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Jewish and Christian Marriages in Early Modern Europe. Rituals, Rights, and Interrelations

edited by
Fernanda Alfieri - Serena Di Nepi

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Introduction

by *Fernanda Alfieri* and *Serena Di Nepi*

Historical studies have addressed marriage with increasing intensity, especially since the last quarter of the twentieth century, even with regard to the Italian context. This heightened attention has undoubtedly been incited by historiographical sensitivities more and more aware of the porosity between institutions and society, and of the need to ascribe value to long-neglected female experiences and to feelings as the driving force behind relations and conflicts. In Italy, a significant role has also been played by the social tensions affecting the institution of marriage in relatively recent times, including the family law reform and attempted divorce law repeal in the mid-1970s, and the legal recognition of same-sex civil unions, which only occurred in 2016 but was preceded by a long public debate. This has also had an impact on the world of academia, contributing to placing the sphere of sexuality under a new, finally historicizing lens.

In this political, social and cultural framework, challenges to the indissolubility of marriage – a feature traditionally deemed essential for the institution by Christian and state laws, and one of the matters examined here – as well as the more recent emersion in the public space of affective bonds calling for rights equal to those enjoyed by married couples have encouraged the observation of marriage from a long-term perspective. This has allowed its removal from the sphere of immutability and alleged a historical naturalness to which it had long been assigned. Indeed, notice has been taken of the changes it underwent on the various planes of doctrine, the meanings attributed to it, and the lived experiences that interpreted it «from below» and, thus, forged it, in a constant tension between norm and praxis. The effectiveness of coercive actions by institutions endowed with a normative monopoly on marriage in the early modern period (first and foremost, the Church) has been questioned. Light has been shed on a culture of marriage that was both lived and practiced. For centuries, this culture

Translation by Riccardo James Vargiu.

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bent the nuptial bond to serve familial, economic and political strategies, and, though less frequently, individual choices spurred by feelings. Marriage has thus shown itself to be a crucial point of observation from which to view tensions existing within communities, the role of the family as *oikos* (system for the preservation and production of offspring and assets), and the sexual hierarchies on which the latter was built and upheld. One need only think of the centrality of female virginity as the linchpin for family honor, the former being a requisite for the latter to be preserved, and for the aspiring bride to retain her value on the marriage market. Or consider the many expectations placed on the spouses' generative capacity, materially and symbolically investing the wife's ability to serve as a secure and fertile vessel, ready to ensure the continuity of lineage, and the husband's ability to provide, through his virility, the biological and identity-bearing substance of that lineage.

A fundamental role in opening up these perspectives, which we can only mention in passing here, was and is played by the studies published in the series «Quaderni» and «Monografie» of the Italian-German Historical Institute in Trent, specifically referenced in the essays collected in this issue. Indeed, the latter aim to establish a relationship of continuity and dialogue with the former. Let it suffice to recall the four volumes of the series «I processi matrimoniali degli archivi ecclesiastici italiani» edited by Silvana Seidel Menchi and Diego Quaglioni[1], who launched a multi-year work merging research in the archives of tribunals endowed with competence over Christian marriage throughout the Italian peninsula with the study of a varied legal corpus, both practical and erudite. Attention has thus been drawn to the existence of a plurality of laws, their overlap, and sometimes their contradictory nature, as well as to the procedures informing the orchestration of marriage trials. Conflicts in courts of law involved not only the spouses, but also ecclesiastical apparatuses, families, and whole communities. To be sure, marriage is a varied scene populated by many actors. In so crowded a stage, matters pertaining specifically to Jewish marriage are thrown into relief in this issue following two

[1] S. Seidel Menchi - D. Quaglioni (eds.): vol. 1, *Coniugi nemici. La separazione in Italia dal XII al XVIII secolo*, Bologna, Il Mulino, 2000; vol. 2, *Matrimoni in dubbio. Unioni controverse e nozze clandestine in Italia dal XIV al XVIII secolo*, Bologna, Il Mulino, 2001; vol. 3, *Trasgressioni. Seduzione, concubinato, adulterio, bigamia (XIV-XVIII secolo)*, Bologna, Il Mulino, 2004; vol. 4, *I tribunali del matrimonio, secoli XV-XVIII*, Bologna, Il Mulino, 2006. Detailed references on this and other historiographical matters touched in this introduction are provided in each essay.

research directions: on the one hand, marriage law (Old Testament, the Talmudic and rabbinic tradition) in European Christian theological, juridical, and erudite discourse; on the other, Jewish marriage practices in the Italian peninsula and relations with host communities.

Historiography has highlighted an unprecedented relevance, in the early modern period, of religion in the organization not only of collectivity, but also of the conjugal cell. The legacy of a tradition primarily conscious of the Christian rite and its changes after the Council of Trent – and of the ways in which Catholic and Reformed Churches imposed their monopoly on the jurisdiction of marriage and, by this means, on the government of society – has exerted a great deal of influence on the history of marriage[2]. Particularly in Italy, the Council of Trent has been singled out as a watershed moment. Its conditioning force and, conversely, its fragility have both been investigated, probing the actual monopoly of the Catholic Church on matrimonial jurisdiction, viewed as a mirror of the tension toward the total (legal and spiritual) government of society[3]. Attention has also been drawn to how this tension influenced and conditioned Jewish marriage[4]. Furthermore, light has been shed both on the ritual specificities of Jewish marriage in communities present in the Italian peninsula in the early modern period, and on its permeability to the influences of rituals in use among host communities[5]. By studying the practices of mixed marriages and marriages between Christians and converts, the role of the

[2] For a comparative perspective, see S. Seidel Menchi (ed.), *Marriage in Europe, 1400-1800*, Toronto, University of Toronto Press, 2016; the thematic issue devoted to B. Albani (ed.), *Global Perspectives on Tridentine Marriage*, in «Rechtsgeschichte - Legal History», 27, 2019, accessible online at http://rg.rg.mpg.de/en/Rg27; M. Wiesner-Hanks, *Christianity and Sexuality in the Early Modern World. Regulating Desire, Reforming Practice*, London - New York, Routledge, 2000; and finally, M.E. Wiesner-Hanks - M. Kuefler (eds.), *The Cambridge World History of Sexualities*, 4 vols., Cambridge, Cambridge University Press, 2024.

[3] The impact of the Catholic doctrine on the use of conjugal violence has also been investigated. See S. Seidel Menchi - D. Quaglioni (eds.), *Coniugi nemici*; M. Cavina, *Nozze di sangue. Storia della violenza coniugale*, Roma - Bari, Laterza, 2011; S. Feci - L. Schettini (eds.), *La violenza contro le donne nella storia. Contesti, linguaggi e politiche del diritto (sec. XV-XXI)*, Roma, Viella, 2017.

[4] C. Cristellon, *Borach Levi, la censura e la giurisdizione sul matrimonio degli ebrei (secc. XVI-XVIII)*, in M. Caffiero (ed.), *L'Inquisizione e gli ebrei. Nuove ricerche*, Roma, Edizioni di Storia e Letteratura, 2021, pp. 111-127.

[5] R. Weinstein, *Marriage Rituals, Italian Style. A Historical Anthropological Perspective on Early Modern Italian Jews*, Leiden - London, Brill, 2004.

institution as a tool for confessionalization has also been addressed[6]. At the same time, how Jews and Christians interacted beyond the confines of marriage[7], which was prohibited between Christians and infidels, has also been investigated.

Yet this issue does not concern itself only with the history of marriage. In the last twenty years, important research has brought to light the quantitative and qualitative relevance of the contacts existing between Jews, Christians, and Muslims specifically during the centuries under consideration. Mobility, whether chosen or forced, commercial exchange, travel, diplomacy, trade and so forth pushed people to relocate throughout the world, to experience an unpredictable series of events that, not infrequently, ended up involving stays – often extending over a significant length of time – in formally prohibited places[8]. Theoretically forbidden presences and unthinkable cohabitations were actually quite common. While these forced societies – often with great difficulty and amid countless contradictions – to face the complexity and diversity of beliefs and cultures, they largely remained in a limbo of limited visibility[9]. Thus, there were individuals who lived where they should not, sometimes formally complying with local rules, sometimes drawing the attention of the authorities (in Catholic countries, particularly that of the Inquisitions), sometimes managing to remain undetected without causing any suspicion. The decisive boundary between these forms of

[6] On Europe, C. Cristellon, *Between Sacrament, Sin and Crime. Mixed Marriages and the Roman Church in Early Modern Europe*, in «Gender & History», 29, 2017, 4, pp. 605-621. On the Ottoman space, F. Tramontana, *Conversioni nel Vicino Oriente ottomano e diffusione del cattolicesimo a Betlemme*, in «Quaderni Storici», 13, 2009, 2, pp. 549-577; C. Santus, *La communicatio in sacris con gli «scismatici» orientali in età moderna*, in «Mélanges de l'École française de Rome - Italie et Méditerranée modernes et contemporaines» [Online], 126, 2014, 2, http://journals.openedition.org/mefrim/1790; DOI: https://doi.org/10.4000/mefrim.1790.

[7] M. Caffiero, *Legami pericolosi. Ebrei e cristiani tra eresia, libri proibiti e stregoneria*, Torino, Einaudi, 2012.

[8] N. Terpstra, *Religious Refugees in the Early Modern World. An Alternative History of the Reformation*, Cambridge, Cambridge University Press, 2015 (Italian translation, Bologna 2019).

[9] B.J. Kaplan, *Divided by Faith. Religious Conflict and the Practice of Toleration in Early Modern Europe*, Cambridge, Harvard University Press, 2010; Y. Kaplan, *Confessionalization, Discipline and Religious Authority in the Early Modern Western Sephardic Diaspora*, in Y. Friedman (ed.), *Religious Movements and Transformations in Judaism, Christianity and Islam*, Jerusalem, The Israel Academy of Sciences and Humanities, 2016, pp. 83-108; L. Felici - G. Imbruglia (eds.), *La tolleranza in età moderna. Idee, conflitti, protagonisti (secoli XVI-XVII)*, Roma, Carocci, 2024.

illicit yet somehow tolerated presences (this is not the place to investigate the reasons for these ambiguous paths to acceptance) and clearly defined models of coexistence, even in situations of mutual hostility, lies in the legitimation of tools of collective organization, systems of family formation, and mechanisms for the transmission of generational bonds. In this framework, the history of Jews is different from that of other groups because states recognized communities and institutions whose task it was to collect taxes, govern internal conflicts (albeit with many limitations), and manage the life of its members according to clear, understandable rules. As this issue's essays will illustrate in detail, Jewish marriage did not fall within the purview of host communities. Precisely because it was legitimized in its normative autonomy, Jewish marriage is a central element in a story that is so multifaceted and difficult to trace. What's more, as has recently been underscored, the history of the Jewish presence should be studied not only in relation to the history of anti-Semitism, but also highlighting the connections Jewish communities wove with surrounding Christian societies, and vice versa[10].

In keeping with these historiographical sensitivities, the essays in this issue intend to contribute to the history of marriage by adopting a perspective that, in some ways, 'provincializes' Rome and Trent, placing Jewish marriage at center stage. It's worth bearing in mind that in the years contemporaneous to the Tridentine watershed, when Roman Christian marriage was reorganized, passed definitively under ecclesiastical monopoly and subjected to precise formalities, Jewish communities in the Italian peninsula underwent a transformation process, owing to demographic and social changes that modified their organization and power relations, not without consequences on the broader context. The institution of ghettos, the arrival of Sephardic Jews, the expulsions of Jews from the south, from islands, and later from Milan, and the Church's increasingly aggressive policies[11], on the other hand, influenced Jewish marriage, amid a general confessionalization process affecting communities throughout Europe between the end of the sixteenth and the first half of the seventeenth centuries[12]. The

[10] G. Maifreda, *Italya. Storie di ebrei, storia italiana*, Bari - Roma, Laterza, 2021; G. Todeschini, *La banca e il ghetto. Una storia italiana*, Roma - Bari, Laterza, 2016; D. Kaplan - M. Teter, *Out of the (Historiographic) Ghetto. European Jews and Reformation Narratives*, in «Sixteenth Century Journal», 40, 2009, 2, pp. 365-394.

[11] M. Caffiero, *Storia degli ebrei nell'Italia moderna. Dal Rinascimento alla Restaurazione*, Roma, Carocci, 2014.

[12] Y. Kaplan, *Confessionalization*.

conversions of Jews, both male and female, to Christianity had an effect on Jewish marriage and, along with that, on the community's organization[13]. For instance, confraternities were established within ghettos for the purpose of collecting dowries for poor women[14], often in open competition with Christian ones doing the same for neophytes.

Therefore, marriage constitutes a particularly effective prism through which to view the interaction between religious groups in the early modern period. As already mentioned, marriage fell within the juridical autonomy enjoyed by each Jewish community[15]. However, there were times when Jewish couples addressed secular and ecclesiastical tribunals, and Christian judges solved the cases before them based on Jewish law. In such instances, the Christian authorities attempted to establish parallelisms (including terminological ones) between the Christian and Jewish institution, as well as contrasted Christian ideals with Jewish 'errors' to prove that Christian marriage was the 'true' one. This was done by some of the greatest canonists of the early modern period, such as Martín Azpilcueta, alias Navarrus, Tomás Sánchez, and Giovanni Battista De Luca, sections of whose works Fernanda Alfieri examines in her essay. Marriage among Jews is one of the many matters on which these theologians wrote, and on which they were viewed as authorities carrying tremendous weight. Indeed, their treatises broached the form and essence of Jewish marriage, questioning the value of consent, the necessary formalities for the transformation of the promise to marry into an actual matrimonial bond, and its duration. In their eyes, Jewish marriage seems to constitute a surpassed but inevitable archetype, something at once foreign and familiar.

The breaking of the matrimonial bond – unthinkable in Catholic marriage, possible in Jewish marriage, and also, though not always in a straightforward manner, in Reformed marriage – appears as a crucial point in the erudite debates that swept across early modern Europe. And the matter is dealt with at length in this issue. The essay by Vincenzo Lavenia explores a rich corpus of commentaries on the Old Testament, both Protestant and

[13] M. Caffiero, *Battesimi Forzati. Storie di ebrei, cristiani e convertiti nella Roma dei papi*, Roma, Viella, 2004; V. Lavenia - S. Pavone - C. Petrolini, *Sacre metamorfosi. Racconti di conversione tra Roma e il mondo in età moderna*, Roma, Viella, 2022.

[14] N. Melcer Padon, *Charity Begins at Home. Reflections on the Dowry Society of Livorno*, in Y. Kaplan (ed.), *Religious Changes and Cultural Transformations in the Early Modern Western Sephardic Communities*, Boston - Leiden, Brill, 2019, pp. 346-380.

[15] V. Colorni, *Gli Ebrei nel sistema del diritto comune fino alla prima emancipazione*, Milano, Giuffrè, 1956, pp. 181-195.

Catholic, written and published in Europe during the early modern period, from Spain to Portugal and France, from Imperial Germany to Flanders and Rome. Focusing on certain episodes concerning repudiation and mixed marriages contained in the historical and prophetic books, Lavenia throws into relief how Western Christian Churches, after the Reformation and the Council of Trent, used the interpretation of Scripture on these issues as a means to legitimize their own doctrinal and moral stances. In a divided Europe and in a world characterized by increased mobility, the concreteness of relationships between people belonging to different ethnic and religious groups and the fragility of their bonds shed new light not only on the medieval legal corpus on marriage, but also on Scripture itself. After the Babylonian captivity, men from the liberated communities joined with women from foreign ethnic groups, generating offspring. How should their unions be regarded? The priest and scribe Ezra and the governor Nehemiah deprecated them, calling for their severance, and Malachi, the last prophet, further condemned Jewish men who had betrayed their legitimate wives to unite with foreign women. Those passages in Ezra, Nehemiah and Malachi, already commented upon starting in early Patristics, were again addressed by Catholic and Reformation theologians, who, through their interpretations, consolidated the diverse stances of their respective Churches. Religious differences are built also through the different ways in which the conjugal state is understood and regulated. Marriage – in this case, biblical Jewish marriage – thus proves to be an effective device for confessional differentiation.

For the English scholar John Selden, the author of *Uxor Ebraica* (1646), the study of Jewish marriage law is also functional to supporting a specific political position. As shown by Alberto Scigliano in his essay, Selden rigorously examines rabbinic sources in order to reconstruct the Jewish rules pertaining to betrothal, marriage and divorce, highlighting their preeminently contractual and civil nature. Marriage appears as a juridical institution based on natural law, not as a sacrament of divine origin, and as lacking the indissolubility attributed to it by Catholic doctrine. Jurisdiction on marriage should thus fall to the parliamentary rather than the ecclesiastical authority. Placed within the broader context of the debates on the reform of the institution of marriage in early modern Europe, Selden's work stands out as a crucial intervention in the controversies over the relationship between law, theology and the boundaries of civil authority.

In implicit dialogue with *Uxor Ebraica* is the work by Johann Buxtorf the Younger, examined by Guido Bartolucci. Born and educated in Calvinist

Basel, a crossroads of philology and Reformed theology, Buxtorf produced a systematic analysis of Jewish marriage law, conducted through the extensive use of biblical, Talmudic and rabbinic sources, and aimed at legitimizing the Calvinist interpretation of divorce as permissible only in cases of adultery. By investigating key concepts such as *ervat davar* and *porneia*, Buxtorf builds a bridge between the Mosaic law and the Gospels, while arguing for the authority of the Reformed Church in the correct interpretation of Scripture. The broad, inter-confessional reception of his treatise – also adopted by Lutherans and cited by Benedict XIV as a reliable source on Jewish marriage law – attests to the emergence of new paradigms in the study of Hebraism. The Jewish legal tradition was no longer merely the object of polemical attacks, but also a normative, exegetical, and comparative resource.

