


The King and Jewish Authority: Political Foundations of the Catalan Jewish Communities in Royal Domains (14th C.)

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ENG Abstract: The aim of this article is to offer an overview of the legal and political context of the Catalan Jewish communities between 1240 and 1391. This contribution will synthesize the complex net of factors, rules, and theories that shaped the Catalan Jewry's social environment by combining the use of Hebrew and Christian sources. Communal self-government was built upon the convergence between the royal legislation and the normative and theoretical production of the communities. My objective is to capture this multi-faceted reality. The discussion below will focus on the main privileges granted by the Catalan-Aragonese kings to their Jewish subjects, the political theories developed by the Jewish scholars of the time, and the communal legal production. I will pay special attention to the social and historical elements that boosted the evolution of the communal system.

Keywords: Medieval Catalonia; communal self-government; Jewish political tradition; Jewish *aljamas*.

[es] El rey y la autoridad judía: fundamentos políticos de las comunidades judías catalanas en los dominios reales (s. XIV)

ES Resumen: El presente artículo es una breve aproximación al contexto legal y político de las comunidades judías catalanas entre 1240 y 1391. A través del uso combinado de fuentes hebreas y cristianas, se ofrecerá una síntesis de la compleja red de factores, reglas y teorías que moldearon el ecosistema social de las comunidades hebreas en Cataluña. En este sentido, el autogobierno comunal era el resultado de la convergencia entre la legislación real y la producción normativa y teórica de las comunidades. Nuestro objetivo es presentar el carácter poliédrico de esta realidad a través de los privilegios concedidos por los monarcas aragoneses a sus súbditos judíos, los modelos políticos desarrollados por los intelectuales hebreos, la legislación interna de las comunidades y el conjunto de factores sociales e históricos que impulsaron la evolución del sistema comunal.

Palabras clave: Cataluña medieval; autogobierno comunal; tradición política judía; *aljamas* judías.

Summary: 1) Introduction. 2) Some Notes on the Formal Nature of the Catalan *kehillot*. 3) The Consolidation of the New Political Trends: Shlomo ben Adret. 4) Communal Organization after Shlomo ben Adret. 5) Nissim of Girona and the Division of Communal Power. 6) Conclusions. 7) References.

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1. Introduction

The period covered in this article comprises what might be called the *classical age* of Jewish self-government in Catalonia. Throughout this century and a half, Catalan Jewry reached an unprecedented political sophistication that lasted until the summer of 1391. New political trends reached the Crown from the other side of the Pyrenees and

challenged the political models in force. A concatenation of charismatic and prolific scholars, such as Moshe ben Nahman and Shlomo ben Adret, contributed to reformulating communal approaches to self-government by implementing the so-called "majority rule". Furthermore, the concession of royal privileges granting greater levels of autonomy increased.

The article will begin by presenting the formal elements that composed the elementary framework for Jewish autonomy, as well as the events that redefined communal self-government in the mid-thirteenth century. The focus will be set on the causes and consequences of the overthrowing of the *nasi'im* in the community of Barcelona and on the royal response to the social unrest. A second section will discuss the political views on communal authority and self-government held by one of the key intellectual leaders of the thirteenth-century Catalan Jewry, Shlomo ben Adret. I will then address the contents of the statutes of Barcelona of 1327 as an example of communal ordinances, emphasizing the social circumstances that led to their approval. Finally, I will introduce the most relevant aspects of Nissim of Girona's political thought.¹

2. Some Notes on the Formal Nature of the Catalan

It is worth starting with some remarks on the formal nature of the Jewish communities in the Crown of Aragon, especially in Catalonia. The foundations of Catalan communal structures followed the same path as the rest of the Jewish communities in the Diaspora. The pillars of their self-organizational autonomy were erected upon two main axes. On the one hand, royal privileges provided the basic set of limits and rights for communal self-management and autonomy. These privileges were often royal graces individually conceded to particular *aljamas*, while others aimed at setting common prerogatives of regional scope—that was indeed the general trend from the reign of Peter the Great (1276-1285) onwards. On the other hand, the resulting framework gave grounds to communal scholars and leaders to develop political principles and legal regulations to rule the *kehillot* according to the *halakhah* and their actual needs.

The convergence of both factors placed communal life in a three-dimensional legal ecosystem. Firstly, royal privileges provided the elementary institutional configuration. Moreover, as any other subject, Catalan Jewry was also bound by royal legislation. The inhabitants of the community, as well as the community itself, had the natural duty to obey the lords of the land. In this sense, their autonomy was not absolute. Indeed, the Talmud openly accepts the authority of the host kingdom as a fundamental legal source, as reflected in the statement “the law of

the kingdom is valid law” (דינא דמלכותא דינא, “*dina demelkhuta dina*”)² (BT *Baba Batra* 54b-55a; *Nedarim* 28a; *Gittin* 10b; *Baba Kamma* 113a).³ Some authors have deemed this obedience to the external powers as one of the keys to the survival of the Jewish people as an autonomous social minority.⁴ Secondly, the *aljamas* were entitled to produce their own ordinances and to punish their transgressors. Thirdly, Christian-Jewish coexistence—especially in urban areas—required the development of co-regulative instruments.⁵ Therefore, the legislative environment of the Jewish communities was composed of i) royal/baronial legislation, ii) self-regulatory sources, and iii) co-regulation. Nevertheless, these categories were not unconnected.

Approaches to communal self-government did not remain unalterable throughout the Middle Ages. As with any other political system, it was in a constant evolution conditioned by the emergence of new ideas, the alteration of the inner social balances, their relationship with the external powers, or the omnipresent effects of acculturation.⁶ Changes were often subtle, quiet, and slow. However, punctual extraordinary events also shook the foundations of Catalan Jewry and drastically modified their social tissue. The mid-thirteenth century was one of these turning points. The concatenation of events that occurred at the equator of the century led to a period of political evolution and institutionalization, intense intellectual production, and social transformation. The

¹ Several bibliographical references that are frequently mentioned in the text will be cited using the following abbreviations:

[Adret =] Shlomo ben Abraham ben Adret, *Shelot ve-teshuvot*. 7 vols. Jerusalem: Makhon Yerushalayim, 1996.

[A =] ASSIS, Yom Tov, *The Jews in the Crown of Aragon: Regesta of the Cartas Reales in the Archivo de la Corona de Aragón*, 2 vols. Jerusalem: The Henk Schussheim Memorial Series, 1993-1995.

[B =] Baer, Fritz [Yitzhak], *Die Juden im christlichen Spanien*. Vol. I. Berlin: Akademie-Verlag, 1929.

[BT =] *Talmud Bavli [Babylonian Talmud]* (Hebrew and English). Retrieved from: <https://www.sefaria.org/texts/Talmud>

[J =] Jacobs, Joseph, *An Inquiry into the Sources of the History of the Jews in Spain*. London: David Nutt, 1894.

[R =] Régné, Jean, *History of the Jews in Aragon*. Jerusalem: The Magnes Press and the Hebrew University, 1978.

In all these cases, citations refer not to page numbers, but to specific text sections.

