* (London, Portland, OR: The Littman Library of Jewish Civilization, 2000), 215.

68 In many places Jews were exempt from summonses to court on the Sabbath. It seems that in London this was not the case (see Assaf, *Batei ha-Din u-Sidreihem Aharei Hatimat ha-Talmud*, 18 n. 1).

69 Thus we find Isaac Mendes Belisario, one of the most important preachers at the synagogue, and even Pinhas Nietto, the son of the late Haham David Nietto, appearing at court on the Sabbath. Nietto did not avail himself of license granted by the Mahamad. Belisario, for his part, did (LMA/CLA/038/03/008, Court of Requests—Summons Book 1785–1786, Belisario v. Belilo, 25 March 1786; LMA/CLA/038/03/006, Court of Requests—Summons Book 1783–1784, Netto [sic] v. Lyon, 17 July 1784).

70 A hundred years earlier, in 1678, the *Mahamad* issued an *Ascama* condemning those who went to the post office to deliver and collect letters on the Sabbath. We do not know their approach regarding going to court on that day, which, unlike going to the post office, was obligatory. Yet, already at the end of the seventeenth century we see a measure of laxity in the strict observance of the sanctity of the Sabbath by members of the congregation (see CAHJP/HM2/991, Minutes of the *Mahamad* 5438–5484, fol. 1r). A similar laxity regarding the observance of the Sabbath can be found in Amsterdam in the last decade of the seventeenth century. There too, the reactions of the *Mahamad* were rather mild (see Swetschinski, *Reluctant Cosmopolitans*, 215–16).

most without it, at the Chancery Court we meet the upper class of the community. The few cases in which we see wealthy members of the congregation at the arbitration courts of the *Mahamad* is when they were creditors of small sums owed to them by poor members of the congregation. If the sum was not significant, wealthy members also took their cases to the court of the *Mahamad*. Hananel Mendes de Acosta, for example, was a rich merchant who also rented some apartments to congregation members, and was warden of the charity fraternity Maasim Tobim. We find him in 1765 at the Chancery Court in a major financial dispute with Joseph Salvador, a member of one of the most prominent Anglo-Sephardic families. Years later he appears at the *Mahamad*'s arbitration court, represented by Abraham Julião, reclaiming a tiny sum (for him, at least) of seven shillings.[71]

Although the procedures at the court of the *Mahamad* were far simpler and faster, the upper classes preferred the royal instances of law.[72] Here we see litigations worth tens of thousands of pounds, stock shares, securities and annuities, cases involving Sephardic merchants from England, the Netherlands, Gibraltar and North Africa, and family disputes regarding the execution of wills worth fortunes big and small. All dealt with, of course, by professional solicitors, almost all without license from the *Mahamad*. In one case at least, although the *Mahamad* ordered that it not proceed to court, the plaintiff did so anyway. Moreover, the plaintiff, if not a member of the current *Mahamad*, was at least a former one.[73] Were we to follow the prevailing image of the Sephardic congregations in the West, this is precisely the kind of court where we would expect to find its members, and not the Court of Requests, which was the court to which the majority actually appealed.[74] Let us recall, however, that disputes related to letters of exchange and cases involving large sums were exempted a priori from the need of license granted by the *Mahamad*.

Here too we can identify interesting phenomena. In certain cases, the members of the *Mahamad* as individuals and the *Mahamad* as an institution appear as parties to litigation or as testators of wills. Thus, in the case of Costa

71 See: TNA/C/12/2058/12a, Mendes de Acosta v. Salvador, April 1765; LMA/4521/A/01/21/002, Mendes de Acosta v. Finse, 26 Iyar 5540 [31 May 1780].

72 Compare the simple procedures described here with the procedures at the Court of Chancery described by Radcliffe and Cross (G. Radcliffe and G. Cross, *The English Legal System* [London: Butterworths, 1971], 146–47.

73 TNA/C/12/174/19, Brandon v. da Costa, August and October 1791; LMA/4521/A/01/21/003, Brandon v. da Costa, 26 Iyar 5551 [20 May 1791].

