Abstract

Although medieval rabbinic law generally forbade Jews from suing their co-religionists in state courts, this practice was widely accepted among some Mediterranean Jewish communities. This study focuses on one such community, the Jews of Venetian Crete’s capital city of Candia, during the century following the Black Death (ca. 1350-1450). Court records indicate that Candiote Jews quite often sued each other in Venice’s colonial courts. Unlike many other medieval Jewish communities, the rabbinical leadership of Candia took this intra-Jewish litigation as a given. Moreover, these leaders themselves accessed Venetian justice to sue fellow Jews. Among the factors that motivated Jewish use of the Venetian court was a special accommodation given to Cretan Jews: when litigation in the colonial court dealt with Jews’ marriages or divorces, judges were obligated to adjudicate according to Jewish law. Many Candiote Jews utilized this personal law privilege, and the Venetian court actively implemented it. The Catholic judges of the colonial court in Crete learned about Jewish law mostly from the litigants themselves, and not from a panel of rabbinic experts, giving these Jewish litigants significant agency in shaping not only the outcome of their marriage and divorce cases but also the government’s understanding of Jewish law.

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Normative rabbinic consensus in medieval Europe squarely forbade Jews from suing each other in secular or so-called “gentile” courts. Instead of airing intracommunal grievances before state judiciaries, Jews were directed to settle their disputes in their local Jewish court (beit din).¹ The responsa² of the unrivaled Barcelonan legal authority Rabbi Solomon ibn Adret (the Rashba, d. 1310), sought after by Jewish communities across medieval Eu-

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¹ The starting point for all discussions stems from the Babylonian Talmud (BT) Gittin 88b, which records in the name of Rabbi Tarfon: “In any place where you find gentile courts, even though their law is the same as the Israelite law, you must not resort to them since it says, ‘These are the judgments which thou shalt set before them.’ (Ex. 21:1). This is to say, ‘before them’ and not before gentiles.” Rashi (d. 1105) on Exodus 21:1 adds that recourse to gentile courts is akin to idol worship. Maimonides’s (d. 1204) legal code states that he who sues in gentile court, no matter the law, “is a wicked man. It is as though he reviled, blasphemed and rebelled against the law of Moses” (Mishneh Torah, Hilhot Sanhedrin, 26:7). Nevertheless, the Talmud and its commentators and codifiers (including Jacob Tam, the Rosh, and Maimonides himself) incorporated loopholes, particularly allowing secular litigation when a Jew ignored his co-religionist’s call for suit in a beit din.

² Responsa literature comprises epistolary legal answers to questions posed to rabbinic authorities. On the responsa of the Rashba, see the introduction to Solomon b. Adret, Teshuvot She’elot le-haRashba [Responsa of the Rashba] (Shlomo Zalman Havlin ed., 1976).
rope, contain one of the most explicit articulations of this ban: Jews “are prohibited by the Torah from showing a preference for the law of the Gentiles and their ordinances. Moreover,” he writes, echoing the Talmud, “it is forbidden to bring litigation into their courts even in matters where their laws are identical to Jewish law.”

The Rashba’s main objection seems to lie in the notion that such behavior indicated a valuation of secular law as better than or as good as Jewish law (halakhah). For others, the prohibition stemmed from a fear of mistreatment by Christian judges. The influential Ashkenazi halakhist Meir of Rothenburg (d. 1293) forbade the use of secular courts to keep Jews out of “the clutches of the Gentiles” in which a Jew’s “life as well as his property is in jeopardy.” Furthermore, “the gentiles are happy to hold a Jew in their power, and, especially when commissioned by another Jew, their cruelty is boundless.”

Over the course of the twentieth century, as scholars of Jewish Studies—particularly those studying the lands of Ashkenaz, or Franco-Germany—paid increasing attention to the social history of Jews, especially through analysis of responsa and beit din records, many took prescriptive law as historical description; they tended to assume that the prohibition of the Rashba and other powerful medieval rabbis had successfully hindered Jews from litigating against their co-religionists in secular courtrooms. To be more precise, scholars tended to assume that “good” Jews did not sue their brethren before the gentile judiciary. Those exceptional cases of intra-Jewish litigation they did find, usually when mentioned in Hebrew responsa literature, were deemed the product of pariahs, apostates, or the morally weak; or they were understood as dealing with one of the very few circumstances in which Jews were indeed allowed to sue in secular court, but only with the consent of the Jewish authorities—particularly when one party continually obstructed the engines of Jewish justice. In any case, such behaviors, it was assumed, were anomalous rarities. When some scholars began looking into the state court records of medieval Germany, their assumptions seemed to be confirmed. Guido Kisch, for example, found not a single example of intra-Jewish litigation in the Magdeburg Jury Court decisions when he researched them in the 1940s.

In recent decades, however, both the ubiquitous success of the Rashba’s ban and the wider applicability of the Ashkenazi model to the rest of medieval Europe have been questioned by evidence from the Rashba’s own Iberian context. Groundbreaking work, particularly studies by Yom Tov Assis and Elka Klein, moved beyond the traditional

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5 For one early example, see David Menachem Shohet, The Jewish Court in the Middle Ages 95-104 (1931).

6 See, e.g., Bernard Rosensweig, Ashkenazic Jewry in Transition 82-83 (1975).

7 Guido Kisch, Relations Between Jewish and Christian Courts in the Middle Ages, in Louis Ginzberg Jubilee Volume 201, 206 (1945).
source base for Jewish history—internally constructed rabbinic sources—by delving into the vast evidence from the Crown of Aragon, including Catalonia. In scouring Latin court registers, these scholars have shown that “regular” Jews—not apostates or pariahs—chose to litigate in the royal courts. Even the Rashba himself appears in these Latin sources, initiating an intra-Jewish lawsuit at the “gentile court” of Barcelona. Many Iberian Jews seem to have made this litigative choice; Alexandra Guerson, looking at the Aragonese-Catalan royal judiciary, recently counted 255 individual suits in which both claimant and defendant were Jews from the years between 1380 and 1391 alone.

Yet Spain is not a cultural anomaly. Iberia, rich in archival sources, has become the center of this new scholarship, but it is certainly not the only location in the Christian Mediterranean where such behavior was rampant. Joseph Shatzmiller has noticed intra-Jewish litigation in Provence’s secular courts, and Rebecca Winer has noted it in Aragonese-held Perpignan. Scholars studying Jews living under Muslim rule have also identified the phenomenon. My research on Venetian Crete has demonstrated that a wide swath of Jews on that island, from community leaders to unhappily married women, from angry neighbors to feuding heirs, used the secular judiciary against fellow Jews.

