

A Controversy in the Amsterdam Community in 1650: Can a Ger Tzedek be Appointed Parnass?

By: JEREMY I. PFEFFER

There are few more contentious issues in public affairs than the selection of appointees to positions of power and authority, and never is it more divisive than when the candidate is an outsider. One such incident occurred in the Amsterdam Jewish community in or about the year 1650. The office to be filled was that of *parnass* (lay head of the community) and the eligibility of the leading candidate, an otherwise impeccable nominee, was challenged at the meeting of the membership convened to confirm his appointment on the grounds that he was a *Ger* (proselyte) and hence prohibited by the Torah from occupying a position of coercive authority over the community.

From amongst your brethren shall you set a king over you; you may not place a foreigner over you, [one] who is not your brother.¹

On the face of it, the objection was well founded. In the *Mishneh Torah*, Rambam had formulated the *Halakhab* as follows:

A king should not be appointed from amongst the *gerim* [מקהל גרים], even after a number of generations, until his mother is an Israelite, as it says: *You may not place a foreigner over you, who is not your brother*. This applies not to the monarchy alone, but to all positions of authority within Israel...All appointments you make shall be none other than *from amongst your brethren*.²

¹ *Devarim* 17:15.

² *Mishneh Torah, Hilkehot Melakhim*, 1:4.

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Thus, it would appear that *gerim*, as a class, are excluded from holding office in a Jewish community. This ruling was an issue of concern for the Amsterdam community, many of whose members were *Anussim* who had begun arriving in the newly independent Northern Dutch Provinces after 1593. Most of the males were uncircumcised when they arrived and would have had to undergo *giur*, the all-pervading surveillance of the Inquisition having made circumcision in Iberia impossible.³

The candidate was the son of an *Anuss* (*Cristiano Nuevo, Converso* or *Marrano*) and a Christian woman, and as such he was not a Jew from birth. His father had died and he had made his way from Iberia to Amsterdam where he underwent *giur* and properly became a Jew.⁴ He had become a respected member of the community, a “brother” Jew, but did this make him a “brother” in the sense required for an appointment to a position of coercive authority?⁵

Unsure how to act in the matter without slighting the said *ger* or going against Rambam’s ruling, the Amsterdam Jewish community appealed for outside guidance. The replies they received from two rabbinical scholars have recently come to light; they were discovered in the Hebrew codex Ms. 199 of Christ Church Library, Oxford.⁶ The first of these scholars

³ The flow of *Anussim* and their offspring into Holland continued well into the seventeenth century and, as often occurs in immigrant societies, tensions had begun to surface between the earlier and later arrivals. Notwithstanding, as loyal supporters of the House of Orange, they prospered in their new home by dint of their skills and hard work.

⁴ Non-Jews are not ‘converted’ to Judaism; they become Jews (or Hebrews or Israelites). Becoming a Jew involves more than just changing one’s religious affiliation. To be a Jew means to belong to the nation of Israel (עַם יִשְׂרָאֵל), and when a gentile becomes a Jew, he joins that nation. By Jewish law, however, the only way of joining the nation of Israel is by acceptance of the *Torah* of Israel (תּוֹרַת יִשְׂרָאֵל), and it is this that gives the process its religious connotations.

⁵ The word “brother” or a declension of it [...(אָחִי)] occurs some 250 times in the Torah, its definition and import depending in each instance on the particular context.

⁶ Pfeffer, Jeremy I., Authorship in a Hebrew Codex...MS 199: Tracing Two Lost Works by Delmedigo, *Christ Church Library Newsletter*, Volume 6, Issue 3; <<http://www.chch.ox.ac.uk/sites/default/files/Newsletter%20Tri10.pdf>>. Pfeffer, Jeremy I., “From Eisenstadt to Oxford: The Provenance of MS 199 in the Hebrew Collection of Christ Church Library,” *Christ Church Library Newsletter*, Volume 9, Issues 1–3. <http://www.chch.ox.ac.uk/sites/default/files/Christ%20Church%20Library%20Newsletter-Vol%209_0.pdf>.

was the polymath R. Joseph Solomon Delmedigo (1591–1655), also known as *YaSbaR* of Candia (Heraklion, Crete);⁷ the second was his pupil, R. Issachar Ber Jeteless of Prague (d. 1685).⁸

Delmedigo summarizes the details of the affair in the opening paragraphs of his reply.

A man of the seed of Israel, one of the *Anussim* in Portugal, profaned himself with a gentile woman who bore him a son; the man subsequently died. The lad remained with his mother until he grew up and learned wisdom, and ‘the spirit of the Lord began to stir in him’...And he chose well and did not follow the ways of her idolatry and went in search of the Lord. And he came to Holland...and became a Jew...And it was on the day the leaders of the community were assembled...and they proposed to appoint him *parnass* and head of the community or *gabai* [treasurer] of the community chest for the redemption of prisoners, and [one of those present] objected...calling out “he is disqualified by the Torah [from holding the positions]”...but many stood up for him...and supported the righteous *Ger*.

This introduction also goes into some detail about the background and general circumstances of the *Anussim* and Jews of Amsterdam. Who

The inclusion of Issachar Ber’s short *responsum* in a codex whose principal content is two works by Delmedigo is explained by the fact that he was a pupil of Delmedigo. We learn this from an inscription on the title page of a copy of David Ibn Yachya’s book *Lashon Limudim* (Constantinople: Eliezer Soncino, 1542) that came up for auction in January 2013 at Kestenbaum & Co. New York (Auction No. 57: Lot 120). The inscription states that the volume was given to Issachar-Ber Jeteless by his teacher Joseph Solomon Delmedigo.

⁷ A scion of a distinguished Ashkenazi family of rabbis and physicians that had settled in Crete during the fourteenth century. He was a student of Galileo in Padua where he studied medicine, and is credited with being the first Jewish Copernican. After spending much of his life on the move, Delmedigo ended his days in Prague where his tombstone still stands in the old Jewish Cemetery.

⁸ The first recorded mention of a person named Jeteless (Geidels) is of a certain Moses ben Simon, who was listed as a house owner in Prague in 1615. His son Yehuda Leib (d. 1666) was *gabbai* of the Prague *hevra kaddisha* (Jewish Burial Society) for 30 years and also of the Altneuschul. His son, R. Issachar Ber, the author of the said *responsum*, was a leader of the Prague community until his death in 1685.

the questioner was, however, is not stated; Delmedigo just observes that “[the question] was apparently written by a great man, one of the wise men of the Portuguese [Jews].”

Although he was residing in Eisenstadt, Hungary, at the time—the colophon on his reply reads “Written here in the city of iron [Eisenstadt], near the city of Vienna, in the state of Hungary, Wednesday 15th *Menahem* (5)411 [August 2, 1651]”—Delmedigo was not unfamiliar with the Jews of Amsterdam. By 1627, or possibly earlier, his travels had brought him to the city where he would stay until 1630 and officiate as the community’s *ad hoc* Rabbi. In his mid-thirties when he arrived, he had encountered much antagonism during his wanderings. “Whoever holds his soul dear must remove himself from secular sciences,” he was told, “for they are contrary to the true Jewish nature.” At once a rabbinical scholar, mystic and mathematical scientist who counted Karaites among his friends, an early proponent of the Copernican heliocentric model (he had been a student of Galileo during his medical studies in Padua) and the first Jew to use logarithms, he could not be other than controversial.⁹ And like many such polymath geniuses before and after him, he would end his life a bitter and lonely person. Delmedigo had already composed thirty or more Hebrew books and essays (on astronomy, mathematics, medicine, logic, alchemy, astrology and *Kabbalah*) by the time he arrived in Amsterdam. All were still in manuscript, but despite the appeals of his friends and pupils, he refused to have them printed because, he claimed, they were still unfinished, though it was more likely for fear of denunciation. Notwithstanding, two compilations of his correspondence and essays on a range of scientific and mathematical topics, *Sefer Elim* and *Sefer Ma’ayan Gannim*, were published in Amsterdam by Menasseh ben Israel in 1629, evidently with his agreement.

Though it appears that he dearly hoped for it, he would never be appointed to the position of communal Rabbi (*Av Bet Din*), and in 1630 he left Amsterdam to take up the lesser position of physician to the Jewish community in Frankfurt-on-Main.¹⁰ This was a rebuff that Delmedigo

⁹ For a discussion of the legitimacy of scientific activity amongst Jews in early modern times and the earliest Jewish allusions to Copernicus see: Ruderman, David B., *Jewish Thought and Scientific Discovery in Early Modern Europe* (Yale University Press, 1995); Brown, Jeremy, *New Heavens and a New Earth: The Jewish Reception of Copernican Thought* (Oxford University Press, 2013).

