Tribunais e diásporas: interação das instituições de governança commercial

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This paper examines the extensive use of litigation by merchants of Jewish origin plying the sugar trade route – Brazil, Portugal and the Netherlands – in the late sixteenth and early seventeenth century. It argues that the legal system was not only feasible but actually used to solve commercial disputes among traders of various origins across wide distance and different political units, even during wartime. Litigation was also frequent amid within the diaspora that comprised Western Sephardic Jews and Iberian *conversos*, which allegedly constituted a closely-knit group.

Traditional historiography maintains that, during early modern times, trading relations were mainly supported by informal mechanisms based on reputation within small, dense and cohesive affinity diasporas[1]. More recently, revisionist historians contended that traders who did not share any common natural affiliation built significant business relations, which were mostly governed by informal mechanisms founded on reputation and self-interest[2]. Both traditional and revisionist studies accord that the legal

[1] **[xxxx][Halachah: Kaplan and Goldish]**

[2] Trivellato correctly pointed to courts' inefficiency in terms of swiftness, expertise and equity, alongside the multiple conflicts of jurisdiction among the various tribunals in operation. Such shortcomings would have led merchants to minimize resorting to litigation. Nevertheless, the great diamond case, to which Trivellato dedicates a full chapter of her book, and which involved Western Sephardic Jews, on one side, and a Persian Jew, on the other, was eventually resolved judicially in spite of all the inadequacies of all the courts that had touched it. Moreover, Trivellato also makes use of an extensive body of documents produced in the course of trade and attached to mercantile correspondence – such as bills of lading, protests

system was too ineffective; therefore both downplay the role of formal enforcement in supporting commerce.

In fact, official coercion coevolved and interplayed with the informal mechanism for securing compliance with mercantile norms and agreements rather than competed with them for prevalence. When the informal mechanisms failed, merchants turned to the more costly, slower and doubtful legal verification and enforcement. To better count on such remedy, merchants produced official documents, which functioned like an option: their costs were all more sensible the more the parties feared to have to resort to litigation later on.

Both authorities and merchants enhanced the effectiveness of the legal system by establishing a growing standardization, universalization and enforceability of trading customs and routines throughout Europe and its colonies. Furthermore, private documents produced in such routines were increasingly admitted as evidence in court, sometimes in summary procedures and at specialized mercantile tribunals. Authorities also recognized the legal tender of both official and private documents produced abroad, and allowed foreigners to litigate against nationals. Trade expansion both engendered and was enhanced by this process.

Universal and uniform trading routines

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of bills of exchange, insurance policies and the letters themselves – that were admissible evidence. The production and dispatch of such documents imply that even if both the results provided by litigation and the resort made to it by merchants were low, merchants found the legal system to be of enough use to take the trouble: Trivellato, *Familitarity*, pp. 154, 159-162, 261-270. Vanneste echoes the same evaluation, however, on a different section underlines that a large share of the extant mercantile correspondence survived thanks to its use in bankruptcy proceedings: Vanneste, *Global Trade*, pp. 29, 176.

A relative uniformization of the mercantile routines across the Western European realm by the end of the sixteenth century produced a shared standard about how trade should be properly conducted[3][4]. There were few local variations, but traders who dealt with those regions were well aware of them[5].

These growingly uniform and universal routines also produced pieces of information that facilitated merchants to observe their counterparties' actions and third parties to verify them. Routines required identification individuals[6], ships[7], goods and ownership[8].

Although such routine did not always require, it did recommend tradesmen to register their transactions in their account books and to produce various documents[9], mostly

[3] On the importance of rules that make the meanings of various actions common knowledge to institutions based either on collective or third-party punishment, see: A. Greif, "Commitment, Coercion, and Markets," p. 735 n. 9.

[4] Dutch arbiters decided a dispute between a Dutch shipmaster and Jewish merchants on whether fees should be paid for the goods salvaged from a shipwreck, in which the shipmaster had no part, according to a Sea Law injunction that was also quoted by Malynes: SR Nr. 1511, G. Malynes, *Lex Mercatoria*, pp. 167-8.

[5] Malynes mentioned many of them throughout his book: MALYNES, G. Consuetudo: vel, lex mercatoria, *passim*. Affidavits and other notarial deeds in Porto and Amsterdam made reference to local customs: SAA, 5075: *Archief van de Notarissen ter Standplaats Amsterdam*, l. 33, fls. 390v.-392; SR Nrs. 314, 2560, 2604; ADP, NOT, PO2 l. 20, fls. 220v.-223v. (1603-10-15); l. 25, fls. 146v.-150 (1606 5 12); PO1, l. 133, fls. 70-72v. (1612 6 20); l. 133, fls. 77-79v. (1612 6 26); l. 133, fls. 162-163v. (1612 9 22); l. 137, fls. 131-133 (1616 3 11); l. 137, fls. 141-143v. (1616 3 22).

[6] Individuals were identifiable through trading marks, names or aliases, if needed, and signatures. For the public trading alias of Uriel da Costa, alias Adam Romes, originally babtized Gabriel da Costa, see: A.M. Vaz Dias, *Uriel da Costa*, pp. 14-5. Tomas Nunes Pina's signatures in Porto in 1597 and in Amsterdam in 1623 are significantly similar: ADP, NOT, PO2, l. 7, fls. 73-74v. (1597-1-17); Source: SAA, NA, book 386, fls. 189-189v. (1623-5-6).

[7] Ships are identified in all freight contracts by her and her masters' name, its type or tonnage. Tonnage was usually not mentioned in Portugal, whereas typology was not always recorded in the Netherlands: Dataset.

[8] Goods were recognizable through their owners' marks and serial numbers inscribed on their containers **[Malynes]**: *PRO*, SP, 9/104, *passim*, SR Nrs. 657, 663 n. 47; ADP, NOT, PO2, l. 40, fls. 41v.-42v. (1615-1-28).

private, such as: invoices, bills of lading, letters of advice, letters of credit, IOUs, bills of exchange, receipts, releases, insurance policies etc. In some instances, trading routine necessitated or advised producing a few public registers, such as certificates from customs and public weighting houses or notarial deeds[10].

Private documents acquired a uniform formulaic wording. Sometimes they were even printed out in forms with blanks for the standard variables to be filled in manually[11]. Bills of lading printed in Amsterdam, for instance, had nearly the same style and content as those issued in London, Bahia and Lisbon[12]. Likewise, instruments of credit, such as bills of exchange and IOUs, acquired similar features across Western Europe, and, during the period under scrutiny, they were attributed with approximate properties and applications[13].

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[9] Overseas commercial agents were expected to hand over and/or mail these documents to their principals. These documents, or excerpts and copies of them, should follow their assiduous reports on their ongoing and previous transactions on behalf of their principals *PRO*, SP, 9/104, fls.136, 140, 144v.; D. Strum, "The Portuguese Jews and New Christians in the Sugar Trade," pp. 207-213 **[SR]**.

[10] *PRO*, SP, 9/104, fls. 98v., 121v., 131v. **[Malynes; SR]**

[11] For bills of lading, see: NA, 1.01.02, 12561.33.1; for bills of exchange, see: [Roover; Moreira; Guelderbloom].