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9 As a guardian for a young orphan in 1268, the Rashba himself sued the Jewish executors of another estate to recover property he believed should be paid out to the orphan. King James I of Aragon himself heard the case—and found for the defendants. The Rashba may have lost, but the very fact of his litigating before the king at all should strike us as highly significant. Fritz Baer addressed this case in 1 A History of the Jews in Christian Spain 161 (1961), but Klein’s discussion highlights the importance of the Rashba himself litigating against fellow Jews in the royal court. See Klein, Jews, supra note 8, at 155-58.


11 Regarding minority use of secular courts, Spain has been fairly well researched while other Mediterranean states have not, thus sometimes leading to an argument of uniqueness (“España es diferente”) essentially made from silence. See Jonathan Ray, Beyond Tolerance and Persecution: Reassessing Our Approach to Medieval “Convivencia,” 11 Jewish Soc. Stud. 1, 2-4 (2005).


Scholars are currently engaged in a broader scholarly reassessment of Jewish use of civil courts in the late medieval and early modern periods. But we are still at the beginning of this exploration.\textsuperscript{15} Although some scholars now take for granted that Mediterranean Jews used secular courts, the mechanisms by which Jews rationalized and implemented this litigation have not yet been sufficiently addressed.\textsuperscript{16} While a complete accounting of intra-Jewish civil litigation is beyond the scope of this study, here I will address some of the key facets of such behavior by focusing on one locale: Candia, the capital city of Venetian Crete. Held by Venice from 1211 until 1669, when it was lost to the Ottomans, Crete was Venice’s flagship colony. Candia, where the colonial governor had his base, was also home to a significantly sized Jewish community whose members often litigated in Venice’s colonial courts, particularly the island’s highest judiciary, known as the ducal court.

Because detailed evidence of Jewish use of Crete’s secular judiciary abounds in Latin ducal court records, and because local Hebrew ordinances also survive from Candia, not only can we investigate the kinds of cases that compelled Jews to sue their co-religionists in this court, but perhaps more importantly, we are able to gain both an official, emic Jewish perspective and a detailed (if mediated) rationale from Jewish litigants regarding their choices. This essay addresses Jewish use of secular courts in Candia through these lenses. First, it looks at the attitude towards this behavior by the religious leadership of Candia. Despite the high rabbinic prohibition, Candia’s own rabbinic leadership took such litigation as a given, and did not treat it as a transgression. Second, it asks why Jews chose to litigate in this court. To answer this question, I look at a special legal privilege granted to Jews that empowered them to enter the secular courtroom during crises related to the construction and dissolution of marriage without having to leave Jewish law and practice at the door. Venice promised the Jews in Crete the right to have personal law cases (particularly those dealing with marriage and divorce) adjudicated in the secular judiciary according to Jewish law. After looking at the scope and limits of the personal law accommodation, I turn to the mechanisms by which knowledge of Jewish law was transmitted between Jews and Catholic judges of the secular judiciary, considering the Cretan case in comparison with the transmission of information between Jews and the state in Aragon-Catalonia, another Mediterranean polity that accommodated Jewish personal law.

\section*{I. Local Ordinances and the Acceptance of Jews in Gentile Courts}

Starting centuries before the Venetian conquest in the early decades of the thirteenth century, the island had been home to a sizeable Jewish community that identified as Romaniote—adherents of the Byzantine-Jewish rite—though Ashkenazi, Sephardi, and Italian Jews would immigrate to Crete over the course of Venetian rule. Candia was home to the island’s largest Jewish community, about a thousand strong in the century after the

\textsuperscript{15} See, for instance, the continued assumption of Jewish non-use of secular courts in reference works. See, e.g., Michael Broyde, Civil Courts, in The Oxford Dictionary of the Jewish Religion 173 (Adele Berlin ed., 2011).

\textsuperscript{16} See, e.g., Pinchas Roth, Regional Boundaries and Medieval Halakhah: Rabbinic Responsa from Catalonia to Southern France in the Thirteenth and Fourteenth Centuries, 105 Jewish Q. Rev. 72, 95 (2015).
Black Death, though individuals and smaller communities lived across Crete. The Candiot Jewish community, a taxable corporate institution recognized by the Venetian state, was led by an elected “president” (condestabulo) and an advisory council.

Like many medieval and early modern Jewish communities in Europe, the community of Venetian Crete wrote Hebrew takkanot (sg. takkanah), communal ordinances passed by local leadership in response to perceived crises. It is often in takkanot, particularly from Ashkenaz, that we find staunch prohibitions against suing co-religionists in gentile court. But not so in Crete, where the takkanot suggest a nonchalant attitude towards intra-Jewish secular litigation. In 1228, when Crete’s Jews passed their first takkanot, and then again in a revision of these decrees from about a century later, the leadership certainly aimed to limit Jewish use of secular courts—but not by ending the practice. Rather, the takkanot simply aim to limit when these suits were brought: on Friday or the day before holidays. Litigation on these days could prevent Jews from properly preparing for Sabbath and holidays, and could lead to the desecration of the Sabbath if the case continued for too long. Thus, the authors declare that no Jew is owed “to bring a complaint against his Jewish friend [havero ha-yisrael] in any place of justice, whether at the gentiles’ [court] or whether at the Jews’ [court] on Sabbath eve or holiday eve.” No mention of a blanket prohibition is made; for these communal leaders, the reality that Jews would sue each other in the secular courts was so commonplace as to be unremarkable.

The permissive approach of Candia’s Jewish leadership did not result from a lack of other options. As in the lands of Ashkenaz and in the Crown of Aragon, Crete’s Jews had access to a beit din, a Jewish court, although we know little about its local contours or procedures. Nor can we suggest that the Jews of Crete did not know of the prohibitions; surviving responsa literature from the island shows that the Rashba himself was considered a rabbinic authority for Crete’s Jews in the thirteenth century. Likewise, by the fifteenth century, Candia’s elite rabbinic families immersed themselves in Ashkenazi halakhic approaches, which also staunchly opposed secular court litigation.  