In addition to the study of the early modern European erudite discourse on Jewish marriage and its instrumentality in the religious and political debate, this issue leaves room for perspectives of social history and history of justice. Moving from these same premises, the latter investigate the relationship between Jewish marriage and Christian marriage in daily practices. The tension between contiguity, remoteness and comparability of the nuptial rites and the rules of the game lies at the heart of the essay by Germano Maifreda. Archives and case studies reveal a multifaceted reality, one even ghetto walls could not close off, distinguish, or separate in a clear-cut way. On the one hand, an individual's feelings and passions could unexpectedly challenge otherwise consolidated hierarchies of difference and of unacceptable relationships. On the other, precisely because spaces of encounter and exchange were part of daily life, they extended beyond their formal boundaries and called for decisive measures to be taken by outside authorities, challenging the very logics of distinction. Forming a family, protecting the dowry, ensuring the future of new generations were constantly negotiable matters, particularly for the affluent, who were better equipped to appeal to the justice of Christians and to attempt to turn it in their favor.

Finally, Serena Di Nepi's essay focuses on the threshold between the inside and the outside of the ghetto. The weight of marriage, and of the female choices making marriage possible, is observed first by drawing attention to women's awareness of the alternatives available to them and of their meaning. Indeed, women could marry a Jew or a Christian; remain Jewish and continue to live in the ghetto, or convert and leave it behind. What emerges is a system of education, social pressure and organization that

helped with the challenges of minority life, and the implications entailed by every decision, when faced with the concrete possibility of forever stepping outside the gates of the ghetto. The focus of this issue thus narrows, bringing to the fore the place and meaning of 'small' stories – seemingly specialized, yet central for a broad reflection on the past.

For the sake of readability, transliterations of Hebrew have been carried out according to phonetic criteria suited to English. The system's ease and simplicity make the words more accessible to readers unfamiliar with scientific transliterations. The small number of recurring words found across multiple essays follow the forms used in Roni Weinstein's classic work *Jewish Marriage, Italian Style*, as well as the common transliterations on sefaria.org.

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New Moabites
The Old Testament, Mixed Unions and Christian Interpretations after the Reformation

by *Vincenzo Lavenia*

ABSTRACT

This essay will examine some texts and biblical commentaries from the sixteenth and early seventeenth centuries that dealt with repudiation based on specific passages from the Old Testament that acquired significant meaning in the early modern period. In particular, the analysis will focus on some passages from the historical and prophetic books (Ezra 9-10; Neh. 13; Mal. 2:10-16) to understand how the Reformed communities and Catholics (for whom marriage remained indissoluble) legitimized their respective doctrinal positions and interpreted mixed marriages at a time when the division of Europe, growing mobility and the global expansion of Catholicism multiplied marital relationships that transcended original ethnic or religious affiliations.

Keywords: mixed marriages – repudiation – Old Testament – Reformation – Tridentine Church

1. Introduction

«A bastard shall not enter into the congregation of the Lord … An Ammonite or Moabite shall not enter into the congregation of the Lord for ever; even to their tenth generation shall they not enter into the congregation of the Lord for ever; because they met you not with bread and with water in the way, when ye came forth out of Egypt … Thou shalt not abhor the Egyptian, because thou wast a stranger in his land. The children that are begotten of them shall enter into the congregation of the Lord in their third generation».

Certain passages in Deuteronomy (23:1-9) lay out the rules and prohibitions that Israel was to follow in order to establish kinship relations with foreign communities and to recognize the right of any offspring from such unions to belong to God's people. The divine law affirmed the Israelites' special bond with the Egyptians but forbade intermingling with other neighboring nations. The children and descendants of unions with Ammonites

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or Moabites were never to be included among God's people, because of their past hostility, but also because of their impurity. Indeed, as we read in Genesis 19:31-37, the Ammonites and Moabites descended from the unwitting incestuous unions of Lot – a nephew of Abraham – with his two daughters, following the destruction of Sodom and Gomorrah, the death of his wife (turned into a pillar of salt), and the family's brief stay in Zoar.

The above passages from Deuteronomy on the issue of children born from mixed unions precede the beginning of chapter 24, where we read that God recognized the right of men in Israel to repudiate their wives: «When a man hath taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her, then let him write her a bill of divorcement … and send her out of his house». The Christian tradition on marriage would encounter an interpretative stumbling block in this part of Mosaic law, despite the seemingly clear words of Jesus (Matt. 19:3-10). When questioned by the Pharisees about whether it was permissible to repudiate one's wife for any reason, Jesus replied that husband and wife were one flesh; that man could not separate what God had joined together; that after repudiation, second marriages would involve the sin of adultery; and that the rules in the Pentateuch attributed to Moses did not legitimize divorce at all, but were permitted because of the Jews' hardness of heart. A major stumbling block was the numerous passages attesting to the practice of polygamy, or rather polygyny, among the Jews. This was acknowledged once again in the words of Deuteronomy (21:15-17), which recorded the rules on primogeniture: «If a man have two wives, one beloved, and another hated, and they have born him children, both the beloved and the hated; and if the firstborn son be hers that was hated …, he may not make the son of the beloved firstborn before the son of the hated, which is indeed the firstborn». After all, while Scripture spoke of only one woman for Isaac, it mentioned several companions for Gideon, David, Solomon and other patriarchs. As for mixed unions with peoples outside the lineage of Israel, the Old Testament recounted that Moses was married to a Midianite (Exod. 2:16-22) and a Cushite (Num. 12:1); that Samson was a persistent xenophile even before his fatal relationship with the Philistine Dalilah (Judg. 13-16); and, not least, that Ruth – David's progenitor – was a Moabite (Ruth 4:18-22)[1]. It was also difficult for Christians to interpret Abraham's repudiation of Hagar,

[1] I refer to K. Stone, *Marriage and Sexual Relations in the World of the Hebrew Bible*, in A. Thatcher (ed.), *The Oxford Handbook of Theology, Sexuality, and Gender*, Oxford,

given that Ishmael was his firstborn son. As we read in Genesis (21:8-14), following the unexpected birth of Isaac, his wife Sarah harshly asked the elderly patriarch to repudiate the Egyptian woman, who had mocked her late motherhood. «Cast out this bondwoman and her son», she allegedly told Abraham, «for the son of this bondwoman shall not be heir with my son». Reluctantly, Abraham yielded to Sarah's demand, but God reassured him about the fate of his firstborn son: Ishmael would become the father of a lineage also blessed by God. Estranged from Abraham's household, Hagar wandered in the wilderness of Beer-Sheba. When she ran out of water and feared for her son's life, God sent an angel who revealed a well, allowing her to quench her thirst and save the baby Ishmael. As Scripture states, «God was with the lad; and he grew, and dwelt in the wilderness, and became an archer. And he dwelt in the wilderness of Paran; and his mother took him a wife out of the land of Egypt». St Paul (Rom. 9:6-9; Gal. 4:21-31) would interpret the story of Sarah and Hagar as a foreshadowing of the relationship between the Church and the Synagogue: Sarah, the free woman, symbolizes obedience; Hagar, the slave, is the mother of a lineage that lost its status of primogeniture and divine election – like the Jews after the advent and death of Christ. Later tradition would interpret the expansion of the Arabs and Islam as the success of a desert people descended from Hagar and Ishmael. Nevertheless, for Christian theology, Abraham's polygyny and Hagar's repudiation remained rather enigmatic. The most compelling response to interpretative doubts about these Genesis passages was offered by Augustine in *De civitate Dei* (XVI, 25), where the Bishop of Hippo describes the birth of the Egyptian maidservant – a concubine – as a form of «surrogate motherhood», a role also accepted by Sarah before she became the mother of Abraham's legitimate heir:

«Abraham is in no way to be branded as guilty concerning this concubine, for he used her for the begetting of progeny, not for the gratification of lust; and not to insult, but rather to obey his wife … Here there is no wanton lust, no filthy lewdness. The handmaid is delivered to the husband by the wife for the sake of progeny, and is received by the husband for the sake of progeny, each seeking, not guilty excess, but natural fruit. And when the pregnant bond woman despised her barren mistress, and Sarah, with womanly jealousy, rather laid the blame of this on her husband, even then Abraham showed that he was not a slavish lover, but a free begetter of children, and that in using Hagar he had guarded the chastity of Sarah his wife, and had gratified her will and not his own – had received her without seeking, had gone in to her without being attached, had impregnated without loving her – for he says, *Behold your maid is in your hands: do to her as it pleases you*; a man able to use women as a

Oxford University Press, 2014, pp. 173-188, here pp. 183-184. See also M.G. Brett, *Genesis. Procreation and the Politics of Identity*, New York, Routledge, 2000.

man should – his wife temperately, his handmaid compliantly, neither intemperately!» [transl. by Marcus Dod].

This was the prevailing interpretation in the Christian tradition. However, even in the sixteenth century, theologians debated whether mocking the elderly Sarah for becoming a mother constituted such a grave fault on Hagar's part as to justify the loss of Ishmael's firstborn status – a fact that at least partly contradicted the later Mosaic rules[2]. In any case, the exegesis of passages devoted to repudiation (or divorce) and the rules on mixed marital relations underwent some changes after the Reformation. With the decrees of the Council of Trent, the Roman Church reaffirmed the indissolubility of marriage, while the Protestant communities introduced the possibility of divorce, also legitimizing it with Old Testament passages. This was a novelty: since the third-fourth centuries – when Tertullian wrote *De monogamia* and the Council of Elvira forbade remarried women from considering themselves part of the Christian community – the prevailing position had been that defended by Augustine and then systematized by Aquinas in the thirteenth century: man should not separate what God had united, unless one of the spouses was a neophyte who wanted to distance themselves from their non-Christian partner. Of course, one could separate from an adulterous spouse, but not divorce or remarry, although in his *Commentary on Matthew* Origen had written that religious leaders could repudiate their wives, and Jerome had admitted the lawfulness of separating from a perverse husband[3].

This essay makes no claim to reconstruct the debate on marriage, repudiation and mixed unions after the Reformation, as the sources and bibliography on the subject are endless[4]. Its scope is much more limited. Even in the sixteenth and early seventeenth centuries – the time period examined

[2] See J.L. Thompson, *Hagar Victim or Villain? Three Sixteenth-Century Views*, in «The Catholic Biblical Quarterly», 59, 1997, pp. 213-233. The essay – a controversial response to feminist interpretations that have elevated the figure of Hagar since the late twentieth century – analyzes the reflections of Thomas De Vio the Cajetan, Calvin and Luther.

[3] Still helpful is P.E. Harrell, *Divorce and Remarriage in the Early Church*, Austin, R.B. Sweet Co., 1967. Cf. P.L. Reynolds, *Marriage in the Western Church. The Christianization of Marriage during the Patristic and Early Medieval Periods*, Leiden, Brill, 1994.

[4] See, for example, R.H. Bainton, *What Christianity Says About Sex and Marriage*, New York, Association Press, 1957; H.J. Selderhuis, *Marriage and Divorce in the Thought of Martin Bucer* (English translation), Kirksville, Thomas Jefferson University Press, 1999; J. Witte Jr., *From Sacrament to Contract. Marriage, Religion, and Law in the Western Tradition*, Louisville, Westminster John Knox Press, 2012[2]; E. Picardal Jr., *Early Protestant Church, State, and Marriage Models*, London, Lambert, 2022. On legal implications, see

here – Christian views on family ties were still shaped by Jewish history and Old Testament passages, which theologians sought to reconcile with the words of Christ and the Apostles, as well as with the need to redefine doctrine from perspectives that no longer coincided (for Rome, marriage remained indissoluble, but could be declared null and void by the Rota). I will therefore examine some biblical texts and commentaries, both Catholic and Protestant, that address repudiation in relation to specific scriptural passages that acquired relevant significance in the early modern period. In particular, I will focus on certain passages from the historical and prophetic books (Ezra 9-10; Neh. 13; Mal. 2:10-16)[5] to understand how Catholics and Reformed communities legitimized their respective doctrinal positions and interpreted mixed unions at a time when the division of Europe, increasing mobility and the global expansion of Catholicism were creating marital relationships that transcended original ethnic or religious affiliations. We know that, in the Middle Ages, papal constitutions, canonists and theologians had developed a body of often contradictory norms that discouraged mixed unions or permitted the separation of spouses and even the annulment of marriages between members of the Latin Church and other believers. This did not include Jews, infidels or pagans[6]. The situation would become more complicated in early modern times.

2. Against mixed unions: condemnation and repudiation

The end of the Babylonian captivity and Cyrus of Persia's decree that allowed the Jews to rebuild the Temple and return to their homeland, which was now inhabited by other peoples (sixth and fifth centuries BC), constituted a moment of great historical and theological significance. Beyond the conflicts within Israel's religious hierarchies, certain canonical

S. Lettmaier, *Marriage Law and the Reformation*, in «Law and History Review», 35, 2017, pp. 461-510.

[5] For an insightful theological interpretation of the Malachi passages, see G. Hugenberger, *Marriage as a Covenant. A Study of Biblical Law and Ethics Governing Marriage, Developed from the Perspective of Malachi*, Leiden, Brill, 1994. For an analysis of the context in which the rules in the biblical texts were developed, see C. Frevel (ed.), *Mixed Marriages and Group Identity in the Second Temple Period*, London, T&T Clark, 2011.

[6] See J.A. Brundage, *Law, Sex, and Christian Society in Medieval Europe*, Chicago, University of Chicago Press, 1987, pp. 195-196, 241, 267, 361, 380, 573. See also S. Ganster, *Religionsverschiedenheit als Ehehindernis. Eine rechtshistorische und kirchenrechtliche Untersuchung*, Paderborn, Schöningh, 2013.

books – later recognized as such by the various Christian denominations – attest that the Jews' openness toward or exclusion of other communities upon their return from exile was a source of division. In some passages of the book that bears his name (chapters 9-10), it is recounted that the priest and scribe Ezra was approached by leaders of the communities liberated from captivity. They denounced the fact that some clans of priests and Levites had mingled with foreign peoples («the Canaanites, the Hittites, the Perizzites, the Jebusites, the Ammonites, the Moabites, the Egyptians, and the Amorites») and, despite the «abominations» of those lineages, had taken their women as brides and fathered numerous children. That act of «trespass» – committed primarily by the religious and the magistrates – had profaned «the holy seed» with the local people. Upon hearing this protest, Ezra expressed his sorrow by tearing his clothes, hair and beard, and delivered a harsh speech that evening. The land of Israel, he said, had been defiled by the «filthiness of the peoples of the land»; to mix with them was a grave fault in the eyes of God, who had already forgiven Israel's past disobedience. The aim of Ezra's sermon was clear: «Now therefore give not your daughters unto their sons, neither take their daughters unto your sons, nor seek their peace or their wealth for ever: that ye may be strong, and eat the good of the land, and leave it for an inheritance to your children for ever». His indignation was great: «Should we … join in affinity with the peoples of these abominations?». God would punish this new sin with even harsher punishments, unless the Israelites asked for forgiveness and immediately remedied the contamination. At that point, a man named Secanias declared his repentance and proposed removing women and children born of mixed unions. Meanwhile, Ezra required the religious leaders to swear an oath that they would sever their relationships and be reconciled with God. He also convened a meeting of returnees in Jerusalem, during which he reiterated his condemnation of mixed unions. Those who did not renounce them would not be worthy of belonging to the people of Israel. With a few exceptions, after asking for time to repudiate their mixed families, they all accepted the prescription and sent back the foreign women together with the children they had with them. According to another passage of Scripture, Governor Nehemiah held the same view as the priest. As we read in chapter 13 of the book that bears his name (for Jews it is part of the Book of Ezra), he found that some of the Jews «had married wives of Ashdod, of Ammon, and of Moab; and their children spake half in the speech of Ashdod, and could not speak in the Jew's language». After making them swear that they would repudiate women of impure lineage and forbid new unions between their sons

and daughters and the surrounding peoples, Nehemiah evoked Solomon's impurity, accusing the xenophilic priests of violating the covenant with God, as that king had done.

Finally, according to another passage of Scripture (Mal. 2:10-16), the reaction of the last of the prophets was more nuanced. While he too condemned the sin of intermarriage with unclean lineages – those who worship «a strange god» – he also issued a call to strengthen and preserve the exclusivity of relationships *between* Jews. «Have we not all one father? Hath not one God created us? Why do we deal treacherously every man against his brother, by profaning the covenant of our fathers?». In their youth, the men of Israel had vowed before the Lord to remain faithful to the woman they had chosen as their life partner, but they later betrayed and abandoned her. In addition to defiling themselves by consorting with idolizing peoples, for Malachi the Jews had also committed the sin of repudiating their lawful wives, thereby violating the principle of endogamous monogamy:

«And did not he make one? Yet had he the residue of the spirit. And wherefore one? That he might seek a godly seed. Therefore take heed to your spirit, and let none deal treacherously against the wife of his youth. For the Lord, the God of Israel, saith that he hateth putting away: for one covereth violence with his garment, saith the Lord of hosts: therefore take heed to your spirit, that ye deal not treacherously».