¹⁰ Before his authorship of the *responsum* in the Christ Church codex was uncovered, little had been known of Delmedigo’s writings or activities after his departure from Amsterdam to take up the position of physician in Frankfurt. All that

would never forget, and the request from the Amsterdam community some twenty years later for guidance in the matter of the *Ger* who was the son of an *Anuss* was an opportunity for him to settle accounts. Accordingly, his reply opens with a dissertation on the importance of כבוד הבריות—Human Dignity or showing consideration for others. So important is this ordinance that the Talmud states “it can supersede a negative injunction (לא תעשה) of the Torah.”¹¹ Delmedigo avers that this is the first lesson that the burghers of the Jewish community in Amsterdam have to learn: the *ger* should not be treated in the same insensitive manner as he had been when he was a stranger (the alternative meaning of the Hebrew word גר) in their midst.

Delmedigo was so agitated by this possibility that he attached a polemic he had composed entitled ספר בחי הנפש (*The Book of the Houses of the Soul*) to the halakhic *responsum* he dispatched to Amsterdam. The work is in part a passionate outpouring against those who are unwelcoming of *gerim* and in part a lyrical paean in their praise. In its introduction he explains that he was driven to write the piece by the grudging manner in which *gerim* were often received by their host communities. The body of the work comprises twenty-two paragraphs, composed and ordered such that their initial letters give the sequence of the Hebrew alphabet, from *Aleph* through *Tav*. In the first nine paragraphs, he berates the Jewish burghers of Amsterdam for their attitude towards the *gerim* amongst them; at one point he even compares their inhospitality to that of the biblical citizens of Sodom. In the next ten paragraphs, written in the first person, it is the son of the *Anuss* who speaks, telling his own story. He recounts how his father had been beguiled by a gentile woman (his mother) and died shortly afterwards; how he himself had come to reject the religion of the land in which he had grown up (Portugal) and escape and make for Amsterdam; his feelings during the circumcision and ritual immersion he had undergone in becoming a Jew; and, finally, his dismay at the unfriendliness of his new coreligionists. Delmedigo reappears in the last three paragraphs and concludes his rebuke with this call: “[the welcoming of *gerim*], this is charity; this is love, kinship, peace and friendship; this is the solicitude ordained by the Torah in the thirty-six places the text refers to *gerim*.”

But this was not all he had to say; he would also show those Jewish burghers what they had missed by not appointing him as their Rabbi. His

was known for certain was that he had died some twenty-five years later, in 1855, and was buried in the Prague Jewish cemetery where his grave can still be visited.

¹¹ *TB Shabbat* 81b.

responsum, which he entitled ספר נפש הגר (*The Book of the Soul of the Ger*), takes up eighty-eight of the codex's one hundred and ten pages. It is an academic *tour de force* that goes far beyond the immediate question of the eligibility of this son of an *Anuss* to the position of *parnass*. Exhibiting an encyclopedic knowledge of the traditional sources, Delmedigo examines the halakhic standing of *gerim* over a whole range of issues, including their filial and levirate obligations, inheritance rights and kinships. This is followed by a review of all the biblical and historical precedents of persons who had occupied positions of authority over Israel even though their mothers had been born gentiles, as well as a selection of Talmudic, Midrashic and Kabbalistic tales and homilies regarding *giur* and *gerim*.

In coming to his decision in the present matter, however, Delmedigo does not introduce any controversial halakhic *novella*; he seems to be most concerned with exhibiting the extent of his knowledge rather than its originality. Indeed, he is quite conventional throughout and does not dispute that, halakhically, a *ger* should not be appointed to a position of coercive authority (שררה). Notwithstanding, Delmedigo concludes that this particular *ger*, whose identity he evidently knew, could be appointed to the position of *Parnass* of the community. In justification of this, he cites two extenuations:

1. The *Parnass* in Amsterdam does not exercise sole or absolute authority over the community; his powers are limited and are exercised only in conjunction with others whose eligibility is not in question. Indeed, the Jews of Amsterdam resolved all monetary disputes that arose between them in the civil courts and not before a *Bet Din*.
2. This particular individual is such an exceptional righteous *ger* (גר צדק) that the kinship to his gentile mother, by reason of which he was ineligible for a position of authority, no longer existed: "He has returned to his father's family, to be his heir presumptive, and can be considered a son of Israel."

Unlike Delmedigo, his pupil R. Issachar Ber Jeiteless had no personal axe to grind nor did he have any prior connection with the Amsterdam community; he was however no less of a polymath as the inscription on his tombstone in the Prague cemetery testifies (Appendix II). His sole concern was with the specific question of whether a person such as this *Ger Tzedek*, the son of an *Anuss* and a gentile woman, may be appointed to a position of authority. His *responsum* is accordingly concise and to the point

and occupies just the last two pages of the codex. Notwithstanding, it is an exemplary piece of halakhic writing.¹²

As is customary, Jeiteless opens his *responsum* by restating the question he will be answering.

גר צדק בעל תורה ירא אלהי ועבד לו, זך וישר פעלו, והוא בן ישראל אנוס ואמו נכרית מהו למנותו בשררה על ישראל אם על כיוצא בזה אמרו חז"ל שום תשים עליך מלך (כל משימות שאתה משים יהיו) מקרב אחיך¹³ ולא מן הגרים.

And in translation

A *Ger Tzedeke* [righteous convert], learned in Torah, God fearing and His servant, whose deeds are chaste and honest; and he is the son of an Israelite *Anuss* and his mother is a gentile. What is [the legal position] regarding his appointment to a position of coercive authority over Israel? Whether it was with regard to such [persons] that the Talmudic Sages stated: “*You should appoint a king over yourselves* (that all appointments you make, shall be) *from amongst your brethren*¹⁴ and not from the *gerim*.”¹⁵

The question comes down to this: When the Sages decreed that *Gerim* may not be appointed to positions of coercive authority (שררה), did they intend this ruling to apply to *Gerei Tzedeke* such as this son of an *Anuss*? Jeiteless contends that they did not. In his opinion, the Sages had considered the issue of the appointment of a *ger* to a position of coercive authority only by reference to what he terms a “*Ger Stam*—גר סתם.”

What we find in the Talmud regarding this matter relates wholly to a *Ger Stam*.

The expression *Ger Stam* does not occur anywhere in the Talmud, however. Jeiteless’ use of the term in this context is innovative and requires clarification.

The notion of two classes of *gerim*—*Gerei Tzedeke* and *Gerei Stam*—has its origin with Rambam, who differentiated between those whose *giur* had been authorized by a properly constituted *Bet Din* of three learned rabbis or scholars (*dayanim*), and those whose *giur* was by an *ad hoc*, though legitimate, *Bet Din* of three observant but not necessarily learned Jews. *Giurim*

¹² A Hebrew transcript of the *responsum* can be found in Appendix I.

¹³ *TB Yevamot* 45b; *TJ Kiddushin* 4.5.

¹⁴ *Devarim* 17:15.

¹⁵ *TB Yevamot* 45b; *TB Kiddushin* 76b.

carried out by the latter are valid and confer all the obligations and privileges of being a Jew upon the *ger*, even though his or her motives may not have been altruistic; such a *ger* was called a *Ger Stam* (an ordinary proselyte). By contrast, *gerim* whose motives had been thoroughly investigated by a *Bet Din* of three learned *dayanim* and who were found to be genuinely sincere, were termed *Gerei Tzedek*.¹⁶ But Jeiteless' use of the term *Ger Stam* in the context of coercive authority appears to have a different purpose, namely, to indicate a *ger* with no prior Jewish credentials.

Regarding *gerim* as a class, Jeiteless notes a consensus amongst the *poskim* that they cannot be appointed to any judicial or coercive position in a Jewish community. The only exceptions to this are Rashi's minority opinion regarding their fitness to judge monetary cases, which found no support and was thus set aside, and the rare circumstance of a *Ger* whose mother was an Israelite.