17 See Lauer, supra note 14, at 90-93, for demographics.
18 For takkanot from famed pan-Ashkenazi synods which prohibited such behavior c. 1150 and in 1603, see Louis Finkelstein, Jewish Self-Government in the Middle Ages 41-43, 257-58 (2d ed. 1964).
19 Takkanot Kandiya u’Zikhronotehah (Statuta Iudeorum Candiae) 5 no. 10, 9 no. 17 (Elias Artom & Umberto Cassuto eds., 1943) [hereinafter TK].
20 Regarding Candia, the Hebrew ordinances mention that, at least in the early sixteenth century, the beit din met inside the town’s Great Synagogue. Id. at 80 no. 74. In the Crown of Aragon, from the thirteenth century forward, kings granted privileges to the Jewish communal institutions (aljamas) of individual towns; the aljama was given right to choose officials to offer autonomous justice to Jews in civil cases. Klein, Jews, supra note 8, at 128-29, 144. Nevertheless, the ubiquity of Jews deciding to litigate in the secular court despite the existence of a government-encouraged beit din led one king at least to threaten to heavily fine Zaragozan Jews who used the royal court! See Guerson, supra note 10, at 142.
22 Lauer, supra note 14, at 130-34.
The Cretan model, however, seems more understandable when situated within its wider cultural spheres, Byzantium and the Italian peninsula, two locations in which resident Jewish communities also expressed a more lenient approach to intra-Jewish secular litigation. Byzantine Jews seem to have comfortably used the secular courts, much to the dismay of the twelfth-century southern Italian rabbinic authority Isaiah di Trani, who criticized Romaniote Jews for being lax about rabbinic law in general and specifically for their use of secular courts.23 Despite this disgust, it seems that in the Byzantine context from which Crete’s Jewish community had originally sprung, Jews had little choice. Between the sixth and twelfth centuries, Jews were stripped of a Jewish-run court system, then stripped of a Byzantine-run judiciary which had been dedicated (at least in Constantinople) to Jewish issues. After 1166, Jews had to seek justice in the secular judicial system.24 It seems likely that this reality spurred the Jews of the Byzantine Empire, including the Cretan community that would soon fall under Venetian rule, to rationalize the use of secular courts and read such behavior as less problematic than other Jewish communities did.

Though initially products of a Byzantine milieu, Crete’s Jews were also influenced by the approaches of northern Italian Jews. Although Jews could not permanently settle in the city of Venice itself until the 1510s, Jews from northern Italy were among the newcomers who immigrated to Crete, and Cretan Jews traveled to Venice, the Veneto, and its environs.25 Takkanot from northern Italy, too, express some lenient attitudes towards intra-Jewish litigation in secular courts, although not as nonchalantly as in Crete. In 1484 in Pesaro, the Jewish community passed an ordinance which took the Jewish use of secular courts as a given. The decree attempted to stop only the use of Jewish religious items such as phylacteries as objects over which Jews were making oaths, since the use of these items caused them to be scorned, and thus caused the desecration of God’s name (hillul ha-shem).26 Although the authors expressed misgivings about the ramifications of the behavior (i.e., the defaming of God and holy objects), as in Candia, they never questioned the initial choice to seek justice among the secular courts.

Jewish ordinances from sixteenth-century Ferrara walk a similar line, although it seems that such behavior was becoming less accepted by the leadership; they sought to limit it by demanding that potential plaintiffs get permission before initiating secular lawsuits. But the takkanah recognized that many people would not seek permission first. Thus it forbade those who litigated in secular court from returning and retrying their case

23 Andrew Sharf, Byzantine Jewry from Justinian to the Fourth Crusade 175-77 (1971).
26 This takkanah is published and translated in Finkelstein, supra note 18, at 314-15.
in the beit din. As in the ordinances from Pesaro, no outright prohibition against using the secular court can be found here. Ferrara’s takkanah suggests a growing distaste for intra-Jewish litigation in secular courts, but distaste is not prohibition. In addition, the distaste seems to stem—in part, at least—from the game being played by some Ferrarese Jews: they would play the judiciaries off one another, turning from one to the other if they did not receive the judgment they desired.

The Cretan case certainly seems more pronounced than that of Ferrara; not even a distaste is intimated there. Moreover, evidence from Crete’s ducal judiciary and communal takkanot indicates that the leaders of the community not only accepted their flock’s use of the courts, but actually litigated in those courts themselves. Fights over conflicts of interest among those elected to the community council were brought before the ducal court by Jewish elites, as happened in 1406. A number of suits indicate that Jews from elite families who had thought that they should have been named to lead synagogues used the ducal court in an attempt to have the Venetian court force the Jewish community to enforce the community’s own expressed election standards (or so the plaintiffs claimed). In 1451, a former condestabulo even utilized the ducal court to sue the community institution he had recently led, claiming he had not been paid his expected salary! These suits, which highlight tensions within the communal leadership structure, are only the most obvious examples of Jewish leaders using the secular court to fight one another in Crete; we also find many examples of individual leaders litigating in court over private property, business, or family matters. Whether in their capacities as community leaders or as private individuals, the elite Jews of Candia saw the Venetian judiciary as a legitimate venue for airing intra-communal grievances—a venue whose use did not undermine dedication to and observance of halakhah.

II. Jewish Choice and Jewish Personal Law in the Secular Court Room

As the Ferrara ordinance suggests, the Jews of that city litigated in whatever jurisdiction they deemed would provide the best outcome—that is, they engaged in forum-shopping. Some rabbis certainly thought that the secular court would not guarantee Jews legitimate justice, whether because of legal difference, social inequality, or cruel treatment. But Jewish litigants clearly disagreed. In Crete, Jews chose to enter the secular judicial system by bringing suit at a specialized Venetian court of first instance dedicated to civil litigation

27 Id. at 304.
28 In Candia, an elected community president, condestabulo, led alongside an advisory council. In 1406, some of the community elite thought that a conflict of interest existed in the newly elected advisory: two of the three men chosen as councilors then contracted marriage among their children. Those who deemed this inappropriate took their complaint to the ducal court, and had an official Venetian state resolution passed forcing one of the two in-laws to recuse himself from office. TK, supra note 20, at 51 no. 52.
29 Cases of this type from the 1370s and 1411 appear in Archivio di Stato di Venezia (henceforth ASV) Duca di Candia, b. 30 bis, r. 29, fols. 19v-21r (Oct. 3, 1411), and one from the 1450s appears in the takkanot TK, supra note 19, at 37 no. 45.
30 ASV Duca di Candia, b. 26 bis, r. 10, fol. 206r (Sept. 27, 1451).
between non-citizen subjects, i.e., a court for Jews as well as for the island’s Orthodox Greek majority. The records of this court, the Curia Prosoporum, survive only as faint traces visible in cases brought before the appeals court, known as the ducal court, on which the island’s governor and two councilors served as a panel of judges. But these ducal court registers survive in quite good condition in Venice’s Archivio di Stato, and in these extensive records we find many Jews litigating against one another: over 160 intra-Jewish lawsuits appear between 1350 and 1450—a significant number given the size of the community.31 They litigated for many reasons: to air family tensions, especially over inheritance; to dispute community and synagogue authority; to fight Jewish neighbors over property lines; to air grievances over unhappy marriages and unsettled divorces; and to fight over soured business deals.