² For an overview on this legal principle, see S. Shilo, *Dina de-Melkhuta Dina*. Jerusalem: Defus Akademi be-Yerushalayim, 1975. Catalan Jewish scholars set theoretical boundaries for the duty of obedience. Nahmanides, for example, considered that the Jews were only bound by those prerogatives that were traditionally inherent to royal power (see B. Septimus, “Kings, Coinage and Constitutionalism: Notes on a Responsum of Nahmanides”, *The Jewish Law Annual*, 14 [2003]). Shlomo ben Adret alleged that the *dina de-melkhuta* covers every subject that affects the king's interests (Adret VI: 254). Given the material impossibility of opposing the king's will, these attempts to set limits to royal power were just legal fiction.

³ For all Talmudic references, see *Talmud Bavli [Babylonian Talmud]* (Hebrew and English). Retrieved from: <https://www.sefaria.org/texts/Talmud>

⁴ See, for example, S. W. Baron, *The Jewish Community: Its History and Structure to the American Revolution*. 2 vols. Philadelphia: Jewish Publication Society of America, 1942, vol. I, p. 214. Also D. Biale, *Power and Powerless in Jewish History*. New York: Schocken Books, 1986, p. 56.

⁵ Perhaps loans are the most well-known manifestation of this dimension. The distribution of butcheries and slaughterhouses is also a noteworthy example. Butcheries for *kosher* products were usually allocated via privilege or through an agreement between the *aljama* and the *universitat*. In this particular case, co-regulation tended to be problematic and used to lead to disputes between the two parties. Royal arbitration was not unusual. See, for example, the interventions of James II in Barbastro in 1297 (Archive of the Crown of Aragon [ACA], reg. 253, f. 12r [R: 2640]) and of Peter III in Girona in 1342 (ACA, CR, Pedro III, c. 14, n. 1830 [A: 993]).

⁶ Relevant authors like Baer, Feliu, and Assis noticed the influence of local government institutions in communal political organization. As will be discussed below, these influences did not lead to subtle and debatable similarities; on the contrary, the general trend was to equate the institutions and functioning of both kinds of governments. See Y. Baer, *History of the Jews in Christian Spain*. 2 vols. Skokie (Illinois): Varda Books, 2001, vol. I, p. 27. Y. T. Assis, *The Golden Age of Aragonese Jewry*. London: The Littman Library of Jewish Civilization, 2008, pp. 67ff. E. Feliu, “Cuatro notas esparsas sobre el judaísmo medieval”, *Tamid*, 2 (1998-1999), p. 110.

Catalan *kehillot* started what might be called their *classical* period.

At the dawn of the century, Barcelona was under the totalitarian rule of a *nasi'* (נָשִׂיא, “prince”). Bernard Septimus asserted that this traditional form of government could have been the last carryover of Arab influence in the city.⁷ The *nasi'im* were the virtual monarchs of the *aljama*. In that sense, they used to legitimate their power alleging a Davidic ascendance.⁸ The communal aristocracy and intelligentsia were the principal upholders of the regime.⁹ Nevertheless, this well-rooted legitimation did not prevent social unrest from increasing. Popular disconformity progressively swayed this original social order. However, the fall of the *nasi'im* materialized when the scholars withdrew their support. The reasons for this change of position are still unclear. Septimus suggested that it could be linked to the Maimonidean controversy, which was at its peak by then.¹⁰ Elka Klein accepted the same line.¹¹ It appears that the *nasi'im* and the aristocrats largely subscribed to Maimonides' philosophical vies, whose ideas on the prophet-king were useful to legitimate their power.¹² From their side, most Catalan intellectuals—then largely influenced by the mystical and political currents that had flourished beyond the Pyrenees—aligned themselves against the Andalusian rabbi.¹³ Similar events took place in other major cities of the Crown, like Zaragoza.¹⁴

King James I decided to intervene as the situation went out of control. In 1241, he granted a privilege to reformulate the political regime of the *aljama*. The new royal grace gave an end to the ruling of the *nasi'im* and allowed the community to choose two or three delegates to manage its affairs. The victory of the scholars and the popular classes entailed the

introduction of the “majority rule”¹⁵ in Barcelona, a decision-making system developed and popularized by the Tosafist circles in France and the Rhineland.¹⁶ The privilege stated:

Noverint universi, quod nos Jacobus etc. concedimus vobis toti conventui judeorum Barchinone [...] ut possitis eligere inter vos duos vel tres iudeos probos homines et legales vel plures, si volueritis, iuxta cognitionem vestram, qui videant et cognoscant diligenter in personis illis, qui aliquam fecerint stultitiam vel dixerint aliqua injuriosa verba aliis probis hominibus judeis, super quibus valeant ponere penam et bannum, quod habeamus nos et loco nostri detur bajulo nostro Barchinone, et ipsi etiam propria autoritate possint eicere inter vos et de vestro callo judayco [...].¹⁷

In 1272, James I confirmed and improved this privilege.¹⁸ The content was essentially the same: the community could choose representatives to deal with judicial and executive matters. However, the king timidly expanded the prerogatives of the *aljama* or, at least, permitted to understand better the scope of the former privilege. The document states that the leading officials were habilitated to resolve internal matters according to the halakhah (“legem judeorum et bonas consuetudines legis judeorum”, “the law of the Jews and the good Jewish customs”) and that their office could be temporary (“si necesse fuerit pro tempore, ipsos inde remove et alios loco eorum substituere”, “if it were eventually necessary, they could be removed or substituted”). Nevertheless, these points were probably implicit in the privilege of 1241.

The succession of royal privileges conferred to the Catalan *aljamas* in the thirteenth century peaked in 1280. This year, James' successor, his son Peter II the Great, granted a new and unique privilege to all the communities in Catalonia. The new measures considerably enlarged and uniformized communal autonomy. This homogeneity was not absolute since the king could—and indeed he and his successors usually did—grant additional privileges to particular *aljamas* or even to individuals. Notwithstanding the limits of this apparent unification, the privilege provided standardized bases for the internal organization of the communities. The grace permitted the *aljamas* to appoint between two and seven officials

⁷ B. Septimus, “Piety and Power in Thirteenth-Century Catalonia”, in I. Twersky (ed.), *Studies in Medieval Jewish History and Literature*. Cambridge (Massachusetts): Harvard University Press, 1979. Also mentioned in D. Gutenmacher, *Political Obligation in the Thirteenth-Century Hispano-Jewish Community*. Doctoral Dissertation, University of Michigan, 1991, p. 65. For the Jewish preferences for personalistic regimes in the Islamic world, see A. Melamed, “Attitudes Towards Democracy in Medieval Jewish Philosophy”, *Jewish Political Studies Review*, 5:1/2 (1993).

⁸ B. Septimus, “Piety and Power in Thirteenth Century Catalonia”, *op. cit.*, p. 205. Y. Baer, *History of the Jews in Christian Spain*, *op. cit.*, vol. I, p. 92.

⁹ Y. T. Assis, *The Golden Age of Aragonese Jewry*, *op. cit.*, p. 77.

¹⁰ See B. Septimus, “Piety and Power in Thirteenth Century Catalonia”, *op. cit.*, and B. Septimus “Open Rebuke and Concealed Love: Nahmanides and the Andalusian Tradition”, in I. Twersky (ed.), *Rabbi Moses Nahmanides: Studies in His Religious Virtuosity*. Cambridge (Massachusetts): Harvard Center for Jewish Studies, 1983.

¹¹ E. Klein, *Jews, Christian Society, and Royal Power in Medieval Barcelona*. Ann Arbor: University of Michigan Press, 2006, pp. 117ff.

¹² For the Maimonidean concept of *prophet-king*, see H. Kreis- el, *Maimonides' Political Thought: Studies in Ethics, Law, and the Human Ideal*. Albany: State University of New York Press, 1999, especially chapter 1.