According to Rashi, [a *ger*] may judge monetary cases¹⁷... but is unfit for a position of coercive authority¹⁸... and should not be appointed to any such position if his mother was not an Israelite.¹⁹ But in the opinion of *Ha-Rif* (Isaac Alfasi), Rambam, *Ha-Rosh* (Asher ben

¹⁶ *Mishneh Torah, Hilkhhot Issurey Bi'ab*, 13:15, 17. "For this reason [doubts as to their sincerity], the *Bet Din* did not accept *Gerim* throughout the reigns of David and Solomon. In David's time, [the apprehension was] that they sought to become *Gerim* out of fear, and in Solomon's time that they were motivated by the sovereignty, prosperity, and eminence that Israel enjoyed. [They refrained from accepting such *Gerim* because] a gentile who seeks to become a *Ger* because of the vanities of this world is not a righteous *Ger*. Nevertheless, there were many people who underwent *Giur* in the presence of ordinary persons during the era of David and Solomon... A *Ger* who had not been examined [by a *Bet Din*] and who had not been informed about the *Mitzvot* and the punishment for [failing to observe] them but had circumcised himself and immersed in the presence of three ordinary people is nevertheless a *Ger*. Even if it is discovered that he underwent *Giur* for an ulterior motive, since he circumcised himself and did undergo *Giur*, he has exited the category of gentiles... Even if he subsequently worships false deities, he is like an apostate Jew. [If he] consecrates [marries a woman], the consecration is valid, and it is a *Mitzvah* to return his lost property. For having immersed himself, he has become an Israelite."

For a comprehensive survey of the subject see: ספר זרע ישראל, אמסלם חיים, פרק ג, עמ' קסח, קפד, ער, שם ירושלים (5570), פרק ג, עמ' קסח, קפד, ער, שם.

¹⁷ *TB Yevamot* 102a.

¹⁸ *TB Yevamot* 45b.

¹⁹ *TB Kiddushin* 77a.

Yeḥiel) and Tosafot, and all the *poskim* who came after them, in particular *Ha-Tur* (Ya‘acov ben Asher),²⁰ a *ger* whose mother was not an Israelite is barred from judging even monetary cases.

And when [the Talmudic Sages] stated that “all persons are fit to judge monetary cases,”²¹ even a *ger*, [what they meant was] a *ger* whose mother was an Israelite;²² for [Israelite women] are often victims of rape or kidnapping; or that he can sit in judgment on a fellow *ger* even if his mother was not an Israelite. And Rashi’s [opinion that a *ger* may judge monetary cases] is set aside by reason of his being in a minority.

The concept of a *ger* whose mother is an Israelite requires clarification. Although the accepted halakhic position today is that the child of an Israelite woman is *ipso facto* an Israelite from birth, irrespective of the circumstances of its conception, this was not always so. There are a number of different legal opinions in the Talmud regarding the difficult question of the status of a child born to an Israelite woman who was impregnated by a gentile: the child may be a *mamzer*, a lawful gentile or a lawful Israelite, and accordingly might or might not have required *Giur* depending on the circumstances.²³

But what of the appointment of *gerim* to executive positions, such as that of the *parnass* of a community; must they satisfy the same criteria as candidates for judicial posts? Apparently, the answer is yes:

As regards the leading householders and elite of the community, those who are called *Parnassim* or *Manbigim*, they [have the standing of] a *Bet Din* as stated by *Ha-Mordecai* (Mordecai ben Hillel);²⁴ therefore, *gerim* whose mothers were not Israelites [cannot be appointed to these positions].

This would appear to settle the matter: the said *ger* was the son of a gentile woman and so could not be appointed *parnass*. But Jeiteless does not give up:

But as regards the issue currently before us, we do not find any explicit reference to such an instance in the *Gemara*, that is to say, to a person whose father was an Israelite and whose mother was a gentile.

²⁰ *Yoreh De‘ab* 269 and *Hoshen Mishpat* 7.

²¹ *Mishnah*, *Sanhedrin* 4:2.

²² *TB Kiddushin* 76b; *Mishneh Torah*, *Hilkehot Sanhedrin* 11:11.

²³ *TB Yevamot* 45a; *TB Kiddushin* 68a/b; Tosafot, *Yevamot* 16b and 23.

²⁴ Mordecai ben Hillel, *Sefer Ha-Mordekhai*, Riva de Trinato, 1559, p. 63a.

What we actually find is that a father's Israelite status is of major importance in all such matters, as the *Tur* and the *Bet Yosef* state in *Yoreh De'ab* 269 and *Hosben Mishpat* 7. Thus, as regards [the obligation to perform] *Halitzah*,²⁵ Tosafot and the *Rosh* wrote [in their glosses on] Chapter 12 of *TB Yevamot* that a person's father matters more than his mother, and likewise the *Tur* and the *Bet Yosef* in *Even Ha-Ezer* 169. But this is only if the person's conception was in holiness, such as when an Israelite man marries a *gioret*.²⁶

[The person's status] in such an instance is superior to that of one whose mother was an Israelite and father a gentile and whose conception was not in holiness; [for] although the latter is fit to be a judge, he is disqualified from performing *Halitzah* [by reason of his gentile genitor]. But if a person's father is an Israelite and mother a *gioret*, he is eligible to perform *Halitzah* and is also lawful as regards matters of Aaronide descent.

Notwithstanding, instances such as the present case, where the mother is a gentile and the father an Israelite, are not mentioned anywhere, neither in the *Gemara* nor by the *poskim*.

Albeit, it is well known that the son of a gentile woman [and an Israelite] is called her son and is not the son of his Israelite genitor, as it says in *Yevamot*.²⁷

"R. Yochanan replied in the name of R. Shimon b. Yohai, when Scripture stated, *For he* [the gentile's son who has married your daughter] *will turn your son [or grandson] away from following Me.*"²⁸

This implies that [by law] the Israelite man has no son by her and even if [the child] subsequently converts [to Judaism] he still bears no filial relationship to his genitor given that [*gerim*] are considered as though newly born.²⁹ And Rambam wrote in Chapter 5 of *Hilkhot*

²⁵ The formal procedure that frees the widow of a childless man to marry whoever she wants when her deceased husband's brother refuses to carry out his levirate obligation of marrying her. Since medieval times and the institution of a prohibition on polygamy, its performance has become obligatory in all circumstances.

²⁶ Paternity is established by the parents' cohabitation which is taken as proof that the man is the father of the woman's children.

²⁷ *TB Yevamot* 23a.

²⁸ *Devarim* 7:3-4. The passage in *TB Yevamot* 23a continues: "[The words] 'your son' [when referring to a child] born of an Israelite woman mean *your son* [or *grandson*]; [the words] 'your son' [when referring to a child] born of a gentile woman mean not 'your son' but *her son*."

²⁹ A *Ger* is regarded as having no relatives: *Giur* is tantamount to a rebirth and breaks all former familial connections. *Gerim* (proselytes) are deemed the children of *Avraham Avinu* (our father Abraham) and as such have no legal affiliation

Mamrim, that should he curse or smite his genitor, he is not indictable for this act; nor is he his heir.³⁰

In principle, Jewish Law determines the status of a child by reference to his or her natural (biological) parents, irrespective of whether or not they were legally married at the time of its birth; there is no such thing as an *illegitimate* child or *filius nullius* (nobody's child) in Jewish Law.³¹ Even the child of a forbidden union, a *mamzer*, has a legal mother and father with all the concomitant rights and mutual responsibilities. There is, however, one exception to this rule. In Jewish Law, the child of an Israelite man and a gentile woman has no legal father: the child's genitor is not his or her legal father.³² Even if the child subsequently undergoes *giur*, he or she will still be known not as the Israelite genitor's child but as the child of "our father Abraham."³³ This being so, what weight, if any, can be given to the Israelite father in the case before us?

Furthermore, contrary to those instances in which the father's status carries some weight, albeit only when the mother is a *gioret*, as regards his inheritance rights a *ger* whose father is an Israelite may be even worse off than one who is the son of a gentile genitor and a gentile woman.

According to Torah Law, a gentile is his father's heir, and even if he undergoes *giur* he remains his heir according to Scribal Law...³⁴ But the son of an Israelite man and a gentile woman is not [his genitor's

to their biological fathers (genitors). A *Ger's* patronymic is "...son/daughter of our Father Abraham."

³⁰ A child bears its Israelite genitor's name, together with all the filial rights and obligations that go with it, only if both its conception and birth were "in holiness."

³¹ In Muslim *Sharia* Law, the child of an unmarried woman has no legal father.

³² The rationale for this is taken from an interpretation of the verse "You shall not marry them, neither give your daughter to their son nor take his daughter for your son; for he will turn your son away from following Me and they will worship other gods; so will the anger of the Lord be kindled against you" (*Devarim* 7:3-4).

³³ This exception to the rule that parentage is determined by biology has troubled Jewish scholars and *Poskim* throughout the ages, and it underlies the issue of the status of the said son of an *Anuss*. Notwithstanding, in recognition of the natural affinity of the child and its genitor, various expedients have been adopted over the ages in order to soften its impact. For example, such persons are often referred to as זרע ישראל (*Zera Yisrael* - Seed of Israel).