Members of Jewish communities chose secular justice, in Crete as elsewhere, for a number of reasons. Secular courts’ enforcement powers were deemed stronger than that of the beit din, which often (and certainly in Crete) could only threaten those found guilty with excommunication—a social tool only as powerful as the leadership’s authority and the flock’s compliance.32 Cretan Jews also probably felt that Venice’s court was a more neutral arbiter than the beit din, not because secular judges were unbiased, but because they were not party to the insider, cliquish politics that influenced many Jewish court cases in small towns.33 In addition, there was the consideration of speed and consistency; secular courts were deemed—and often were—faster than the Jewish courts, because the professional judiciary had more resources and full-time staff, while the beit din was often staffed by men busy with other communal and professional obligations.34 Finally, secular courts in many Mediterranean locales, such as Marseilles and Candia, met outside in public venues (markets and town squares), which allowed litigants the emotional benefit of publicly humiliating the opposing party, no matter the official outcome. The beit din, in contrast, heard its cases privately.35

Yet these incentives for secular court litigation were not unique to Jews; all those engaging in forum-shopping may consider enforcement, neutrality, professionalism, and

31 A significant number of these cases were heard by the ducal court multiple times, sometimes over the course of an entire decade. I have counted each of these cases only once.

32 E.g., TK, supra note 19, at 8 no. 14.

33 For another example of this problem from sixteenth-century Ferrara, see Eliot Horowitz, Families and Their Fortunes: The Jews of Early Modern Italy, in 2 Cultures of the Jews 271, 292 (David Biale ed., 2002). For a similar point regarding the choosing of arbitrators, see Thomas Kuehn, Law, Family, and Women: Toward a Legal Anthropology of Renaissance Italy 73 (1991).

34 On Crete’s speedy and professional justice, see Elisabeth Santschi, Procès criminels en Crête vénetienne (1354-1389), 7 Thesaurismata 82, 83 (1970). For the ad-hoc nature of Candia’s beit din, see TK, supra note 19, at 8 no. 14.

35 Scholars have recently stressed the importance of emotional satisfaction as a reason medieval people chose to litigate instead of engaging in standard forms of revenge. See especially Daniel Lord Smail, The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264-1423, at 3-24 (2003). For evidence that Cretan Jews watched ducal court cases, see TK, supra note 19, at 9 no. 18.
publicity. In a subset of cases, however, Venice’s judiciary also offered its Cretan Jews something uniquely beneficial to them: the right to be judged according to their own personal law system—i.e., *balakhab*—in the Venetian colonial courtroom. Personal law systems govern the ways individuals interact and change status within the family structure, particularly as regards marriage, divorce, property exchanges related to marriage and divorce (including dowry), inheritance, and family law issues related to children, such as adoption and fostering/guardianship. Although personal law remains a relatively narrow legal space (for example, disengaged from business or personal injury suits), and the Venetian colonial court limited its accommodation even further (addressed below), its wide application to familial disputes had implications for a large number of intra-Jewish cases heard by secular judiciaries in Crete and beyond.

The Venetian colonial government was not the only medieval state to offer Jews religious accommodations for personal law. The Crown of Aragon also promised Jews royal justice rendered according to their own personal law. The scope of the relevant personal law differed in the two regions. Aragon’s courts respected Jewish laws as regarded inheritance, divorce, and marriage. In contrast, only in cases related to marriage and divorce were Venetian judges were instructed to allow Jews to uphold their ancient law (referred to as *lex moisis*, *ritus iudeorum*, and *ritus moisis*, among other variations), though Jews were also entitled to make oaths according to their own religious system.

Practically, accommodation of Jewish personal law meant that only Jewish instruments of marriage and divorce (i.e., the *ketubbah* and the *get*) and only Jewish customs regarded as making these events legally valid (i.e., certain modes of gift giving, rings, etc.) were considered legitimate for Jews. Thus, in the many cases between Jewish litigants which appeared before state courts in Aragon-Catalonia and Crete revolving around legal separation, divorce settlements, broken engagement contracts, or dowry disputes, Catholic judges had to render judgment according to what they perceived to be the normative rabbinic legal approach.

Over the course of the century between 1350 and 1450, Crete’s ducal court dealt with around twenty-five separate cases of Jewish marriage/divorce litigation; undoubtedly, the number that reached the court of first instance was far larger, since only appeals cases moved to the ducal bench. In addition, some lawsuits over property inheritance (a category comprising over fifty cases in the century under study) centered on questions regarding a mother’s dowry, bringing personal law debates into cases that did not themselves hinge on accommodated personal law, since Venice kept inheritance law as its own purview. In

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36 Klein, Jews, supra note 8, at 158; Assis, Golden Age, supra note 8, at 145-48.

yet other cases, litigants brought in the language of personal law even when technically irrelevant to the case, thus making the *ritus iudorum* a familiar topic in the courtroom.

The accommodated areas of personal law were not familiar territory for Venice’s colonial judges. Dealing with marriage and divorce in general was outside the typical bailiwick of any medieval secular court. Divorce, of course, was prohibited for Catholics, and litigation related to Catholic marriage and legal separation (a recognized alternative to divorce in canon law) generally fell under the jurisdiction of the ecclesiastical court.

Yet despite the need to access a foreign body of law regarding fairly unfamiliar subject matter, evidence from the ducal registers suggests that Crete’s judges took their mandate seriously. At times, they explicitly repeated their dedication to upholding this Jewish privilege. In pronouncing judgment in a marriage suit in 1406, the duke and his council announced that in assessing the case, they had considered Jewish law, and in particular, had examined how Jewish marriage gifts work, noting that such consideration was mandatory in such cases. A later appeal of the same case once again reiterated and emphasized the court’s responsibility to consider Jewish law—but only if both parties remain alive, a clause to which we shall return in a moment. This respect for Jewish law even extended to instances when it directly clashed with canon law. In 1409, the court noted that although some Jewish marriage and divorce practices “differ from the rites of the Christians,” the court could not impede the practice of Jewish law.

The court was also careful to ensure that mechanisms for enacting these rites were valid only when undertaken in the Jewish way. The court could not, for example, grant a Jew a divorce, but rather had to enforce the traditional Jewish paths towards divorce, i.e., only the husband could initiate the writing of the *get* (the writ of divorce) and then had to physically transmit it to the wife, who had to accept the document in order for the divorce to be valid. The court thus recognized its own limitations, at times even admitting that it had no jurisdiction to make certain divorce-related decisions. For example, when Pothu, the wife of Abba son of Moses, was not on the island to receive the divorce document (the physical acceptance of the *get* being the final step in constituting a valid divorce), the court noted it could not consider Pothu and Abba divorced, and instructed the plaintiff husband to work through rabbinic channels.