[12] A bill of lading signed in Amsterdam in 1617 is almost identical to another signed in Bahia (Brazil) in 1651; and another signed in São Luis do Maranhão (Brazil), in 1655: NA, 1.01.02, 12561.33.1; M.A.F. Moreira, *Os Mercadores de Viana e o Comércio do Açúcar Brasileiro*, pp. 58-60; L.F. Costa, *O Transporte no Atlântico*, v. 1, p. 443; v. 2, p. 13. The only difference between these and the description of bills of ladings made by the Englishman Gerard Malynes reffers to the inclusion of the remmuneration to be paid for the transportation, which the author may have omitted: G. Malynes, *Lex Mercatoria*, pp. 134-5. **[PRO]**

[13] Transmission of instruments, particularly of bills of exchange or instruments payable to the bearer, before maturity faced different official restrictions, but were probably informally accepted: R. de Roover, L'Evolution de la lettre de change, pp. 99-113; H. van der Wee, The Growth of the Antwerp Market, v. 2., pp. 348-9; **STRUM, [xxx]; Malynes [xxx]; Gelderbloom**.

Finally, there was a growing standardization of commodities and trade-related services. Certified lists of prices, customs tariffs and traders' manuals indicate specific measures and standards – quality, workmanship, origin etc. – for classifying and pricing products. Brazilian sugar, within its three types, was a relatively homogenous commodity, and so were most of the goods traded along this route, such as coarse textiles, metalware, salt, grain, timber, pitch, wine, oil, fish and dyes[14]. Certainly, other variables influenced the final price. Nevertheless, there were easily recognizable benchmarks for commodity prices as well as for exchange, interest and freight rates and insurance premiums.

The mercantile custom in the public legal system

Trading agreements had implicit clauses provided by a normative system that was comprehensive, well known and binding[15]. During the sixteenth and early seventeenth centuries, authorities were keen on validating and regulating many of the mercantile customs that had evolved, mostly privately, as a result of the integration and expansion of markets. Rulers endeavored to conciliate these costumes with the Roman, Germanic, Canonic and Consuetudinary traditions with which they were at odds. The aim was to allow trade to expand unruffled and within a clear normative framework[16].

[14] ADP, Cabido, livs. 110, 113, 134, *passim*; ADP, NOT, PO2, l. 23, fls. 82v.-85v. (1605-4-2); l. 25, fls. 19-20v. (1606-3-3); idem, fls. 64v.-65v. (1606-4-1); l. 26, fls. 238-239v. (1607-6-19); l. 40, fls. 195-195v. (1615-7-28); SR Nrs. 362, 379; F. Mauro, *O Brasil, Portugal e o Atlântico*, v. 1, 137-141, 378-380, v. 2, pp. 13-17; F.R. da Silva, *O Porto e o seu Termo*, v. I, *passim*; L.F. Costa, *O Transporte no Atlântico*, v. 1, pp. 88-9. **[NEHA, AHMP, Malynes, Almeida]**.

[15] On the importance of a clear, shared and consequential meaning, see: Greif, "Game Theory and Historical Institutional Analysis" **[Title in French]**.

[16] **[xxx]**

This legislative effort was paralleled by jurisprudence. Courts homologated arbiters' decisions made upon custom, and accepted affidavits and opinions about trading usages. In Amsterdam, the city magistrates formally appointed merchants as arbiters[17]. Furthermore, specialized mercantile tribunals were established, and even if short-lived, as in the case of Portugal, they certainly influenced subsequent jurisprudence[18].

Valid evidence and procedures

Formal documents, such as notarized agreements and official certificates, were advisable as proof in court, but not a requisite. Private documents, ledger books and letters produced in the course of trade, at home or abroad, as well as sworn witnesses – including foreigners – and affidavits, were admissible as evidence[19]. The result of this process was that observable misconduct was more easily verifiable by court.

In the same vein, authorities recognized private bills of exchange and IOUs as titles conferring the same right to automatically proceed to enforcement as a judgment did, exempting the adjudication of the legitimacy of the debt and allowing the seizure of the debtor's properties through a swift proceeding[20]. Protests for either non acceptance or non payment of bills of exchange and for non delivery of cargoes were public procedures meant at producing sufficient evidence of breach in standard transactions overseas and

[17] SR Nrs. 212, 568, 601, 1811.

[18] **[xxx]**.

[19] Certified copies, sworn translations and authentication of signatures could be provided in case of need **[xxx]**.

[20] RAU, V. Virgínia, "Aspectos do pensamento económico português durante o século XVI", p. 116; ADP, NOT, PO2, l. 36, fl. 294 (1613-4-12); MALYNES, G. Idem, pp. 101-2. [check:] ROOVER, R. de L'évolution de la lettre de change, pp. 94-6, 99-113; WEE, H. van der. The growth of the Antwerp market, v.2., pp.348-9.

speed up legal proceedings on both origin and destination places[21].

Bankruptcy, seizure and prison for debts

Exactly because more markets became integrated, and malicious bankruptcy and absconding were more frequent, rulers adopted stricter policies against such offenses. By securing creditors' property rights, authorities enhanced their gains from expansion of trade and avoided the negative political implications of a sequence of bankruptcies.

Local authorities arrested absconding and insolvent debtors, including agents, and seized (distrained /sequestered) their goods until some settlement was reached with the creditors. Provisional settlements, often through the intervention guarantors and trustees, allowed people, vessels, goods and funds to circulate until the dispute was solved.[22]