¹³ See N. Caputo, *Nahmanides in Medieval Catalonia*. Notre Dame: University of Notre Dame, 2007, pp. 19ff.

¹⁴ Y. T. Assis, ““Masheber be-kehillah Saragosa be-shanim al fi makorot ivriyim ve-loazyim” [“The Crisis in the Community of Saragossa in 1263-1264 in the Light of Hebrew and Non-Jewish Sources”], *Proceedings of the World Congress of Jewish Studies*, 4 (1977), and Y. T. Assis, *The Golden Age of Aragonese Jewry*, *op. cit.*, pp. 76ff.

¹⁵ In his contribution to *The Principles of Jewish Law*, Shmuel Shilo defined the “majority rule” as “deciding a matter according to the majority opinion”. S. Shilo, “Majority Rule”, in M. Elon (ed.), *The Principles of Jewish Law*. Jerusalem: Keter Publishing House, 1974, p. 163.

¹⁶ For a synthesis of the development of the “majority rule”, see H. Shapira, “Majority Rule in the Jewish Legal Tradition”, *Hebrew Union College Annual*, 81-83 (2011-2012).

¹⁷ “Everybody shall know that we, James etc., authorize the entire Jewish community of Barcelona [...] to choose two or three men among you—or even more if you wish—, who will be empowered to diligently prosecute and judge those [Jews] who disturb or defame the rest of good Jewish men. They [the delegates] will be allowed to impose penalties and bans on them, which will be observed by us and the *batlle* of Barcelona. They will also have authority over you and over your community of Barcelona [...]” (my own translation). ACA, reg. 16 f. 158r [R: 29; B: 93].

¹⁸ ACA, reg. 21, f. 32v [J: 634; R: 517; B: 106].

annually to manage communal government according to Jewish Law:

Noverint universi, quod nos Petrus, D. g. rex Aragonum, concedimus vobis universis aljamis judeorum Catalonie, quod quelibet aljama possit perpetuo constituere de duobus usque septem probos homines de dicta aljama annuatim vel ad aliud tempus, sicut eis expedire videatur, qui possint cognoscere et terminare questiones, controversias et querimonias [...] et possint condepnare et punire judeos et judeas dicte aljama vel locorum, qui sunt de collecta ipsius aljame [...]. Possint etiam facere statuta et prohibitiones, districtus et ordiantiones super gestibus et actibus eorum et ponere vetita et alatmas et niduy.¹⁹

The series of privileges granted throughout the thirteenth century contributed to redefining the conceptions of communal authority. The former personalistic approaches to self-government were progressively replaced by new political trends imported from beyond the Pyrenees by the Catalan scholars educated in the academies of Montpellier and Narbonne—such as Nahmanides. In this sense, the political theories developed by the Tosafists in Northern France and the Rhineland were crucial for moving the focus of communal leadership from individuals to the community itself. The so-called ‘majority rule’ was then adopted as the preferable decision-making system in many communities.

3. The Consolidation of the New Political Trends: Shlomo ben Adret

Privileges were not enough to develop and exercise this autonomy. This task was delegated to Jewish Law. In fact, the permission to enforce the halakhah was their ultimate finality. The responsibility of developing a Jewish political and legal construction within the community was in its members’ hands. The spiritual leaders primarily assumed this duty, whose scholarly authority was largely respected by their coreligionists. Their knowledge of the halakhah and their sensibility towards the situation of the Catalan-Aragonese Jewry allowed them to define the parameters of communal authority and self-government. In almost all cases, the commentaries on the Tanakh and Talmud and, especially, the *she’elot ve-teshuvot* became their elementary tools to formulate their ideas.

To a large extent, the crystallization of these reforms and the internal consolidation of the “majority rule” was conducted by Shlomo ben Adret, the Rashba (Barcelona, 1235-1310). In his *responsa*, Adret held a practical and realistic conception of politics. He was aware of the actual situation of the

Catalan-Aragonese communities and of their status as autonomous entities subjected to the will of a gentile monarch. Consequently, he attempted to address the real political, social, and economic needs of the *aljamas*. Adret’s premise was that a rigid interpretation of the Torah could not fulfill this task. The halakhah should be approached with flexibility and relying on local uses. In that sense, Adret used to avoid dogmatism.

Adret justified these views by adducing the broad interpretative spectrum provided by the Talmud to cope with the “needs of the hour”. In the *teshuvah* [Adret III: 393], Adret alleged the Talmudic statement “Jerusalem was destroyed only because they restricted their judgments to Torah law” (BT *Bava Metzia* 30b) to defend the capacity of the community to rule and impose penalties beyond the literacy of the Torah:

עמדתי על כל טענות הקונדרים הוה, ורואה אני שאם העדים נאמנים אצל הברורים רשאים הן לקנוס קנס ממין או עונש גוף, הכל נפי מה שיראה להם, וזה מקיובי העולם, שאם אתם מעמידין הכל על הדינין הקצובים בתורה ושלא לענוש אלא כמו שענשה התורה בחבלות וכיוצא בזה נמצא העולם חרב, שהיינו צריכים עדים והתראה, וכמו שאמרו ד”ל לא חרבה ירושלים אלא שהעמידו דיניהם על דין תורה [...] ²⁰

Respect for the law of the Torah cannot precede the protection of the community and its inhabitants. On the contrary, the survival of the Torah depends on the survival of the Jewish people. This inescapable relationship leads to the existence of two separate laws: on the one hand, the religious law; on the other hand, the legislation of the community. In this second case, the decrees and judgments should pursue the welfare and political stability of the group. This objective legitimates the community to rule independently of the Torah if the final goal is to “build a fence around the Torah”. In other words, the physical continuity of the Jewish people, the worshipers of the true God and His law, is indispensable. The Rashba summarized this position in his *responsum* [Adret IV: 311]:

שלה נאמרו אתן הדברים שאמרתם אלא בבית דין שדינין על פי דיני תורה כסנהדרין או כיוצא בהם, אבל מי שעומד על תיקוני מדינה אינו דן על הקינים הכתובים בתורה ממש אלא לפי מה שהוא צריך לעשות כפי השעה [...] וכן אמרו מכין ועונשין שלא מן הדין ולא לעבור על דברי תורה אלא לעשות סייג לתורה [...] ²¹

¹⁹ “Everyone shall know that we Peter, King of Aragon by the grace of God, concede to all the Jewish *aljamas* in Catalonia that every community will always be allowed to appoint between two and seven good men every year—or for longer periods, if you prefer—, who will be in charge of the matters, disputations, and ceremonies [of the community] [...], to condemn and punish the inhabitants of their *aljama* and *collecta* [...]. They will also be authorized to enact decrees, prohibitions, and ordinances on communal affairs, and to impose *alatma* and *niduy*” (my own translation). ACA, reg. 44, f. 167v-188r [R: 823; B: 121].

²⁰ “If the appointees (*berurim*) find the witnesses trustworthy, they are permitted to impose monetary fines or corporal punishment as they see [fit]. Society [*olam*, literally, ‘the world’] is thereby sustained. For if you were to restrict everything to the laws stipulated in the Torah and punish only in accordance with the Torah’s penal [code] in cases of assault and the like, the world would be destroyed (*ha-olam harev*), because we would require two witnesses and [prior] warning. The Rabbis have already said that ‘Jerusalem was destroyed only because they restricted their judgments to Torah law’ (BT *Bava Metzia* 30b).” Translation: M. Walzer *et al.*, *The Jewish Political Tradition*. 3 vols. New Haven/London: Yale University Press, 2000-2018, vol. I, pp. 402-403.