³⁴ *Tur*, *Hoshen Mishpat* 283.

heir] according to either Torah Law or Scribal Law, even if he undergoes *giur*.³⁵

How, asks Jeiteless, did this distinction between the inheritance rights of a *ger* whose genitor is a gentile and those of one whose genitor is an Israelite, to the detriment of the latter, arise in Scribal Law; and secondly, does it have any bearing on the matter at hand?

But the reasoning behind this [ruling] should be properly examined. [On the one hand] it is right that the gentile woman's son should not inherit his Israelite genitor, seeing that he naturally clings to his mother and will [most likely] worship idols as she does. As Scripture plainly puts it: *For she will turn your son away from following Me*;³⁶ she will turn him away from being a follower of God. And it is for this reason that he cannot be indicted for abusing his father and does not release [his genitor's widow] from the levirate requirement.³⁷

But this [ruling] is wholly a matter of inheritance. The Sages bolstered [the law] so as not to equate the inheritance [rights] of [the son of an Israelite man and a gentile woman] with those of the rest of his brothers [his genitor's lawful sons], even if he undergoes *giur*, lest his [*giur*] be only because he had set his eyes on the money. Besides, this ruling is no more than a rabbinical ordinance (*Takkanah*) like the one introduced by the Talmud Sages which allows a *ger* to inherit from his gentile genitor even though, according to Torah Law, he should not. It was only enacted lest he otherwise return to his previous [gentile] ways. For were he not to inherit [from his gentile genitor] by reason of being a *ger*, he might well return to his gentile ways whereupon he would [ironically] be eligible to inherit from him according to Torah Law.

As regards the *Takkanah* that a *ger* who is the son of a gentile genitor is entitled to an inheritance from him, the Sages reasoned that should he be denied this by the strict application of Torah Law, he might well be persuaded to return to his former gentile ways, whereupon, ironically, he would be entitled to the inheritance by virtue of the same Torah Law; it

³⁵ *Hilbket Nahlao* 2:11. "If a person had sons while still a gentile and then converted, he does not have a firstborn with regard to the rights of inheritance. However, if an Israelite fathered a son from a gentile woman then, since [this child] is not considered his son, any son he fathers afterwards from a Jewish woman is considered his firstborn with regard to the laws of inheritance, and receives a double portion [from his father's estate]."

³⁶ *Devarim* 7:4.

³⁷ If the genitor dies without children from his lawful Jewish wife, his brother will still be obliged to marry her.

was in order to remove this temptation that they instituted the ruling. On the other hand, the Torah law that a *ger* is not the heir of his Israelite genitor was not amended for fear that his conversion might be prompted by monetary considerations; had such a *Takkanah* been enacted and he became entitled to an inheritance from his Israelite genitor, the motive for his *giur* might have been just that and not a sincere desire to become a Jew.

But when he has undergone *giur* and we know that he is following in the ways of his father, it cannot be right for us not to consider him to be his son. For at all events, he has a father, and he is his son as regards the yoke of *Torah* and *Mitzvot*. Accordingly, he should also be eligible for a position of authority (שררה) just like his father and should be designated *from amongst your brethren* seeing that the fear that *he will turn your son away*...has gone.

Jeiteless finds support for his contention that the combination of Israelite paternal descent and *giur* is sufficient for the child of a gentile mother to be appointed to positions of authority in the biblical accounts of the Royals of the kingdoms of Judah and Israel. The first example he cites is the distressing story of Amnon and Tamar.³⁸ Without going into the salacious details of Tamar's assignation with King David's firstborn son Amnon, it is clear from the biblical text that she was regarded as a royal princess, i.e. as a daughter of King David, in which case their relationship would appear, at first sight, to have been incestuous. The text does not say who her mother was, however. This mystery is resolved by the Talmud, which states that she was the daughter of a *Yefat T'oar*, a gentile woman whom David had ravished in the heat of battle and, as such, not legally Amnon's sister.³⁹ Presumably, both she and her mother subsequently became *giorot*, but for Jeiteless, the key point is that she was considered a 'Royal of the House of David' even though her mother had been a gentile at the time of her conception; her patrilineal descent was what mattered.

³⁸ 2 Samuel 13.

³⁹ A *Yefat Toar* is a beautiful woman who is ravished by an Israelite soldier in the heat of battle and whom he may subsequently legitimately marry (*Devarim* 21:10). According to *TB Sanhedrin* 21a, the soldier who had ravished Tamar's gentile mother was David himself. Since she was conceived when her mother was still a gentile, she was not legally Amnon's sister and so there was no legal impediment to their union.

“Rabbi Judah said in the name of Rav, Tamar was the daughter of a *Yefat To’ar*,⁴⁰ as it is written: *Please speak to the king [David], that he not withhold me from you [Amnon]*.⁴¹ Is it conceivable she was the offspring of a legitimate marriage; how could his sister be granted to him [in marriage]?⁴² And furthermore, both he and David called her Amnon’s sister and she called him my brother. Absalom also asked her, “Was Amnon your brother with you?”⁴³ And [the text] also states that [she wore a robe of many colours,] for such was the dress of the king’s virgin daughters.⁴⁴ It follows that his daughter from a gentile woman was his daughter [i.e., a royal princess].

But what of those biblical kings whose mothers were gentiles; how could they have risen to the throne? It is here that Jeiteless exhibits his most creative thinking. The Talmud had determined that the Torah injunction *nor curse a ruler of your people*⁴⁵ applies only to one who “practices the proper usages of your people (עושה מעשה עמך).”⁴⁶ Turning this statement around, Jeiteless applies it to the question of who may be appointed king.

One ‘who practices the proper usages of his people’ [behaves as an Israelite should] may be *a ruler of your people*, and such a person is even fit to be king.

A gentile who undertakes *giur* may be said to have adopted the “the proper usages [*Mitzvot*] of your people.” And so, if the royal sons born to gentile mothers undergo *giur*, they can become kings.

Behold, Rehoboam [Solomon’s son who succeeded him as king] was the son of an Ammonite woman and there is no mention in Scripture that his mother became a *gioret*. And even if [the son] follows his mother’s [idolatrous] ways, if he becomes a *ger* he may succeed to the

⁴⁰ A beautiful woman ravished by an Israelite soldier during battle (*Devarim* 21:10). According to *TB Sanhedrin* 21a, the soldier who had ravished Tamar’s gentile mother was David himself. An alternative interpretation given by the *Tosaphists* is that she was the daughter of an already pregnant woman that David married and whom David subsequently adopted as his own.

⁴¹ *2 Samuel* 13: 13.

⁴² *TB Sanhedrin* 21a.

⁴³ *2 Samuel* 13:2, 6–8, 11–12, 20.

⁴⁴ *2 Samuel* 13:18.

⁴⁵ *Shemot* 22:27.

⁴⁶ This proviso occurs in a number of different contexts in the Talmud, not all relating to rulers: *TB Yevamot* 22b; *TB Baba Kama* 94b; *TB Bava Mezi’a* 48b, 62a; *Baba Batra* 4a; *TB Sanhedrin* 85a; *TB Makkot* 8b.

throne. And the proof for this is from the sons of Aḥab, Aḥaziah and Jehoram, the sons of the accursed Jezebel, daughter of the king of the Zidonians, who caused both her husband and sons to sin, as Scripture testifies.⁴⁷

And what of the many other gentile wives of Solomon and of Samson's wife Delilah? Rambam had asserted that they underwent *giur*, but Jeiteless points out that Scripture gives no hint of this.⁴⁸

Rambam wrote in Chapter 13 of *Hilkebot Issurei Bi'ab* that Solomon and Samson did not marry gentile women before making them *girot*, but this does not appear anywhere in the Scriptural text. The *Gemara* likewise says nothing [about his gentile wives] other than that Solomon made Pharaoh's daughter a *gioret*.⁴⁹

Jeiteless concludes that a *ger* who is the son of an Israelite genitor can be considered *from amongst your brethren* for the purpose of public appointments, whether or not his gentile mother ever underwent *giur*. He adds that he finds support for this from what Rambam might well have added, but did not add, to his assertion that Solomon made his gentile wives become *girot*.