Despite the seriousness with which the court treated the accommodation of personal law, the jurisdictional power granted to *halakhah* by the Venetian judiciary was highly constrained. Notably, in contrast to the practice in the Crown of Aragon, it did not fit Venetian state interests to accommodate Jewish inheritance or orphan law. Thus, when Joseph Ferer swore an oath to care for his orphaned granddaughters, he swore a “Jewish”

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38 ASV Duca di Candia, b. 30 bis, r. 27, fol. 54r (Sept. 16, 1406).
39 Id. b. 30 bis, r. 27, fol. 98v (Apr. 14, 1407).
40 Id. b. 30 bis, r. 28, fol. 54r (May 7, 1409) (*discrepent a ritibus xristianorum*).
41 Id. b. 26 bis, r. 9, fols. 41v-42r (Apr. 3, 1443).
oath; but the content of his oath bound him to care for the children in accordance with Venetian statutory law.\textsuperscript{42}

These limits existed even within the boundary of cases understood by the ducal court as marriage-law cases. The stipulation in the 1406 marriage case mentioned above—that consideration of Jewish law only applies when both parties are living—illustrates this. The judges stressed that, should the wife either die first and/or die intestate, the court should then adjudicate on the basis of Venetian law, ostensibly because the case would cease to deal with marriage and instead would become an issue of inheritance, which remained under Venetian statutory jurisdiction.\textsuperscript{43} The legal spectrum of the Venetian courtroom could thus accommodate state law and minority law, but the bodies of law accessed could shift over the course of a case, depending on individual factors.

In considering the uniqueness of the Mediterranean milieu, it is worth highlighting that Jewish personal law accommodations in Crete and Aragon/Catalonia cannot be wholly disentangled from the traditional “Jewry laws” that assured Jewish legal privilege—usually settlement rights and assurances of bodily and economic protection—across Christendom, especially in former Carolingian and German-influenced territories.\textsuperscript{44} Indeed, imperial Jewry law aimed to ensure that Jews would be allowed to live according to their law. The execution of this law, however, looks quite different in the German context than in the Mediterranean one. From one angle, as Friedrich Lotter has noted, the key focus of the imperial Jewry law regarding free practice of Judaism was the outlawing and invalidating of forced baptism.\textsuperscript{45} In contrast, medieval Mediterranean Jewish personal law privileges went beyond such basic, essentially passive safeguards, which served to ensure Jews the same rights to bodily and familial autonomy as Christians. Instead, Mediterranean privileges actively empowered Jews to behave in ways that were different from their Christian neighbors.\textsuperscript{46}

Yet the central difference between the northern European approach to Jewry law and the Mediterranean approach to personal law lies in the persons responsible for ensuring Jews’ rights to their laws. Imperial Jewry law guaranteed that “[c]ases between Jews shall be judged only by their peers.” Furthermore, the code empowered the leader of the Jewish community in legal circumstances by allowing him to force a defendant “to confess the truth according to [Jewish] law.”\textsuperscript{47} As imperial Jewry law dealt in offering protection to a given corporate community of Jews, it relied on the corporate leadership

\textsuperscript{42} Id. b. 30 ter, r. 30, fol. 20r (Dec. 10, 1415).

\textsuperscript{43} Id. b. 30 bis, r. 27, fol. 98v (Apr. 14, 1407).

\textsuperscript{44} On medieval “Jewry laws” in Carolingian-influenced territories, see Friedrich Lotter, The Scope and Effectiveness of Imperial Jewry Law in the High Middle Ages, 4 Jewish Hist. 31 (1989).

\textsuperscript{45} Id. at 34; see also id. at 48 (schematic version of the Jewry law’s statutes).

\textsuperscript{46} Interestingly, Jewry law seems to have been on the wane in imperial territory by the late thirteenth century, precisely when Mediterranean rulers’ attention to personal law began to increase. Id. at 46-47.

\textsuperscript{47} Id. at 48.
to deal with intra-Jewish disputes. No such limitation existed in the Mediterranean realms addressed here. Personal law was put into play precisely when Jews crossed beyond the borders of corporate community rule and entered the secular courtrooms. Imperial law allowed Jews to live according to their own law by recusing imperial judges from cases involving the relevant, protected realms. Personal law in the medieval Mediterranean, in contrast, obligated a Catholic judge in a secular courtroom to adjudicate according to halakah. Imperial Jewry law thus took Jewish issues out of the secular courtroom; Mediterranean accommodations declared that Jewish law ought to be integrated into the state’s judicial spaces.

III. Transmitting Knowledge of Halakhah to the Secular Judiciary

When secular authorities in some Mediterranean Catholic states had to adjudicate according to Jewish personal law, how did judges ascertain what constituted proper “Jewish law”? Who in the Jewish community was empowered to convey this crucial information, and how did this transmission process affect what was deemed authentic Jewish law? The Crown of Aragon and Venetian Crete provide two different models for the transmission of halakhic knowledge from Jews to judges. The Iberian model is well charted, and relies on the passing of data from Jewish expert to state judicial expert. The Cretan case is less clear. Thus, in this section I argue that, despite some mechanisms for institutional memory of halakhic precedent to be passed from judge to judge in Candia, the contours of the Venetian colonial judiciary led to a reality in which amateurs on both sides of the bench often became the transmitters and recipients of knowledge.

As mentioned above, in the Crown of Aragon, personal law for Jews applied not only to marriage, divorce, and marital property issues, but also to general familial inheritance; thus the judges of the royal court needed to understand and rule on a wide swath of Jewish law. From the reign of King Peter II (r. 1196-1213), when the number of civil cases heard by the royal court increased significantly and the number of Jewish cases also grew, the king dealt with Jewish personal law cases in one of two ways. One approach was to obtain necessary knowledge from a rabbinic expert, but to have the Christian judge make the final ruling. Peter II himself wrote “to the official responsible for the case and ordered him to observe the technicalities of Jewish law” by conferring with leading rabbinic experts of the day.48 The other option was for the king to simply deputize a suitable Jewish judge to hear the case; that Jewish judge’s ruling would become the official royal court judgment.49 In these cases, the boundary between Jewish courts and secular courts was breached, with the same individual rabbinic experts like the Rashba comfortably switching between their roles as agents of the Jewish community (as judges on the beit din) and agents of the royal court (as deputized judges for that court).