²¹ “Those rules cited by you [that witnesses who are next of kin, etc., are incompetent] apply only to a court that judges according to the laws of the Torah, like the Sanhedrin or a similar body. But whoever is appointed on the basis of a communal enactment does not judge directly according to the laws set down in the Torah itself; he may do whatever is necessary to satisfy the needs of the hour [...] It has also

Following the steps of his master, the political thought of Adret was strongly influenced by the Tosafist notions of the nature of the community and the rule of the majority.²² This affinity becomes evident even in the allegorical images used by Adret to refer to the legislative and coercive powers of the community. Thus, he compares the authority of communal institutions to the king and the High Court (*Adret* III: 411, IV: 142 and V: 126 and 242, for example) or to the *geonim* (*Adret* I: 729).

Adret's theories cannot be considered a mere transposition of the Franco-German political conceptions. The context of the Iberian Jewry differed from that of the Central European communities in many regards, which resulted in different political challenges. Unlike most Tosafists, Adret considered that the community was not just a partnership of people, but a holistic entity independent of the sum of its members. As shown in his *responsum* 968, for example, Meir of Rothenburg linked the power of the community to legislate and impose penalties to a hypothetical foundational consent of its members.²³ The sovereignty of the association relies on a social contract whereby individuals ceded their will to a series of ruling institutions. In other words, Meir's position was based on a consent theory. Adret, by contrast, did not match this definition of communal association, as argued by Daniel Gutenmacher in his doctoral dissertation.²⁴ According to his analysis, Adret cannot be considered a theorist of consent since he apparently suggests that communal authority is inherent to its institutions and that individuals are subjected to them by nature.²⁵ Perhaps the initial authoritarian system of government in Catalonia hampered the development of a theory of consent and reinforced the idea of the natural authority of the community.

It is noteworthy that Adret's idea of the inherent power of the constitution does not annul the notion of partnership as the basis of communal association. These are two different concepts that should not be confused. Above all, there was a perception of the community as a group of Jewish people belonging to the same ethnic-religious body and subjected to

the same Divine law, who decided to join to preserve their traditions and identity. In the ontological-not material-plane, the community members were conceived as equals who had the duty of contributing to this final objective (*Adret* V: 183). No communal society can function without solid ties of solidarity between its members.

This natural power is exercised according to the majority will. The compulsion of any rule agreed by the majority of members of the community is out of discussion for Adret. Rashba held that the minority is inevitably compelled by the coercive force of the majority. In *teshuvah* [*Adret* III: 411], he states:

וכל שכן לענין הדין, כי הם זכות או חוזק יד יש לקהל אחד על אחד ואפילו ליחיד על רבים בדיני הממונות והנהגות והסכמות [...] לפי שכל צבור וצבור היחידים כנתונים תחת יד הרבים ועל פיהם הם צריכים להתנהג שכל עניניהם, והם לאנשי עירם ככל ישראל לב"ד הגדול או למלך²⁶

One of the key functions of the majority was the appointment of communal officials. Officials were the representatives of the majority and the depositaries of the power of the community. Their functions were not homogeneous, but they often shared several common attributions, including managing communal properties and resources; tax collection (both royal and communal); law-making; and the power to judge and impose penalties, especially excommunications—but also capital punishment.²⁷

Adret considered that the majority's will must prevail over the candidates' scholarship. He vindicated that the seven good townsmen frequently mentioned in the Talmud were not the most versed men in the study of the halakhah or the wealthiest members of the community, but those chosen by their fellow neighbors. Following this idea, Adret equated the legislative attributions of the sage described in the Talmudic narration about the enactments of the butchers to the power of the elected officials (*Adret* IV: 185; see *BT Baba Batra* 9). In his opinion, seven was the appropriate number of secretaries because they were enough to represent the whole community without further authorizations. Nevertheless, many *aljamas* were not allowed to choose more than three secretaries. In other cases, like Valencia, the number of representatives was raised to twelve (as pointed out in *Adret* IV: 315). As he noted in III: 443, this amount is figurative, and the number of delegates might vary according to the community's needs or its population. In *Adret* I: 617, he states:

ואקדים לך הקדמה כי שבעה טובי העיר המזכרים בכל מקום אינם שבעה אנשי המובחרים בחכמה או בעושר וכבוד אלא שבעה אנשים שהמידום הצבור פרוסים סתם על עיני העיר והרי הן כאפטרופוסין עליהם [...] ואם

been said that punishment not prescribed by strict law may be imposed—not to transgress the Torah but in order to make a fence around the Torah [...].” Translation: M. Elon, *Jewish Law: History, Sources, Principles*. 4 vols. Philadelphia: Jewish Publications Society, 1994, vol. II, p. 691.

²² See, for example, I. M. Ta-Shma, “Shikulim filosofiyim behakraat ha-Halakhah be-Sefarad” [“Philosophical Considerations for Halakhic Decision-Making in Spain”], *Sefunot*, 18:3 (1985); Y. Kaplan, “Rov u-miut ve-hakhraot ba-kehillah ha-yehudit bi-yemei ha-veinayyim” [“Majority and Minority in the Decisions of the Medieval Jewish Community”], *Shenaton ha-Mishpat ha-Ivri*, 20 (1995); and M. Lorberbaum, *Politics and the Limits of the Law*. Stanford: Stanford University Press, 2001, p. 94.

²³ Meir of Rothenburg, *Sefer Teshuvot Maharam bar Barukh*. Budapest: Buchhandlung Steinberg & Comp., 1895, *responsum* n. 968. See also, I. Agus, *Rabbi Meir of Rothenburg*. 2 vols. Philadelphia: The Dropsie College for Hebrew and Cognate Learning, 1947, vol. I, pp. 108ff; and J. I. Lifshitz, *Rabbi Meir of Rothenburg and the Foundation of Jewish Political Thought*. New York: Cambridge University Press, 2016, pp. 74ff.

²⁴ D. Gutenmacher, *Political Obligation in the Thirteenth-Century Hispano-Jewish Community*, *op. cit.*

²⁵ D. Gutenmacher, *Political Obligation in the Thirteenth-Century Hispano-Jewish Community*, *op. cit.*, pp. 116-121.

²⁶ “So too are the decrees or enactments of the majority of the kahal regarding the needs of the community (*kehillah*). Since the majority enacted it, even against the will of individuals, it is valid. [...] For in each and every public, individuals are considered to be under the rule of the many and must pay heed to them in all their affairs. They [the minority] stand to the people of their city as all Israel stands to the high court or the king.” Translation: M. Walzer *et al.*, *The Jewish Political Tradition*, *op. cit.*, vol. I, pp. 404-405.

²⁷ This list is largely based on I. Epstein, *The ‘Responsa’ of Rabbi Solomon Ben Adreth of Barcelona (1235-1310)*. New York: KTAV Publishing House, 1968, p. 35.