After the Reformation, Catholic commentators would interpret Malachi's rebukes as a foreshadowing of Christ's prohibition of divorce in the Gospel of Matthew. Prior to that, however, Old Testament passages concerning the conjugal relations of the Jews on their return from the Babylonian captivity had played only a marginal role in preaching and theological tradition. Erasmus' writings bear witness to this – even the *Institutio Christiani matrimonii* (1526), which the celebrated humanist devoted to Catherine of Aragon before her repudiation by Henry VIII. In a significant passage of this complex work, written in part to respond to critics who had accused him of «Lutheranism», Erasmus acknowledged that the theological knot surrounding divorce was very difficult to untangle («argumentum de divortio tale est ut plane requirat Delium, quod aiunt, natatorem»). Erasmus preferred the New to the Old, but this alone does not explain why Malachi, Ezra and Nehemiah are not referenced in his treatise on marriage[7]. The

[7] I quote from Erasmo da Rotterdam, *Scritti sul matrimonio*, introd. by L. Felici, Italian translation by O. Montepaone, Torino, Aragno, 2024, p. XLVIII. Cf. A.G. Weiler, *Desiderius Erasmus of Rotterdam on Marriage and Divorce*, in «Nederlands Archief voor Kerkgeschiedenis / Dutch Review of Church History», 84, 2004, pp. 149-197.

year before Erasmus wrote the *Institutio*, Luther had married Katharina von Bora and was in the process of removing marriage from the list of sacraments, viewing it instead as a purely civil contract[8]. In his commentary on Malachi, written before Erasmus' treatise, the Reformer did not dwell on the question of mixed relationships – he merely noted that such unions had multiplied after the Babylonian captivity because the Jews needed to secure peace with their neighbors. Instead, he took his cue from the prophet's words to denounce the ease with which wives were repudiated, to extol marriage and to urge husbands to treat their wives with respect: «uxor donum Dei est, ipsa ergo sit adiutorium viri et vir adhaereat ipsi toto animo»[9]. Later, when initiating the Reformation in Geneva, Calvin likewise accepted divorce in cases of adultery or abandonment of the marital home. He permitted the injured party to enter into a second marriage, but strongly condemned marriage with those who refused to recognize the principles of the true faith in Christ (pagans, infidels, Jews, heretics… and «papists»)[10]. Catholic controversialists accused the Protestants of permitting the repudiation of wives out of their inclination to lust, a source of heresy. This criticism intensified after 1540, when Philip of Hesse persistently urged the Reformers not to legitimize the repudiation of his first wife, Christina of Saxony, but rather to sanction his marriage to Margarethe von der Saale. This case provided Catholic polemicists ample grounds to stir up controversy and embarrass the theologians opposed to Rome. Martin Bucer and Philip Melanchthon endorsed the personal choices of the incontinent Landgrave[11], but other theologians, such as Andreas Osiander, were much

[8] For the effects of Lutheranism on marriage in German lands, see J.F. Harrington, *Reordering Marriage and Society in Reformation Germany*, Cambridge, Cambridge University Press, 1995; S. Ozment, *Ancestors. The Loving Family in Old Europe*, Cambridge, Harvard University Press, 2001.

[9] M. Luther, *Werke (Weimarer Ausgabe)*, vol. 13: *Praelectiones in Prophetas Minores (1524-26)*, Weimar, Böhlau, 1889, *In Malachiam*, pp. 676-703, here pp. 686-691.

[10] See R.M. Kingdon, *Adultery and Divorce in Calvin's Geneva*, Cambridge, Harvard University Press, 1995; J. Witte Jr. - R.M. Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva*, vol. 1: *Courtship, Engagement, and Marriage*, Grand Rapids, Eerdmans, 2005, pp. 354-383 (containing an extensive selection of documents, including the pages that Calvin devoted to Malachi, on which see below).

[11] Paradoxically, Bucer used passages from Malachi to warn secular authorities against easily granting husbands' requests for repudiation of their wives: M. Bucerus, *De Regno Christi Iesu Salvatoris nostri libri II … De coniugio et divortio*, Basilae, per Ioannem Oporinum, 1557, p. 134.

more cautious[12]. Beyond the case of Philip of Hesse's «bigamy», theological writings on marriage multiplied from the 1530s onward, mainly due to Henry VIII's divorce from his first consort[13]. Later, when religious conflicts erupted across Europe, the words of Ezra, Nehemiah and Malachi began to take on a more topical relevance.

3. Wives and concubines: the theologians of the Reformation

One of the first people to comment on the Malachi passages was Johannes Oecolampadius (1527), who interpreted Abraham's decision to cast out Hagar in the traditional way, pointing out that, according to Jewish law, a woman who was expelled had the right to receive a bill of repudiation. Just as the patriarch had received special permission from God to sleep with his slave in order to ensure he had offspring of his own blood, so too was the divine precept not to intermingle with other peoples unique to the lineage of Israel: «non igitur sicut gentibus licet eis quaslibet uxores ducere». The reason for this was the divine election of the Jews, but also the danger that unions with other peoples could lead them to deny monotheism, driving them «ad cultum idolorum». According to Oecolampadius, the violation of the covenant that bound God with Israel had caused the Jews who returned from the Babylonian captivity to resemble the impious Zimri, son of Salu, more than Phineas, son of Eleazar and grandson of Aaron. According to Numbers 25:6-15, Phineas killed Zimri for daring to transgress Mosaic laws by bringing a woman, Cozbi, the daughter of Sur from the impure lineage of Midian, into the camp of Israel (the young woman was pierced to death along with her companion). At that point God had appeased His terrible wrath and addressed Moses, praising the

[12] W.W. Rockwell, *Die Doppelehe des Landgrafen Philipp von Hessen*, Marburg, Elwert, 1904 (reprint: Münster, LIT, 1985). See also M. Sikora, *As Long as it's Marriage. The Hessian Bigamy Case of 1540 within the Competing Interests of Dynasty, Desire and New Moral Demands*, in «Dimensioni e Problemi della Ricerca Storica», 2, 2012, pp. 33-60.

[13] See A.R. Winnett, *Divorce and Remarriage in Anglicanism*, London, MacMillan, 1958; E.J. Carlson, *Marriage and the English Reformation*, Oxford, Blackwell, 1994; and the impressive textbook collection T.L. Thompson (ed.), *Marriage and its Dissolution in Early Modern England*, 4 vols., London, Routledge, 2005. There is no room here to discuss the works of Thomas Abell, William Tyndale, Thomas Cranmer and Anthony Gilby, nor those written in the seventeenth century by Edmund Bunny, John Rainolds or John Milton – not to mention, for Scotland, John Knox.

double murder and renewing His covenant with the people of Israel[14]. The episode of Phineas was rarely evoked in commentaries following that of Oecolampadius; moreover, until the 1530s, texts made no reference to the contemporary relevance of the issue of mixed unions. It is enough to read the pages of Johannes Brenz or Heinrich Bullinger's book on marriage, which circulated widely in England[15]. Things began to change in Geneva, where Calvin – through his works and in response to a series of doubts formulated by, among others, Lelio Sozzini – suggested discouraging mixed marriages, though without easily annulling those already contracted. This was the position adopted by the Consistory, as evidenced by the legal controversies brought before that magistracy, which was also responsible for matrimonial discipline[16]. As for Calvin, in his rather late commentary on the Book of Malachi, he defended Abraham's honor and interpreted the condemnation of mixed marriages as an invitation not to yield to «aucune pollution des Gentiles». «Et c'est la raison pour la quelle Dieu avoit defendue en la Loy qu'ils ne prinssent aucunes femmes etrangers, si non qu'elles fussent bien purgees, comme il est dit au Deut. 21». As a «race», the Jews had repeatedly transgressed the commandment against mixing with idolatrous lineages – an offence that justified the anger of Malachi, who contemptuously described the women chosen by the sinful males of Israel as daughters of foreign gods. Indeed, in the Old Testament, the prohibition of mixed marriages was intended as a bulwark – «comme une barriere» – to prevent a people prone to deviation from falling back into sin. However, for Calvin, the main sin committed by the Jews was not the act of mixing with neighboring peoples, but rather the establishment of ties with «plusieurs femmes», thereby violating the sacredness of marriage, which had God as its guarantor («stipulateur»). The sin was all the more serious because a man who rejected a woman he had married as a «ieune pucelle», after he had grown tired of her, demonstrated a complete lack of respect for

[14] I. Oecolampadius, *In postremos tres prophetas, nempe Haggaeum, Zachariam, & Malachiam, commentarius*, Basileae, apud Andream Cratandum, 1527, fols. 77v-79r.

[15] See I. Brentius, *In librum Iudicum et Ruth commentarius*, Haganoae [Braubach], 1536 (who merely mentioned the prohibition of contracting nuptials with women of Canaanite stock «in sua impietate manentibus», pp. 41, 249); [H. Bullinger] *The Christen State of Matrimonye*, London, Nicholas Hyll, 1552, fol. VIIIr (where a mention of Ezra and the «diverse marriages» appeared). *Der Christlich Eestand* (1540) was translated into English as early as 1541. See C. Euler, *Heinrich Bullinger, Marriage, and the English Reformation. 'The Christen State of Matrimonye' in England, 1540-53*, in «The Sixteenth Century Journal», 34, 2003, pp. 367-393.

[16] Again, see J. Witte Jr. - R.M. Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva*, vol. 1, pp. 354-383.

marriage. As Calvin pointed out, «le lien de marriage est indissoluble», just like the believers' covenant with God. Christ himself had reaffirmed this in Matthew's Gospel. Certainly, the Lord – the arbiter in establishing the laws – could have given man multiple wives from the beginning of creation; but He had not done so, placing only Eve alongside Adam. Hence, nothing could justify the lasciviousness of the Jews, who had condemned the children born of their subsequent unions to live as bastards. In short, rather than formulating a clear doctrine on mixed unions or the lawfulness of repudiation, Calvin preferred to interpret the angry words of Malachi (who had removed the «masque aux Iuifs») as a clear condemnation of «polygamy»: a custom he associated with the Turks and Persians, without alluding to the radical sects of the sixteenth century[17]. From Zurich, after his years in England, Pier Martire Vermigli echoed this view. In his commentary on the Book of Judges (1561), he inserted a digression to legitimize the right of fathers to decide what marriage was most appropriate for their children. He also recalled that, among the early Christians, Tertullian had disapproved of «nuptias in religione dispari», as God himself had done in the Old Testament to limit the freedom of individual believers to contract nuptials without the consent of their community[18].

Leaving the Swiss Reformed cities and turning our gaze to the lands of Germany, it is easy to see that after the Peace of Augsburg, in the second half of the sixteenth century, marriage was one of the most controversial terrains for theological reflection. This is evidenced by the scriptural commentaries of the Lutheran Lucas Osiander, which in part reflect the alarm over the spread of mixed marriages. Interpreting passages from Ezra, he pointed out that admixture with other lineages had produced children «qui nec Israelitae sint, nec Ethnici», in violation of Moses' command forbidding the Jews to intermingle and defile themselves. With the ancient covenant having ceased, Christians were no longer bound to observe Mosaic law; nevertheless, the warning against contracting mixed unions also applied to them: «eiusmodi disparia coniugia sunt valde periculosa». For Osiander, it was mainly the princes («primates populi et Magistratus») who were inclined toward intermarriage, just as had been the case with the

[17] I. Calvin, *Leçons et expositions familières sur les douze petits prophètes …, traduites de Latin en François*, à Lyon, par Sebastien Honorati, 1563, pp. 586-592.

[18] P.M. Vermilius, *In librum Iudicum commentarij doctissimi. Editio secunda*, Tiguri, excudebat Christophorus Froschoverus, 1565, fols. 145v-146r. On this work, see G. Jenkins, *Commentary on Judges. Patristic and Medieval Sources*, in E. Campi et al. (eds.), *A Companion to Peter Martyr Vermigli*, Leiden - Boston, Brill, 2009, pp. 231-248.

clergy («nostri ordinis homines») and the leaders of Israel when Ezra had raised his voice. Attentive to the legal implications of marriage, Osiander observed that after repudiation, Jews were obliged to return their second wives' dowries, support the children born from those unions and compensate the foreigners for lost virginity («pro amissa virginitate»). Indeed, these were not mere concubinage relationships but «matrimonia … illegitime contracta», consummated sexually. Osiander praised the decision of the repentant Jews to remove these women and their children from the communities of Israel emphasizing that obedience to God must come before personal affections. Moreover, commenting on Nehemiah – who, like Ezra and Malachi, said nothing about the possible conversion of foreign wives – he added that the Ammonites and Moabites could not be admitted to sacred services even if they had embraced Judaism («etiamsi Israelitarum religionem amplecteretur»), given their descent from Lot, who was also Abraham's grandson. As Osiander reiterated, although the separation from the newly formed families was hard to bear, «facienda sunt quae Deus mandavit, tametsi ea re aliorum animi a nobis possunt abalienari». Moreover, the Jews had relapsed into guilt («relapsi»), despite having sworn an oath before Ezra. Mixed marriages, the theologian pointed out, always lead to confusion: not only in language, but also – and more critically – in matters of faith. In short, the errors mentioned in the Old Testament were a warning to Christians. On paper, no rule forbade them from contracting marriage with a man or woman belonging to another religion; but – Osiander pointed out – «eiusmodi connubia periculosa sunt, et multas habent molestias». This was evident in Germany, where «talia matrimonia» were not «rara», especially among the aristocratic clans who had to secure advantageous matches for their daughters, even with households of different confessions. With bitterness or sarcasm, Osiander declared that he doubted that these were happy unions («quam vero felicia sint talia matrimonia, ipsi viderint»)[19].

A few years later, an eminent theologian who preferred Zwingli's doctrine to Luther's echoed Osiander's concerns. In 1583, Johann Jacob Grinaeus, in his commentary on Malachi, wrote that after the Babylonian captivity, the Jews had sought every pretext to justify the mixed marriages prohibited by Mosaic law. Invoking the notion that all humans shared «unus pater»

[19] L. Osiander, *Esdras, Nehemias, Esther, Iob, Psalterium, Prouerbia Salomonis, Ecclesiastes, & Canticum Canticorum. Ivxta Veterem sev Vvlgatam Translationem, Omnia Ad Hebraeam Veritatem emendata … Habes in hoc Tertio Tomo, omnia scripta Canonica, ab Esdra vsque ad Prophetas*, Tubingae, excudebat Georgius Gruppenbachius, 1576, pp. 43-54, 126-135.

was a «sophisma» aimed at legitimizing marriages with idolatrous women. This reasoning, he argued, overlooked the fact that while creation made all men equal, divine election had established a special bond of adoption with Israel. Grinaeus also tried to reconcile Malachi's words with Paul's (1 Cor. 7:12-16), which in the Christian tradition constituted an obstacle against the annulment of 'mixed' marriages:

«If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away. And the woman which hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him. For the unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband … But if the unbelieving depart, let him depart … For what knowest thou, O wife, whether thou shalt save thy husband? Or how knowest thou, O man, whether thou shalt save thy wife?».

For Grinaeus, Paul had sought to facilitate conversions and ease the lives of neophytes; the marriages he spoke of were all prior to the Gospel law («in Christo enim, nec Iudaeus nec Graecus est, si in fide consentiant»; «religio … in Novo Testamento non tollit legitima pacta connubialia et civilia»). Malachi, on the other hand, had addressed marriages «non legitime contracta», which, according to Mosaic law, had to be annulled. As with Calvin, for Grinaeus Malachi primarily condemned polygamy, which forced first wives to live in a humiliating way; but his words were not meant to facilitate the repudiation of «ingratas coniuges»: in the Gospel of Matthew, Christ had spoken unequivocally about the indissolubility of marriage. In any case, following the Reformation, it was preferable for people to marry within their own religious denomination: «aequalitas enim non solum generis, aetatis, morum et opum, sed et pietatis ac fidei esse debet inter contrahentes». Grinaeus also cited the case of an Anabaptist woman who abandoned her husband and children and fled to Moravia. She defended her decision by invoking the words of Malachi, claiming that her husband lived far from the truth of the Gospel. The story was exemplary: perhaps the Old Testament could be misused; but love for Christ had to prevail over the marital bond. Indeed, religious difference justified the dissolution of a bond to prevent heresy from infecting the entire family: «maius … periculum est a contagione haereticorum, quorum sermo gangrenae instar serpit, quam vitiosis exemplis vitae impurae»[20].

[20] I.I. Grinaeus, *Hypomnemata in Malachiam prophetam, quibus adiunctae sunt theses analyticae de epistola Pauli Apostoli ad Galatas*, apud Basileam, typis Leonhardi Ostenij, 1583, pp. 56-69.