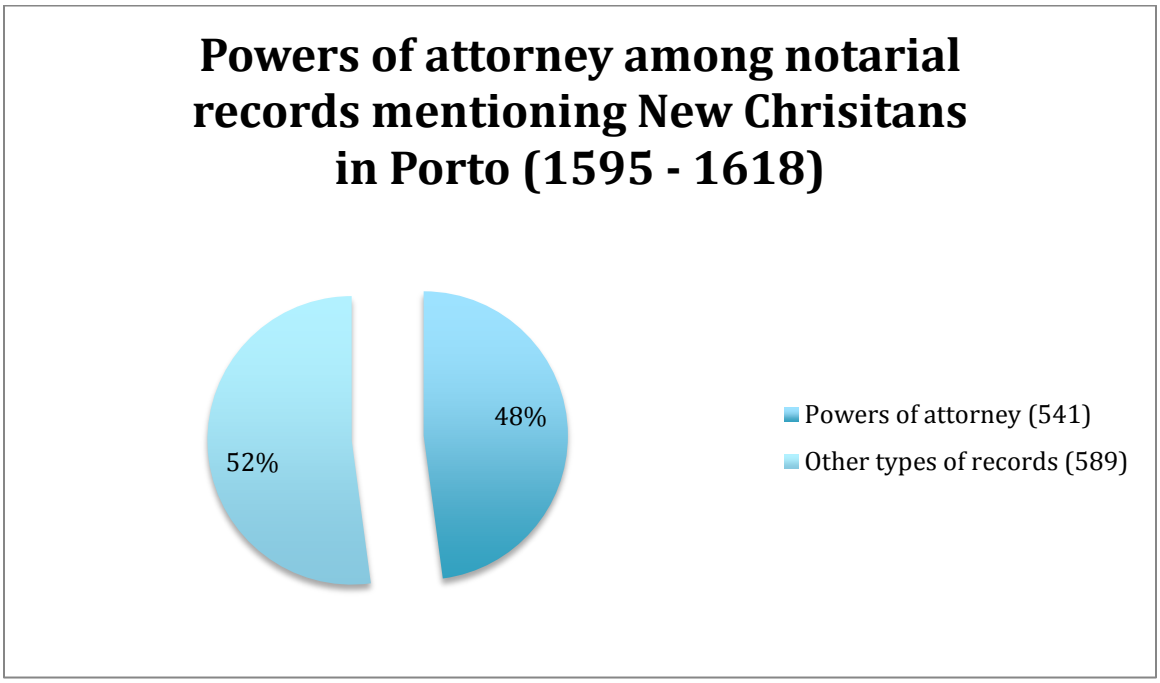
Litigation

[21] Protests were lodged about for the lack of: acceptance of bills of exchange, payment of instruments credit, loading cargo during the lay days, or matching between the actualy received and the expected shipment [complete; protests for cargo in Amsterdam] [Check:] SR Nr.375, 500, 950. SMITH, D.G. The mercantile class of Portugal and Brazil in the seventeenth century, pp.370-1; Strum [xxx].

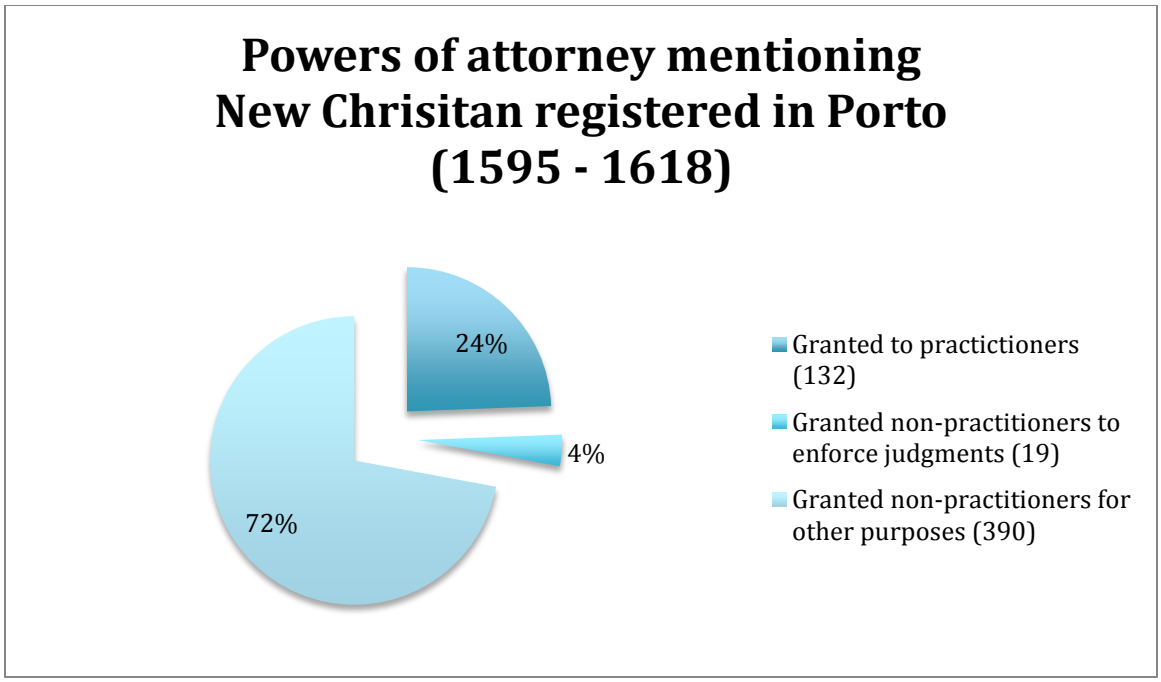
[22] Such policies also meant to allow bona fide merchants to recover and pay, at least partially and in delay, their debts under the authorities' control. For Portugal, see: *Ordenações Manuelinas*, liv.5, tit.LXV; BNP, RES. 84//16 A: Ley sobre os mercadores que quebram (1597-03-08), p.39; *Ordenações Filipinas*, liv.4, tit.LXXVI, liv.5, tit.LXV. For the Netherlands, see: SR Nrs. 259 n. 23, 548, 551, 555, 575. S. van Leeuwen, *Commentaries on the Roman-Dutch Law*, pp. 501-4. If arrest and sequestration were powerful weapons against wayward traders, their excessive use could also overburden and impair trade; therefore, precipitate plaintiffs were liable to indemnify losses and damages: SR Nrs. 114, 115, 401, 576. Dutch courts allowed debtors in arrears who were neither resident nor had guarantors to appeal out of prison as long as they showed up periodically to the authorities: SR Nrs.702, 717, 720. If renegotiation reduced the gains anticipated from cooperation, it also cut down the opportunity and transaction costs in protracted and escalating litigation: A. Greif, *Institutions and the Path to the Modern Economy*, pp. 443-5.

Although judicial sources are not extant, notarized powers of attorney are. The latter indicate that going to court was often resorted by merchants, and even next of kin were brought to courthouses in trading matters. Duarte Fernandes was one of the leading members of the Jewish community of Amsterdam during its first generation. Duarte's son in Madrid ran out of funds and defaulted on payments to both his father and his father's payees in Spain. Embarrassed, Duarte Fernandes had to empower his creditors in Madrid to charge payment from both his son and his son's debtors.[23]

Among the 1,130 notarial deeds from Porto mentioning New Christians between 1595 and 1618, 48% were powers of attorney (541/1,130); and 24% of these powers of attorney (132/541) had a lawyer or a solicitor as one of the grantees.



[23] SR Nr. 1405, 1480.



Not all powers granted to practitioners referred to trading or financial disputes. A number of them dealt with inheritances, real estates, criminal cases, etc. In most powers of attorney recorded in Porto, however, it is impossible to determine precisely what the attorneys were to procure, and whom they were to sue. 49% (65/132) stated, in various ways, that the practitioners should simply defend all the grantors' rights both in and out of court, and at each and every court of justice in all current and future lawsuits. They should also charge and collect all that belonged to and was due to the grantor.

Since 72% of these laconic powers were granted by merchants (47/65), it is reasonable to assume that the practitioners were to charge and collect mainly mercantile and financial assets. Inquisition process files support such inference. During the defense stage of the proceedings, defendants often strove to prove that all those who they suspected to have denounced them hated them deadly and, therefore, would falsely accuse them. Litigation deriving from trading disputes was often mentioned as a source

of hatred, of which the defendant named witnesses. In one of such cases, the defended claimed to have had brought a consequential lawsuit at the royal civil court in Porto against another New Christian merchant over a shipment of sugar that the defendant had sold to him before it arrived or was available, a forward contract. During the judgment, when the witnesses were heard at the home of a clerk and the son-in-law of the buyer was about to bear witness, the defendant said to him to mind how he swore and not swear as his father-in-law, who always swore falsely against the defendant. Over this issue, they would have exchanged bad words, blows and knife strokes, and many people came between.