תאמר הם פרנסים ידועים הם למה לי שבעה [...] לפיכך כשהן שבעה יש להם רשות לכל דבר כאלו עשו כן כל בני העיר אף על פי שלא העמידו אותם דבר זה בפירוש אבל פחות משבעה אין כחן שיהיה להיותם ככל בני העיר עד שיטלו רשות בפירוש בני העיר [...] ²⁸

His pragmatism and commitment to the stability of the Catalan-Aragonese Jewry prevented Adret from becoming a political proselytist.²⁹ His political views favorable to the “majority rule” were evident, and he always advised its implementation in his *responsa*. Likewise, he was openly critical of tyrannical and despotic communal governments (*Adret V*: 245). However, he had to acknowledge the existence of alternative political systems within the Crown. This forced tolerance was in accordance with his defense of the local customs as a source of law. Adret’s theories on secular politics inevitably implied the acceptance of political diversity. It was inherent to his political and legal realism. In his answer to a *shelah* by the community of Zaragoza (*Adret III*: 394), he explained:

ואומר אני שמנהג המקומות בעניינין אלו אינו שוה בכל, לפי שיש מקומות שכל ענייניהם נוהגין על פי זקניהם ובעל עצתם, ויש מקומות שאפילו הרבים אין רשאים לעשות דבר בלתי עצת כל הקהל ובהם כמת הכל. ויש מקומות בממנין עליהם אנשים ידועים למן שיתנהגו על פיהם בכל ענייניהם הכללים והם אפטרופין אליהן, ורוה אני שאתם נוהגין כן שאתם ממנים עליכם קרויין מוקדמין. וכל מקום שנגו כן פסלו כל השאר לדברים אלו ואלו לבד מסכימין וטועין צריכי צבור הכללים, ואלוהם שקראום חכמים שבעה טובי העיר, כלומר שמנו אותם על כללי ענייני הצבור ³⁰

Adret’s tolerant acceptance of other kinds of communal political regimes can be symptomatic of the transitory period experienced by Catalan-Aragonese *aljamas* in the thirteenth century. The huge amount of legal and political doubts he was asked to solve and the subsequent thousands of *responsa* he produced point in that direction. Adret’s bet for stability rather

than for dogmatism prevented him from openly attacking alternative forms of government.

The role of Adret in the evolution of communal government was fundamental. His defense of the majority rule largely contributed to outpacing unipersonal regimes and legitimatizing the reforms contained in royal privileges.

4. Communal Organization after Shlomo ben Adret

Yitzhak Baer rightly noted that the death of Adret in 1310 left a void in the spiritual leadership of Catalonia and the whole Crown of Aragon.³¹ The vacuum lasted for at least thirty years. During this period, there was no identifiable political and religious authority with the charisma and influence of Nahmanides or Adret. This situation is unusual in the chronology of the Crown of Aragon. The second half of the fourteenth century and the first decades of the fifteenth century were also dominated by great names like Nissim of Girona (1320-1380), Hasdai Cresques (1340-1412), Sheshet Perfet (1326-1408) and Joseph Albo (c. 1380 – c. 1433). Therefore, the first half of the fourteenth century was a rather exceptional period.

This apparent political orphanage did not stop the process of evolution initiated in the previous century. The concession of privileges and the production of internal ordinances continued refining the complex communal self-government system. Barcelona was the starting point for this second wave of reforms. In 1327, the king accepted a number of *takkanot* proposed by the community to reformulate its internal organization.³² The ordinances were written in Catalan and attempted to provide additional legal security to the decision-making processes, set clear limits to the power and competencies of communal institutions, and establish mechanisms of control to prevent corruption. The document also attempted to fight external interferences and abuses of authority, which were potentially harmful to the autonomy of the *aljamas*.

Despite this set of rules being elaborated under the form of internal ordinances entirely conceived and formulated by the community itself, the instigation and participation of the king are almost certain.³³ The simplicity of the former institutional construction had become insufficient to properly respond to the needs of a community in continuous growth. Moreover, it had not eradicated the institutional monopolization by the plutocracy, and social unrest had arisen again. Some months before the approval of the statutes, in April, the complaints of the inhabitants of the Barcelonian community against the corruption of its leaders pushed James II to designate an external auditor to inquire into this issue.³⁴ The measure might have been unsatisfactory and inadequate to solve the

²⁸ “[The seven good townsmen], who are frequently mentioned, are not seven people who excel in wisdom, wealth, or honour, but seven people chosen by the people and authorized generally to be the administrators and trustees of the town affairs [and they are like the town guardians] [...] You may ask: if the leaders are recognized, why is there a need for seven? [...] When they are seven, they have full authority to act on all matters without further specific authorization, [and their acts are] as if done by all the townspeople. However, if there are less than seven, they do not have the general authority to act for the townspeople but are limited to the performance of those acts townspeople specifically authorize.” Translation: M. Elon, *Jewish Law: History, Sources, Principles*, op. cit., vol. II, pp. 727-728, with some additions.

²⁹ D. Gutenmacher, *Political Obligation in the Thirteenth-Century Hispano-Jewish Community*, op. cit., p. 97.

³⁰ “I tell you that the custom is not everywhere the same. There are places where the elders and the councillors manage everything. In other places, even the majority is not allowed to do anything without the previous agreement of the whole community. There are also places where some people are designed and entrusted to take care of the community’s general affairs and be like its guardians. I have noticed that you do it that way: you choose people called *muqadamin* (*adelantados*). Wherever this system has been adopted, no other practice is allowed anymore and only these people can look after the necessities of the community. They are those named the seven good townsmen by the sages, those appointed to look after the affairs of the public” (my own translation).

³¹ Y. Baer, *History of the Jews in Christian Spain*, op. cit., vol. I, p. 18.

³² ACA, reg. 230, f. 106r-107v [R: 3454; B: 189]. We have divided the text according to Baer’s edition. Each section of the text is indicated by using the word *point*.

³³ Baer considered the statutes only as a community product, see Y. Baer, *History of the Jews in Christian Spain*, op. cit., vol. I, pp. 227ff. Y. T. Assis, *The Golden Age of Aragonese Jewry*, op. cit., did not discuss this possibility.

³⁴ ACA, CR, Jaime II, c. 134, n. 223 [A: 443].

structural problems of the *aljama*, which would have led the king to sponsor a deeper reform. It is particularly striking that the complainants were headed by a secretary, Astruc Saltell, who had been appointed for this office the previous year thanks to the express support of the *infants* Peter and Alphonse, sons of James II.³⁵

The involvement of the king would also explain the abrupt interest of the community to equate its institutions as much as possible to the city government. In addition, the original document in the Archive of the Crown of Aragon is classified among the privileges conceded by James II.³⁶

Paradoxically, the first concerns reflected by the ordinances are related to external interferences in communal affairs. The concession of individual privileges by the king, local lords, or royal family members to their favorite Jews had been a traditional challenge for communal authorities. Those personal graces turned the recipients into untouchable. The scope and object of privileges were diverse. They used to consist of legal and fiscal immunities, the exemption of communal duties, or the appointment of the king's trusted men as officials of the *aljama*. They discredited the authority of communal institutions, distorted their functioning, and caused economic damages since the fiscal exemption of the larger donors did not imply a reduction in the general contribution of the *aljama*.³⁷

The community of Barcelona pursued the reversion of this praxis. The first point of the document stated that every member of the *aljama* who had been awarded with a special privilege must renounce it. In the two next items (2 and 3), the ordinance extended this measure to future concessions, preventing anyone from “recaptar assi mateix ne a altre neguna letra o manament aixi del senyor rey com del senyor infant com de qualquier altra persona” (“to achieve for himself or another person a privilege or commission from the king, the *infant* or any other person”).³⁸ The non-compliance with those three dispositions carried a fine of one thousand *morabitins*. However, these norms were virtually inapplicable: the community could not force the king to comply. They might have been a declaration of intentions rather than a real rule.