By the end of the sixteenth century, attitudes toward mixed marriages within the Reformation camp were by no means unanimous. One could take a more 'Puritan' position (it was mostly theologians who did so, also using the Old Testament); alternatively, one could adopt a less rigid point of view, recalling Paul's words and the fact that marriage was a civil contract, though blessed by God. The latter view was notably upheld by Alberico Gentili, an Italian jurist who emigrated to England and frequently came into conflict with Calvinist zeal[21]. In any case, as the seventeenth century progressed, and even more so in the eighteenth, it became evident that mixed marriages were increasingly common, forcing theologians and jurists to define the lawfulness and boundaries of liturgical, social and patrimonial relationships that defied confessional division. Moreover, cases such as the marriage of Henrietta Maria to Charles I Stuart (1625) carried political implications of the highest order. Recent historiography has placed considerable emphasis on interdenominational relations, religious conversion and forms of tolerance that developed beyond religious conflicts, and not only in the lands of the Empire[22]. Mixed marriages have been studied as a litmus test of social and confessional issues that gave rise to an enormous casuistry. For the purposes of this brief study, it suffices to cite a

[21] See A. Gentilis, *Disputationum de nuptiis libri VII*, Hanoviae, apud Guilielmum Antonium, 1601, ch. 19, «De diversa religione». For an analysis of the text, see G. Minnucci, *Diritto canonico, diritto civile e teologia nel I Libro del 'De nuptiis' di Alberico Gentili*, in U.-R. Blumenthal - K. Pennington - A.A. Larson (eds.), *Proceedings of the Twelfth International Congress of Medieval Canon Law*, Vatican City, BAV, 2008, pp. 423-445; A. Wijffels, *'Audiuntur theologi'. Legal Scholarship's Claim on the 'Second Tabl' in Alberico Gentili's 'De Nuptiis' (1601)*, in H. Dondorp - M. Scheirmaier - B. Sirks (eds.), *'De rebus divinis et humanis'. Essays in Honour of Jan Hallebeek*, Göttingen, Vandenhoeck & Ruprecht, 2019, pp. 497-512; G. Minnucci, *'Sileant theologi: nec alienam temnant temere disciplinam': la controversia fra giuristi e teologi nel I Libro del 'De nuptiis' di Alberico Gentili: nuove indagini*, in G. Claessens et al. (eds.), *True Warriors? Negotiating Dissent in the Intellectual Debate (c. 1100-1700)*, Turnhout, Brepols, 2023, pp. 245-272.

[22] Within the vast bibliography on these topics, I will only mention a few texts that are still considered to be reference points: K. Luria, *Sacred Boundarie. Religious Coexistence and Conflict in Early Modern France*, Washington, The Catholic University of America, 2005; C. Scott Dixon - D. Freist - M. Greengrass (eds.), *Living with Religious Diversity in Early Modern Europe*, Farnham, Ashgate, 2009; B. Kaplan, *Divided by Faith. Religious Conflict and the Practice of Toleration in Early Modern Europe*, Cambridge, Harvard University Press, 2010; C. Cristellon, *Due fedi in un corpo: matrimoni misti fra 'delicta carnis', scandalo, seduzione e sacramento nell'Europa di età moderna*, in «Quaderni storici», 49, 2014, pp. 41-69, by the same author, *Mixed Marriages in Early Modern Europe*, in S. Seidel Menchi (ed.), *Marriage in Europe 1400-1800*, Toronto, University of Toronto Press, 2016, pp. 294-317; D. Freist, *Glaube - Liebe - Zwietracht. Konfessionell gemischte Ehen in Deutschland in der Frühen Neuzeit*, München, De Gruyter, 2017.

mid-seventeenth-century treatise written by an eminent Lutheran theologian Johannes Gerhard, who taught in Jena. According to the Gerhard, who acknowledged the fluid reality characterizing Germany after the Peace of Westphalia, disparity of faith could not constitute an impediment to marriage: God spoke of one flesh, rather than one spirit. Moreover, it was necessary to prevent religion from becoming a pretext for dissolving marital unions. For this reason, while also discussing the opinions of Second Scholastic authors and prominent Catholic controversialists – from Domingo de Soto to Robert Bellarmine – Gerhard preferred to comment on Paul's letter to the Corinthians rather than dwell on the condemnations formulated by Ezra, Nehemiah and Malachi[23].

4. Purity and danger: the zeal and doubts of Catholics

A similar debate emerged within the Catholic sphere following the conclusion of the Council of Trent, which reaffirmed the sacramental nature of marriage. A particularly intriguing text – featuring even some quotations from Erasmus – is a cycle of Advent sermons by Mathurin Quadrat, a friar minor from Évreux, Normandy, who taught theology in Paris during the bloody years of the Wars of Religion. In November 1570, having received a royal privilege from Charles IX, Quadrat prepared the publication of a collection of sermons on the Book of Malachi. He had dedicated the work in July to the powerful Guillaume d'Avançon de Saint-Marcel, archbishop of Embrun, former ambassador to Rome under Pius IV, councilor of state and a prominent figure on the Catholic front. We know that Quadrat would later go on to comment on the books of Joel and Amos; however, information about him is so scarce that it is difficult to determine whether he played a role at the French court during the weeks leading up to the Peace of Saint-Germain, signed on 18 August 1570. What is certain is that his *Homiliae in Malachiam* were not published in Paris by Sébastien Nivelle until 1572 – the same year as the bloody wedding of Margaret of Valois and the Huguenot-turned-Catholic Henry of Navarre. A second edition followed in 1575, while the war raged on. To a champion of the fight against the heretical plague such as the Archbishop of Embrun, Quadrat recalled that the times in which Malachi had lived seemed comparable to the context of a France torn by internal conflicts

[23] I. Gerhardus, *Locorum theologicorum … tomus septimus: De conjugio, celibatu et cognatis materiis. Editio novissima*, Francofurti & Hamburgi, sumptibus Zachariae Hertelii, 1657, pp. 200-202.

(that «infelicissima tempestas – he wrote – cum nostra omnino convenire visa est»). Inspired by this parallel, he composed a collection of twenty-one sermons on a little-explored biblical text, which nevertheless could speak to the faithful now affected by the religious crisis in the dominions of the Most Christian King[24].

If in the twelfth homily, Quadrat attacked the supporters of adultery and polygamy, who relied on biblical episodes such as that of Lot or the union between Abraham and the slave girl Hagar (the patriarch, he argued, had not succumbed to lust, but only to the perhaps immoderate desire to perpetuate his lineage: «inconsideratus salutis humanae zelus»)[25]. In the thirteenth homily, he defended the sacramental nature of marriage, polemicizing against the heretics («de Epicuri grege porcos») who legitimized new marriages following the repudiation of a lawful spouse, once again citing Old Testament passages (those in which Moses had yielded to the hardness of heart of the Jews)[26]. In the eleventh sermon, the author addressed Malachi 2:10-16. The Hebrew men who had returned from the Babylonian exile, Quadrat observed following Jerome, had turned away from their wives because these women had been worn down by the terrible exertions of the return journey («uxores enim suas Israeliticas itineris labores tabescentes ac deformatas, & solis calore fere consumptas atque torridas repudiabant»). This is why they preferred the 'fresher' and 'well-preserved' bodies of beautiful foreigners to the withered bodies of the women of Israel («alias vero exoticas, & a propria familia alienas, ex requie nitidas pulchras, contra Dei praeceptum … ducebant»). For this they had been bitterly blamed by Ezra and Nehemiah, who had acted as true preachers should: with the courage shown by Malachi, who had not hesitated to rebuke the elite and the priests, even though he knew that repudiating foreign consorts might provoke war with neighboring peoples. But what about Henry VIII, intent on divorcing Catherine of Aragon? Or the lustful German princes inclined toward divorce, beginning with Landgrave Philip of Hesse? Had the Protestants been equally courageous in opposing («animos irritare») the powerful within the Reformation camp? The Church of Rome, the mystical bride of Christ, had unhesitatingly defended the sacramental nature of marriage; the Reformers had not. Quadrat used Malachi to unmask the 'heretics', but above all to admonish the French nobility against intermixing, urging them to preserve

[24] Dedicatory letter in M. Quadratus, *In Malachiam novissimum Veteris Testamenti Prophetam Homiliae*, Parisiis, apud Sebastianum Nivellum, 1575, fol. n.n.

[25] *Ibid*., fol. 56r.

[26] *Ibid*., fols. 59v-60v.

both their social rank and confessional boundaries («utinam … nobiles nobilibus, & pares paribus in Domino nuberent»). The theologian did not at all conceal the thorniest issue implicit in Malachi's passages: he noted that the prophets, in order to redeem the chosen people from the guilt of mixing with idolaters, had required the men of Israel to dissolve their illegitimate unions, without addressing the fate of their foreign wives or the children born from them. However, for Quadrat, the passage from Malachi showed that even the prophets of Israel, before the Church Fathers, had considered marriage to be a holy bond. On the basis of Jewish history, he acknowledged that the theological question concerning the Old Testament foundation of the indissolubility of marriage remained controversial («nolo hic disputationem instituere»). Nevertheless, Malachi's rebukes clearly highlight how, in matters of marriage, the patriarchs consistently upheld the religious foundation of conjugal bonds («in coniugio religionis rationem semper habuisse»), even to the extent of prohibiting any intermingling with idolaters. Besides, they were well aware that many inconveniences could arise from a marriage characterized by the religious non-conformity of the spouses («multa nasci scandala»), beginning with the choice of creed in which to raise the children, who risked confusing true and false doctrines, or worse, falling into disbelief («mixtam quandam discere religionem, vel de illa omnino dubitare»). However, while the weakest sheep («morbidae») had to be removed from the Church's fold to save the flock from contagion («ne totum pecus inficiant»), it was also acknowledge that mixed marriages had aided the spread of the faith in Christianity's early centuries and could now help convert those who did not yet recognize the true religion – just as had happened with Clovis, the king who became a Christian thanks to his conversations with his wife Clotilde. In short, different confessional affiliations were not always a legitimate reason to repudiate one's wife («ne igitur religione praetextu divortia quaeramus»); otherwise, God would have chastised those who dared to break what had been united by a sacred bond. Malachi had spoken clear words, useful in opposing Protestant doctrines; yet perhaps his prophetic zeal against bonds contracted outside Israel's lineage needed to be tempered. As Quadrat's homily suggested, if the breaking of all conjugal unions between Catholics and Huguenots were mandated in France (let us recall the abjuration of Henry of Navarre, still the consort of Margaret), the conflict would be exacerbated, and perhaps more souls would be lost[27].

In the Iberian Peninsula – where the problem of conversions became especially urgent after the *Reconquista*, and inquisitorial censorship closely

[27] *Ibid*., fols. 46v-52v.

monitored editions and interpretations of Scripture – biblical commentaries on the passages analyzed here were scarce. Among the few interpreters of the Book of Malachi, however, was Pedro de Figueiro, a Hebraist active in Coimbra and regular canon of Santa Cruz, whose work was published posthumously in 1596 outside Portugal. As his commentary reveals, the mixed unions condemned by Ezra, Nehemiah and Malachi after the Babylonian captivity were by no means new to Israel's lineage: Solomon had chosen Rahab and Booz, David's great-grandfather, had married Ruth. But in those cases, the women had been converts to the Jewish faith: «iste iam erant fideles». In interpreting Malachi, Figueiro could not help but consider the ties that had bound – and still bound – the old Christians and the clans of *conversos* in the Iberian Peninsula; however, he preferred not to dwell on this point or use the ancient biblical stories to allude too explicitly to the religious entanglements of his time. He wrote that the Jews who had rebuilt the temple in Jerusalem had violated God's law by contracting new marriages with idolatrous women – a grave fault. That is why the Lord, «zelator sanctificationis et sanctitatis suae», had commanded the expulsion from the «societas sanctorum» of men guilty of that sin, unless they repented by returning to their lawful spouses – married at a young age and never repudiated (at least according to the text of Ezra). Moreover, for Figueiro, the Old Testament passages served to condemn the practices of polygamy and polygyny (relationships with multiple wives, or with «pellices, et concubinas, et meretrices») and to reiterate that true marriage union always involved only one couple («unus vir et una mulier»). Therefore, if the Bible spoke of two, three or four women bound to one man (often kings and patriarchs), such exceptions had to be justified on the basis of God's plans, intended to facilitate the numerical growth of His chosen race («ad celeriorem fidelis populi propagationem»). After the advent of Christ, this exception was no longer justified, because «fidelium populus non per carnalem generationem, sed per spiritualem Baptismi regenerationem propagatur». Moses had permitted the repudiation of a wife who was hateful to her husband; but he had done so with the Jews' hardness of heart in mind. In truth, a wife could only be removed in the case of adultery, and never for any other reason, not even «si pauper est, aut deformis»[28].

[28] Petrus a Figueiro, *Commentarii in Lamentationes Hieremiae Prophetae, et in Malachiam Prophetam*, Lugduni, ex officina Iuntarum, 1596, pp. 445-469. On this author, see D. Barbosa Machado, *Bibliotheca Lusitana*, t. III, Coimbra, Atlántida Editora, 1966, pp. 579-580; M.A. Rodrigues, *Dom Pedro de Figueiró e a sua obra exegética*, in «Didaskalia», 5, 1975, pp. 133-153.

In the same years, Miguel de Palacio, a theologian teaching in Salamanca, took a more peremptory stance. According to the Old Testament, he wrote, a mixed marriage had to be considered null and void – so much so that Ezra had ordered the Jews to dissolve such bonds. The Church shared this opinion: a Christian could not marry «Saracenam vel Iudaeam, aut cuiusvis alterius disparis cultus», because the marriage would be null and void. In the first Christian communities, neophytes were allowed to marry a pagan man or a pagan woman, but such unions had long been considered an abomination. Moreover, Malachi's reproaches did not concern the number of wives at all («non agitur de pluralitate mulierum»), since Mosaic law permitted more than one; nor did they address the legitimacy of repudiation when the husband harbored hatred for his spouse (this too was permitted by the Pentateuch). Malachi's text stigmatized the mixed marriages of his time because of the disparity in worship: a choice that could lead to contamination and thus harm the offspring («ex pessimo coniugio, pessima proles»). God did not approve of the sacrifices made by men tainted with impurity, beyond the pain inflicted on their Jewish wives. As the anti-Jewish controversialist and polemicist Pablo de Burgos recalled – the choice of this interpreter is significant – in order to justify polygyny and the inclination to lust, the Talmudists commenting on Scripture used Mosaic law, the rules on repudiation and even the Book of Malachi as a shield, taking the passage «nonne unus fecit?» to refer to Abraham[29]. But this was a stretch, all the more so since the patriarch had not turned to Hagar for his own pleasure, but only to beget children («ad propagandum

[29] It seems significant to me that Pablo de Santa Mária or Pablo de Burgos (Schlomo ha-Levi), who converted to Christianity and later became bishop of Burgos before his death (1431), was not followed in his conversion by his wife, Joanna Benvenisti, who refused to abandon Judaism. Pablo commented on the Gospel of Matthew, but here Palacio alludes to Pablo's additions to the biblical commentary by Nicholas of Lyra, which began circulating in print from the late fifteenth century. See the polemical *Additio* to Lyra's commentary on Deuteronomy 24: «Nullo modo licebat repudiare uxorem, nisi propter huiusmodi turpitudinem quae fornicationem includit. Thalmudici vero, qui Pharisaicam doctrinam sectantes saepe irritabant mandata Dei propter traditiones suas, in tantum deviaverunt a veritate in hoc loco, quod … pro solo libito voluntatis vir posset repudiare uxorem; et sic inolevit usus vel potius abusus perniciosus usque ad hodiernum diem inter eos … Nec obstat quod dicitur, Si odui habueris eam, dimitte eam. Nam hoc est intelligendum de odio causato secundum formam Mosaicae Legis … Ipse enim Malachias in fine suae prophetiae concludit: Mementote legis Moysi». I quote from *Biblia Sacra, cum glossis, interlineari et ordinaria, Nicolai Lyrani Postilla, ac Moralitatibus, Burgensis Additionibus, & Thoringi Replicis*, t. I, Venetiis, ad signum Aquilae, 1580, fol. 360v. For Pablo de Burgos' use of Malachi, see also the *Scrutinium Scripturarum*, Burgis, apud Philippum Iuntam, 1591 (the work dates from the same years in which the *converso* wrote the additions to the Lyranus commentary).

cultum Dei»): something impossible with a barren wife like Sarah. Nor did Scripture state that Hagar was an idolater. For Palacios – who rejected the more open interpretations of contemporary scholastic moral theology (which is beyond the scope of this discussion) – Malachi's words did not primarily serve to ground the indissolubility of marriage in the Hebrew Old Testament as a foreshadowing of Christ's words in Matthew's Gospel; rather, they were meant to warn good Christians against being tempted by unions that could contaminate the true faith and *limpieza*[30]. The Jesuit Francisco de Ribera (1537-1591), one of Teresa of Ávila's spiritual directors, also quoted Pablo de Santa María in the commentary he dedicated to Juan de Ribera, archbishop of Valencia – a city still home to many families of Arab and Berber origin. The court's efforts to promote mixed unions between members of old Christian families and *moriscos*, prior to the Alpujarras revolt, was only a memory by then[31]. The harshness of a commentary like Palacio's perhaps reflects this change in Spanish religious policy, which affected not only the Judeo-converso families. Nevertheless, Ribera's tone was more moderate than Palacio's: marriages between Jews and idolatrous women were null and void because repudiation of first wives was only lawful in cases of adultery; Malachi's words anticipated those of Christ in Matthew; and the mixed marriages condemned by the prophet conveyed a metaphorical message, signifying both the abandonment of a virtuous life and apostasy: «qui dimittunt uxores Israeliticas et ducunt alienigenas, ii sunt, qui deserunt religionem Christianam [vel] transeunt ad vitam laxiorem et molliorem»[32].

[30] M. Palatius, *Explanationes in duodecim Prophetas minores, secundum literales, anagogicum, allegoricum & tropologicum sensum …*, Salmanticae, apud Ioannem & Andream Renal fratres, 1593, pp. 610-613. On the author, see L. Durán, *Miguel de Palacios - un gran teólogo desconocido*, Madrid - Salamanca, Fundación Universitaria Española-Universidad Pontificia, 1988.