The fact that the laconic powers of attorney were general ones had the advantages that they could be used in several different cases, and would not be interpreted restrictively. Granting powers of attorney to practitioners does not necessarily imply that a lawsuit was in progress or about to be filed, but the procurations might have been granted preventively. Still, one would not waste his time and money coming before a notary and granting powers of attorney to a lawyer or a solicitor unless he had some pressing need for it.

An addition 19 powers of attorney (19/541) were granted in Porto to non-practitioners to enforce judgments. Theses deeds clearly indicate a judicial response to a lawsuit.

All such powers of attorney, both those authorizing practitioners to take legal steps and those appointing non-practitioners to enforce judicial sentences, amounted to 151 deeds, a considerably large figure. Just to compare, only 60 freight contracts that mentioned New Christians were identified for the same period of time. Yet the average

individual powers of attorney granted for commercial disputes in a lifetime probably comprised only a handful.

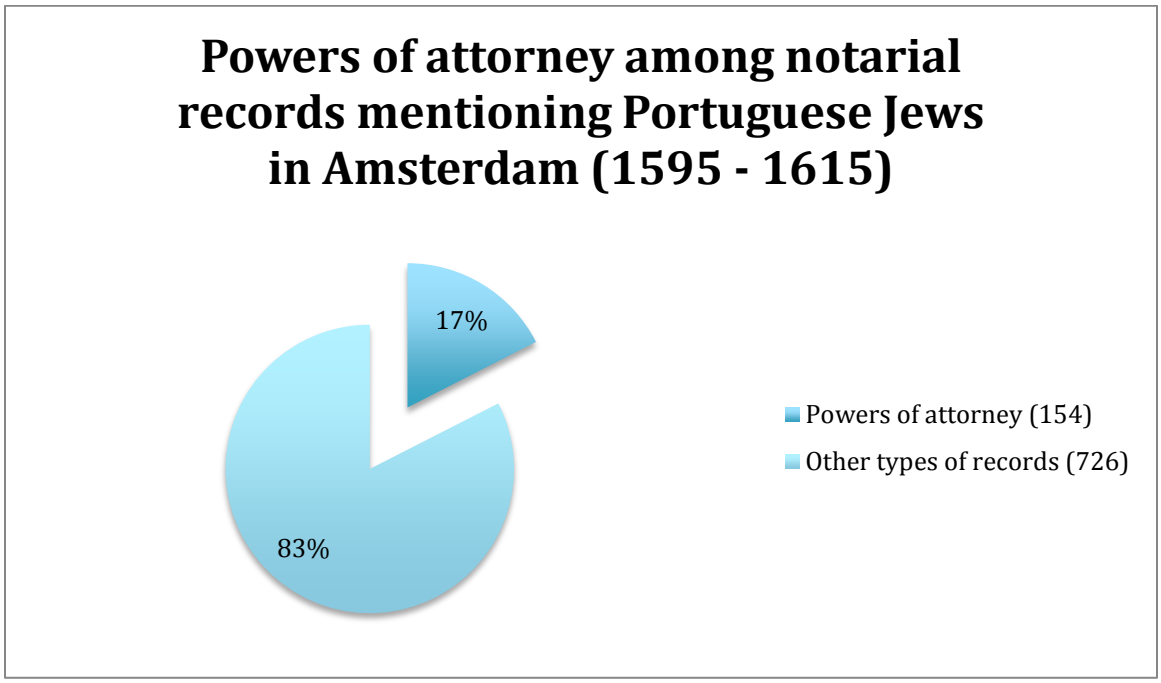
On Amsterdam, the journal *Studia Rosenthaliana* published 880 notarial records referring mainly to Portuguese Jews[24] registered between 1595 and 1615 (October 18 to October 18). **17.5%** (154/880) of all these records comprise powers of attorney[25]. Amsterdam's notarial records present a lower proportion of powers of attorney compared to Porto's, which does not mean that they were less used in Holland. It merely reflects the fact that a large share of the deeds in Amsterdam included types of instruments that were not registered by Porto notaries, such as the abandonment of goods to insurers, protests of bills of exchange and notices. During the period under scrutiny, the Jewish male population grew steeply from a handful of souls to up to 300 individuals, which indicates the same pattern of only a few lawsuits per lifetime.

Among those powers of attorney another **17.5%** (27/154) were granted to lawyers, solicitors and officers at the municipal and provincial courts, as well as at the boards of the different admiralties and the East Indies Company, the Chamber of Assurance and the Commissioner of Small Causes. In nearly all cases (25/27), practitioners and officers were supposed to either institute or proceed with judicial

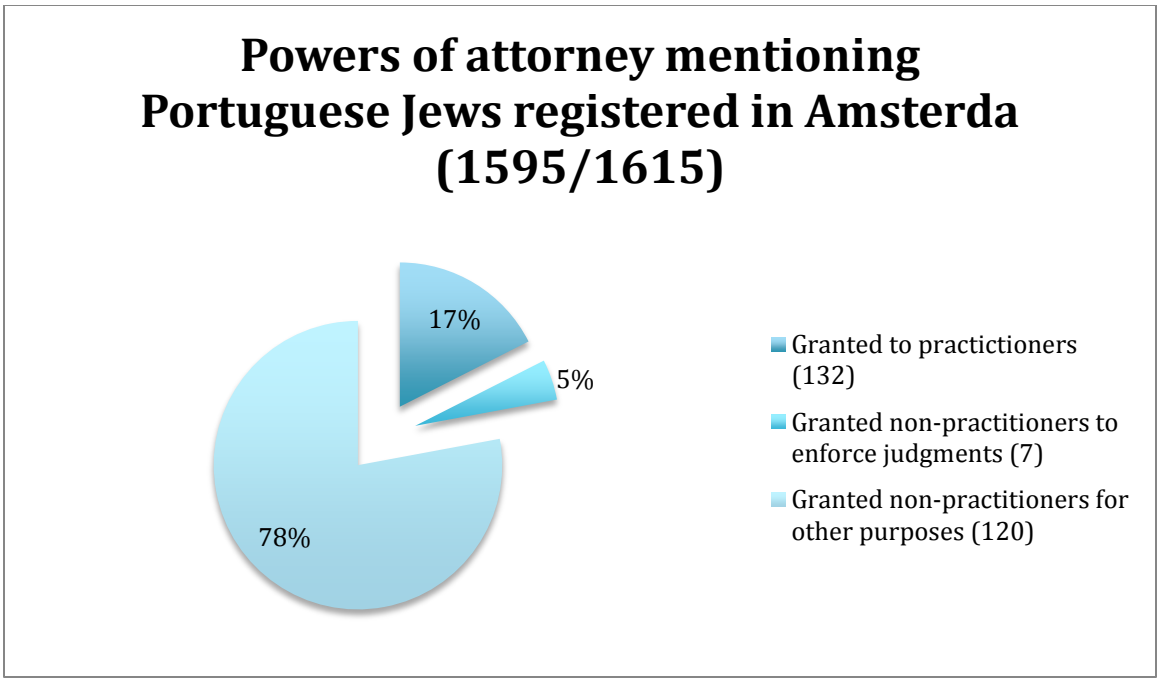
[24] This series includes not only Portuguese Jews and New Christians living in Amsterdam, but also Portuguese Old Christians sojourning in this city, and individuals of Portuguese origin in various other places.