Rambam could have added force to his supposition [that Solomon had made his gentile wives *girot*] by stating that were this not so, how could Rehoboam have become king? But he [evidently] considered that if a person's father is an Israelite, he is deemed to be *from amongst your brethren* so long as he becomes a *ger*. But if he does not undergo *giur*, even in the case where his mother is an Israelite, since his father was a gentile, he is a gentile and is called his son and not hers.⁵⁰

The notion that one who “practices the proper usages of your people” may be eligible to occupy a position of authority did not originate with

⁴⁷ 2 Kings 3-8. An early 13th-century work—*Sefer Tannaim Ve-Amoraim*—by R. Yehudah ben Kalonymous of Worms (d. 1217) raised the question of how these two could be considered sons of Ahab in light of the Talmud ruling (*TB Kid-dushin* 68b) that the child of gentile woman and an Israelite genitor is called her child and not his.

⁴⁸ *Mishneh Torah, Issurei Bi'ab*, 13:14.

⁴⁹ *TB Yevamot* 76a.

⁵⁰ Jeiteless appears to be implying that Rambam would require the child of a Jewess and a gentile to undergo *Giur*.

Jeiteless. According to Tosafot, before the Rabbinical Sages ruled otherwise, the Torah could be understood to permit a liberated slave or a *ger* to become king so long as he was “your brother in *mitzvoth*” (אחיך במצות); the intent of the ruling that the king must be *from amongst your brethren* was only to exclude gentiles.⁵¹ But the Sages amended this and decreed that henceforth a king could be appointed only from “amongst the unequivocal of your brethren” (הברורין שבאחיך), a designation taken to mean only a person whose parents were both Israelites at the time of his birth.⁵²

The ruling that only a person who was unequivocally “from amongst your brethren” could be appointed king had an immediate negative impact on the legitimacy of Herod’s rule in Jewish eyes. According to the Talmud, his parents were Idumeans and he himself had been a slave in the house of the Hasmoneans.⁵³ As such, he did not have any true Israelite credentials and like most usurpers and autocrats, he was fearful of his hold on the throne. Whether the Sages’ motives for changing the law were political and directed against him or not, Herod thought they were and reacted by ordering the slaughter of those who had instituted the change. According to the account in the Talmud, one Baba ben Buta, who was a confidant of Herod and whose advice he valued, was spared. In what might be described as a confessional exchange, ben Buta told Herod that the slaughter he had ordered was unwarranted; he had nothing to fear from the Sages since they were traditionally supportive of whoever was in power. Whereupon, to make amends, Herod was persuaded to undertake the construction of a new and finer Temple building.⁵⁴

The change in law initiated by the Sages would also affect Herod’s grandson Agrippa I (10BCE – 44CE), the son Aristobulus IV and his cousin Berenice.⁵⁵ Agrippa had been brought up and educated in Rome,

⁵¹ Tosafot *Bava Batra* 3b. “Tosafot and other Rishonim explained that were it not for the Sages’ elucidation, the Torah text could be construed to mean that although a person who is not an Israelite may not be appointed king, anyone who ‘belongs with the Mitzvot’ (שייך במצוות) was fit to be king.” (Adin Steinsaltz, *in situ*).

⁵² Tosafot *Sotah* 41b. Subsequently this rule was applied to all positions of communal authority, not just to the king (*TJ Kiddushin* 4:5; *TB Yevamot* 45b).

⁵³ The Talmud states that he had killed all but one of the members of the household, a maiden he wanted to marry, but she subsequently committed suicide by throwing herself off a roof. According to Josephus, she was Mariamne I, the daughter of Alexander, a son of Aristobulus II, and she was put to death by Herod after several years of marriage to him (*TB Bava Batra* 3b).

⁵⁴ *TB Bava Batra* 4a.

⁵⁵ The daughter of Herod’s sister Salome I.

and his credentials for the post of King of the Jews were no better than his grandfather's. Whilst living in Rome he had assisted in securing the accession of Claudius as emperor when Caligula was assassinated in 41CE, in reward for which he was appointed ruler of Judea and its adjacent territories. Keen to ingratiate himself with his Jewish subjects and establish his legitimacy as their monarch, Agrippa fixed his permanent residence in Jerusalem and ostentatiously observed the ancestral laws. The *Mishnah* relates that he led the public reading from the Torah in the Temple on the festival of *Sukkot* immediately following the conclusion of the seventh year in the *shemittah* cycle,⁵⁶ and that his eyes ran with tears when he reached the verse *you may not appoint a foreigner [as king] over you.*⁵⁷ Whereupon the Jews present called out to him, "Don't fear, Agrippa, you are our brother, you are our brother!"⁵⁸ The Talmud comments on this: "At that moment, the enemies of Israel [a euphemism for Israel itself] incurred extermination, because they flattered Agrippa." Just thirty years later, the second Temple was destroyed.⁵⁹

Taking the Talmud's account of the life of Agrippa as historically correct, Jeiteless cites a gloss from Rambam's *Commentary on the Mishnah* to the effect that he was a *ger* and that this was the reason it had been wrong for the people to flatter him and acclaim the legitimacy of his rule by calling him a brother.

And in his *Commentary on the Mishnah*, Chapter 7 of *TB Sotah: Parshat HaMelekh*, Rambam wrote the following: "Agrippa was from the category of *Gerim* [מקהל גרים] and did not have an Israelite mother;⁶⁰

⁵⁶ *Devarim* 31:10–13.

⁵⁷ *Devarim* 17:15.

⁵⁸ *Mishnah Tractate Sotah* 7:8; *TB Sotah* 41a.

⁵⁹ A King Agrippa appears in a number of stories in the Talmud, but whether the events described relate to Agrippa I, his son Agrippa II or some combination of the two is a matter of scholarly debate. For a discussion of this issue see: Schwartz, Daniel R., *Agrippa I: The Last King of Judea*, J.C.B. Mohr (Paul Siebeck), (Tübingen, 1990), pp. 157–171.

⁶⁰ According to Rashi (*TB Sotah* 41b), however, his mother was an Israelite and it was because he was a slave that he could not be king. In their discussion of Rashi's glosses, Tosafot differentiate between the criteria for appointing a person to a regular position of authority and that for appointing him as king. Whereas for the former it is sufficient if the candidate's mother is an Israelite, for him to be appointed king both parents must be Israelites. Only Agrippa's mother was an Israelite and so he did not fully satisfy this requirement. But that by itself would not have justified such a severe punishment. But by proclaiming,

and he was not *from amongst your brothers*; and therefore Israel was punished for proclaiming, ‘You are our brother!’”

Jeitless notes that Tosafot and Rashi offer other reasons that Agrippa could not be king, namely, that his father had been a gentile or that he had been a slave.⁶¹

Besides, his father was a gentile or a slave as Tosafot state in their glosses on Chapter 4 of *TB Yevamot*⁶² and Rashi likewise in his glosses on Chapter 7 of *TB Sotah*⁶³ and in *TB Kiddushin*.⁶⁴

Rambam’s proscription of Agrippa in his *Commentary on the Mishnah* on the grounds that he was a *Ger*, was in line with his ruling in *Hilkebot Melakhim*⁶⁵ prohibiting the appointment of a king from the category of *gerim* (מְקוּהָל גֵּרִים).

A king should not be appointed from amongst the *gerim* even after a number of generations, until his mother is an Israelite, as [Scripture] says: *You may not place a foreigner over you, who is not your brother*.⁶⁶

But for Jeiteless’ purposes, it was not what Rambam said in either his *Commentary on the Mishnah* or the *Mishneh Torah* that was important, but what he did not say.

And take note, he [Rambam] did not state that the son of an Israelite man and a gentile woman may not be appointed, which [the case of] Rehoboam proves.⁶⁷

And with regard to the rider [Rambam added], ‘until his mother...’: if even his mother is said to be sufficient [to qualify him to be appointed king], how much more so his father, for when he follows

‘You are our brother!’ they sought to flatter him though they knew he was ineligible. That was very wrong; they should have remained silent.

⁶¹ The Talmud considered Herod’s slave status to have been passed on to all of his descendants (*TB Kiddushin* 70b).

⁶² *Tos. Yevamot* 45b.

⁶³ *TB Sotah* 41b.

⁶⁴ *TB Kiddushin* 70b.

⁶⁵ *Mishneh Torah, Hilkebot Melakhim* 1:4.

⁶⁶ *Devarim* 17:15.

⁶⁷ The legality of Rehoboam’s ascent to the Davidic throne is no small matter. Upon it depends the legitimacy of the ensuing succession of the House of David down to that of the Messiah.

the fitting usages of his father, he is not called her son but his son.⁶⁸

But is there any support in *Halakhab* for the argument that the ineligibility to a position of authority, by reason of affinity to his gentile mother, can be negated by that to his Israelite father? Jeiteless suggests that there is by reference to the *Halakhab* regarding the prohibition on slaughtering an animal and its young on the same day.