[31] On mixed marriages and the Iberian context in the late Middle Ages and the early modern period, I refer to the introduction and essays in M. García-Arenal - Y. Glazer-Eytan (eds.), *Mixed Marriage, Conversion, and the Family. Norms and Realities in pre-Modern Iberia and the Wider Mediterranean*, in «Mediterranean Historical Review», special issue, 35, 2020.

[32] F. Ribera, *In librum duodecim Prophetarum commentarij sensum eorundem Prophetarum historicum, et moralem, persaepe etiam allegoricum complectens*, Salmanticae, excudebat Guillelmus Foquel, 1587, pp. 425-427. On the author, see A. Gerace - B.D. Fischer - W. François - L. Murray, *The 'Golden Age' of Catholic Biblical Scholarship (1550-1650) and its Relation to Biblical Humanism*, in J.M. Lange van Ravenswaay - H.J. Selderhuis (eds.), *Renaissance und Bibelhumanismus*, Göttingen, Vandenhoeck & Ruprecht, 2020, pp. 217-274.

Looking north again, Cornelius a Lapide (1567-1637), a Jesuit who taught for many years in Leuven before moving to the Collegium Romanum, noted that Malachi, with great zeal, had defended the strict bond «sanguinis et religionis», the women repudiated after the sacrilegious «connubio Gentium idolatrarum» (although repudiation was preferable to uxoricide), but above all the indissolubility and «sanctitas matrimonii». Lapide's reading was continuist: Malachi had foreshadowed Christ's message on the sacredness of marriage, acknowledged even in the pagan world; his warning aimed to ensure that the men of Israel, instead of indulging in pleasure, would devote themselves to their offspring, «eiusque educationi piae et sanctae», which could be given «a solis uxoribus Israelitis». The prophet's words, however, also carried a strong warning for Catholics, urging them to avoid endangering themselves and their children by marrying a man or woman infected with heresy («ne matrimonia ineant cum haereticis»). Moreover, the Old Testament described the harm caused by foreign women to Solomon and Samson, not to mention the myth of Heracles enslaved by Onphale. Influenced by humanist rhetoric, Lapide concluded his commentary with an observation inspired by traditional anti-Judaism, recalling that Malachi's lament («ubi est Deus iustitia?») had been heard by the Lord: in the following centuries, the Jews, guilty of deicide, would face humiliation[33].

As for Imperial Germany, the debate on mixed marriages intensified in the late sixteenth century, especially in the Rhineland, where the highest number of confessional transitions was recorded[34]. This is evidenced by a short text written in 1594 by Nicolaus Serarius (1555-1609), an eminent Jesuit of Jewish origin who taught in Würtzburg and Mainz. Rather than a commentary on Scripture, it was a kind of instant book that the theologian drafted to condemn a practice that was spreading rapidly: choosing spouses from different confessions across all social strata. Many objected that the ancient imperial provisions aimed at discouraging mixed marriages did not apply in this context, since Protestants – who were baptized – did not deny the sacred bond of marriage. Furthermore, the canons of the Trullan Council of 692 only forbade marriage with infidels. But Serarius disagreed: such marriages were very dangerous, especially when the wife was the heretic (for the theologian, women were more stubborn in their error). Moreover, as the Lutherans themselves admitted, these unions provided an alibi for repudiation, not to mention the problem of

[33] Cornelius a Lapide, *Commentaria in Duodecim Prophetas Minores*, Parisiis, apud Ludovicum Boulanger, 1630, t. II, pp. 325-336.

[34] See J.F. Harrington, *Reordering Marriage*, pp. 205-206.

how to raise the children. Sometimes offspring were brought up by parents of different denominations according to their sex at birth! Such a practice was tantamount to immolating children to idols, as the pagan peoples did («non dissimiles isti videntur illis gentilibus, qui filiorum suorum aliquos idolis et daemonibus immolabant»)[35]. As Marcin Kromer recounted in his writings on Poland, Ladislaus II Jagiellon, with foresight, had forbidden marriages with Orthodox Russians before their conversion. What would he have said to those who argued that mixed marriages served precisely to facilitate the abjuration of heretics? Serarius confronted the most celebrated canonists and moral theologians (Martín Azpilcueta, Tomás Sánchez, Enrique Henríquez)[36] to address the matter of *communicatio in sacris*: where were wedding rites to be celebrated? In a Protestant temple? In the home of those who considered Catholics idolaters? Could the faithful participate in such celebrations, as Antonio Possevino had done with the Orthodox during his trip to Muscovy? Could the priest bless the couple without causing scandal? Did he require a special dispensation? In the past, the Christians of the Iberian Peninsula had united with Muslims; but the Jews neither favored mixed unions nor admitted Christians into their temples. As for the Slavic Orthodox, their hostility toward Catholics was well known. Perhaps it was necessary to adapt, in the hope of converting heretics – «sublato tamen scandalo» – with careful attention to the education of their children[37]. But Serarius was not convinced by this strategy: in his view, one risked casting pearls before swine. The German bishops ought to be stricter and more vigilant in overseeing their dioceses. The reproaches of Ezra and Malachi, who spoke of idolaters and Jews, equally applied to Catholics who married heretics[38].

5. Conclusions

As recent research has shown, from the end of the sixteenth century, and even more so in the seventeenth and eighteenth centuries, the institutions of the Roman Curia (the Penitentiary, the Congregation of the Council, the

[35] N. Serarius, *De Catholicorum cum Haereticis matrimonio quaestiones*, Coloniae, sumptibus Bernardi Gualtheri, 1609, p. 19.

[36] On moral theology, see F. Alfieri, *Nella camera degli sposi. Tomás Sánchez. Il matrimonio, la sessualità (secoli XVI-XVII)*, Bologna, Il Mulino, 2010.

[37] N. Serarius, *De Catholicorum cum Haereticis matrimonio quaestiones*, p. 56.

[38] *Ibid*., pp. 13 and 40.

Rota, Propaganda Fide, and especially the Holy Office) were inundated with numerous sacramental doubts concerning mixed marriages. This included requests for dispensations and controversies surrounding *communicatio in sacris* with Protestants in Northern Europe, Orthodox Christians in the Ottoman dominions and Slavic lands, Jews and Muslims, and even «pagans» in missionary territories[39]. The subject of mixed marriages inspired a casuistry and a practice of *accommodatio* that deserve deeper exploration, particularly by continuing to analyze how moral theology and the interpretation of Scripture engaged with concrete cases. This essay has pursued a more limited aim: to highlight how Old Testament norms – in particular those found in the books of Ezra, Nehemiah and Malachi – provided argumentative tools for those who either stigmatized or legitimized interdenominational unions during the first century of profound religious division in Western Europe.

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[39] I will limit myself to citing *Administrer les sacrements en Europe et au Nouveau Monde: la Curie Romaine et les 'Dubia circa Sacramenta'*, eds. P. Broggio - C. de Castelnau-L'Estoile - G. Pizzorusso, in «Mélanges de l'École Française de Rome. Italie et Méditerranée», special issue, 121-1, 2009 (in particular the essays by C. de Castelnau-L'Estoile, B. Dompnier and P. Scaramella); M. Caffiero, *L'Inquisizione romana e i musulmani: le questioni dei matrimoni misti*, in «Cromohs», 14, 2009, pp. 1-10; C. Cristellon, *L'Inquisizione, il duca di Neoburgo e i matrimoni misti in Germania in età moderna*, in «Rivista Storica Italiana», 125, 2013, pp. 76-108, by the same author, *Between Sacrament, Sin and Crime: Mixed Marriages and the Roman Church in Early Modern Europe*, in «Gender and History», 3, 2017, pp. 605-621; C. Santus, *Trasgressioni necessarie. 'Communicatio in sacris', coesistenza e conflitti tra le comunità cristiane orientali (Levante e Impero ottomano, XVII-XVIII secolo)*, Roma, École Française de Rome, 2019.

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From Betrothal to Divorce
The Anatomy of Marriage in John Selden's *Uxor Ebraica*

by *Alberto Scigliano*

ABSTRACT

This paper offers a comprehensive analysis of John Selden's *Uxor Ebraica* (1646), a monumental study of Jewish matrimonial law. Far from being a purely antiquarian endeavor, *Uxor Ebraica* is interpreted as a sophisticated exercise in legal theory, Hebraism and political thought. Through detailed engagement with rabbinic sources, Selden reconstructs the Jewish laws of betrothal, marriage, and divorce, highlighting their contractual and civil character. He presents marriage as a juridical, not sacramental, institution grounded in natural law. Selden's treatment of divorce – especially his nuanced reading of *porneia* in the Gospels – reveals a deliberate critique of Christian indissolubility. The essay argues that *Uxor Ebraica* implicitly supports parliamentary sovereignty in matrimonial matters, challenging ecclesiastical jurisdiction and promoting legal pluralism. Situating Selden within the seventeenth-century debates on marriage reform, it frames *Uxor Ebraica* as a crucial intervention in early modern controversies over law, theology, and the boundaries of civil authority.

Keywords: matrimonial law – Jewish jurisprudence – natural law – divorce – civil vs. ecclesiastical authority

1. A man with a manuscript

On a day in 1646, John Selden (1584-1654), a Member of Parliament, was in high spirits when he walked with a brisk pace to Richard Bishop's printing house at Paul's Wharf in London. This was not far from the House of Commons, where Selden had already made his mark during the turbulent years of the Long Parliament. Under his arm, he bore a sheaf of handwritten pages: *Uxor Ebraica, seu de nuptiis et divortiis ex iure civili, id est, divino et talmudico, veterum ebraeorum* his treatise that sought to explore the extensive Jewish tradition on marriage and divorce, through what he described as the jurisprudential sources of Jewish legal scholars.

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Outlining John Selden's life in a words is a daunting task. Much has been written[1] and much remains to be explored. While this paper cannot retrace his biography in detail, let it suffice to say that Selden was the foremost English jurist, scholar, and Hebraist of the seventeenth century. Born in 1584, Selden studied at Oxford before training in law at Clifford's Inn and the Inner Temple. Although he practiced law, his true interest lay in scholarship, which shaped his influential writings on legal and religious thought[2]. Selden's erudition extended beyond law to include history, theology, astronomy, and philology. He was also proficient in Greek, Hebrew, Arabic, Italian, and Aramaic.

Selden was also closely associated with the Erastian faction in the English Parliament, advocating the primacy of civil authority in matters of Church governance and discipline[3]. With the support of influential patrons, he amassed an extensive personal library, notable for its substantial collection of *Hebraica* within a broader corpus of legal and theological works.

Major interpretations agree that *Uxor Ebraica* is a monumental, erudite compendium of Jewish matrimonial law. Selden approached rabbinic texts with unprecedented depth and respect, surveying virtually every aspect of marriage in Jewish tradition – betrothal and wedding rites, forbidden degrees of kinship (incest laws), polygamy, levirate marriage (*yibbum*), divorce procedures – through extensive citations of the Hebrew Bible, Talmud, Midrash, and medieval Jewish codifier. Scholars such as Jonathan Ziskind have lauded the work's breadth, noting Selden's comparative excursus on non-Jewish practices (from early Christian fathers to Islamic and classical sources) on marriage and divorce[4]. This wide scope justifies Selden's

[1] A comprehensive review of all the scholarship on Selden is beyond the scope of this discussion. For now, I will only refer to S. Caruso, *La miglior legge del Regno. Consuetudine, diritto naturale e contratto nel pensiero e nell'epoca di John Selden (1581-1654)*, 2 vols., Milano, Giuffrè, 2001; J.P. Rosenblatt, *Renaissance England's Chief Rabbi: John Selden*, Oxford - New York, Oxford University Press, 2006; G.J. Toomer, *John Selden: A Life in Scholarship*, 2 vols., Oxford, Oxford University Press, 2009; O. Haivry, *John Selden and the Western Political Tradition*, Cambridge, Cambridge University Press, 2017.

[2] O. Haivry, *John Selden and the Western Political Tradition*, pp. 21-22.

[3] W.L. Fisk, *John Selden. Erastian Critic of the English Church*, in «Journal of Church and State», 9, 1967, 3, pp. 349-363.

[4] J. Ziskind, *John Selden on Jewish Marriage Law. The Uxor Hebraica*, Leiden - New York, Brill, 1991, pp. 7-8.

reputation as one the most learned men of the seventeenth century in matters of law, religion and political learning[5].

Debates on *Uxor Ebraica* revolve around its purpose and context in Selden's time. Was *Uxor Ebraica* purely a work of antiquarian scholarship, or was it intervening (perhaps subtly) in contemporary religious controversies? For instance, earlier historians like David S. Berkowitz viewed Selden as mostly driven by a humanist impulse to recover ancient legal wisdom[6]. Whereas, on the other hand, scholars like Jason Rosenblatt have refined this view arguing that Selden had both genuine reverence for rabbinic learning and a reformist streak[7]. However, the consensus is that Selden maintained a scholar's objectivity; and yet his work undeniably supplied arguments to contemporary readers rethinking marriage law.

Another area of scholarly discussion concerns Selden's methodology and its implications. Selden's philological rigor and use of rabbinic sources were unparalleled among his Christian peers. In particular, based on the assessments by Sergio Caruso, *Uxor Ebraica* exemplifies Selden's method of deriving general principles from Jewish law to inform universal jurisprudence. In fact, Selden treated the Talmud and later *responsa* literature as authoritative legal texts, not merely as curiosities. This approach has sparked discussion on how accurately Selden understood these sources, and to what extent he selectively interpreted them. For example, Selden's account of the *ketubbah* (marriage contract) might emphasize its role in protecting wives' rights, which Ziskind suggested was a subtle critique of Christian marriage settlements of the time[8]. Likewise, his neutral and scholarly tone in discussing polygamy and levirate marriage – practices disapproved of, or obsolete in Christian Europe – has been interpreted as a form of implicit comparative criticism, perhaps intended to prompt contemporaries to reconsider categorical rejections of Old Testament marital norms. Yet, because Selden refrains from explicit moralizing, the question remains: was he subtly relativizing his own culture's matrimonial conventions by highlighting their

[5] See also P. Christianson, *Discourse on History, Law, and Governance in the Public Career of John Selden, 1610-1635*, Toronto, University of Toronto Press, 1996, pp. 240-245.

[6] D. Sandler Berkowitz, *John Selden's Formative Years. Politics and Society in Early Seventeenth-Century England*, Washington - London - Toronto, Associated University Press, 1988, p. 33.

[7] J.P. Rosenblatt, *Renaissance England's Chief Rabbi*, pp. 50-52.

[8] J. Ziskind, *John Selden on Jewish Marriage Law*, p. 164 n. 104.

historical contingency, or merely presenting Jewish law as *lex historica*? Current scholarship has yet to reach a definitive conclusion, marking this as a particularly fertile area for further investigation.

The reception history of Selden's treatise is riddled with lacunae. While we know *Uxor Ebraica* was read by theologians and legal thinkers in the seventeenth century (for instance, it influenced certain deliberations at the Westminster Assembly on divorce in the 1640s), detailed research on its impact in Jewish and Christian circles is sparse. How did contemporary rabbis view Selden's work, if they did at all? Did *Uxor Ebraica* leave any imprint on later Enlightenment scholarship or on the development of Anglican theology?

Due to space constraints and the scope of this paper, a thorough discussion of Jewish marriage – its historical development and its legal and religious foundations – cannot be undertaken here. It is possible, however, to offer a brief and broadly sketched overview, noting that the institution of Jewish marriage is a rich field straddling legal (halakhic) frameworks and socio-cultural practices. Across the rabbinic, medieval, and early modern eras, Jewish marriage evolved in dialogue with internal norms and surrounding cultures.

Scholars emphasized that marriage in Judaism was never monolithic. In Talmudic law, marriage was a two-stage process: *erusin* (also called *kiddushin*, formal betrothal) followed by *nissuin* (full marriage). *Erusin* was not a mere promise but a binding legal act, requiring a *get* (bill of divorce) to be dissolved[9]. Rabbinic sources portray marriage as a social and religious ideal, the vehicle for procreation and family building. Marriage age and norms varied by community, so that Palestinian Jewish texts suggest men often married later (perhaps around the age of thirty) into an established household model, whereas Babylonian Jews in Sasanian society (second-sixth centuries CE) married younger (closer to the age of twenty), and viewed marriage in tension with prolonged Torah study[10]. Polygamy was technically permitted in biblical and rabbinic law, since the Torah and Mishnah impose no explicit limit on the number of wives a Jewish man may take. However, the ideal marriage was often implicitly monogamous, and rabbinic texts discuss co-wives (*tzarot*) mainly in technical legal contexts like

[9] See for example H. Tzvi Adelman, *Women and Jewish Marriage Negotiations in Early Modern Italy. For Love and Money*, London, Routledge, 2018, pp. 102-131.

[10] M.L. Satlow, *Jewish Marriage in Antiquity*, Princeton, Princeton University Press, 2001, pp. 106-108.

levirate obligations or divorce, suggesting they were not prevalent in everyday life. The absence of a systemic rabbinic critique of polygamy indicates it was tolerated, yet later Jewish memory would regard the Second Temple/Talmudic era as essentially monogamous in practice[11]. Another area of discussion is the extent of women's consent and agency in Jewish marriages. While the Bible and Talmud allow arranged marriages, there are indications (e.g., Rebekah's consent in Genesis, or Talmudic requirements to obtain the bride's agreement when she is of age) that women's assent was expected in practice. Scholars continue to explore how egalitarian or patriarchal Jewish marriage was in theory versus reality. Purely by way of example, Michael Satlow identifies at least one rabbinic source that articulates near-egalitarian marriage ideals, suggesting more complexity than the stereotypical patriarchal past[12]. Overall, the rabbinic period laid the legal foundation (*erusin/nissuin* structure, contractual obligations, allowance of polygamy) that later ages would adapt in response to new social circumstances.