[25] The lower proportion of powers of attorney among the deeds surveyed in Amesterdam does not mean that powers of attorney were less used in Holland. It merely reflects the fact that a large share of the deeds in Amsterdam comprised types of instruments that were not registered by Porto public notaries, such as the abandonment of goods to insurers and protests of bills of exchange and notices. [reference]

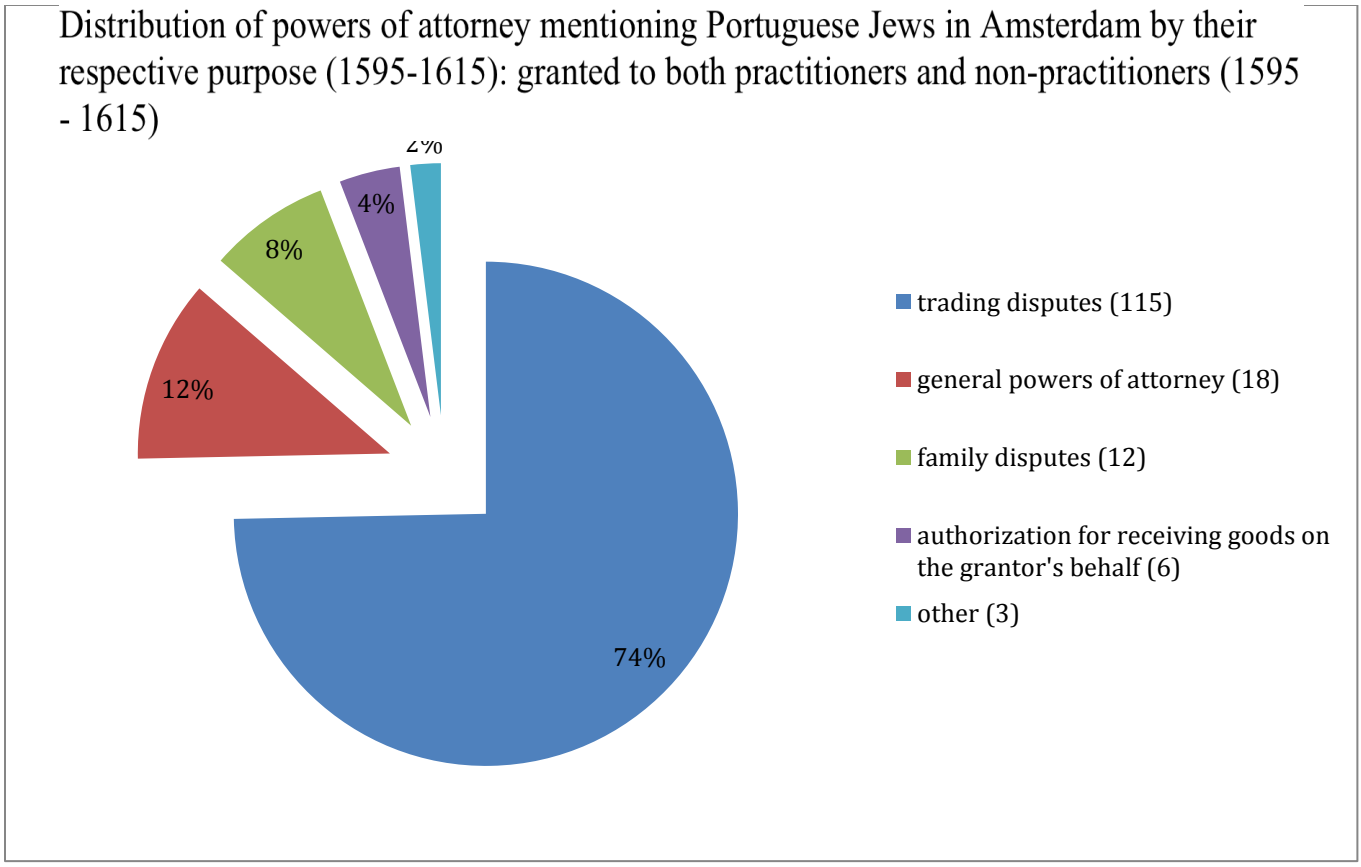
proceedings on trading disputes[26]. Other 4.5% (7/154) powers of attorney were granted to non-practitioners but expressly instructed them to institute legal measures on business disputes.



[26] 93% (25/27) referred to trading dispues: SR Nrs. 19, 63, 66, 83, 85, 122, 138, 184, 221, 251, 257, 273, 369, 420, 434, 446, 513, 527, 635, 663, 720, 782, 798, 827. A further case consisted of a general power of attorney granted by a merchant SR Nr. 722. The remaining power of attorney granted to practitioners referred to an inheritance dispute and SR Nrs. 838



Powers of attorney granted to non-practitioners also entitled grantees to go to court if necessary. In Amsterdam, powers of attorney were more specific about their aims. 74% of all powers of attorney, granted to practitioners or not, referred to trading disputes, 12% were general powers of attorneys, 8% concerned family business, 4% entitled others to receive assets on the grantor's behalf, and 2% were for other purposes. Admittedly, some records empowering people to charge payment of debts were actually meant to transfer credits rather than for representation in trading disputes.



Notarial records registered in Brazil during the studied period are not extant, However, the renowned New Christian planter, merchant, tax farmer and writer, Ambrosio Fernandes Brandão claimed to have appealed to the Court of Appeals in Salvador against several sentences that Pernambuco's local court had passed to his detriment.[27]

Hence, going to court was always not only feasible but actually a concrete alternative. Parties also filed suits against each other in faraway places, in foreign

[27] A.F. Brandão, *Diálogos das Grandezas do Brasil*, p. 37. On this court, mainly from a social and political point of view, see: S.B. Schwartz, *Sovereignty and Society in Colonial Brazil*, passim.

countries and even during wartime. The fact that the family of Uriel da Costa fled Porto for northern Europe at the beginning of 1614 did not mean that they ran away from all their outstanding debts in Portugal. On May 22, 1615, a New Christian merchant in Porto empowered a number of Jews in Amsterdam to enforce a judgment he had obtained against Uriel da Costa's brother[28].

Likewise, a resident in the Portuguese inland village of Linhares secured his rights against a defaulting debtor living in Pernambuco. He got the legal authorities to seize some sugar shipped by the debtor to Porto until a final judgment or agreement on the matter was reached. Meanwhile, the creditor's lawyer in Porto was instructed to further seize each and every additional shipment of sugar arriving in city that belonged to either this or any of his other debtors. This debtor was the aforementioned Ambrosio Fernandes Brandão[29], whereas the sugar trustees were two brothers and merchants in Porto, and later Jews in Amsterdam and Hamburg[30]. In fact, several of the powers of

[28] ADP, NOT, PO2, l. 41, fls. 17-18 (1615-5-22). This power of attorney might not have taken effect because it was not signed. Yet it is not mentioned, as is usual, that it did not take effect. As far as I was able to ascertain, Israël Salvador Révah seems to have missed this document in his monumental survey of Portuguese sources on Uriel da Costa and his family and close acquaintances: I.S. Révah, *Uriel da Costa et les Marranes de Porto*.

[29] J.A.G. de Mello, *Gente da Nação*, pp. 26-7; R.C. Gonçalves, *Guerras e Açúcares*, pp. 219-223.