And the Torah spoke in the way the world does, [namely] that a child clings to its mother, for she encourages it with her words. And as [the Talmud] states in the matter of *it and its young* [the prohibition to slaughter an animal and its progeny on the same day],⁶⁹ that this means ‘it and its mother,’ for it is to the females that [the offspring] instinctively cling.⁷⁰ And out of concern that this same instinct may also exist towards males, [the same-day slaughter of the young] and its father is also prohibited, if it is known for certain that he is its father, as the *Tur* states in *Yore De’ah* 16.

And it is likewise in the laws of the nations, for they call the son of a concubine/mistress ‘a natural son,’ and a true son born in wedlock is called ‘a legitimate son.’ But it cannot be denied that the former is his natural son and, should he take his place, he will be the heir to his authority though not to his money.⁷¹

Jeiteless now confidently summarizes his ruling in the matter:

And when the issues are correctly understood, no scholar or *posek* can dissent from this. And this *Ger Tzedeq*, whose father was one of the *Anussim*, should certainly be regarded as his son and has the status of *Zera Yisrael* (זרע ישראל), even though he is not his heir for the reasons given above. But as regards all matters of authority or sitting in judgment, he is a fit person. For [his standing] is above that of one whose mother in an Israelite and father a gentile. And reliance should be put on this principle, for everything else that has been said is irrelevant. And there is no need for Talmudic casuistry, or to cite the *Gemara* and the *poskim*, for the Sages spoke only about a *Ger Stam*

⁶⁸ This is essentially the same rationale as that brought by Delmedigo in the second of the two reasons he gave as to why the said *Ger* could be appointed to any position the Amsterdam community decided.

⁶⁹ *Leviticus* 22:28.

⁷⁰ *TB Hullin* 78a. The Torah ordinance is stated in the masculine—אֹתוֹ וְאֶת בְּנוֹ—but it was taken to apply to a cow or ewe and her young; whether it also applies to a bull or ram and its young is discussed in the *Gemara*.

⁷¹ Only legitimate offspring are lawful heirs.

from the category of *gerim* [one without any previous Israelite credentials] and a *ger* whose mother was an Israelite.⁷²

This is my opinion and I am not bothered should anyone stiffen his neck or be stone-faced in dissent.

These are the words of the frail youngster, Issachar called Ber, the son of R. Yehudah Leib Jeiteless, Dayan.

Exactly when the *responsa* of Delmedigo and Issachar Ber were received by the Amsterdam community is not documented. But on November 6th 1651, just three months after the date of the signature to Delmedigo's *responsum* in the Christ Church Library manuscript, the son of an *Anuss*, a *ger* by the name of Moseh Roiz da Costa, was declared by Menasseh ben Israel and David Prado "fit to be appointed to any post the congregation might give him...without exception." The text of the decree makes it clear that this was an exceptional case and would not become a precedent.⁷³ This rider may have been added by reason of the dissenting opinion of R. Jacob Sasportas who was living in Amsterdam at the time and to whom the following question had been put by the physician Samuel de Mercado:⁷⁴ "May a *Ger*, whose mother is not an Israelite, occupy a position of coercive authority over the community?"⁷⁵

Mercado's question was evidently prompted by differences as to the import of R. Josef Karo's gloss on Rambam's ruling in particular regarding the proviso "until his mother is an Israelite."⁷⁶ The Hebrew text of Karo's gloss reads as follows:

⁷² In the eighteenth century, the influential authority R. Yehezkel Landau, who resided in Prague from 1755 to 1793, stated that a king's lineage should be questioned only at the start of a dynasty when the monarch is first "appointed." Once the dynasty has been established, a descendant who inherits the throne may do so even if his mother is a Gioret (Noda B-Yehudah, *Hoshen Mishpat*, Responsum 1).

⁷³ *Menashe ben Israel and his World*, ed. Y. Kaplan, H. Mechoulam & R.H. Popkin, E.J. Brill, Leiden (1989) p. 58.

⁷⁴ In the extant annals of the Amsterdam community, Mercado's name is given as Samuel Israel de Mercado or Samuel Jessurun de Mercado. The addition of 'Israel' or 'Jeshurun' usually denotes a returning *Anuss* who had undergone *Giur*.

⁷⁵ *Sefer Ohel Ya'acov* (Sasportas' *responsa*, edited and prefaced by his son Abraham Sasportas), Amsterdam 1737, *Responsum* 4.

⁷⁶ In the *Kessef Mishneh* commentary on Rambam's code.

כל שתשימהו עליך לא יהא אלא מן הברורים שבאחיך ומשמע לי דלרבנותא
נקט אמו ומכל שכן אם היה אביו מישראל אע"פ שאין אמו מישראל כשר וכן
כתבו התוספות בפרק מצות חליצה ובהכי ניהא לי היאך מלך רחבעם דלא הוה
אמו מישראל...

And in translation:

...All those you appoint over you shall be none other than from the unequivocal of your brethren. And it seems to me that he mentioned his mother by way of an 'optional extra,' seeing that he would anyway be eligible if his father was from Israel even though his mother was not from Israel, as Tosafot wrote in their glosses on *TB Yevamot* 102a.⁷⁷ And as for me, this resolves [the question of] how Rehoboam could have been king even though his mother was not from Israel...

The Tosafot cited by R. Josef Karo state that having an Israelite father would suffice for one to be appointed to a position of judicial authority. Drawing on the verse *the King establishes the land with justice*⁷⁸—which places judges and kings on a similar standing—Tosafot's ruling can be taken to apply to the appointment of kings as well.⁷⁹ Karo observes that this view explains the accession of Rehoboam, whose mother was the gentile Naamah the Ammonite, to his father's throne without recourse to apologetics such as Rambam's surmise: "One should not think that Samson who saved the Jewish people, and Solomon, King of Israel, who is called 'the friend of God,' married gentile women who did not undergo *giur*."⁸⁰

Sasportas, who is known for his conservatism (he was one of the contemporary rabbis who most vigorously opposed the Sabbatean movement), rejected this understanding of Karo's gloss out of hand: a *Ger* who was the son of an Israelite man and a gentile woman could never be eligible for a position of coercive authority. Drawing on the case of R. Mari bar Raḥel bar Shmuel, who is referred to in the Talmud only by his matronymic, Sasportas argues that only a person whose mother is an Israelite can be called *from amongst your brethren*. The Talmud relates that R. Mari's

⁷⁷ Tosafot held that whereas having an Israelite mother does not of itself make one eligible to judge cases of *Halitzah*, having an Israelite father is of itself sufficient: לענין חליצה עד שיהא אביו ואמו מישראל - פי' באמו לא סגי עד שיהא גם אביו מישראל אבל באביו לחוד סגי...

⁷⁸ *Proverbs* 29:4.

⁷⁹ This equivalence between the standing of judges and kings is drawn by Rashi in his glosses on the same page in the Talmud, *TB Yevamot* 102a, as the said ruling of the Tosafot appears.

⁸⁰ *Mishneh Torah, Issurei Bi'ah*, 13:14.

mother, the daughter of the great Babylonian sage Shmuel, had been impregnated by a gentile Babylonian soldier, and according to the ruling that both parents must be Israelites, he should not have been eligible for any position of authority. Yet the Talmud states that “Raba declared R. Mari bar Raḥel to be a legitimate Israelite and appointed him a supervisor...for if a person’s mother is an Israelite he is called *from amongst your brethren*.”⁸¹

Sasportas asserts that Karo’s gloss cannot mean that “his father alone being an Israelite [is sufficient for an appointment to a position of authority] and that this is superior to his mother being an Israelite: God forbid!”⁸² The candidate’s mother must always be an Israelite, making him an Israelite from birth. Rambam’s purpose had been only to clarify the situation where the father is an Israelite and the mother a *gioret*. Such a person can still be considered *from amongst your brethren*, his circumstance being superior to that of one whose mother is an Israelite and father a gentile.