74 Some examples, TNA/C/12/1911/74, Rodrigues v. Namias, 17 February 1762; TNA/C/11/2108/41, Robles v. Paiba, 26 March 1746; TNA/C/11/508/27, Lindo v. Lindo, 1732; TNA/C/11/778/21, Gabay Villareal v. Pereira et al., 1733.

Alvarenga v. de Paiba, Fernandes, Ximenes and others, mention is made of several names who were "the then wardens or elders of the Portuguese Jews' Synagogue in London."[75] More intriguing, as wills had to be deposited at an ecclesiastical court (in our case, at the court of the Bishop of Canterbury), the jurisdiction of the *Mahamad* was rendered irrelevant, even in a field that could easily be dealt with according to Jewish law and tradition. In some cases, the person writing a will wished it to be executed according to the Jewish law, creating strange situations in which a non-Jewish court, judging between Jews, was asked by a party to issue a ruling according to halakhic principles. In one case, for example, a request was made that the inheritance of a deceased person "should be divided between nearests [*sic*] relations according to the holy law of Moses"[76] In another case mention was made of "the custom and the usage of the Jews" or to rules "according to the custom and the usage of the Jews he being of that persuasion."[77] Moreover, issues that seem to properly belong within confines of the community made their way to the Chancery Court. One of the disputes refers to a thousand "pounds sterling to be appropriated in order to apply and dedicate the revenue of that sum towards establishing a *jesiba* (yeshiva) or assembly for daily reading the holy law leaving the management thereof to his executors therein named for the same to improve the holy and divine law." One of the inheritors, as was often the case, objected to implementing the charity articles of the will.[78]

5 Conclusions

On 23 April 1778, the *Mahamad* issued the following decree, to be read aloud at the synagogue before the reading of the Torah, and to be posted on the door of the office of the *Mahamad*:

75 TNA/C/11/668/66, da Costa Alvarenga v. da Costa Alvarenga, October 1725. For an additional example, see TNA/C/11/816/17, de Paz v. Campos, 1742–1743: "and oratrix further shew unto your lordship that the worthy men of the said Portuguese synagogue are usually chosen and appointed every year […] the gentlemen […] of the said portuguez synagogue consisted of five persons and no more (that is to say) Abraham mendes Campos, Jacob alvares Pereira, moses gomes lara, Abraham capadoce, and Moses Pereira of London merchants and they continued and were the worthymen of the said portuguez synagogue for a considerable time after the death of the said Hannah d'Avila."

76 TNA/C/12/2053/31, de Paz v. Buzaglo, March–June 1765.

77 TNA/C/11/2090/40, Supino v. Supino, January 1742.

78 TNA/C/11/1072/5, da Costa v. Pereira, May 1743.

> In the name of [our] Blessed God, Amen. Having the gentlemen of the *Mahamad* considered the inconveniency resulting to the members of the congregation and the poverty of our nation due to the present litigations that one has against the other at the court of the land without first being summoned to appear in front of the *Mahamad*, and wishing the aforesaid gentlemen to avoid this inconvenience conforming the intention of *Ascama* 16, they have decided that from today on they will proceed with all rigor according to the *Ascama*, against any person that will infringe [against the said *Ascama*] it. And peace be upon Israel.[79]

Not surprisingly, no actual change was implemented in the policy against those who went to an external court without license. As in other fields of administration of authority, a clear gap existed between the intentions of the *Mahamad* and what actually transpired. The same can be said about the whole mechanism of arbitration. Whereas in 1664 the internal legal mechanism was set up with the rich merchants of the congregation in mind, by 1778, as is clearly reflected by the decree, it was a mechanism devoted to serving the poor. Indeed, the cases that we find in the litigation records are mostly of poor people, struggling for a sack of coal, some bottles of milk, small quantities of flour, some biscuits, a pair of underpants, shoes, coats, and shirts. It was about street brawls and marital violence, small debts of utterly insolvent people who as a matter of rule were dependent on the charity fraternities funded by the rich *imposta* and *finta* payers of the congregation. This was definitely not a tool of control as we could have expected from an allegedly ever-more power-seeking body, but rather another kind of charity system or social service, seeking compromise, promoting peace, and saving the poor members of the community the costs and risks of appealing for justice at an external court. Despite the ideals of *Bom Judesmo* groomed by the founding fathers of the congregation in the second half of the seventeenth century and the aspirations of the wardens throughout the generations to control their flock and make of them a disciplined congregation, the impression is that the majority, the poor and non-privileged, were a quite unruly assemblage of people. This made their control impossible, as we learn from the numerous appeals of members of the congregation to the courts made without license from the *Mahamad*.