Nevertheless, the main focus of the statutes was the redefinition of government institutions. The epicenter of this reform was the improvement and institutionalization of the *'etsa* as the pivotal legislative and controlling body of the *aljama* and the institution in charge of appointing the highest officials. This traditional communal council was provided with clear positive competencies, and a stable structure. It was composed of thirty men from the wealthiest families in the community. It was expected to be renewed annually. In order to avoid nepotism, corruption, and family monopolies, the members of the *'etsa* could

not be “pare e fill ne sogre ne genre” [“father and son or father-in-law and son-in-law”]. The document declared:

[Els] quals XXX se facen totes les eleccions, que seran mester ne son acostumades de fer en la dita aliama, aixi d'eleccions de secretaris com de jutges e reebedors de compte como de totes les eleccions. Encara se dege ordenar a coneguda daquells, per quina manera la aliama pagara les questes e les altres contribucions [...]. E que hi vayan fer aquelles ordinations o contraforts, que a ells sera vist faedor, o que puguen triar certs homens, aixi daquells XXX com d'altres, a coneguda dels quals se puguen fer e acabar totes les coes damunt-dites. E tot aço encara, que los dits XXX ordenaran en tots los feyts de la aliama, haya lo dita aliama per ferm sens tot contrast. (Point 4)³⁹

Therefore, almost every decision, including the appointment of secretaries, was in the hands of the *'etsa*. The agreements of the institution must be adopted by a simple majority (point 5). The appointments of secretaries and assembly members were reciprocal. According to the text, the “thirty” appointed three secretaries, five judges, and five *reebedors de comptes* (a kind of fiscal supervisor or auditor). The renovation of secretaries and councilors was supposed to occur in different periods. When the council's office ended, the secretaries were in charge of electing the new members and vice versa (point 9). In addition, the secretaries were empowered to designate substitutes for the absent members of the assembly and to decide the day and place of the meetings (points 7 and 8).

Besides the prohibition of choosing members from the same family, the statutes included further measures to shield the independence of the *'etsa*. The election of foreigners and Christians for the council was expressly prohibited (point 24), and nobody was allowed to gather privileges that could undermine the authority of the assembly (point 17).⁴⁰ Furthermore, none of the “thirty” or the other officials could have two consecutive offices (point 13).

The composition and attribution of the new *'etsa* paralleled those of the Barcelonan local assembly, the *Consell de cent* (“council of the one hundred”,

³⁵ ACA, CR, Jaime II, c. 134, n. 152 [A: 367].

³⁶ The register number 230 of the *Cancillería Real* to which this document belongs is part of the *Graciarum 21* of James II.

³⁷ I. Epstein, *The 'Responsa' of Rabbi Solomon Ben Adreth of Barcelona (1235-1310)*, op. cit., pp. 29-32. Y. T. Assis, *Jewish Economy in the Medieval Crown of Aragon, 1213-1327*. Leiden: Brill, 1997, pp. 209-223.

³⁸ My own translation.

³⁹ “Those thirty will decide all the appointments for the necessary or customary offices of the *aljama*, such as the election of secretaries, judges, and *reebedors de comptes* [that is, fiscal supervisors or auditors]. They will also approve the procedure to pay the *questies* and the rest of taxes [...]. They will be empowered to enact these ordinances and regulations or to appoint some men—among these thirty or someone else—to manage these affairs. Those thirty will rule over all the affairs of the *aljama* without interferences” (my own translation).

⁴⁰ This measure offers ruled solutions to problems like the one submitted by the *aljama* of Zaragoza to Adret in the *responsa* III: 394. A number of delegates were commissioned by the *aljama* to obtain some privileges from the king. They accomplished their task, but they also successfully negotiated a number of additional graces for the community. Those last negotiations were not covered by the budget allocated by the *aljama*. The delegates attempted to have their expenses paid by the community alleging the general benefits of their goals. Adret considered that the community was not obliged to pay since its members had not authorized these negotiations. The statutes of 1327, thus, set limits to this sort of independent initiatives.

definitely established in 1274), an institution with fiscal and representative powers, as well as with some normative attributions.⁴¹ This later reform proved to be unable to solve the endemic problems of the *aljama*. Some years later, the situation remained the same. Apparently, these ordinances could not stop the generalized corruption among communal leaders, the institutional monopolization by the wealthiest families, and the continuous external interferences. The pretended reinforcement of political autonomy and transparency lasted until 1333, when the king commissioned one of his officials, Gerard de Palaciol, to inquire about the accusations of embezzlement against the whole former government team of the community.⁴² But, once again, the means of the community appeared insufficient to manage the situation and the *aljama* itself asked for royal intervention.

In the following years, royal interventions by request of Barcelonian Jews were as frequent as they used to be. In 1337, two members of the *aljama*, who had been appointed *ad hoc* to conduct some special tasks, resort to Alphonse III to get the expenses of their works reimbursed by the secretaries. One of the claimers was Hasdai Cresques—perhaps the grandfather of the philosopher—, who was one of the reported secretaries in 1333. This exchange of accusations evinces the dangers and complexities of communal political life.

In Barcelona, the statutes were in force until 1386. That year, Peter III decided to abrogate them, probably because of their inefficacy to avoid corruption and social unrest. The king decreed a new statute,⁴³ whose general aim was to reinforce the control of the 'etsa on the *berurim*. He also attempted to shield the election methods against manipulations and ensure the participation of the three *mans*⁴⁴—in this case, it was stated that public offices must be evenly divided among the *mans*. Ultimately, the king increased his own power of control over the *aljama*. The new statute did not have time to prove its efficacy. Less than five years later, the community of Barcelona was obliterated.

5. Nissim of Girona and the Division of Communal Power

We want to finalize this discussion with some notes on the political thinking of Nissim of Girona, the most outstanding Jewish intellectual between 1350 and 1375. Nissim's political thought was an inheritor of Adret's contributions. However, his works might not be considered a mere reiteration of the positions held by the Rashba half a century earlier. To begin with, their historical contexts were different. Adret led the halakhic response in a period of social and institutional changes. His *responsa* contributed to homogenizing the political foundations of the *kahal* in Catalonia and crystallizing the majority rule as the

basic principle of self-government. From his side, Nissim belonged to the next generation.⁴⁵

Nissim was a prolific author. His production includes several exegetical commentaries and dozens of *responsa*. However, the general lines of his philosophical and political ideas are developed and systematized in a series of *derashot* (דרשות, "sermons") he wrote throughout his life. The topics of these homilies are diverse, including prophecy, ethics, community ties, metaphysics, and liturgy; but the *Derashah* 11 is entirely devoted to politics.

The *Derashah* 11 starts as a commentary on Deut. 16:18,⁴⁶ but the author's purposes soon appear to be more ambitious. This verse leads Nissim to argue for the existence of two parallel normative systems. On the one hand, there is the realm of secular politics, which the king and his officials embody. They must rule the society according to its material needs—the *needs of the hour*—, even when this implies contravening the Revelation. On the other hand, there is the Torah, whose defense is in the hands of the priests and the Sanhedrin. They are in charge of preserving the spirit and rituals of the Torah; their actions must be utterly respectful of the contents of Scripture.