In light of the foregoing, this paper will focus primarily on *Uxor Ebraica*, to elucidate, preliminarily, the author's sustained interest in Jewish matrimonial law. Attention will also be given to the intellectual implications of Selden's work where relevant, in particular with regard to contemporary debates on marital jurisdiction, divorce, and theology in seventeenth-century England.

Indeed, John Selden's *Uxor Ebraica* occupies a pivotal role in the debate on matrimonial reform during the sixteenth and seventeenth centuries in England, serving as a critical counterpoint to prevailing doctrines of marriage in an era of deep ecclesiastical and political contestation. Prominent figures such as John Milton, John Lilburne, Gerrard Winstanley, and various Leveller and Radical pamphleteers vigorously advocated for reforms during those turbulent years as part of an effort to establish a true pious commonwealth in England[13].

At its core, Selden's treatise reframes marriage not as a sacramental union ordained by divine will, but as a juridical construct governed by the imperatives of law and contract. Drawing extensively on Jewish legal sources – ranging from Talmudic jurisprudence and Maimonidean exegesis to the more

[11] E. Westreich - A. Westreich, *Jewish Law Marriage*, in *Routledge Handbook of Religious Laws*, London, Routledge, 2019, pp. 225-228.

[12] M.L. Satlow, *Jewish Marriage in Antiquity*, p. 58.

[13] G.J. Toomer, *John Selden*, vol. 2, pp. 643-691.

peripheral insights of Karaite scholarship – Selden constructs a framework in which matrimonial bonds are seen as the outcome of legal negotiation rather than spiritual fate or ecclesiastical decree. Whereas Ziskind offers a faithful philological rendering of *Uxor Ebraica*, this essay tries to reframe Selden's treatise as a strategic jurisprudential exercise: by foregrounding the flexibility and interpretive authority of rabbinic courts, Selden implicitly seems to legitimize a model of legal pluralism that challenges ecclesiastical monopoly, and reasserts civil control over matrimonial jurisdiction in his time.

Finally, no direct reference will be made to rabbinic or other sources employed by Selden, in order to streamline the reading and ensure the text remains as fluid as possible. Nonetheless, precise references will be provided to the pages in which Selden discusses the relevant topics, or, alternatively, to the English version edited by Ziskind, which is likewise cited in the footnotes where appropriate. The primary aim of this essay is to offer an analytical account of the development of the three books that constitute *Uxor Ebraica*, while endeavoring to maintain, as far as possible, a coherent conceptual thread that highlights the work's ideal tripartition: namely, who may marry, how marriage is contracted, and how and when it may be dissolved.

2. The Hebrew Wife: scheme of the work

2.1. Book I

The editorial history of *Uxor Ebraica* in the seventeenth century is relatively straightforward. Following the first edition, printed in 1646, a *nova editio* appeared in Frankfurt an der Oder in 1673, which also included Selden's *De successionibus ad leges Ebraeorum in bona defunctorum* (1631). A third edition was published in Frankfurt in 1695, incorporating Selden's *De successione in pontificatum Ebraeorum*, originally issued in 1636.

It was no coincidence that the third edition was published in Frankfurt, as the latter_was a major center of learning and home to the Viadrina University, one of the most prestigious Protestant universities in eastern Germany. This academic environment was ideal for philological and orientalist studies. At the time, reformed universities stood at the forefront of a broader intellectual trend that embraced Hebraist studies and ancient comparative law. Given this, it is easy to see why the German milieu was

deeply interested in texts that critically examined Jewish sources. This is especially true considering that, in those years, a Jewish book market was developing in both Poland and Germany, with Jewish families who had been granted permission to settle in Frankfurt[14].

Uxor Ebraica opens immediately with Selden clarifying that the «operis designatio» is, above all, to demonstrate that matrimonial matters among the Jews fall under three well-defined categories: natural law, the law of nations, and civil law[15]. However, it is useful to note that the work is organized into three books.

Early in Selden's discussion in Book I, divine law and natural law are fused. Marriage is thus conceived as a sign of a preordained order in which natural law – an expression of God's original intent – intertwines with the human normative system: «What we call Natural Law is simply what the Author of Nature himself by his most sacred will ordained and impressed at creation upon the human heart and has been a law that has been regularly and continuously observed as immutable by all posterity»[16].

In Book I, Selden examines marriages that are forbidden (*irrita* and *vetita*) or required by Jewish law (*imperata*), addressing topics such as incest and polygamy. His goal is to provide a broader understanding of how marital relations are regulated. Within the category of *imperata* marriages, Selden explores institutions such as priestly marriages, royal marriages among the Israelites, levirate marriage (i.e., the marriage of a widow to her deceased husband's brother), and other arrangements aimed at ensuring communal continuity. Selden frames the issue in terms of legal obligation, implying that under Jewish law some marriages may be *imperati iure*, and that normative duty can override individual consent. Notably, Selden himself partially anticipated this portion of *Uxor Ebraica* in Book V of his *De Jure Naturali et Gentium juxta disciplinam Ebraeorum* – a wide-ranging reflection on natural law, grounded in the seven Noahide precepts, which he

[14] M. Muslow, *John Selden in Germany. Religion and Natural Law from Boecler to Buddeus (1665-1695)*, in A. Blair - A.S. Goeing (eds.), *For the Sake of Learning. Essays in Honor of Anthony Grafton*, Leiden, Brill, 2016, pp. 299-301.

[15] «Res apud Ebraeos uxoria seu connubialis … jure in eorum commentariis subnituntur Triplici. Naturali, Gentium, & Civili»; J. Selden, *Uxor Ebraica, seu de nuptiis et divortiis ex iure civili, id est, divino et talmudico, veterum ebraeorum, libri tres*, London, Typis R. Bishopii, 1646, p. 1 (hereafter cited as *UE*). The English translation is taken from the version found in J. Ziskind, *John Selden on Jewish Marriage Law*.

[16] *UE*, pp. 1-2; J. Ziskind, *John Selden on Jewish Marriage Law*, p. 33.

framed as a universal legal corpus[17]. In *De Jure*, Selden outlined matrimonial relationships from the perspective of «Noahide» natural law, which existed «before the Law of Moses»[18].

Nonetheless, Selden devotes significant attention to the analysis of prohibited relationships in his discussion of the distinctive elements of Jewish marriage. His particular interest in the study of illicit sexual unions regulated by Jewish law is evident in his study of them. Furthermore, Selden's comparative method is evident in his references to Islamic legal traditions, particularly regarding polygamy, which underscores his focus on this type of marital relationship.

According to Selden, the practice of polygamy among Jews continued largely unrestricted until it was limited by the Christian emperors Theodosius, Arcadius, and Honorius. From that period onward, it was decreed that Jews could no longer maintain their traditional matrimonial customs. Marriage according to Jewish polygamous practices was explicitly forbidden, as was the simultaneous contracting of multiple marriages[19]. The English jurist made a noteworthy observation concerning the exceptional cases in which Jewish communities in Italy and Germany were permitted to contract a second marriage if the first wife was infertile, provided they had obtained explicit papal approval. Selden attributes this information to Leone Modena (1571-1648), a Venetian rabbi who addressed the matter in his celebrated *Historia de gli riti Hebraici*. Additionally, Selden remarks that, when he consulted Modena's account, the *Historia* existed only in manuscript form[20].

[17] C. Leben, *Hebrew Sources in the Doctrine of the Law of Nature and Nations in Early Modern Europe*, in «The European Journal of International Law», 27, 2016, 1, pp. 79-106.

[18] J. Selden, *De Jure Naturali et Gentium juxta disciplinam Ebraeorum*, London, R. Bishopius, 1640, pp. 537-540.

[19] See V. Colorni, *Legge ebraica e leggi locali. Ricerche sull'ambito d'applicazione del diritto ebraico in Italia dall'epoca romana al secolo XIX*, Milano, Giuffrè, 1945, p. 193.

[20] Selden appears to have acquired his manuscript copy through the agency of Sir William Boswell, English ambassador to the Netherlands and one of Selden's close correspondents. During his time in Venice, Boswell had studied Hebrew under Leone Modena's guidance, and their relationship continued over many years. On 6 September 1628, Modena presented Boswell with a manuscript of his treatise, inscribed *Ex dono authoris*, a copy which is now preserved in the library of St John's College, Cambridge. It is likely this very manuscript that eventually came into Selden's possession. It may therefore be hypothesized that the manuscript passed from Leone Modena to Boswell, and eventually to Selden, at some point between 1629 and 1631 – thus prior to the first printed edition of Modena's treatise. Moreover, in a letter dated 20 September 1636, Boswell forwarded to Selden the original of a missive he had received from Modena in 1634, in which the Venetian rabbi, expressing gratitude for having been cited in

Interestingly, in a subsequent printed edition, Selden points out that the passage regarding papal authorization – previously cited from Modena's manuscript – appears to have been modified or omitted[21].

Among the topics addressed in Book I, Selden also refers to the unlawfulness of remarrying a divorced woman. More precisely, he highlights the Jewish law – derived from both the Babylonian Talmud (Yevamot 11b) and Maimonides' Mishneh Torah – stipulating that a woman who has married a second husband cannot subsequently remarry her first spouse, even if the second union ends in death or divorce. According to Selden's interpretation, this prohibition arises because the woman is considered «defiled» (*polluta est*), a term that the rabbis interpret as meaning diminished or contaminated, thus rendering her ineligible to return to her initial husband. Interestingly, the concept of defilement also extends to second betrothals. In this case too, the woman is regarded as contaminated and therefore prohibited from returning to her former husband. Selden emphasizes that rabbinical sources treat both divorced and abandoned betrothed women equally, classifying both categories as *pollutae*.

Selden's *De successionibus*, mentioned having given another copy of his *Historia de gli riti Hebraici* to an English gentleman named William Spenser and alluded to plans to publish the work in Paris to circumvent local censorship. Notably, this autograph manuscript differs in several respects from the version submitted by Modena to the Venetian Inquisition in 1637, suggesting that multiple variants of the text circulated prior to its eventual printing; on this, see C. Roth, *Leone da Modena and his English Correspondents*, in «Transactions», 17, 1951, 52, pp. 39-43.

[21] «Gl'è lecito pigliar più d'una e quante moglie vonno, pure in Italia e Alemagna non usano pigliare più d'una se non in caso che non habbia con la prima figlioli, che si conosca che lo faci per questo, e in Italia hanno usato chiederno licenza e pigliare dispense del Papa [They are permitted to take more than one wife, as many as they wish; however, in Italy and Germany it is not customary to take more than one, except in cases where a man has no children with his first wife, and it is known that he is doing so for this reason. In Italy, moreover, it has been customary to request permission and obtain dispensations from the Pope]», *UE*, p. 73. The 1637 printed version of *Historia de gli riti ebraici* by Modena contains a significant variation: «Gl'é lecito pigliar più d'una, e quante mogli vonno, come da molti luochi della scrittura si vede la licenza, e i casi seguiti, e così fanno Levantini, ma tra Tedeschi non si permette né si usa, in Italia, rarissimi, e solamente in caso che sia molti anni stato con la prima e non habia potuto haver figlioli [They are permitted to take more than one wife, as many as they wish, as is evident from many passages of Scripture that attest to such permission and related instances; and thus do the Levantines. Among the Germans, however, it is neither permitted nor customary, and in Italy it is exceedingly rare, and only in cases where a man has lived many years with his first wife without being able to have children]»; L. Modena, *Historia de gli riti hebraici*, Paris, s.n., 1637, p. 84.

In other words, betrothal is conceptualized as an incomplete – or, in the language familiar to Selden as a jurist, an «unperfected» (*nondum perfecta*) – form of marriage[22]. This is because, as Yevamot 11b explicitly indicates, betrothal is regarded as a future-oriented act that inherently anticipates sexual consummation. In this context, Selden builds upon the Jewish texts (in particular Maimonides' Gerushin and Moses of Coucy's *Sefer Mitzvot Gadol*), which originally present this matter in a considerably more straightforward manner: «All that pertains to the wife proper [*justa uxore*] or the betrothed woman … whose betrothal [*sponsalia*] is either invalid [*irrita*] or not yet completed [*perfecta*]»[23]. Since the adjective «justa» should be understood as contractually perfected, Selden attempts to reinterpret the concept of *sponsalia* as a synallagmatic agreement establishing a contractual relationship. Thus, future obligations are an integral part of a system pending ultimate fulfillment, contingent upon the absence of defects. Therefore, when the rabbis identify a defect (*pollutio*), the very foundation of the agreement itself is undermined. Consequently, the commitment loses its binding force toward any subsequent performance. According to Selden's interpretation, which is deeply influenced by civil-law concepts derived from the aforementioned rabbinic sources, the betrothal acquires full contractual significance.

Moreover, Book I addresses the levirate marriage, which Selden introduces as a sacred obligation prescribed (*imperatum*) by Mosaic law (Deut. 25:5-10). However, he notes the contradictions between levirate law and biblical norms prohibiting incest, particularly marriage to one's sister-in-law (Lev. 18:16; 20:21). In his discussion, Selden points out that rabbinic tradition attempted to resolve these contradictions by strictly limiting the circumstances in which levirate marriage was permissible[24]. The clashes Selden identifies between the obligation of levirate marriage articulated in Deuteronomy and the prohibitions found in Leviticus implicitly convey the central idea of the *Uxor*: religious law necessarily requires human interpretation and adjustments when applied in practice[25].

Selden emphasizes that certain prohibitions, such as those concerning incest, derive directly from Mosaic law, while others emerge from customary practices or established takes by earlier generations. Offering an

[22] *UE*, pp. 77-78.

[23] *UE*, p. 78; J. Ziskind, *John Selden on Jewish Marriage Law*, p. 94.

[24] *UE*, pp. 81-88.

[25] *UE*, p. 89.

interpretation distinctly characteristic of a jurist devoted to the mechanics of common law, Selden argues that a union – though not explicitly forbidden by sacred law – may nonetheless become prohibited through subsequent traditional customs. In illustrating the numerous exceptions that shape the practice of levirate marriage, especially in Ch. 13, Selden demonstrates that, far from representing a weakness, these exceptions testify to the flexibility of Jewish law in addressing practical needs: «all these things depend upon the decision of the authorities»[26]. The flexibility of rabbinic practice does not appear to be coincidental. Rather, it seems to be deliberately employed to reinforce Selden's conception of law as a system based on custom and pragmatic adaptation.

However, the most significant part for understanding one of the work's aims emerges toward the end of Book I, in the perhaps more politically charged section. In Ch. 15, Selden insightfully concludes Book I by examining the role of the presbytery (in Greek *gerousia,* elders) in overseeing the levirate marriage ceremony and, more broadly, matters pertaining to matrimonial jurisdiction. According to Selden, the *gerousia* was the Israelite body that exercised controlling authority over official acts, such as marriage, ensuring compliance with religious and legal norms. The term not only refers to the assembly involved specifically in matrimonial affairs, but also denotes a diverse institution that performed various judicial functions within the Jewish community before the Sanhedrin. In fact, Selden writes that when Moses was called to inscribe the Torah laws and entrust them to the Levites and the presbyters of Israel, the Christian exegesis of the term rendered as presbyters was incorrectly carried out in relation to the more authoritative Talmudic tradition. For this reason, Selden adopts the Talmudic account according to which the rabbis understood the term presbyters to include not only members of the later Sanhedrin (the ancient Israelite supreme council and court), but also any private individuals who were not deemed incompetent. Both the former and the latter constituted the *gerousia*, and, according to Jewish tradition, the *gerousia* is no different from the *systema geronton* (the assembly of the elders, literally) or senate. Likewise, a *presbyterion* (senior) or *systema presbyterion* (assembly of seniors) is no different from any other senior assembly[27]. Drawing on extensive textual evidence from the Talmud and Maimonides, Selden argues that the Sanhedrin – a body composed not of priests, but of senior

[26] *UE*, p. 94; J. Ziskind, *John Selden on Jewish Marriage Law*, p. 107.

[27] *UE*, p. 115.

lay jurists – assumed the responsibility traditionally attributed to priestly oversight[28].

In doing so, the English jurist not only implicitly asserts that those who sat in the Sanhedrin were literally senators rather than priests, but he also broadens this qualification, distancing it further from any ecclesiastical connotation. Within Selden's conceptual framework, if the laws are entrusted to the *systema presbyterion*, then the presbyters become jurists in a broad sense. In any event, the phenomenon of some priests undertaking roles of governance – or even functions of a jurisdictional nature – is tied to particular moments in ancient Israelite history, rather than being a systematic practice. Nothing in divine law allows for the possibility of such purported regularity, nor, according to Selden, is there any trace of it in Talmudic law. To support this argument, he further adds that even in the Hebrew semantic field and the Talmudic tradition, the terms *gerousia* and *presbyterion* are lexically equivalent: both refer to those individuals who sat in the Sanhedrin and were «created» – i.e., invested with that office through the laying on of hands – in a way similar to how, in Selden's own time, law doctors received their degrees[29].