The court of litigations, like the congregation, was far from an isolated institution. On the contrary, the *Mahamad* was well aware of its constraints, and thus permitted the members of its community to interact with the courts

79 LMA/4521/01/02/002, Minutes of the Mahamad 1776–1788, 23 April 1778, fol. 59.

of the land, leaving open, despite its official policy, the path to English justice. This receptivity to the English legal system, and its compatibility with it, is also a sign of the modernization, integration, and acculturation processes that the Sephardic congregation in London underwent during the eighteenth century. The adoption of the Court of Request model (with some adaptations) instead of clinging to the old isolationist systems used in other communities to cultivate a unique Jewish identity, further demonstrates the particularity of the Anglo-Sephardic case. This, to borrow Yosef Kaplan's words, was one of the expressions of the "alternative path to modernity" of the Sephardic congregation in London,[80] or, perhaps, an expression of this congregation's unique path to Englishness.

Bibliography

Assaf, Simcha. *Batei Ha-Din U-Sidreihem Acharei Chatimat Hatalmud*. Jerusalem, 1924.

Baker, J.H. *An Introduction to English Legal History*. 4th ed. Bath: Butterworths, 2002.

Barnett, Lionel D. *El Libro de Los Acuerdos, Being the Records and Accompts of the Spanish and Portuguese Synagogue of London, from 1663 to 1681*. Oxford: Oxford University Press, 1931.

Deady Keane, David. *Courts of Requests, Their Jurisdiction and Powers*. London: Shaw & Sons, 1845.

Endelman, Todd M. *The Jews of Britain, 1656 to 2000*. Berkeley, Los Angeles, and London: University of California Press, 2002.

Gotzmann, Andreas. "At Home in Many Worlds? Thoughts about New Concepts in Jewish Legal History." In *Jahrbuch Des Simon Dubnow Instituts*, 2: 413–36. Munich: Simon Dubnow Institut Leipzig, 2003.

Hyamson, Albert Montefiore. *The Sephardim of England. A History of the Spanish and Portuguese Jewish Community 1492–1951*. London: Methuen & Co., 1951.

King, Peter. *Crime, Justice, and Discretion in England 1740–1820*. Oxford: Oxford University Press, 2000.

Milano, Attilio. "L'Amministrazione della giustizia presso gli Ebrei di Livorno nel Sei-Settecento." In *Scritti in memoria di Leone Carpi*. Edited by Daniel Carpi, Atilio Milano, and Alexander Rofe, 133–64. Gerusalemme: Fondazione Sally Mayer, Milano, 1967.

80 And compare with the situation in some German cities (see Gotzmann, "At Home in Many Worlds? Thoughts about New Concepts in Jewish Legal History," 429).

Nieto, Ishac. *Recopilação de varias cartas & actos autenticos concernentes a Bedica ou examinação das rezes publicadas, a fim que cada hum possa vir, a conhecimento da verdade*. London (Salonika), 1761.

Oliel-Grausz, Evelyne. "Patrocinio and Authority: Assessing the Metropolitan Role of the Portuguese Nation of Amsterdam in the Eighteenth-Century." In *The Dutch Intersection*. Edited by Yosef Kaplan, 149–72. Leiden: Brill, 2008.

Radcliffe, G., and G. Cross. *The English Legal System*. London: Butterworths, 1971.

Samuel, Edgar. *At the End of the Earth. Essays on the History of the Jews of England and Portugal*. London: The Jewish Historical Society of England, 2004.

Samuel, Edgar. "The Mahamad as an Arbitration Court." *Jewish Historical Studies* 41 (2007): 9–30.

Swetschinski, Daniel M. *Reluctant Cosmopolitans, The Portuguese Jews of Seventeenth-Century Amsterdam*. London. Portland, OR: The Littman Library of Jewish Civilization, 2000.