Nissim's division of powers confers significant autonomy to secular politics in front of the rigid and liturgy-focused religious law of the Torah. However, there is no unanimity on interpreting the scope of politics and their independence from religious law attending to *the needs of the hour*. For Aaron Kirschenbaum, the separation of secular law from the strict halakhah only applies in cases of urgency, when the physical survival of the community is in danger.⁴⁷ For scholars like Shalom Rosenberg,⁴⁸ Gerald Blidstein,⁴⁹ and Menachem Lorberbaum,⁵⁰ the distinction implies a permanent division into two legal realms. Lorberbaum considered that Kirschenbaum was mistaken when he interpreted the *needs of the hour* as a synonym for *emergency*. In his opinion, this concept refers to the real and habitual political requirements derived from the material situation of the communities.⁵¹ The theses of Lorberbaum, Blidstein, and Rosenberg offer a more convincing explanation in accordance with the idiosyncrasy of the Catalan *kahal*.

⁴¹ For a general reference, see P. Ortí Gost, "El Consell de Cent durant l'Edat Mitjana", *Barcelona Quaderns d'Història*, 4 (2001).

⁴² ACA, CR, Alfonso III, c. 20, n. 2376 [A: 715].

⁴³ ACA, reg. 948, f. 114v-122v [B: 381].

⁴⁴ The *mans* (literally, hands) were the three classes in which the non-noble inhabitants of the royal domains were divided according to their profession, wealth, and social status.

⁴⁵ For a brief biographical overview, see L. A. Feldman, "Rabenu Nissim: Biographical Highlights", *Proceedings of the World Congress of Jewish Studies*, 2 (1965).

⁴⁶ "You shall appoint judges and officers in all your gates, which the LORD your God gives you, according to your tribes, and they shall judge the people with right judgement." The interpretation of Deut. 16 and 17 also played a main role in Nahmanides' comment on the Torah, see Ramban, *The Torah: with Ramban's Commentary*. Ed. and trans. Y. Blinder and Y. Kamenetsky. 5 vols. New York: Mesorah Publications, 2004-2010, vol. V, pp. 416-419.

⁴⁷ A. Kirschenbaum, "The Role of Punishment in Jewish Criminal Law: A Chapter in Rabbinic Penological Thought", *The Jewish Law Annual*, 9 (1991).

⁴⁸ S. Rosenberg, "Ve-shub al 'derekh ha-rov'" ["More on the 'Most Part'"], in E. Belfer (ed.), *Manhigut ru anit be-Yshrael: Morsheh ve-yad*. Ramat-Gan: Ha-Makhon le-Yehadut ve-le-Maḥshabah Bet-Zmananu, 1982.

⁴⁹ G. J. Blidstein, "'Ideal' and 'Real' in Classical Jewish Political Theory", *Jewish Political Studies Review*, 2:1/2 (1990).

⁵⁰ M. Lorberbaum, *Politics and the Limits of the Law*, *op. cit.*

⁵¹ M. Lorberbaum, *Politics and the Limits of the Law*, *op. cit.*, p. 133, also supported by D. Novak, *The Jewish Social Contract*. Princeton: Princeton University Press, 2005, p. 148.

Thus, Rosenberg, Blidstein, and Lorberbaum suggested that the use of the institution of monarchy in Ran's sermon is allegorical. The king is a metaphor, a personification of secular power.⁵² The object of Nissim's reflections was not the idea of monarchy as a unipersonal and hereditary government, or to set a legal framework for a hypothetical messianic king—as Maimonides did—, but the exercise of secular power itself. In other words, Nissim was theorizing on the prerogatives of the lay communal authority. Nissim proposed a bicephalous construction based on a separation of powers and the secularization of monarchical attributes. Blidstein rightly compared this theory with the Gelasian doctrine of the *Two Swords*.⁵³

Nissim starts his comment by acknowledging that every society needs laws and judges to protect the social order and, ultimately, survive. Even a group of thieves, he says, has norms. The Jewish people are not an exception; they need governors and rules. However, Judaism is a special case. The Jews are also commanded to elect judges to guarantee the observance of the Torah. And they must do so according to the rules and procedures established in the halakhah. For Nissim, this is the *true justice* (אמית' משפט; *amiti mishpāf*). The task of judges is inexcusable, even if their judgment can be harmful to the community or contrary to the interest of the public. But social order must still be protected. For this reason, Deut. 16:18 commands: "You shall appoint judges and officers." This is the origin of Nissim's legal duality. On the one hand, the king and his officials must legislate and rule to protect the society according to the *needs of the hour* (השעה צורך; *hish'á tsórekh*). On the other hand, religious judges are told to judge following only religious law. In Nissim's own words:

ידוע הוא, כי המין האנושי צריך לשפט שישפטו בין פרטיו [...] וכל אומה צריכה לישב מאדני [...] וישראל צריכים לזה (ב) [כ]יתר האומות, ומלבד זה צריכים אליהם עוד לסיבה אחרת, והיא: לעמיד חוקי התורה על תילם ולהעניש חייבי מלקיות וחייבי מיתות בית דין העוברים על חוקי התורה, עם היות שאין באותה עבירה הפסד יישוב מדיני כלל. ואין ספק, כי בכל אחד מהצדדים יזדמנו שני עניינים—האחד: יחייב להעניש איזה איש כפי משפט צדוק אמיתי, והשני: שאין ראוי להענישו כפי משפט צדוק אמיתי, אבל יחייב להענישו כפי תיקון סדר מדיני וכפי צורך השעה. והי יתברך ייחד כל אחד מעניינים האלו לכת מיוחדת, וציוה שיתמנו "שופטים" לשפות המשפט הצדוק המיתי [...] ומפני שסידור המדיני לא ישלם בזה לבדו, השלים הי יתברך תיקונו במשפט המלך.⁵⁴

⁵² G. J. Blidstein, "Ideal' and 'Real' in Classical Jewish Political Theory", *op. cit.*, p. 56.

⁵³ G. J. Blidstein, "Ideal' and 'Real' in Classical Jewish Political Theory", *op. cit.*, p. 57.

⁵⁴ "It is well-known that men need judges to judge between individuals [...] And every nation needs some government [...] The people of Israel need it as the rest of nations do, but they also need it for another reason: to preserve the laws of the Torah against those who furrow it and are punishable by a bet din with the capital penalty according to the rules prescribed in the Torah, whether their crimes are harmful for the nation or not. And there is no doubt here, these concerns require two functions. The first is to punish a man according to true justice. And the second: to judge him not according to true justice, but for the sake of the benefit of society and the needs of the hour. The Almighty assigned these tasks to two kinds of servants; he commanded to appoint judges to give judgment on the bases of true righteous justice. [...] And be-

Nissim considers that the Torah encases a Divine Immanence which irradiates the terrestrial world and benefits society. For this reason, the commandments of the Torah must be preserved, and the Sanhedrin must judge observing its procedural rules. Like Maimonides,⁵⁵ Nissim asserts that religious *mitzvot* are not meaningless, although sometimes human intellect cannot comprehend their finality.⁵⁶ They all tend to an end, which always benefits society and contributes to its perfection.⁵⁷ The judges of the Torah are the natural depositaries and protectors of those influxes. They judge according to God's will, even when it is apparently against the interests of the public. For this reason, the Torah demands strict and deep inquiries to ensure that judgments are compliant with true justice. The decisions of the judges are, therefore, supposed to be infallible.⁵⁸

However, society is a human construction with down-to-earth necessities that require a ruler to fulfill them. The possibility acknowledged by the Torah of appointing a king with powers separated from the prerogatives of priesthood pursues this objective. The monarch must give judgment according to the context and do whatever is needed to ensure the continuity of the social order.