Additionally, the *Uxor* passage on presbyters contends that the term was widely used across various cultures – much like *curia*, assembly, and court, where variance arises solely from local customs. In other words, Selden challenged the notion held by some scholars that the *Presbyterium* was exclusively a religious court among the Jews. Instead, he argued that the same judicial body exercised authority over both sacred and secular matters, as affirmed by Talmudic teaching[30]. Accordingly, he argued that while ancient Jewish texts did not support the existence of ecclesiastical courts for marriage cases, they affirmed that any lawfully established body could assume jurisdiction over such matters if permitted by local civil law.

2.2. Book II

The transition from Book I to II introduces the legal and ritual forms by which Jewish marriage is established, beginning with betrothal (*erusin*) and culminating in marriage proper (*nissuin*). Selden examines the means

[28] J. Ziskind, *John Selden on Jewish Marriage Law*, p. 10.

[29] *UE*, p. 116.

[30] *UE*, p. 117.

prescribed by rabbinic law for contracting marriage and explores the nature of marital contracts and dowries (*ketubbah*), and nuptial rites. Through constant comparisons with Roman law and Christian traditions, Selden seeks to demonstrate that although marriage is regarded as a sacred act, it is essentially configured as a contractual institution governed by civil norms (*civile demum jus*) that can be adapted to historical and cultural contexts.

In the first chapters, he defines *erusin* (or *kiddushin*) as the preliminary but binding stage of marriage[31], while *nissuin* represents its completion, often marked by the bride's physical entry into the groom's home. In particular: «The contract … is called *liqukhin*, that is, the takings, derived from the wife having been taken, but the terms in wider use are *qiddushin* and *eirusin* both of which mean betrothal [*sponsalia denotant*]. The same idea is conveyed in the Law of Caesar by the term *sponsalia*, the offer and counter-offer of a future marriage»[32]. As Selden infers from Maimonides, following *erusin*, the woman can be considered a wife[33], although he underscores that the two stages are legally distinct: «Accordingly, among the Hebrew jurists betrothal denotes the contract … Nuptials, distinguished from betrothals [*a sponsalibus discriminatas*], are called *nisu'in*»[34]. Here Selden presents an ambiguous view of *kiddushin*. While he acknowledges their immediate legal effect, he also likens them to Roman *sponsalia*, describing them as promises of future marriage. This suggests a hybrid conception in which *kiddushin* are both present-binding acts and formal anticipations of nuptials[35]. In addition, Selden notes that the bride is not called *nesu'ah* (married) until the nuptials have taken place: «The betrothed woman thus led, but not before, was called *nesu'ah,* that is, married [*nupta*] even though

[31] Roni Weinstein emphasizes that, in the Talmudic tradition, *erusin* and *kiddushin* carry subtle, overlapping meanings that reflect their ambiguity. The *Genizah* documents from eleventh-twelfth-century Cairo show *erusin* being used for a combined matchmaking and betrothal act. This practice was influenced by Arabic customs, which lack a distinct concept of matchmaking. Non-Arabic Jewish sources used terms inconsistently, and rituals often blurred the line between an informal commitment and a legal bond. Despite formal legal distinctions, actual practice made the boundary unclear: see R. Weinstein, *Marriage Rituals Italian Style. A Historical Anthropological Perspective on Early Modern Italian Jews*, Leiden, Brill, 2004, pp. 52-55 and p. 154.

[32] *UE*, pp. 128-129; J. Ziskind, *John Selden on Jewish Marriage Law*, p. 143.

[33] *UE*, p. 130.

[34] *UE*, p. 129; J. Ziskind, *John Selden on Jewish Marriage Law*, p. 143.

[35] Vittorio Colorni argued that *kiddushin* was a case of *sponsalia de praesenti*, rather than the subsequent *traditio sponsae*; V. Colorni, *Legge ebraica e leggi locali*, p. 183.

by betrothal a marriage was clearly contracted»[36]. This sequential model, along with Selden's comparison of it to legal traditions that treat *sponsalia* as promissory rather than consummative, suggests that he fundamentally conceives of *kiddushin* as juridically effective yet temporally anticipatory. His treatment of the three legal means by which *kiddushin* or *erusin* may be contracted is also significant: money (*kesef*), written agreement (*shtar*), and cohabitation (*biah*). Selden shows that each method is subject to specific conditions requiring consent and the presence of witnesses[37].

Indeed, consent appears to be the decisive element for validity, without an explicit reference to consummation because – as Selden observes – the rabbis disagree on whether physical union determines a woman's status as a wife[38]. In any case, the point of general doctrinal and legal consensus appears to be that a woman must be aware of, and agree to, the contract. Otherwise, even if the document is physically delivered to her, it is not valid[39]. From this it follows that the ritual itself holds value only if it meets the requirements of mutual awareness.

From a legal standpoint, therefore, Selden interprets Jewish marriage as a fully civil and contractual act. The similarity with commercial transactions – such as Abraham's purchase of the field from Ephron in Genesis 23:9 – is explicit[40]. This analogy reveals how, according to Selden, marriage functions primarily as a juridical-social rite rather than a religious one, since it entails a binding legal transfer based on a formula and an economic value, even if it is only symbolic.

Secondly, Selden dwells specifically on the civil nature of marriage. He writes:

«Indeed the nuptial and betrothal contracts of better known peoples such as the ancient Greeks and Romans were in this matter to an extent agreeable to the law and usage [*juri moribusque consoni*] of the Hebrews, and they were regarded as being legitimate and lawful [*legitimis ratisque*] according to what was previously said in the Jewish church or polity [*Ecclesia seu Republica Iudaica*] without any repeated marriage or new contract for the proselytes. This happened by imitation, chance or similar basis

36 *UE*, p. 129; J. Ziskind, *John Selden on Jewish Marriage Law*, p. 143.

37 *UE*, p. 131.

38 *UE*, pp. 182-183.

39 *UE*, p. 134.

40 *UE*, p. 132.

for practice which, by our observation, was deemed neither unworthy nor inopportune nor at all events unpleasant among both gentiles and Christians»[41].

Its inherently civil, rather than religious, nature has led Jews to regard Gentile marriage as legally valid – even according to Jewish law[42]. Indeed, by comparing Jewish and Roman law, Selden examines the juridical forms of marriage itself, questioning whether one of the three traditional Roman rites – *confarreatio*, *coemptio*, or *usus* – is required for its general validity[43]. Unlike Boethius (sixth century), who maintained that a woman could only become subject to her husband's *manus* (power) through *coemptio*[44], Selden – drawing on Ulpian and Cicero, whom he considers to be on a par with Maimonides and the other Jewish *magistri* – argues that both *confarreatio* (equivalent, in his reading, to *shtar*) and *usus* (counterpart to *biah*) likewise entailed this transfer of authority[45]. Selden notes that only *coemptio* was a symbolic ceremony akin to a sale, marked by ritual elements evocative of economic exchange, such as the use of coins.

On this basis, in the chapter comparing Gentile and Jewish rites, Selden observes that many of the practices commonly regarded as distinctively Christian are deeply rooted in, or derived from, earlier Jewish and Gentile customs[46]. Early Christianity retained many Jewish customs, including contracts, dowries, and blessings. Pagan elements – particularly Roman ones – were incorporated into Christian rites, while archaic Roman forms, such as *confarreatio* fell into disuse. Besides, in the Eastern tradition, the Greek liturgy distinguished between betrothal and marriage: the former involved the exchange of rings and blessings, while the latter included crowning, a common cup, and dancing. Russian and Ethiopian rites also reveal affinities with Jewish customs and features symbols of union, submission, and blessings. Ultimately, Christian marriage – especially in the Eastern Church – emerged as a synthesis of Jewish, Roman, and Christian elements deeply embedded in liturgical and cultural frameworks[47].

[41] *UE*, p. 210; J. Ziskind, *John Selden on Jewish Marriage Law*, p. 199.

[42] See also V. Colorni, *Legge ebraica e leggi locali*, p. 184.

[43] *UE*, p. 218.

[44] *UE*, p. 221.

[45] *UE*, pp. 220-221.

[46] *UE*, pp. 235-241.

[47] *UE*, pp. 246-250.

However, the key point of Book II is, once again, the civil nuance. When Selden asserts that marriage is a civil act, rather than a religious one, he appeals to the category of natural law. Indeed, he writes that «according to the natural law as given by the first parents or by the community of the human race, a marriage became legitimate and proper by the mutual consent of the couple to live together or of those persons who take care of them»[48]. Selden adds a significant remark: «Now among the ancient Hebrews, although there were blessings introduced at both betrothals and marriages [*nuptiis*], nonetheless, there is no evidence that it was necessary for a priest or Levite to be present»[49].

Selden argues that, among the Romans, marriage was a civil matter, lacking a necessary religious figure (i.e., an officiating minister)[50]. While Christian emperors prohibited the use of basilicas for weddings, the ban mostly concerned the celebrations rather than the contract itself. Being devoid of true religious meaning, the contract was not deemed worthy of Christian purification. After all, Selden highlights that Christianity is a form of reformed Judaism and, as such, it should still preserve – albeit under layers of exegesis – some of its original, carefully selected institutions, which include marriage[51]. In other words, he shows that even in Christianity marriage was seen as a civil contract long before it was regarded as a sacrament.

2.3. Book III

Finally, Book III is entirely devoted to the legal effects of marriage. It focuses on divorce and the grounds that may lead to the dissolution of the marital bond. After examining prohibited and obligatory marriages, and the forms of marital contract, Selden turns his attention to the legal impact of a valid marriage, cases of adultery, and the procedures and implications of divorce under Jewish law.

In a sense, the final book can be considered the densest and most ideologically significant part of the entire work. Selden's approach to divorce is not only a learned exposition, but also responds to the need for critical

[48] *UE*, p. 211; J. Ziskind, *John Selden on Jewish Marriage Law*, p. 200.

[49] *UE*, p. 292; J. Ziskind, *John Selden on Jewish Marriage Law*, p. 265.

[50] *UE*, p. 305.

[51] «Nascente Christianismo, qui velut Judaismus, unde natus est, erat reformatus, dubitandum non est, quin mores ritusque Ebraici circa sponsalia et nuptias … retenti fuerint ac plane obtinuerint», *UE*, p. 235.

engagement with Christian canon law, particularly its doctrine of the indissolubility of marriage. Without ever adopting an overtly polemical tone, Selden argues that, although grounded in divine law, Judaism nevertheless viewed divorce according to rational and practical considerations.

First of all, he addresses economic matters. Under Jewish law, an indigent husband could be forced to divorce and return the dowry or its value[52]. According to rabbis, a wife who bears no children after ten years of marriage could be divorced. Whether or not she would receive her dowry depended on whether sterility was attributed to her or her husband[53]. Moreover, after extensively discussing adultery, Selden notes that, in the absence of forewarning or witnesses, adultery did not warrant a capital trial, yet it constituted sufficient grounds for divorce and forfeiture of the dowry, unless the wife confessed to her wrongdoing[54]. Nevertheless, a man could not be compelled by a court to divorce his wife for adultery without at least two witnesses or other lawful indications. If sufficient proof was present, the husband who refused to divorce her was punished until he consented[55].

However, the crucial point is that the Biblical grounds for divorce (Deut. 24:1-4) were broadly interpreted as «*propter aliquam foeitatem* (because of some indecency)». In fact, Selden points out that this formula is based on the Hebrew phrase *ki matsa bah 'ervat davar* (because he found a shameful matter in her) – which has been interpreted variously across traditions. Indeed, its translations range from «foulness» (Vulgate), «transgression» (Aramaic), and «lewdness» (Tertullian), to «uncovering of nakedness» (Judeo-Spanish). For Selden, these interpretations reflect culturally informed insights into what justifies divorce[56]. Accordingly, he identifies another category of divorce cases involving wives who do not find favor in their husbands' eyes due to their physical appearance, age, or demeanor. According to the prevailing opinion, husbands could repudiate such women at their discretion. Yet, these women were entitled to keep their dowry and personal property – a position that Selden presents as consistent with Sacred Law[57].

[52] *UE*, pp. 342-343.

[53] *UE*, pp. 355-356.

[54] *UE*, p. 411.

[55] *UE*, p. 412-413.

[56] *UE*, pp. 430-431.

[57] *UE*, p. 432.

However, Selden contextualizes this «popular» view within rabbinic jurisprudence by drawing from the Mishnah. He uses the examples of Shammai and Hillel, two leading first-century BCE rabbis and heads of rival Pharisaic schools representing stricter and more lenient interpretive traditions, respectively. The *beit* (court or school) of Shammai maintained a narrow view, allowing divorce only in cases of proven indecency (*'ervat davar*), whereas the *beit* of Hillel adopted a more permissive stance, extending the meaning of *davar* (thing, word or cause) to include trivial reasons. Selden adds that Rabbi Akiva, a notable contributor to the Mishnah in the first century, offered an even broader interpretation, permitting divorce if the husband simply found a more desirable woman. Rabbi Akiva interpreted *ki matsa* as «if he found» rather than «because he found», demonstrating the semantic flexibility of the Hebrew *ki*[58].

But since the aim is to provide sound evidence, Selden does not fail to stress that although Mosaic law permitted divorce through a bill of repudiation, there are few real examples of its application in the Bible and early Jewish history. Only Flavius Josephus condemned exceptional cases, such as that of Salome, who divorced her husband contrary to the law[59]. Nevertheless, rabbinic and kabbalistic sources, including the *Zohar*, attest to established practices, such as soldiers issuing divorce bills to their wives prior to going to war[60].

Moreover, according to Selden's reconstruction, the debate between the courts of Hillel and Shammai was part of an ongoing tradition of legal interpretation passed down from Moses to the Sanhedrin. The ascendancy of the Hillelite view was finally confirmed by a *bat kol* (a prophecy), which sanctioned the more lenient interpretation[61]. In this regard, Selden cites Flavius Josephus as a witness to this practice. The Jewish historian asserts that a man could divorce his wife for any reason and recounts his

[58] *UE*, p. 433.

[59] *UE*, pp. 436-437.

[60] *UE*, pp. 441-442. As Haivry points out, Selden's attitude toward the *Zohar* – the mystical text at the foundation of Jewish Kabbalah – is rather erratic and skeptical. Indeed, Selden never fails to remind the reader that the *Zohar* is regarded within Jewish tradition as an ancient work, yet he offers no evidence to support this belief. In fact, he clearly ranks it below the Talmud in terms of authority, see O. Haivry, *John Selden and the Western Political Tradition*, p. 348, n. 51.

[61] *UE*, p. 450.

own divorces, motivated merely by displeasure[62]. For Selden, this historical testimony supports the idea that unrestricted divorce was already prevalent in the first century due to the influence of Hillel's school.

Leone Modena's position stands out against this backdrop. He explicitly states that a husband may repudiate his wife not only for wrongdoing, but for any reason according to his taste (*cagion di gusto*)[63]. Modena's assertion shows the complete assimilation of Hillel's doctrine into post-Talmudic Jewish legal practice. Yet, rabbinic tradition continues to emphasize the importance of restraint when exercising this prerogative. It cautions that divorce should not be taken lightly, especially when it comes to the first wife or the wife of one's youth[64]. As Selden notes, a clear parallel can be seen even in Islamic law, which adopts a comparable model. While the Qur'an permits unilateral dismissal by the husband, it also imposes ethical limits. Although Avicenna, the prominent Islamic philosopher and jurist, accepted the husband's right to divorce, he recommended that it be exercised only after prolonged cohabitation, serious deliberation, and under judicial supervision[65].

What emerges, however, is that Jesus himself intervened in the matter of divorce, correcting the prevalent permissive practice. When he declares that it is unlawful to dismiss a wife except for *porneia* – the Greek translation of '*ervat davar*, or fornication – he articulates a stricter principle, closely aligned with Shammai's position:

«Christ then reminded them of the first marriage and the perpetual unity of a marriage [*continua conjugum unitate*] in as much as this is what God graciously granted … I say to you that whoever puts his wife away except for fornication [*mè epì porneia*] (this is omitted in both Mark and Luke where the same matter is treated more briefly) and marries another [*aliam duxerit*] commits adultery»[66].

[62] *UE*, p. 454.

[63] *UE*, p. 460. See also L. Modena, *Historia de gli riti hebraici*, p. 91. Selden's quote and the version from the printed *Historia* coincide.

[64] *UE*, pp. 460-462.

[65] *UE*, pp. 465-468. On the Islamic divorce laws, see M. Mohammad, *The Evolution of Sharia Divorce Law. Its Interpretations and Effects on a Woman's Right to Divorce*, in «Government Law Review», 7, 2014, in part. pp. 421-427.

[66] *UE*, p. 477; J. Ziskind, *John Selden on Jewish Marriage Law*, p. 405. In this passage, Selden is clearly referring to the Gospel accounts of divorce as found in Mark 10:2-12 and Luke 16:18.

Selden argues that it was only from this statement that Christian exegesis began to view marriage as indissoluble, except in cases of infidelity. Selden thus points out that Jesus opposed not only the excesses of the Hillel-inspired law, but also any perspective that allowed for arbitrary divorce. Consequently, the concept of *porneia* became the sole legitimate basis for dissolving a Christian marriage, establishing a clear distinction between the Gospel and the prior natural and human legal traditions.