Winchester, Angus J.L., ed. *The Diary of Isaac Fletcher of Underwood, Cumberland, 1756–1781*. Winchester (UK): The Cumberland and Westmorland Antiquarian and Archaeological Society, 1994.

Appendix: Case Statistics (%) for the Years 1721–1799*

Year	Sessions	Cases total	Finance	Family	Defamation	Neighbors	Community
1721	5	5	5	-	-	-	-
1722	5	6	6	-	-	-	-
1723	2	2	2	-	-	-	-
1724	6	8	7	-	-	-	-
1725	10	27	20	4	1	1	4
1726	3	3	3	-	-	-	-
1727	-	-	-	-	-	-	-
1728	2	2	1	-	-	-	-
1729	2	4	4	-	-	-	-
1730	-	-	-	-	-	-	-
1731	-	-	-	-	-	-	-
1732	-	-	-	-	-	-	-
1733	-	-	-	-	-	-	-
1734	-	-	-	-	-	-	-
1735	12	15	14	-	-	-	-
1736	3	3	2	-	-	1	-
1737	3	3	3	-	-	-	-
1738	9	15	13	-	-	-	-
1739	6	7	6	-	-	1	-
1740	-	-	-	-	-	-	-
1741	2	2	2	-	-	-	-
1742	1	1	1	-	-	-	-
1743	-	-	-	-	-	-	-
1744	1	1	1	-	-	-	-
1745	-	-	-	-	-	-	-
1746	1	1	1	-	-	-	-
1747	-	-	-	-	-	-	-
1748	1	3	3	-	-	-	-
1749	-	-	-	-	-	-	-
1750	4	4	4	-	-	-	-
1751	3	3	3	-	-	-	-

* Numbers in parenthesis represent percentage; M2M = male vs. male; M2F = male vs. female; F2M = female vs. male; F2F = female vs. female

Other	M2M	M2F	F2M	F2F	Ley de terra	No shows
-	4(80)	-	1(20)	-	-	-
-	6(100)	-	-	-	-	-
-	2(100)	-	-	-	-	-
1	8(100)	-	-	-	1(13)	-
-	21(78)	-	1(4)	-	1(4)	-
-	3(100)	-	-	-	-	-
-	-	-	-	-	-	-
1	1(50)	-	-	-	-	-
-	1(25)	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
1	14(93)	-	-	-	1(7)	-
-	2(66)	-	-	-	1(33)	-
-	3(100)	-	-	-	-	-
2	10(66)	4(27)	1(7)	-	2(13)	-
-	6(100)	-	-	1(14)	-	-
-	-	-	-	-	-	-
-	2(100)	-	-	-	-	-
-	1(100)	-	-	-	-	-
-	-	-	-	-	-	-
-	1(100)	-	-	-	-	-
-	-	-	-	-	-	-
1	1(100)	-	-	-	1(100)	-
-	-	-	-	-	-	-
-	2(67)	-	1(33)	-	-	-
-	-	-	-	-	-	-
-	3(75)	1(25)	-	-	2(50)	-
-	3(100)	-	-	-	-	-

Appendix (*cont.*)

Year	Sessions	Cases total	Finance	Family	Defamation	Neighbors	Community
1752	3	3	-	-	-	3	-
1753	6	8	3	-	-	3	-
1754	2	2	2	-	-	-	-
1755	3	3	3	-	-	-	-
1756	2	2	2	-	-	-	-
1757	1	1	-	-	-	1	-
1758	-	-	-	-	-	-	-
1759	2	2	2	-	-	-	-
1760	1	1	1	-	-	-	-
1761	-	-	-	-	-	-	-
1762	-	-	-	-	-	-	-
1763	-	-	-	-	-	-	-
1764	-	-	-	-	-	-	-
1765	-	-	-	-	-	-	-
1766	-	-	-	-	-	-	-
1767	-	-	-	-	-	-	-
1768	-	-	-	-	-	-	-
1769	2	2	2	-	-	-	1
1770	-	-	-	-	-	-	-
1771	1	1	1	-	-	-	1
1772	3	18	13	4	1	3	-
1773	19	50	34	9	3	8	-
1774	17	50	37	10	3	6	-
1775	13	44	23	4	2	5	-
1776	15	37	25	3	2	7	
1777	17	63	32	2	1	6	2
1778	19	79	43	4	1	5	1
1779	16	105	57	7	1	8	-
1780	14	78	37	3	1	2	2
1781	25	104	63	9	4	8	-
1782	21	107	53	3	2	10	4
1783	28	121	68	4	2	12	2
1784	19	128	62	9	-	7	-
1785	21	94	38	6	1	8	1
1786	23	96	45	10	3	11	-