48 Klein, Jews, supra note 8, at 158. Judges in Aragonese Girona adjudicated after discussing halakhic marriage with the Rashba and Rabbi Aharon Halevi de na Clara, another renowned legal expert. Assis, Spanish Jews, supra note 8, at 422; see also Assis, Golden Age, supra note 8, at 311-14, for further examples and discussion.
49 Klein, Jews, supra note 8, at 158.
No matter which option the king chose, in both of these Barcelona models, knowledge-sharing took place between legal experts trained in some variety of jurisprudence. On the Jewish side were the halakhists like the Rashba. The side of the royal court is a bit more complicated. Although judges in the royal court system in the Crown of Aragon were actually political appointees who likely had no legal training, its jurisprudence relied greatly on the revived Roman-law inspired *ius commune*. Thus each judge had a legal expert on his staff with whom he was obligated to consult, and who, in fact, usually actively tried the case and heard evidence instead of the judge. 50 It is thus quite likely that it was this expert who would consult with the halakhists. On each side, then, legal experts familiar with jurisprudential categories, vocabularies, and systems shared information about their own legal traditions. 51

Transmission methods between Cretan Jews and the Venetian judiciary remain far more opaque than such exchanges in the Crown of Aragon. Evidence is scant regarding these mechanisms. But it seems highly unlikely that Venice, consumed equally with the republican ideal of the *cursus honorum* of its young patrician men and with the imperial ideal of controlling and maintaining jurisdiction for itself as much as possible, would willingly deputize Jews as judges for cases which appeared before the *Curia* *Prosoporum*. Ducal court cases, of course, centered on the duke’s own embodied power as both governor and chief judge. We also have no evidence of any consultation between Venetian judges and the island’s rabbinic authorities. To be sure, it is impossible to use a silence to decisively assert that Cretan judges did not consult rabbinic experts. It is certainly possible that at times they did, but I have found no examples in which such behavior is explicit.

Transmission between Jews and the Cretan court is further complicated by the nature of the judges. All of Venice’s judges, as indeed all of Venice’s state administrators, were patrician political appointees—well-educated, but lacking formal legal training, and only in the position for a few years. 52 Those elected duke tended to have plenty of political experience, but the judges were lower on the political totem pole; new skills necessary for both roles were meant to be learned on the job. 53 In fact, when sent from Venice to serve stints in Crete, patrician judges took an oath of office that laid out how to make decisions in their new judicial capacity. When faced with a case, they were first to look to

50 Marie Kelleher, *The Measure of Woman: Law and Female Identity in the Crown of Aragon* 31 (2010). The expert (*iurisperitus*) “had received formal legal training” and served in courts of either *battles* (royal judicial officials in towns or villages) or *reguers* (regional royal judicial officials).

51 The willingness of Iberian rabbis to consult with Christian experts went both ways; at times rabbis engaged with Christian experts in order to make more just rulings within the Jewish legal realm. Pinchas Roth has noted that the Rashba himself sought out Catalan coinage experts before ruling on the halakhic ramifications of currency devaluation for moneylenders. Roth, supra note 16, at 85.


53 See Monique O’Connell, *Men of Empire: Power and Negotiation in Venice’s Maritime State* (2009), esp. at 76-78, 93-96. As O’Connell argues, id. at 78, although all judges through 1490 were supposed to be sent from Venice, in reality many were elected locally in Crete.
Venetian statutory law, then to precedent from similar cases, and then to local customary law. Finally, if all else failed, these amateur judges were told to use their best judgment.\footnote{This judge’s oath of office was first published in Ernst Gerland, Das Archiv des Herzogs von Kandia im K. Staatsarchiv zu Venedig 93-98 (1899).} Such calls to local law and common sense were especially important because, as far as I have been able to ascertain, Cretan judges had no consulting body of experts. Since Venice staunchly insisted that it was not interested in the Roman-inspired \textit{ius commune} which formulated legal rules for experts to learn, but rather emphasized an amorphous sense of “justice” which relied on the judge’s discretion (\textit{arbitrium iudicis}), it would have been meaningless and antithetical to bring in those sorts of technical experts.\footnote{On Venice’s rejection of Roman law, see Mario Ascheri, The Laws of Late Medieval Italy (1000-1500), 276-78, 329-30 (2013).} This lack of a systematized approach to legal ruling has even led one scholar to call the Venetian judicial system “more ‘oracular’” than anything else.\footnote{Edward Muir, The Sources of Civil Society in Italy, 29 J. Interdisc. Hist. 379, 394 (1999). In contrast to the Cretan secular court’s approach, Venice’s patrician Patriarchs, “not especially trained in canon or in Roman law,” were indeed assisted in ecclesiastical court duties by vicars with legal training. Daniela Hacke, Women, Sex and Marriage in Early Modern Venice 13 (2004).}

With neither Jewish halakhic experts clearly consulting, nor legal experts presiding, transmission often remained in the realm of the amateur. That is to say, a close reading of ducal court Jewish marriage law cases suggests that Jewish litigants themselves were often empowered to define Jewish law authoritatively for the secular court judges, whether or not Jewish authorities were consulted. The power of the litigants is perhaps best expressed in the moments in which the final ruling mimics language presented by one of the litigants. Let us look at some cases which highlight the power of the litigant to shape the conception of Jewish law in the court.

In a case from 1368, a Jewish woman named Elea Mavristiri sued her ex-husband, Solomon Astrug, for money she argued was owed to her by the \textit{ketubbah}, the Jewish marriage document, which detailed a payout should a marriage end in divorce or death.\footnote{ASV Duca di Candia, b. 29 bis, r. 15, fols. 63v-65r (Mar. 7, 1368); and ASV Duca di Candia, b. 26, r. 3, fols. 85v-86r (Mar. 7, 1368).} She asked the court to compel Solomon to pay that which was owed to her “according to the rite of the Jews”: her dowry, worth 700 hyperpera, plus significant additional amounts of silver, gold, and coins. As Elea explained to the court, the additional sum constituted the money which “is imparted to women according to the rite of the Jews, as is contained in a certain cadastral writ,” which had been made on the order of the former duke of Crete in December 1361, ostensibly in a previous iteration of this divorce drama which, at this point, had been going on for almost a decade.\footnote{Id. b. 29 bis, r. 15, fol. 64r (Mar. 7, 1368) (\textit{mulieribus adduntur secundum ritum iudeorum, prout continebatur in quadam scriptura catasticata}).}

In response, Solomon first decried Elea as annoying, oppressive, aggressive and burdensome, undoubtedly playing to the audience watching the case play out in Candia’s
square. But then he made his legal case: he claimed that Elea had inflated the amount of money promised in the ketubbah; it was only 500 hyperpera. As for the additional payments, he did not have to pay them because they were only usual Jewish custom (ritu solito indeorum), not Jewish law (legem iudaicam). Note here the halakhic argument being made: Solomon claimed that the ducal court in 1361 misunderstood the halakhic status of the additional payments which it claimed he owed. It was his choice, he argued, whether or not to pay out the additional moneys because it was simply a matter of Jewish custom (ostensibly Heb. minbag), a semi-binding tradition that might look to an outsider as a part of immutable Jewish law, but in reality was not. The ducal court, he claimed, misunderstood Jewish personal law.