The incident in Amsterdam was not unique. At around the same time, an almost identical controversy arose in a Jewish community in the Ottoman Empire, where Iberian Jews had been invited by Sultan Beyazit II after he heard of their expulsion by the Catholic King Ferdinand and Queen Isabella in 1492. The source for this case is the halakhic compendium *Knesset Ha-Gedolah* composed by Rabbi Chaim Benveniste of Izmir (1603–1673).⁸³

In this instance too, the matter in dispute was the appointment of a *ger*, the son of a Jewish man and a gentile woman, to the position of *parnass* of a community. Two rabbis had been consulted by the community. One ruled that the said *ger* could be appointed to the position whilst the other ruled he could not. The issue was then brought before R. Benveniste for his ruling and his initial response was to agree with the rabbi who had ruled against the appointment. As he writes in his *Knesset Ha-Gedolah*, however, he had second thoughts in the matter after reading a *responsum* by R. Avraham de Botton (author of the *Lehem Mishneh*, c. 1560–c. 1605) regarding the judicial status of *Anussim*. After a comprehensive reappraisal of the case, he revised his opinion and concluded that since the position of *parnass* was one of only limited authority, the community being subject to the overriding sovereign rule of the Sultan, the said candidate could be appointed *parnass* if he was acceptable to the community. In essence, this

⁸¹ *TB Shabbat* 154a, *TB Kiddushin* 76b, *TB Yevamot* 45b.

⁸² "כי באביו מישראל לחוד שגיו ועדיף טפי מאמו מישראל וחלילה".

⁸³ *כנסת הגדולה*, חושן משפט, הלכות דיינים, סעיף ז.

was the same conclusion Delmedigo had come to in *Sefer Nefesh Ha-Ger* regarding the Amsterdam case.⁸⁴

A search of the Stadsarchief in Amsterdam, which holds the annals of the Jewish community, has uncovered additional information about Moseh Roiz da Costa. He was a man of some standing; among the communal positions he had occupied, prior to the fracas over his election as *parnass*, was that of administrator of the *Avodat Ha-Hesed* charity established by the Sephardi Community in Amsterdam to provide for needy itinerant Ashkenazi Jews. Subsequently, he was honored as *Hatan Bereshit* in 1652 and was elected *parnass* of the *Hevra* (Burial Society) in the following year. The payments of his *Promessas* (voluntary contributions) and *Impostas* (assessed fees) for the years from 1650 to 1660 also appear in the community accounts.

The extant early records of the Spanish and Portuguese community in London provide further information that may well relate to his descendants. The small London community was made up almost entirely of immigrants from Amsterdam, and in 1664 it drew up its first set of regulations known as *Ascarnot*. One of the seventeen signatories to this founding charter was a certain Abraham Roiz da Costa.⁸⁵ When these *Ascarnot* were amended in 1677, following changes in the community's circumstances, the signature of Abraham Roiz da Costa appears on the new charter. Thirdly, the tombstones of an Abraham Roiz da Costa (d.1679) and a Yitzḥak Roiz da Costa (d.1679) were amongst those identified by the Royal Commission on Historical Monuments of England survey (1930), in the "burial Ground of the Sephardi Jews in Stepney... founded in the middle of the 17th century."

Although no documents have been uncovered proving that Moseh, Abraham and Yitzḥak Roiz da Costa were related, considering the small size of the Amsterdam and London Sephardi communities at the time—the former numbered only about 2000 souls and the latter no more than a few hundred—and the uniqueness of their family names, the probability of more than one family called Roiz da Costa is low. ❧

⁸⁴ Sasportas had rejected the notion that the *Ger* could be appointed to be *Parnass* since the *Parnass* does not exercise sole authority over the Amsterdam community and has no power to enforce his decisions.

⁸⁵ Gaster, Moses, *History of the Ancient Synagogue of the Spanish and Portuguese Jews – The Cathedral Synagogue of the Jews in England Situate in Bevis Marks* (London, 1901), p.11.

Appendix I

Transcript of the *Responsum* of R. Issachar Ber Jeiteless:
Ms. 199. Christ Church Library, Oxford.

שאלה: גר צדק בעל תורה ירא אלהי' ועבד לו, זך וישר פעלו, והוא בן ישראל אנוס ואמו נכרית מהו למנותו בשררה על ישראל אם על כיוצא בזה אמרו חז"ל שום תשים עליך מלך (כל משימות שאתה משים יהיו) מקרב אחיך ולא מן הגרים.

תשובה: מה שמצינו בתלמוד בענין זה כלו אמור בגר סתם. ולרש"י כשר לדון ד"מ [דיני ממונות] כדאי' בפ' מ"ח ופסול לשרר' כדאית' בפ' החולץ ובפ"י יוחסין דנראה התם בהדיא דאין למנותו על שום שררה אם אין אמו מישראל אבל לדעת הר"ף והרמב"ם והרא"ש והתוס' וכל הפוסקי' הבאים אחריהם ובפרט הטור י"ד סי' רס"ט ובח"מ סי' ז' הגר שאין אמו מישראל אפי' לדון ישראל בד"מ פסול ולא אמרו הכל כשרין לדון ד"מ ואפילו גר אלא בגר שאמו מישראל דשכיחי אנוסות ושבויות או לדון גר חברו אפי' אין אמו מישראל ורש"י בטל במיעוטו. לגבי ב"ב [בעלי בתים] גדולים וטובי הקהלו' שקוראין פרנסים או מנהיגים הם במקום ב"ד כמ"ש המרדכי הילכך א"א בגרים שאין אמן מישראל. אבל מענין שאלה זו לא מצאנו בהדיא בגמר' שום דבר ר"ל כשאביו ישראל ואמו נכרית כנ"ד דאטו ברשעי עסקינן.

איברא שמצאנו שאביו מישראל עדיף לכל מילי כמ"ש הטור והב"י בסי' רס"ט בי"ד [ביותר דעה] ובח"מ [ובחושן משפט] סי' ז' ובענין חליצה כתבו התוס' והרא"ש בפר' מ"ח [מצות חליצה] שעדיף אביו מאמו וכ"כ הטור והב"י בא"ה [באבן העזר] סי' קס"ט. אבל זה דוקא כשהורתו בקדושה כגון ישראל נשא גיורת דבכי האי גונא עדיף מכשאמו ישראל' ואביו גוי שהיתה הורתו שלא בקדושה דלדינא הוי כשר ולחליצה פסול. וכשאביו מישראל ואמו גיורת כשר אפי' לחליצה דהא לענין יחס כהונה הוי נמי כשר. ברם בנדון דידן שאימו גויה ואביו ישראל לא הזכירו כלל לא הגמ' ולא הפוס'. אמנם בעלמא ידענ' שבן הנכרית קרוי בנה ואינו בן הישראל אביו כמ"ש בפ' כיצד א"א רבי יוחנן בשם רשב"י [רב שמעון בר יוחאי] ומפרש קר' כי יסיר בנך מאחרי והוי כאילו אין לישראל בן ממנה. ואפילו נתגייר הבן אין לו שום יחוס אחר אביו דכקטן שנולד דמי. וכתב הרמב"ם בפר' ה' מהל' ממרים שאינו חייב על קללת ומכת אביו ושאינו יורשו; ובפ' א' מהל' יבום וחליצה כתב שאינו פוטר את אשתו מן היבום וכן אחיו מן הגויה אינו זוקק את אשתו אעפ"י שהיתה לידתו בקדושה כיון שהורתו שלא בקדושה. ונראה שבן ישראל מהנכרית גרע מבן גוי מגויה אפילו נתגיירו שהרי גוי יורש אביו מד"ת [דברי תורה] ואפי' נתגייר יורש אותו מד"ס [דברי סופרים] כמ"ש הטור בח"מ [חושן משפט] סי' רפ"ג ואילו בן ישראל מהגוי אינו יורש אותו לא מד"ת ולא מד"ס אפי' נתגייר; וכתב הרמב"ם בפ' ב' מהל' נחלות ז"ל היו לו בני' בגיותו ונתגייר אין לו בכור לנחלה אבל ישראל שהיה לו בן מן הגויה הואיל ואינו קרוי בנו, הבא לו אחרינו מהישראל' בכור לנחלה ונוטל פי שנים.

ברם יש להתבונן בטעם הדבר היטב שהדין נותן שלא יהיה בן הגוי' יורש אביו הישראל שמסתמא כרוך אחר אמו הוא ועובד ע"ז כמוה וכדמפרש טעמה קרא כי יסיר את בנך

מאחרי מס' אותו מלהיות אחרי ה' ומטעם זה פטור מבזיון אביו ואינו פוטר אשתו מן היבום.

והכל תלוי בירושה ואפילו נתגייר החמירו חכמים שלא להשוותו יורש עם שאר אחיו דשמא הוא מתגייר מפני שנתן עינו בממון. ואין דין זה אלא לתקנה כמו שתקנו חז"ל לגר שיורש אביו הגוי אע"ג שמן התורה אינו יורשו וכדי שלא יחזור לסורו תקנו כך שאם אינו יורש בהיותו גר ישוב לסורו ויהי יורש אותו מן התורה. אבל כשנתגייר ונודע לנו שהולך בדרכי אביו אין הדין נותן שלא נייחסהו אחריו שעכ"פ אב יש לו והוא בנו לעניין עול התורה והמצוות ולפי זה יהיה זוכה גכ"ן לשררה כאביו ומקרב אחיך קרינן ביה שטעמא דכי יסיר את בנך אזל ליה.