Nissim argues that the procedural requirements of the Torah are too strict. Sometimes, they are virtually inapplicable. They cannot be expected to guarantee peace and justice. In his opinion, if the Jews only relied on the principles of the Torah, criminals would be immune, and they would proliferate to the point of shaking the foundations of society.⁵⁹ This interpretation is close to the views of Adret (*Adret II*: 279, III: 393, IV: 311, etc.). The conclusion is clear to him: there must be religious judges to judge according to the Torah and lay judges to judge according to the will of the king:

השותפות הזה רומז למה שאמרנו, שכמו שבמעשה בראשית נראה שפע אלוהי בתחתונים, שמאיתו נתהוו כל שנתהוה, כן כל דיין שדן דין אמת לאמיתו ממשיך השפע ההוא, ישלם מצד דינו לגמרי התיקון המדיני או לא ישלם, שכמו שבמעשה הקרבנות- עם היותם רחוקים

cause the nation's welfare cannot be preserved just with this, God permitted the election of a king" (my own translation). Nissim ben Reuben Gerundi, *Derashot ha-Ran*. Ed. L. Feldman. Jerusalem: Mosad ha-Rab Kook, 2003, pp. 412-414.

⁵⁵ Moses Maimonides. *The Guide for the Perplexed*. Ed. and trans. M. Friedländer. Skokie (Illinois): Varda Books, 2002, pp. 308-310.

⁵⁶ Nissim ben Reuben Gerundi, *Derashot ha-Ran*, *op. cit.*, pp. 436-437.

⁵⁷ Nissim ben Reuben Gerundi, *Derashot ha-Ran*, *op. cit.*, pp. 415-417.

⁵⁸ Nahmanides exposed the same views in his comment on the verse: "According to the sentence of the law in which they instruct you, according to the judgement they tell you, you shall do; you shall not turn aside to the right hand or to the left from the sentence they pronounce upon you" (Deut. 17:11). Departing from Rashi, the Ramban states:

[...] וענינו, אפלו תחשוב בלבך שהם טועים, והדבר פשוט בעיניך כאשר אתה

ידוע בין ימיך לשמאלך, תעשה כמזומם [...]

"And the meaning of this [statement] is that even if you think in your heart that [the judges] are mistaken, and the matter is as obvious in your view as you know to differentiate between right and your left, you shall nonetheless act in accordance with their command"). Ramban, *The Torah: with Ramban's Commentary*, *op. cit.*, vol. V, p. 417.

⁵⁹ Nissim ben Reuben Gerundi, *Derashot ha-Ran*, *op. cit.*, pp. 414-415.

לגמרי מן ההיקש היה נראה השפע האלוהי, כן במשפתי התורה היה נמשך ושופע גם כי וצטרך כפי הסידור המדיני תיקון יותיר אשר היה משלימו המלך. ונמצא שמינוי השופטים היה לשפוט משפטי התורה בלבד, שהם צודקים בעצמם, כמן שאמר: "ושפטואת העם משפט צדק", ומינוי המלך היה להשלים תיקון הסידור המדיני, ואל מה שהיה מצטרך לצורך השעה. 60

Nissim admits that the will of the king can be fallible. His decisions and judgments are not under the influxes of the Torah; they are just human products. Nissim justifies this risk by recalling that the king rules only under God's acquiescence and people's acceptance. Notwithstanding the independence of royal legislation from the Sanhedrin implies that the king was to some extent independent from the Torah, his position and powers are provided by the Torah and God, to whom the king owes obedience. The exhortations of the Torah praising the good government and imposing conditions for the exercise of power must be observed by the monarch.⁶¹ These elements, Nissim concludes, provide kings with enough legitimacy to govern and judge with independence from the Torah. Zev Harvey has observed that Nissim's concerns for the limits and the control of monarchical power make him the most constitutional Jewish philosopher after Maimonides.⁶²

6. Conclusions

The above discussion has offered an overview of the political and social context in which Hasdai Cresques lived. Throughout the thirteenth and fourteenth centuries, Catalan-Aragonese Jewry developed complex models and theories on self-government. The autonomy conferred by the Christian monarchs set the ground for implementing political and legal structures based on Jewish principles. Nonetheless, royal privileges only provided the elementary framework for institutional self-design. The construction of decision-making systems relying on the halakhah was in the hands of the communities themselves. The succession of outstanding scholars was fundamental to ensuring a real Jewish self-government. Spiritual leaders like Nahmanides, Shlomo ben Adret, and Nissim of Girona contributed to set

an autochthonous legislative and hermeneutical tradition that permitted the flourishing of Catalan communal politics.

When Hasai Cresques was born in the mid-fourteenth century, this tradition was at its peak—although it was close to start its process of decadence. Catalan Jewish communities were conceived as holistic structures with a natural authority directly linked to the secular power of Biblical kings. The "majority rule" was deemed the preferable and ideal self-government system, which was exerted by a solid network of communal institutions. At the same time, Jewish approaches to politics were enriched by the constant interaction with their Christian neighbors. However, the reality of communal life was far more complex. Political struggles, aggressive confrontations between factions, institutional control by oligarchs, the interferences of Christian officers, and fragile balances of power conditioned the inner life of the Jewish communities. The social history of Catalan-Aragonese Jewry elapsed on a permanent dialectic between the intellectual and idealistic views on communal brotherhood and the impositions of a problematic context.

Hasdai Cresques assumed his co-religionaries' spiritual leadership in a period of crisis—a crisis never overcome. The anti-Jewish riots of 1391 drastically changed the social and political panorama of Catalan-Aragonese Jewry. Cresques had to deal with the outcomes of this wave of destruction and lead the reconstruction of the communities. However, these events are beyond the current contribution, which was meant as a first contextualization. The scenario we have outlined is the social and idiosyncratic reality in which Cresques was born, where he grew as a man and scholar, and which molded his intellectual views.

7. References

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⁶⁰ "This partnership we were talking about implies that just as in the Beginning the Immanence of God spread along the terrestrial world and became the source of the whole creation, every [religious] judge sentences under this Immanence, no matter whether his judgment is beneficial for the nation or not; and just as the deeds of the sacrifices—which are inaccessible through logic—make visible the Immanence of God, the judges of the Torah extend those influxes, although the requirements of the nation make a king necessary to complement their judgments. Therefore, the judges [of the Torah] were appointed to judge only according to the laws of the Torah, which are righteous in themselves, as it is stated: 'They shall judge with righteous judgments'; and the king was appointed to complete them and fulfill the requirements of the nation regarding the needs of the hour" (my own translation). Nissim ben Reuben Gerundi, *Derashot ha-Ran, op. cit.*, pp. 417-418.

⁶¹ Nissim ben Reuben Gerundi, *Derashot ha-Ran, op. cit.*, pp. 440-444.

⁶² W. Z. Harvey, "Liberal Democratic Themes in Nissim of Girona", in I. Twersky and J. M. Harris (eds.), *Studies in Medieval Jewish History and Culture*. Vol. III. Cambridge (Massachusetts): Harvard University Press, 2001; and W. Z. Harvey, "Rabbi Nissim of Girona on the Constitutional Power of the Sovereign", *Studies in Halacha and Jewish Law*, 29 (2013).

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