[30] ADP, NOT, PO2, l. 27, fls. 142-143v. (1609-5-6): "*especialm.te para huã caussa e demanda de Embarguo que elle const.e fez na faz.da e açuquares de hum ambrosio frz' brandão da ci.de de Lx.a residente nas partes do brasil que Estão depositados nas mãos de ant.o frz' esteves e de gabriel lopes desta ci.de per mandado do juz dalfandegua della* [...] *sucedendo vir ha esta ci.de ou outra quoaq.r parte fazenda alguã do dito ambrosio frz' brandão ou de outro devedor seu fazer nella novo Embarguo*."

attorney registered in Porto were aimed at suing or enforcing judgments in which one of the contending parties lived in Brazil[31].

The far-reaching extent to which legal enforcement could be secured across wide distance and different political units is demonstrated by the following case: on September 4, 1612, Garcia Gomes Vitoria, a Jewish merchant in Amsterdam, was about to leave for Emden, East Frisia, and Hamburg[32]. As early as October 8, Garcia's principals in Portugal suspected that he went bankrupt, and rushed to charge all that he owed them. Two of them lived in his hometown, Porto, and another in Torre do Moncorvo, near the Portuguese-Spanish border. All of them were New Christians.

The merchants in Porto, one of which represented that in Torre do Moncorvo, granted powers of attorneys to three Jews in Amsterdam. The latter were to collect insurance indemnities, proceedings of cargoes and an unpaid bill of exchange (reexchange) from the absconding agent. The principals in Portugal were aware that their agent had left Amsterdam, and their attorneys were entitled to pursue him "wherever he is" or "wherever he is to be found"[33]. Goods of him, if not he in person, were found in

[31] ADP, NOT, PO2, l. 20, fls. 237v.-239 v. (1603-10-26); l. 31, fls. 20 -21v. (1610-1-13); l. 38, fls. 141v. -142 (1614-6-11); l. 41, fls. 48-49 (1615-7-10); PO1, l. 140, fls. 146-146v. (1618-4-26); fls. 184v.-185v. (1618-5-19).

[32] Before leaving town, Garcia Gomes Vitoria made a last abandonment of goods to insurers for charging reimbursement and granted a general power of attorney to a Dutchman in order to take care of his affairs in town during his absence. These goods were on board the *Nossa Senhora de Nazare* of Master Miguel da Rua of Matosinhos, heading from Brazil for Porto: SR Nrs. 572. The attorney was Abraham Pelt: SR Nrs. 571. From February 1611, Garcia Gomes Vitoria was in an apparently difficult financial situation. Some of his goods had been sequestered by Portuguese merchants and as a consequence he did not pay a bill of exchange he had accepted for payment: SR 461.

[33] The merchant in Torre do Moncorvo had already one of the merchants in Porto as his attorney, and the latter substituted his powers to the merchants in Amsterdam: ADP, NOT, PO2, l. 36, fls. 62-63 (1612-10-8); fls. 63v.-64v. (1612-10-8); fls. 82v.-83 (1612-10-27). See more on the affair: SR Nrs. 461, 571, 572.

Emden, and seized by Jeurian Jserman, substitute attorney of one of the Portuguese grantees in Amsterdam. In the meantime, this grantee also strove to seize all goods belonging to the debtor in Amsterdam. Finally, the debtor's brother paid off at least part of the outstanding amount; and on February 5, 1613, the seizure was lifted[34].

Thus, we learn that a principal resident near the Portuguese-Spanish border could have his rights enforced against his agent absconding in the frontier between the Holy German Empire and the Dutch Republic, through a chain of representatives that went via Porto and Amsterdam.

A state of war encumbered but did not preclude litigation and enforcement. The hostilities between the Dutch Republic and Portugal, as then part of Hispanic Monarchy, prevailing before April 1609 did not deter a leading merchant of Italian origin in Amsterdam, Jaspar Quingetti[35], in his efforts to obtain a refund for the money he had delivered in exchange for two bills of exchange that were never paid. The bills had been drawn in Amsterdam on May 28, 1608 by the Moura brothers on a New Christian and his son in Antwerp. The latter accepted the bills for payment but went bankrupt and were arrested by the legal authorities before October 2. Jaspar Quingetti did not get much from the Moura brothers in Amsterdam either. The re-exchanged bills were protested to the brothers a week later[36], when they had already fled town[37]. On the day that Jasper learned

[34] The grantee sent a notice through the city's messenger demanding that the debtor's brother-in-law prove before a notary public that he indeed did not have any of Garcia's asset: SR Nr. 587; SR Nr. 604.

[35] On Jaspar Quingetti see: SR Nr. 72 n. 76; J.I. Israel, *Dutch Primacy in World Trade*, p. 71; J.I. Israel, "The Phases of the Dutch *Straatvaart*," p. 137; J. de Vries and A. van der Woude, *The First Modern Economy*, p. 368; C. Lesger, *The Rise of the Amsterdam Market*, p. 162; O. Guelderblom, *Zuid-Nederlandse kooplieden*, pp. 153-5, 158-9, 191 n. 28, 216, 231, 244, 312.

[36] SR Nr. 296, 470.

[37] SR Nr. 305.

about the drawers' flight, he empowered a "Flemish" merchant in Lisbon to institute proceedings against the Moura brothers and their properties in Portugal[38]. For historical

[38] SR Nr. 297. Years later, Jaspar Quingetti would act against the drawees empowering people in Lille and The Hague to sue and arrest them as well as seize their goods (SR Nrs. 463, 464). Jaspar Quingetti and three other creditors were less lenient towards the bills' drawees (these creditors were not the same as those who filed the lawsuit in Antwerp. In both cases, Quingetti, Gaspar Coymans and Gaspar Rodrigues played a part. Yet in the first, Hans Broers and Gothard Kerkrinck were mentioned, but not in the second, where Duarte Fernandes was). The drawees, Henrique Alvares and his father – on top of their financial troubles, or rather as an offshoot of them – were taken prisoner by the authorities in Antwerp for Judaizing and banished from the country. They succeeded in obtaining a permit from the sovereign of the Low Countries to remain there for a couple of months longer and it was renewed again because Gaspar Nunes's advanced age allegedly did not allow him to travel. Yet even after the expiration of the permit, they refrained from leaving the Habsburg Low Countries and preferred to live a reserved and unstable life in Antwerp, and even risk religious persecution, rather than face prison for their debts in the northern Netherlands. In the meantime, they secretly traveled to The Hague in attempt to obtain a *sûreté de cor*ps against arrest by creditors and tried to find a way to reach some kind of agreement with their creditors (E.R. Samuel, "Portuguese Jews in Jacobean London" (2004), pp. 157-169; E.R. Samuel, "Portuguese Jews in Jacobean London" (1958), pp. 212-230). Eventually, the drawees reached an agreement with their creditors in Antwerp and came to the Netherlands by February 15, 1611, asking Quingetti and his fellows creditors in Amsterdam to let them comply with the agreement made in Antwerp and settle their accounts with the Moura brothers (SR Nr. 466). Jaspar Quingetti did not just refuse, but two days later empowered a resident of Rotterdam to arrest Henrique Alvares and his father and demand payment of the bills from them (SR Nr. 468). About a year later, the father was spotted in Dordrecht (Holland) and arrested there (SR Nr. 520). As a result, Henrique Alvares reached an oral agreement with Quingetti and Gaspar Coymans, scion of an affluent family in Antwerp that settled in Amsterdam (O. Guelderblom, *Zuid-Nederlandse kooplieden*, p. 298.), on both the outstanding debt and the expenses incurred during his father's imprisonment (probably the fees of the warden who went to arrest him, his bed and board in jail, etc.) This agreement was not to influence the creditors' accord with the Moura brothers. Henrique Alvares gave them a rough and a cut inlaid diamond as a pledge (SR Nrs. 517, 518, 519). Father and son failed to repay Quingetti and Coymans, and two years later the creditors auctioned off the diamonds in Amsterdam (SR Nrs. 772, 775). Two months after father and son had reached an agreement with Quingetti and Coymans, they did the same with a third creditor in Amsterdam, Gaspar Rodrigues. He was the payee of two other bills of exchange that were drawn by the debtors on the Moura brothers. According to the agreement, the creditor would no longer refer to the letters issued by the Chancellery of Brabant, but would keep his claims on the Moura brothers (SR Nr. 534).