Despite Solomon’s attempt to parse the case logic according to the law/custom divide—an effort to nuance the complexities of Jewish law for the court—Ela had already set the tone of the debate years before, when she had convinced the court that Jewish rite guaranteed her the additional moneys. The court did not consider the difference between custom and law in this case. Indeed, the ducal judges reaffirmed that, with a valid divorce, Elea had the right to her dowry, which—they confirmed through investigation of the contracts—was equal to 700 hyperpera. They also confirmed Elea’s right to the additional moneys, mimicking the very language she had used: the extra silver and gold, they wrote, is the money which is imparted to Jewish women according to the rite of the Jews.

Other disputes over marriage echo the same power a litigant—male or female—could have in defining Jewish law, potentially in ways that a beit din would have found to be a stretch. Often the plaintiff had the upper hand in such games of definition by having the first word, as Elea did, but certainly not always. In a 1401 case, a female plaintiff (an angry wife seeking separation) and the male defendant (a bigamist) each defined Jewish law differently: she argued that local custom outlawed bigamy, and he made large claims about Jews around the world accepting bigamy. In this case, the defendant’s claims—that halakhah as practiced around the world allowed bigamy in certain circumstances, such as the inability to produce a male heir with the first wife—was mimicked in the final judgment. This led to a strange solution in which the judges actually arbitrated a compromise in which the plaintiff first wife would remain fully married to the bigamist while getting her own home away from the second wife. Had the judiciary consulted with local rabbis, they might have agreed with the wife’s rejection of bigamy as a practice forbidden locally; but because the litigant’s own narrative power held sway, the court decided to allow situational bigamy for its Jews.

In contrast, in the Crown of Aragon, regular converse between Jewish and Christian legal experts made for a different response to bigamy—one that shifted as local rabbinic views evolved. Until the late fourteenth century, the Jewish community allowed for a wide variety of cases in which bigamy was acceptable. Thus, royal courts readily al-

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60 ASV Duca di Candia b. 30 bis, r. 26, fols. 18v-19v (Oct. 27, 1401).
allowed Jews to contract and maintain bigamous marriages, in particular by granting revenue-producing licenses. But in the late fourteenth century, rabbinic attitudes towards bigamy tightened in Aragon and Catalonia. The royal court—its legal experts in regular contact with Jewish legal experts—responded to this change of rabbinic opinion, and made it harder to receive a license for bigamy. Litigants and license seekers ceased to be taken at their word that they fit one of the allowed Jewish loopholes; instead, the court began investigating each case quite thoroughly before granting permission.61

To be sure, although I stress here the fundamental difference between rabbinic experts in the Aragonese courts and the lack thereof in the Cretan context, I do not mean to claim that Cretan Jewish litigants’ claims were the only source of authoritative definition of halakhah. In the case of Elea Mavristiri, the court looked at the ketubbah to assure itself that the dowry had been 700 hyperpera. But Elea also referenced a written statement made by the duke in 1361 which codified the notion that Jewish divorcees earned certain extra-dotal moneys. In recording decisions, ducal courts created written precedents—one of the ways in which institutional memory could be passed down from judge to judge, despite the short tenure and the amateur nature of the job. Nevertheless, as Elea’s case demonstrates, here too the power of the litigant’s assertions played a pivotal role. In presenting her case, Elea herself had to remind the court of this precedent and its location, and apparently only because of this proactive claim did the court confirm and repeat the accepted principle.

Further evidence suggests that the ducal court and its judges did store and pass along information about Jewish law to be used at relevant moments—even when the litigants were not eager for such data to be included. When Cali Chersoniti sued her ex-fiancé Peres Stamati in 1370, claiming he had broken their legally binding betrothal contract by marrying a seven-year-old girl, both plaintiff and defendant framed their claims as simple breaches of contract. Cali petitioned the court to force Peres to take her as a bride “secundum formam pactorum suorum”—according to the terms of the betrothal contract they had signed.62 Although marriage was the topic at hand, and Cali mentioned that the contract was indeed a Jewish one, the plaintiff had chosen to present her case as a simple breach of contract. Peres’s rebuttal relied equally on the contractual nature of the marriage. After noting that he and Cali should have no standing, since their respective fathers had actually made the contract, he claimed that the fathers agreed to cancel the agreement, and that he and Cali had also agreed to call off their wedding. The contract had been made null and void, and thus Cali had no case.

It was the ducal court, however, which changed the tenor of the debate, claiming that the attempt to speak in terms of a breach of contract went against Venice’s accommodation of Jewish personal law. After examining the evidence, the court sided with Cali, noting not only that the contract appeared never to have been canceled (as Peres had

61 Guerson, supra note 10, at 138. But see also Assis, Golden Age, supra note 8, at 263-64.

62 ASV Duca di Candia, b. 26, r. 3, fol. 158r (Aug. 12, 1370).
claimed), but more importantly, that Peres had continued with the betrothal long enough to take possession of Cali’s dowry and to exchange further marriage gifts; the couple had gone so far as to exchange rings. Here the judges had acquired data on Jewish law that neither party seems to have presented, at least not on this appeal: they understood that the exchanging of rings constituted marriage for Jews. As such, the marriage could not simply be dissolved by reference to an invalidated contract, as Peres had claimed. Cali had won her case, but not by using the argument she had intended.

Just as it insisted that Jewish personal law obtain when relevant, the court limited the use of *ritus iudeorum* in the opposite direction as well. It seems that the knowledge that Venice’s judges were sensitive to Jewish law and custom caused Jewish litigants to claim their right to Jewish law as a common defense, even when not strictly germane to the case. A 1359 suit did actually revolve around a simple breach of contract, albeit in the context of a contracted promise made by a Jewish man not to marry. He swore to remain single, lest he have to pay a very large fine to his daughter (the same Elea Mavristiri whose marriage woes we witnessed above). The father married and did not pay the fine; Elea sued his agent for payment. Here, the defense claimed that because Jewish marriage was involved, the contract had no legitimate standing, and thus the court had no right to enforce it. In perhaps the most explicit articulation of personal law rights through the mouthpiece of a Jewish litigant (mediated by the notary), the defendant said:

> The law of Moses was divine, according to which [law] the Jews are ruled in their marriages, and the temporal ruler must govern the Jews [through it], namely by their laws and rites, and by the power of these personal privileges belonging to the Jewish community.  