ובגמרא דהוריות פ' כ"ג [כהן גדול] אמר ר"י אמר רב תמר בת יפת תואר הית' שנא' דבר נא אל המלך כי לא ימנעני ממך ואי ס"ד [סלקא דעתך] בת נישואין הואי אחתי' מי היה שר' ליה ואפי' הכי הוא ודוד קור' אותה אחות אמנון והיא קורא' לו אחי ואבשל'ו גם כן אמר האמנון אחיך. וע' וכת' כי כן תלבשנה בנות המלך הבתולות אלמא בתו מן הגויה בתו היא מ"מ.

ובעושה מעשה עמך יהיה נשיא בעמך: ואפילו למלוכה בכי האי גוונא כשר שהרי רחבעם היה בן עמונית ולא הוזכר בקר' שנתגיירה אמו. ואפילו הולך אחר דרכי אמו כיון שנתגייר הוא יורש המלכות וראי' מבני אחאב אחזיהו ויהורם בני איזבל בת מלך צידוני' הארורה שהחטיאה בעלה ובניה כמו שהעיד עליה הכתוב.

והרמב"ם כתב בפר' י"ג מהל' א"ב [איסורי ביאה] ששמשון ושלמה לא נשאו נשים נכריות עד שגיורם אבל זה אינו בכתובים וגם בגמ' לא אמרו רק על בת פרעה שגיירה שלמה כדאית בפר' הערל. וה"ל לרמב"ם להחזיק דעתו ולומר דאי לא תימ' הכי היאך מלך רחבעם אלא נראה לו שאם אביו ישראל מקרב אחיך קרינן ליה כל זמן שנתגייר דאי לא נתגייר אפילו אמו ישראלית אם אביו גוי, גוי הוא ובנו קרינן ליה ולא בנה.

ובפר' אלו נאמרים בפ' רמב"ם במשנה פרשת המלך כתב ז"ל אגריפס היה מקהל גרים ולא היה לו אם מישראל ולא היה מקרב אחיך ולפיכך נענשו ישראל שאמרו לו אחינו אתה ואביו גכ"ן היה נכרי או עבד כמ"ש התוס' פ' החולץ וכ"כ רש"י ז"ל בפ' אלו נאמרים ובקדושין.

וכ"כ בפ"א מהל' מלכים אין מעמידין מלך מקהל גרים אפי' אחר כמה דורות עד שתהא אמו מישראל שנ' לא תוכל לתת עליך איש נכרי אשר לא אחיך הוא והנך רואה שלא אמר על בן ישראל מן הנכרי' שאסור למנותו שרחבעם יוכיח.

ומ"ש עד שתהי' אמו אפי' אמו קאמר דסגי וכ"ש אביו שבשעושה מעשה אביו אינו קרוי בנה אלא בנו.

ודברה תורה דרך העולם שהבן כרוך אחר אמו לפי שמשדלתו בדברים וכמ"ש בענין אותו ואת בנו שפי' אותו ואת אמו שנוהג בנקבות שכרוך אחריה ומספק שמא נוהג גם בזכרים אסרו גכ"ן אביו אם ידוע ודאי שהוא אביו כמ"ש הטור י"ד [יורה דעה] סי' ט"ז. ובדיני האומ' הוא גכ"ן כך שקוראין לבן פלגש בן טבעי ולבן האמתי בנישואין קורין לו בן נימוסי' שא"א להכחיש שהוא בנו לפי הטבע ואם הוא ממלא מקומו יהיה יורש שררתו אבל לא ממונו.

וכשיובנו הדברים על אמתת' אין שום חכם ופוסק חולק ע"ז ובודאי גר צדק הזה שאביו הי' מהאנוסי' הוא נקרא בנו ומזרע ישראל הו' אע"ג שאינו יורש אותו מהטעמי' שאמרנו

ולכל מילי דשררה ודינא כשר הו' דעדיף מכשאמו ישראל' ואביו גוי. ועל יסוד זה ראוי להשען שזולתו כל הנאמרים הם חוץ מהענין ואין צורך לפלפל להביא גמרו' ופוסקים שלא דברו חכמי' רק על גר סתם מקהל גרי' ועל גר שאמו מישראל.
זה דעתי ואשר יקשה ערפו וישים פניו כחלמיש לחלוק איני חושש לו.
אלה דברי הצעי' החלש יששכר הנקרא בער בהח"ר יאודה ליב ייטליש דיין.

Appendix II

The Inscription on the Tombstone of R. Issachar Ber Jeiteless in the Prague Jewish Cemetery⁸⁶

יום ג' ג' תמוז תמ"ו [25 ביוני 1686] לפ"ק: פ"נ המופלא המפורסם פאר פרנס
וגדול הדור, במותו פנה הזיו וההדר הרב מו"ה בער ייטלס
בן המושלם כהרר ליב ייטלש ז"ל: בני אלם "מלאכים ואראלם
צעקו חוצה ומתאבלין" כל צבא הגלגלים קדר אורם ומר יבכיון,
על פטירת מבחר אנושי בתורה גדול כרב אשי, בעמקי תוספות
ורש"י, דבר הגדול עליו יאתיון, רב החובל בים הפוסקים, ירד וצלל
במעמקים והעלה חכו ממתקים פנתנו (מציון) מסיני ויצאו מציון
"יששכר יודעי לעתים בינה,"⁸⁷ בקידוש החודש והתכונה,
כרבן גמליאל ביבנה, שם הישכל חוקי הרעיון, "יתקרי חכם
אסו רבי"⁸⁸, בדקדוק הקמחי והתשבי, והוא יקרא אב תופשי
המליצה וחכמי הגיון, טבעו יצא בכל האקלמים על כל
החכמים, והם אלו מדומים כמו הנקודה לגלגל העליון, לו
נהירין שבילין דרקיע, ראשו השמים מגיע, זו בטבע...
דבר ויביע מארו עד האזוב והקיקיון, שקול בהוראה
כשמואל הרואה ששפט בלי הנאון, במתי נפשו באה אתו
במחיצתו כחום חברון

Tuesday 3rd Tammuz 5446 [25th June 1686]: Here lies the wondrous, famous and splendid *parnass* and genius,⁸⁹ at whose death radiance and glory were turned off, the Rabbi, Our Teacher, Ber Jeitless son of His Honour the Accomplished Rabbi Leib Jeiteless.

Lost for words,⁹⁰ "The messengers and the valiant cried out loud and mourned;"⁹¹ the cosmic host dimmed its light and wept bitterly, at the passing away of the choicest amongst men; as great in Torah as Rav Ashi; in the depths of the Tosafists and Rashi, [every] great issue was brought to him; a ship's captain in the sea of the *poskim*, he delved and dived into the depths and his fishhook brought up sweetmeats.

⁸⁶ No. 1199 in the Transcriptions made by Leopold M. Popper.

⁸⁷ דברי הימים א יב:לג.

⁸⁸ בבא מצאא פו/א.

⁸⁹ Lit. 'greatest of the generation.'

⁹⁰ Lit. 'the dumb.'

⁹¹ *Isaiah* 33:7.

Our corner-stone (is from Zion); from Sinai and out of Zion the [perfection] came forth;⁹² “[The children of] Issachar that have an understanding of the passage of time;”⁹³ the sanctification of the New Moon and astronomy, like Rabban Gamliel in Yavne, where he formulated the laws of the method.

“He shall be called Sage, Rabbi’s healer;”⁹⁴ on the subject of the grammar of the Kimḥi and the Tishbi, he shall be called the father of those who grapple with rhetoric and of the wise men of logic. It was his nature to go forth in all climes, foremost in all the sciences; though these are just imaginary like the point of the celestial sphere,⁹⁵ for him they were clear trails in the sky; his head reached up to the heavens; this in Nature...

He spoke and conversed [with all persons] from the cedar to the hyssop and gourd; comparable in his rulings to Samuel the seer who judged without personal gain; at his soul’s pinnacle it came to him, in His presence as in the heat of Hebron.

⁹² *TB Yoma* 54b.

⁹³ 1 *Chronicles* 12:32.

⁹⁴ *TB Baba Meziab* 86a.

⁹⁵ Ibn Ezra on *Psalms* 119:90: נקודת הארץ היא נקודת הגלגל העליון.