Other	M2M	M2F	F2M	F2F	Ley de terra	No shows
-	2(67)	-	1(33)	-	-	-
-	8(100)	-	-	-	1(12)	-
-	2(100)	-	-	-	1(50)	-
-	3(100)	-	-	-	-	-
-	2(100)	-	-	-	-	-
1	-	-	-	1(100)	-	-
-	-	-	-	-	-	-
-	2(100)	-	-	-	-	-
-	1(100)	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	2(100)	-	-	-	1(50)	-
-	-	-	-	-	-	-
-	1(100)	-	-	-	-	-
-	15(83)	3(16)	-	-	8(44)	-
5	37(74)	5(10)	7(14)	-	20(40)	2(4)
3	39(78)	7(14)	2(4)	3(6)	16(32)	2(4)
13	24(55)	3(7)	4(9)	8(18)	11(25)	12(27)
4	25(67)	3(8)	7(19)	1(3)	14(37)	5(14)
21	48(76)	3(5)	6(10)	3(5)	15(24)	27(43)
32	59(75)	5(6)	9(11)	7(9)	14(18)	31(39)
34	61(58)	13(12)	20(19)	9(9)	30(29)	39(37)
30	39(50)	13(17)	15(19)	7(9)	16(20)	36(46)
26	63(61)	11(11)	22(21)	6(6)	33(32)	31(30)
32	56(52)	11(10)	21(20)	5(5)	24(22)	37(35)
37	88(73)	10(8)	16(13)	8(7)	24(20)	38(31)
53	103(80)	6(5)	11(9)	6(5)	34(27)	55(43)
41	76(81)	7(7)	7(7)	2(2)	27(29)	30(32)
35	70(73)	9(9)	12(12)	3(3)	16(17)	31(32)

Appendix (*cont.*)

Year	Sessions	Cases total	Finance	Family	Defamation	Neighbors	Community
1787	22	97	39	7	2	20	4
1788	20	73	21	13	-	4	-
1789	16	80	39	5	4	6	-
1790	26	124	52	8	5	15	2
1791	17	104	50	8	1	8	4
1792	18	70	24	6	1	9	1
1793	18	88	14	1	2	2	-
1794	13	58	22	2	-	6	1
1795	13	53	19	3	1	4	2
1796	14	55	31	3	-	6	-
1797	14	92	26	3	3	8	-
1798	14	62	25	2	2	7	3
1799	12	37	13	4	1	9	-
Total:	**591**	**2307**	**1031(45)**	**156(7)**	**50(2)**	**220(10)**	**35(2)**

Other	M2M	M2F	F2M	F2F	Ley de terra	No shows
30	66(68)	8(8)	18(18)	5(5)	11(11)	28(29)
37	43(59)	5(7)	19(26)	6(8)	10(14)	36(49)
43	62(77)	10(12)	13(16)	2(2)	13(16)	37(46)
52	91(73)	8(6)	15(12)	5(4)	27(22)	41(33)
37	78(75)	4(4)	16(15)	5(5)	9(9)	31(30)
35	51(73)	11(16)	6(9)	1(1)	10(14)	28(40)
27	29(33)	7(8)	6(7)	2(2)	4(4)	23(26)
28	46(79)	3(5)	5(9)	3(5)	12(21)	29(50)
24	35(66)	4(8)	6(11)	6(11)	19(36)	19(36)
17	39(71)	3(5)	9(16)	3(5)	11(20)	17(31)
52	68(74)	7(8)	8(9)	6(7)	16(17)	46(50)
26	44(71)	4(6)	8(13)	4(6)	14(23)	26(42)
13	23(62)	3(8)	5(14)	6(16)	9(24)	9(24)
794(34)	**1595(69)**	**191(8)**	**298(13)**	**124(5)**	**479(21)**	**746(32)**