reasons, in Portugal, the term "Flanders" and "Flemish" referred to the Low Countries, both North and South, in particular, and to the German/Dutch speaking areas on the northwestern European coast from Calais to Gdansk, in general.

Further, Jaspar Quingetti and four other creditors of the Moura brothers had a lawsuit pending before a court in Antwerp by July 4, 1609, when they were asked by the debtors if they wished to join the agreement reached with their other creditors. The five answered that they could not abide by the agreement because the matter was still sub judice in Antwerp, but they did not oppose the States of Holland and West Frisia's granting them a *sûreté de corps* against arrest by creditors in order to allow them to recover financially and settle their debts[39].

During wartime, foe's subjects filed lawsuits in intermediary countries, whose sentences were binding in the debtor's home[40]. Likewise, creditors could have both goods been seized and absconders arrested in neutral cities[41].

Sentences pronounced in the Southern Low Countries, Catholic and loyal to the Hispanic Monarchy, were confirmed (homologated) with greater ease by Iberian courts, and were considered legitimate also in the Dutch Republic, which shared some of its

[39] SR Nr. 352. The brothers Lopo and Antonio Rodrigues de Moura and Fernando Duarte de Moura had a partnership in Amsterdam that went bankrupt by October 8, 1608, and they absconded. In order to allow them to recover financially and pay off their debts, the States of Holland granted *sûreté de corps* against arrest by creditors for a period of two months, which was extended five more times, the last on March 14, 1611 for a period of six months. Fernão Duarte de Moura passed away on April 17, 1612, Antonio Rodrigues de Moura had moved to Italy, and only Lopo Rodrigues de Moura remained alive in Amsterdam: SR Nrs. 259, 259 n. 23, 293, 305, 582.

[40] ADP, NOT, PO2, l.8, fls. 134-135 (1597-7-1); l. 18, fls. 249-252 (1602-10-18).170v.-173 (1597-7-19); l. 19, fls. 173-174v. (1603-3-20); l. 20, fls. 93v.-95 (1603-7-7); PO4, 1.a s., l. 8, fls.233v.-235 (02-09-1621). The same was true for the neutral Hamburg: SR Nr. 408. STRUM [xxx].

[41] SR Nr. 342, 3344.

judicial tradition Resorting to these courts was facilitated by the easy mobility between both cities and the still conceivable reintegration of the northern "rebellious" provinces into the Spanish Habsburg's umbrella until 1609.

One of such judgment was given in favor of the Antwerp New Christian merchant Francisco Godines against two "Flemish" staying in Porto. The sentence was confirmed in Lisbon. The sentenced parties had their goods already seized in Porto for other reasons, and the seizure was levied by another "Flemish" merchant resident in the city, who handed over money to the substitute attorney in Porto of the creditor in Antwerp. The delivery to the substitute attorney, who was also a New Christian merchant, however, was made on the condition that such money would be returned if any subsequent judgment would order the restitution of the money to the debtor. Two additional New Christian merchants in Porto stood surety for the recipient, and a third New Christian merchant guaranteed the guarantors[42]. Meanwhile, one of the debtors empowered his brother, then

[42] ADP, NOT, PO2, l.8, fls. 170v.-173 (1597-7-19): "*Saibão quamtos este estromẽto de fiansa he abonasão virẽ* [...] *pareseo presente g.co llopez merquador he morador nesta cidade do porto he por elle g.co llopez foi dito presente m~j t.am he test.as todo adiante nomeado que hera verdade que elle hera o p.dor bastãte de @to frz' pais m.or na cidade de Lix.a* [...] *he outrosj apresẽtou huã sentensa executoria que dezia ser dada nos estados de frandes a quall sentença executoria vinha remetida ao consullado da cidade de Lix.a o quall cõsulado mãdou que se cõprise p.a se fazer por elle execusão nos beis he fazẽda que fose achado de Jaquis brusen e Jã grune vegen como todo mais cõpridamente se cõteẽ he pode ver da dita sentemsa ececutoria he p.çãoque tudo fiquara em poder do dito g.ço llopez he por quãoto o dito g.ço llopez por vertude da dita p.ção lhe dava poder o dito @to frz' pais pera poder reçeber cobrar e arrecadar da mão de pero Roiz framẽgo morador nesta dita cidade do porto mill he quinhẽtos oitenta he nove llivras de grosos dous solidos he tres dinheiros que podẽ valler quatro mill cruzados que estão depositados na mão do dito pero roiz dos ditos Jaques bruesen he João gruene vegen os quais a de receber o dito g.co llopez por a vertude da dita p.ção e sentẽsa executoria da mão do dito pero Roiz a quall sentensa executoria vẽ de frandes hen nome de fr.co godines portugues a quall sentensa ouvera o dito fr.co godinis he seus p.dores contra os ditos Jaquis brusen e João grune vegen da dita quantia de mil e quinhentos oitenta he nove llivras de grosos dous solldos he tres dinheiros que podẽ inportar os ditos quatro mil cruzados os quais ha de receber elle g.co llopes por vertude*

also in Porto, and a New Christian lawyer, to defend all his rights in Portugal and abroad and settle agreements on his behalf[43].

Neutral countries, such as Hamburg, further bolstered law enforcement. The insurers of an insolvent Jewish merchant in Amsterdam empowered a trader in Hamburg to seize the goods that were supposed to arrive there from Porto on a ship called *De Koning David* and release them only after the debtor paid an insurance premium or provided guarantor for it[44].