But this case was not about marriage; it concerned first and foremost a breach of contract, and second, the unsuccessful collection of a fine already imposed by a Venetian court. The judges were not swayed. They found for the claimant, and awarded her a significant portion of the money she had been awarded by a lower court. The defense’s attempt to appeal to Jewish personal law accommodation failed, as the court declared it not applicable.

Appeal to the *ritus iudeorum*, then, was neither a panacea nor a sure-fire strategy, but provided Jews—male and female—with one mode of argumentation that could support their suits’ claims. By the time this last case was heard in 1359, Crete’s Jews knew that accommodations for Jewish personal law could come into play, and thus here and in other moments over the course of the next century, Jews attempted to stretch the application of the *ritus iudeorum*. The court, however, also had its own storehouse of knowledge about Jewish personal law, and chose when to—or when not to—apply it. Nevertheless, despite the ostensible file of information on Jewish law available to the Venetian judge, and the existence of the *Curia Prosoporum*—the court of first instance for Jews and Greeks, likely carried out in Greek, and which must have been sensitive to the claims of personal

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63 ASV Duca di Candia, b. 29, r. 12, fol. 24r (Nov. 7, 1359) (*Lex moisi erat divina, secundum quam indei regabantur in matrimonitis suis et dominatio temporalis debeat indeos regere, videlicet eorum leges et ritus, vigore quorumdam privilegiorum propriatium que habebat universitas iudeorum.*)
law and customary law brought by those two minority groups—the amateur nature of the transmission of halakhic knowledge and its sometimes unclear precedents in Crete likely encouraged individual Jews decide to litigate before the secular judiciary they deemed malleable. After all, the secular court’s amateurism stood in stark contrast to the beit din, in which litigants had no authoritative input, as the beit din’s judges were deemed experts in both the local community and its practice of Jewish law.

IV. Conclusion

In her recent study of medieval Ashkenazi piety, Elisheva Baumgarten has warned against taking intellectual traditions and halakhic norms as the only authoritative sources for the behavior of “good” Jews. As she notes, “[M]ost research on Jewish communities in medieval Ashkenaz has investigated halakhah and its development; that is to say, most scholars have assumed that halakhah shaped Jewish life without reflecting at length on how the realities of Jewish life shaped halakhah.” Her call for careful investigation of the intersection of prescriptive Jewish law and the realities of Jewish life rings true far beyond the boundaries of Ashkenaz, into the world of the Mediterranean. The case of Jews using the secular courtroom—at least in Candia with the approval of their pious leadership—may offer us one venue in which to locate and explore such an intersection. Despite ostensibly well-known prohibitions against intra-Jewish litigative behavior, Jews from across the social spectrum, including the leadership itself, saw themselves as exempt from the ban—or better, did not deem a ban to exist in a binding fashion. Likely, at least in part because of personal law accommodations, the secular courtroom became a venue in which even “good” Jews could litigate without fear that the core of their ancestral law would be violated. In fact, although the Rashba imagined that recourse to the secular court would promote assimilation into Christian culture, the reality appears to have been quite different. In Crete, and likely in venues across the Mediterranean, recourse to secular court—when the case addressed Jewish personal law, at least—could actually highlight Jewish difference and promote Jewish attention to halakhic modes of marriage and divorce.

This positive rendering of personal law accommodations in the Middle Ages seems quite at odds with contemporary discussions of the practice, especially those stemming from scholarship on British colonial India. By definition, states which structure personal law according to religious affiliation categorize individuals into religious groups and apply categories of law to individuals according to a perceived affiliation. This top-down assignment of individuals’ identities lies at the heart of one of the major criticisms of personal law systems today. As Narenda Subramanian has recently articulated it, “Personal laws constrain individual autonomy, as they usually give individuals little choice about the laws that govern them, and accept


dominant understanding of group norms.66 Indeed, in British colonial South Asia, a turn towards religious expert consultants and official legal texts did limit the breadth of customary law that Hindus and Jews, among others, could claim as their own.67 This criticism also rings true in circumstances where a system of religious personal law favors men over women.

Nevertheless, the right to seek justice in a secular court according to one’s own religious practice seems to have been deemed freeing—not constraining—for at least some members of Mediterranean Jewish communities, particularly in locations where the state courts did not define Jewish law according to particular experts or specific texts. For the male and female Jews of Crete, Venice’s colonial court seemed more neutral, consistent, and powerful than the *beit din*. Moreover, they could have at least some of their religious needs addressed there. This dual benefit made the Venetian court system not only a place where Jews could expect a desired outcome, but also a venue that did not necessitate giving up their dedication to Jewish law. They could litigate in an apparently efficient court without relegating themselves to outsider status by abandoning traditional Jewish customs and laws. They could even offer their own understanding of how those Jewish customs and laws worked, shaping the court’s approach. Women in particular seem to have benefited from the flexibility of the system.68

The Cretan model demonstrates that, even outside of Iberia, the use of the secular court for intra-Jewish litigation was neither rare nor anomalous, nor did it remain the purview of the outcast Jew. Although those who felt disenfranchised by the *beit din* system certainly chose the secular court path, the decision to dispute outside of the Jewish community framework was also made by many insider Jews dedicated to traditional religious practice. In considering the famed responsa of the Rashba, Jonathan Ray has noted that the very cases that “send Ibn Adret into a fit of rage” were precisely cases that “show that the average Jew and even his communal leaders understood themselves to be living in a relatively open marketplace of competing communal organizations and institutions.”69 This communal forum-shopping created social space for judicial forum-shopping, even in the secular realm. When Jewish legal discourse found a place inside the secular courtroom and in its decisions, Jews from across the Mediterranean seem to have found the secular judiciary a safe venue for intra-Jewish disputes not because they could leave the strictures of the Jewish court outside, but because they could selectively bring elements of Jewish law along with them.


67 On ways in which the turn towards legal expertise negatively impacted Hindus’ abilities to assert their own local customs in the British colonial courtroom, see Chandra Mallampalli, Escaping the Grip of Personal Law in Colonial India: Proving Custom, Negotiating Hindu-ness, 28 Law & Hist. Rev. 1043, 1045 (2010). For the impact of textual reliance on ascertaining Jewish marriage law in British India and Burma, see J. Duncan M. Derrett, Jewish Law in Southern Asia, 13 Int’l & Comp. L.Q. 288, 290 (1964).

68 Lauer, supra note 14, ch. 6; see also Rena Lauer, Jewish Women in Venetian Candia: Negotiating Intercommunal Contact in a Premodern Colonial City, 1300-1500, in Religious Cohabitation in European Towns (10th-15th Centuries) 293 (John Tolan & Stéphane Boisselier eds., 2015).

69 Ray, supra note 11, at 9.