Merchants headquartered in Amsterdam often declared being residents of Antwerp, and acted through their agents in Brabant at both Antwerp's and Brussels' courtrooms[45]. Likewise, Luis Mendes, a leading New Christian merchant in Porto found it more prudent to have João Mendes Henriques[46] and Henrique Garces, "residents in Antwerp or wherever they do dwell," as his primary attorneys in charging and collecting money and merchandise owed to him in Portugal, "Flanders" and elsewhere[47]. Both did

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desta p.^{ção} que tẽ do dito @t.^{o} frz' pais p.^{dor} que dise que hera do dito fr.^{co} godinis da mão do dito p.^{o} roiz por hos ter em seu poder embarguados dos ditos Jaquis brisen he J.^{o} grune vegen ho quall dinheiro se mãda hẽtregar ao dito g.^{co} llopez como p.^{dor} do dito @t.^{o} frz' de pais con dar fiansa he abonasão ha elles he llogo apresentou ahy por seus fjadores he princjpais paguadores depozitairos da dita contia atraz dita a diogo gomez he domingos llopes vitoria merquadores he moradores nesta dita cidade do porto he por elles diogo he dominguos llopez vitoria foi dito que elles fiquavão como f.^{to} fjquarão por fjadores he principais paguadores [...] *he pera mais segurãsa hapresentarão logo ahi por abonador ao dito Simão vaz he por elle simão vaz foi dito que elle abonava como de f.^{to} abonou aos ditos g.^{co} llopes he diogo gomez he domingos llopez vitoria na dita contia dos ditos quatro mill cruzados desta fjansa pella maneira atras ditas* [...]."

[43] ADP, NOT, PO2, l. 8, fls. 134-135 (1597-7-1).

[44] SR Nr. 342.

[45] ADP, NOT, PO4, 1.a s., l. 8, fls. 233v.-235 (02.09.1621).

[46] SR Nrs. 106, 206 n. 59.

[47] ADP, NOT, PO2, l. 18, fls. 249-252 (1602-10-18): "*a elle lhes estavão devendo sertas dividas asi de dr.^{o} como fazemda hem este Reino de portuguall como nas partes de frandes he quallquer outras partes de quallquer outro Reino que Seia e p.^{a} cobrasa he arrequadasão do sobredito* [...] *asi dinheiro como*

live in Antwerp, but Henrique Garces, grandfather of Baruch Espinosa (Spinoza), frequently stayed in Amsterdam[48].

Hamburg also played the same role. When the Moura brothers tried to recover some assets from parties living in Brazil, they first had the assistance of an Amsterdam notary public who certified that both the grantors and the notary himself lived in Hamburg, where the power of attorney was purportedly executed[49]. The deed was made after the Twelve Years Truce was already in force for over a year, but the previous state of war probably left some scars[50].

Still, one could flee and abscond. Absconders, however, had to give up a salient participation in the routes and marketplaces in which they could be arrested and/or his goods could be seized. Hence, they had to either fly too far away or maintain a marginal role in these places. Sources mention cases of individuals absconding for several years; however, these seem to have entailed a life of privation and instability. In fact, absconding usually appears as a means meant at buying some time while renegotiating with creditors out of prison instead of a once for all strategy, as it was difficult to sustain for long when much money was involved.

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merquadorias lletras per conhesimentos escreturas de quallquer sorte callidade cãotidade que seia he asi mais toda quall quer outra fazenda que lhe pertẽça por qualquer via he maneira que seia."

[48] SR Nr. 44, 44 n. 46, 729, 926, 1184, 1414; E.M. Koen, "Duarte Fernandes," p. 185; E.R. Samuel, "Portuguese Jews in Jacobean London" (2004), pp. 128, 157, 169; A.B. Coelho, *Inquisição de Évora*, pp. 511-522; I.S. Révah, *Uriel da Costa et les Marranes de Porto*, pp. 29, 273, 352, 464, 467, 473, 493, and appendices D and F; M. Bodian, *Hebrews of the Portuguese Nation*, p. 33.

[49] SR Nr. 408.

[50] During the next three years, the Moura brothers would continue to strive to save their assets in the Portuguese world: SR Nrs. 467, 482, 536, 541.

The father and son Gaspar Nunes and Henrique Alvares, for instance, absconded for four years in Antwerp, while their creditors in Amsterdam proceeded against them in the Southern Netherlands, France and even in Portugal, notwithstanding the state of war between the Republic and the Iberian Crown. After a long period living on others' favor in a secluded life, under threat of religious persecution and banishment, the father was arrested during a secret voyage to the Republic. That was one of their many attempts to reach an agreement with their creditors. As a result of the arrest, the son was forced to an unfavorable settlement[51].

Effectiveness

Still, then as today, the legal system was far from effective in terms of time, cost, expertise, equity and predictability. It was particularly ineffective when the amounts involved were smaller than both the transaction and the opportunity costs entailed by prosecution, and even if the gap narrowed, observable information was not always easily verifiable[52]. Hence, legal enforcement was a less credible threat in deterring misreport and embezzlement of small sums. Another consequence was that legal enforcement was more effective against wealthy merchants who had more assets to be seized.

Still, the effectiveness of the information system to track down absconders and their goods, on the one hand, and ability of legal system to impose sanction on them, on

[51] SR Nr. 297, 463, 464, 466, 468, 517, 518, 519, 520, 534, 772, 775; Samuel, "Portuguese Jews," pp. 201-230.

[52] In deeds appointing arbiters or in settlements, the parties often articulated the reason to forsake legal prosecution was "in order to avoid qualms, animosity, hatred, costs and expenses made in such lawsuits whose decisions are doubtful and uncertain", or owing to the complex accounts that "could not be ascertained without mounting contest and costs". **[ADP]** On these shortcomings of legal system as inherent and perennial, see: Greif, "The Fundamental Problem of Exchange, " p. 259.

the other, significantly limited one's expected future income to be accrued from embezzling large sums of one or many principals. Likewise, both the legal and the information systems in concert significantly mitigated the possibility of a merchant being ripped off by all his agents.

The legal system was resorted to supplement the informal mechanisms based on reputation, both within and across affinity diasporas. In effect, both private and public mechanisms were interdependent. By accepting informal evidence – private and oral – of transactions, the legal system was actually designed to be a second-order mechanism. Trade would take course mostly privately and informally, and so it would be supported.

Only when the informal mechanisms failed, merchants would turn to the more costly legal verification and enforcement. Otherwise, either the legal system would become overloaded and ineffective or the costs of its expansion would overburden transaction costs. A greater reliance on the legal system would also demand systematic formal recording by notaries, officials, sworn brokers etc. Even specialized mercantile courts and arbitration had limits in their administrative capacity[53].

At the same time, the private mechanisms counted on the legal system as a viable, but more costly, recourse to resolve the failures of the former due to their inability to credibly threaten with future total ostracism. To better count on such the legal system as a remedy, more formal recording of transactions, in written and notarized deeds, and providing general guarantees (pledging all properties) and guarantors functioned like an option. Their costs were all more sensible the more likely was the resort to the legal

[53] On the trade-offs between the legal system and private-order instituions, see: A. Greif, "Contract Enforceability," pp. 738, 745-7.

system to be expect for some reason, even if it did not derive from mistrust between principal and agent[54].

Hence the legal system fostered the expansion of trade by facilitating trading relations to be primarily supported by informal mechanisms that were not optimally effective. In most transactions, such relations relied on mechanisms based on professional reputation and economic incentives across different affinity groups through various marketplaces. The universalization and uniformization of the trading routines, and the improvement of the information flow between the marketplaces enhanced the effectiveness of such mechanism. In more sensitive dealings, however, commercial relations were still usually supported by the social and economic incentives provided by a not so close-knit affinity diaspora, such as the Western Sephardic diaspora was.

[54] For misgivings among the parties, see: L.F. Costa, "Informação e Incerteza," pp. 117-8.