Accordingly, Selden examines the divorce clause in the Gospel of Matthew, focusing on the meaning of *porneia*. He argues that it does not strictly mean fornication or adultery (Greek: *moicheia*), but more broadly refers to any grave sexual or moral offense[67]. Drawing on Greek, Hebrew, Aramaic, and Syriac sources, as well as Hillel and Shammai records, Selden shows that *porneia* aligns with Shammai's interpretation of *'ervah* in order to justify divorce only in cases of serious lewdness. Selden also notes that when Jesus answered the Pharisees (Matt. 5:31-32 and 19:3-9), he likely spoke in Aramaic or rabbinic Hebrew, using the language common in those environments. His response would have matched Shammai's position, not introducing a new doctrine but restating an accepted one. Since Jesus' words did not shock his listeners, Selden concludes that the tenet was culturally and legally familiar[68].

The author of *Uxor Ebraica* grounds his thesis in a meticulous philological reconstruction. He draws parallels between the terms *porneia* (Greek), *zanah* (Aramaic), and *'ervah* (Hebrew), while also analyzing Jewish and Hellenized authors such as Philo, as well as Christian thinkers like Origen[69]. Ultimately, he argues that, by analogy with Roman law – where divorce could be justified by *mali mores*[70] – the Gospel clause «except for *porneia*» should be understood not as a reference to adultery, but as encompassing a broader category of behaviors incompatible with marital dignity.

Additionally, to support his view, Selden cites a Jewish tradition in which Moses himself divorced a wife even before the Deuteronomic divorce law was established. The main reference is to Num. 12:1, where Miriam and Aaron speak out against Moses because of the «Ethiopian» woman he had married. Various Jewish traditions and ancient texts interpret this episode

[67] *UE*, pp. 479-483.

[68] *UE*, pp. 483-484.

[69] *UE*, pp. 491-492, 496-498.

[70] *UE*, p. 498.

as linked to the repudiation of that woman. In some cases, she is identified as Zipporah, Moses' Midianite wife; in others, as a different figure altogether – Tharbis, the daughter of the king of Ethiopia, also mentioned by Flavius Josephus[71]. Some rabbinic glossators (notably the eleventh-century Rashi) interpret this passage as hinting at a divorce performed by Moses, who is said to have deliberately sent his wife away[72]. However, Selden clarifies that, in his view, the matter of Moses' alleged divorce was actually a separation rather than a dissolution: «Some say that it was a mere separation whereby only conjugal duties stopped, or, as may be said, a separation from the bedchamber, and therefore it was not a dissolution of a marriage»[73]. Even so, there is little doubt that Selden is eager to assert that Jesus' words do not support the doctrine of the indissolubility of marriage. Instead, they reflect a return to the original law, according to which *repudium* was permitted only due to the hardness of the human heart – a point also noted by Jerome: «because of the hardness of our heart it was conceded … by Moses»[74].

Starting from these points, Selden outlines the roots of the various Christian perspectives on divorce, attributing them to three primary sources: Mosaic law; pagan customs; and different interpretations of *porneia* in the Gospels. The first of these concerns the continuity of Jewish law among early Judeo-Christians[75]. The second refers to the adoption of pagan divorce practices in early Christianity, where dissolution was lawful and formalized[76]. The third, as noted, marks linguistic ambiguities in translating *porneia* and its significant doctrinal impact[77]. Selden argues that these factors led to a wide range of views on divorce over time, reflected in Church practice, canon law, and Bible versions. In this section, he outlines the development of Christian doctrine on divorce, which he frequently refers to as «*solutio*» (dissolution), over early periods. In the first period (up to the Council of Nicaea), the views of the Western Church were still shaped by Roman law: divorce was tolerated, but remarriage was generally condemned. Local

71 *UE*, p. 521.

72 *UE*, pp. 521-522.

73 *UE*, p. 521; J. Ziskind, *John Selden on Jewish Marriage Law*, p. 435.

74 *UE*, p. 520; J. Ziskind, *John Selden on Jewish Marriage Law*, p. 434.

75 *UE*, pp. 540-542.

76 *UE*, pp. 546-548.

77 *UE*, pp. 551-556.

councils and the Fathers of the Church instead promoted a stricter view, allowing separation only for serious reasons[78].

Selden points out that although the major councils remained silent on the matter, opposition to divorce (*divortio seu matrimonii solutione*) solidified in the second period (third-fifth centuries). Popes and some Eastern theologians (Basil, Gregory Nazianzen) affirmed the indissolubility of marriage, admitting adultery as a reason for separation (*uxorem dimittere*), but not for remarriage[79]. In other words, the overall trajectory moved toward a stricter, sacramental view of marriage[80].

The discussion of the Western Church serves as a prelude to clarifying the complex, contested, and non-univocal history of Christian doctrine concerning marriage and, above all, divorce. In his conclusion – to both Book III and *Uxor* – Selden highlights how various canon law collections, papal decisions, Church councils, and local customs succeeded one another from the time of Justinian to the Council of Trent and beyond, often contradicting or correcting each other. He notes, for example, that figures such as Dionysius Exiguus (fifth century) and collections such as those of Burchard (tenth century) and Gratian (twelfth century) did not, at least at first, entirely exclude the possibility of divorce (*vinculum solvi*), not even in cases of adultery[81]. On the contrary, local synods (such as that of Worms) tolerated it under certain circumstances. Nevertheless, following the Council of Trent, the Roman Church increasingly promoted the idea that the marital bond is indissoluble – even in cases of adultery – permitting only separation *a mensa et thoro*, i.e. from table and bed, but not remarriage. Selden notes that this stance was not universally accepted: Eastern Christians, Reformed theologians (Luther, Melanchthon, and Beza)[82], and even certain Catholic theologians (such as Tommaso De Vio Caetano)[83] continued to defend the legitimacy of dissolution and subsequent remarriage on serious grounds – essentially, adultery.

On the other hand, Selden ultimately reveals his own objective, noting that in the English context after the establishment of the Church of England,

[78] *UE*, pp. 600-603.

[79] *UE*, p. 608.

[80] *UE*, pp. 608-610.

[81] *UE*, p. 619.

[82] *UE*.

[83] *UE*, p. 618.

Parliament abolished papal restrictions on degrees of kinship in marriage even while the doctrine of the indissolubility of marriage was preserved[84]. This signaled a further rupture between ecclesiastical norms and civil law. In the absence of a unified theological or juridical stance on marriage and divorce within Christianity, Selden subtly reveals his own position. If views on marriage have shifted over time, depending on place, tradition, and whether marriage is conceived as a human contract, a sacrament, or a divine institution, this would only reaffirm the idea that, as a contract between parties originating in natural law, «of all actions of a man's life, marriage does least concern other people, yet of all actions of our life 'tis most medled with by other people». Thus, its dissolution is likened – through a paraphrase of Aesop's fable – to those prudent frogs that «were extream wise, they had a great mind to some water, but they would not leap into the well, because they could not get out again»[85].

The three books of *Uxor Ebraica* thus correspond to a conceptual tripartition that moves from delimitation (who may marry), through contract (how the bond is constituted), to regulation (what it entails and how it may be dissolved). In this sense, Selden's path establishes the boundaries of what may be lawfully joined. Within these boundaries, the union is legitimized and ultimately made dissoluble. In this sense, *Uxor Ebraica* is not the product of detached legal curiosity, but a deliberate attempt to shape the conceptual architecture of marriage. By situating the Jewish legal tradition within a comparative and civil framework, Selden asserts that marriage is a human ordinance, bound by changeable customs rather than an immutable order.

3. Between marriage, divorce and polemic

With the exception of Johannes Buxtorf's *Synagoga Judaica* (1603)[86], Selden's *Uxor Ebraica* is unique in seventeenth-century Christian scholarship for its thorough engagement with Jewish marital law. While others focused on philology, polemic, ethnography, or theological speculation, Selden constructed a comparative jurisprudence whose scope and resonance were

[84] *UE*, p. 620.

[85] J. Selden, *Table Talk, Being the Discourses of John Selden*, London, E. Smith, 1689, p. 33.

[86] See J. Buxtorf, *Synagoga Judaica … latinitate donata*, Basel, Impensis Ludovici König, 1641, ch. XXVI.

unprecedented. Notably, he also drew on obscure sources, including those of the Karaites, a Jewish group that rejected rabbinic authority in favor of the Bible alone. This choice was strategic: by presenting his argument as scholarly, Selden covertly challenged Puritan and Presbyterian demands for absolute scripturalism and ecclesiastical control over civil life. According to Selden, the Karaites' failure to develop coherent legal rules highlights the intrinsic problems of basing social action on scriptural fundamentalism. This revealed the limitations of *Sola Scriptura* in establishing political cohesion. Despite rejecting the rabbis' oral law, the Karaites mirrored its uncritical authority structures – much like the Presbyterians, whose literalism clashed with Anglican traditionalism. Both contexts revealed deep tensions between inherited custom and radical scriptural purity[87].

We should note that *Uxor* was printed in 1646. Yet, in the *Praefatio* to *De Jure Naturali* (1640), Selden states that the work on Jewish marriage had already been prepared for publication, implying that a draft had been completed either before or during the writing of his *De Jure*. Nevertheless, *Uxor* did not appear until six years later. Assuming Selden's claim is true, the delay raises a number of questions.

First, we should consider the significance and positioning of *Uxor* within the intellectual landscape of the time. Although divorce is only briefly mentioned in *De Jure* (Books V and VII), *Uxor* provides a more extensive and nuanced treatment of the topic. The discussion of the grounds for divorce according to rabbis is elaborated upon with a deeper argumentative structure and more precise engagement with Jewish sources and Christian exegesis. This development is notable given Selden's justification of divorce as a natural institution based on the pre-Mosaic revelation of natural law. Indeed, the discussion on divorce makes up more than a third of the entire work. Besides, *De Jure* only broadly compares divorce norms with Greco-Roman ones, whereas *Uxor* displays punctilious erudition, spanning Islamic, Ethiopian, and – crucially – post-schism English rites (Book III, Ch. 27). This level of detail in the comparison suggests that *Uxor* was drafted slightly before or alongside *De Jure*, but was revised later, once Selden had absorbed – and likely reassessed – the implications of the contemporary debate on divorce.

[87] G.J. Toomer, *John Selden*, pp. 631-632; S. Caruso, *La miglior legge del Regno*, p. 731 and also S. Berti, *Erudition and Religion in the Judeo-Christian Encounter. The Significance of Karaite Myth in Seventeenth-Century Europe*, in «Hebraic Political Studies», 1, 2005, 1, pp. 110-120, at p. 116.

Divorce was a contentious issue in seventeenth-century England. Anglican canon law – largely inherited from Catholic tradition – permitted only limited grounds, such as adultery or impotence, for annulment or legal separation, making full divorce nearly unattainable[88]. Only Parliament could dissolve a marriage via a special act, a measure rarely taken[89]. Within this restrictive setting, poet and thinker John Milton (1608-1674) published a series of polemical works, beginning with *The Doctrine and Discipline of Divorce* (1643), where he proposed a radically new theory of marriage and divorce. Milton redefined marriage as primarily a spiritual companionship that transcends its procreative function, arguing that the noblest purpose of wedlock is «the apt and cheerful conversation of man with woman, to comfort and refresh him against the evils of solitary life»[90]. Accordingly, when «minds cannot unite»[91], the bond loses its purpose, and dissolution becomes legitimate[92].

Nearly a century before Milton and Selden intervened, debates over divorce had already played a decisive role in England's break with the papacy, exposing the fault lines between scriptural authority and ecclesiastical jurisdiction. In 1553, Henry VIII attempted to annul his marriage to Catherine of Aragon by relying on a selective reading of the Levitical law on the levirate: he asserted that a divine command superseded papal dispensation, based on Deuteronomy[93]. The humanist Richard Croke (1489-1558) argued

[88] See T. Cranmer, *Reformatio legum Ecclesiasticarum, ex authoritate primum Regis Henrici VIII inchoata*, London, Impensis Societatis Stationariorum, 1641, pp. 37-38. See also *Articles of Religion*, art. XXV.

[89] See T.L. Thompson, *Marriage and Its Dissolution in Early Modern England*, 2 vols., London, Routledge, 2005, pp. 56 and 97.

[90] J. Milton, *The Doctrine and Discipline of Divorce*, London, s.n., 1644, p. 2.

[91] *Ibid*., p. 24.

[92] See D. Purkiss, *Whose Liberty? The Rhetoric of Milton's Divorce Tracts*, in N. McDowell - N. Smith (eds.), *The Oxford Handbook of Milton*, Oxford, Oxford University Press, 2011, pp. 187-197.

[93] During the controversy over Henry VIII's request to annul his marriage to Catherine of Aragon, a remarkable episode took place in Bologna. Bartolomeo Spina, a Dominican friar and legal scholar, recorded that Pope Clement VII and Emperor Charles V ordered the public inspection of an ancient Hebrew scroll of the Pentateuch – believed to have been written by biblical scribe and priest Ezra, and preserved by the Dominicans in Bologna – to verify the biblical prohibition found in Lev. 18:16, which forbids a man from marrying his brother's wife. This verse was central to Henry's argument that his marriage to Catherine (his brother's widow) was unlawful. The inspection confirmed the verse's presence in the scroll, matching the known Latin, Greek, and Hebrew texts. Nevertheless, Spina ruled that Pope Julius II's earlier dispensation, which had allowed

that, since the fall of Jerusalem, Jews had considered the Deuteronomic law non-obligatory and applicable only when expressly permitted by Levitical regulation. This interpretation contrasted with the complex hermeneutical contortions employed by Henry's supporters. Even Catholic opponents, such as Cardinal Tommaso De Vio Caetano (1469-1534), used rabbinic sources to defend the Church's position. This shows that the question of divorce, and marriage, had become a shared Hebraist battleground[94].

In the following decades, these debates evolved within Protestant thought. Reformed theologian Martin Bucer (1491-1551) viewed marriage as a civil bond, subject to lawful dissolution. In *De Regno Christi* (1550), Bucer argued that divorce was justified in cases of adultery or abandonment, effectively rejecting the idea of an indissoluble sacramental union[95]. Though Bucer's influence was not dominant, his ideas resurfaced in the seventeenth century. Milton, in particular, drew on Bucer to support his radically expanded theory of divorce, extending the grounds to include incompatibility. More cautiously, Selden rarely engaged with Bucer in *Uxor Ebraica*, citing him only as an authority on the adaptability of marital ritual, and reinforcing the principle that such matters belong to civil, not ecclesiastical, law.

In his other works on divorce (*The Judgment of Martin Bucer*, 1644; *Tetrachordon* and *Colasterion*, both 1645), Milton's proposals far exceeded existing Protestant reforms. He advocated for full divorce and remarriage rights for both spouses, extended the causes to include incompatibility, and sought to remove marriage from both Church and civil jurisdiction, placing it instead within the realm of private conscience. These radical claims met swift resistance. Anglican authorities condemned them as threats to

the marriage, remained valid, thus rejecting Henry's case. Curiously, modern examination of the scroll reveals that the very verses from Lev. 18:16-20 were later deliberately erased, an act of censorship possibly intended to suppress evidence favorable to Henry during a time of intense political and religious pressure. The context was one of diplomatic maneuvering, with both English and Papal envoys attempting to sway key figures. Scholar Robert Wakefield, who initially supported Catherine, later backed Henry's claim and cited the authority of this scroll, possibly influencing its public display and subsequent alteration, on this see S. Campanini, *The 'Ezra Scroll' of Bologna. Vicissitudes of an Archetype Between Memory and Oblivion*, in M. Perani (ed.), *The Ancient Sefer Torah of Bologna. Features and History*, London, Brill, 2019, pp. 35-38. See also J.P. Rosenblatt, *Renaissance England's Chief Rabbi*, p. 35.

[94] J.P. Rosenblatt, *Renaissance England's Chief Rabbi*, p. 39.

[95] See H.J. Selderhuis, *Marriage and Divorce in the Thought of Martin Bucer*, Kirksville, Thomas Jefferson University Press, 1999, *passim*.

marital indissolubility. Parliament, Milton's intended audience, enacted no reforms, and his arguments remained ineffectual[96].

Eivion Owen argued that while Milton had not yet read Selden when he wrote his early divorce tracts – as he explicitly states in *The Judgement* – he began citing *Uxor* after the second edition (1644) of *The Doctrine*[97]. Owen also argued that although Milton read Selden, he selectively appropriated his material so as not to compromise his broader political agenda. Moreover, Owen suggested that Milton may have drawn from *Uxor* before its publication, possibly through access to the manuscript[98]. He contended that Milton often refrained from citing Selden directly – both for tactical reasons and due to political sensitivities, given Selden's status as a Member of Parliament and his aversion to overly radical positions[99].

Indeed, in *De Doctrina Christiana* (1650-1674), Milton adopted a broad interpretation of the Greek term *porneia*, extending it to include any behavior that makes cohabitation intolerable. This interpretation aligned with the rabbinic notion of '*ervah*, indicating a notable convergence with Selden's approach[100]. However, Jason Rosenblatt has suggested that it was actually Milton's divorce tracts, especially *Tetrachordon* and *Colasterion*, that may have influenced Selden, given that they were present in his library during the composition of *Uxor*[101]. Though the issue remains unresolved, a cross-referential exchange of influence cannot be ruled out[102] – particularly in light of the fact that *Uxor* remained unpublished between 1640 and 1646, a period during which both authors were actively engaged with overlapping themes. While it is clear that Selden provided Milton with the vocabulary, structure, and arguments to formulate some of his critiques – not only of

[96] See S. Achinstein, *A Law in This Matter to Himself. Contextualizing Milton's Divorce Tracts*, in N. McDowell - N. Smith (eds.), *The Oxford Handbook of Milton*, pp. 174-185.

[97] E. Owen, *Milton and Selden on Divorce*, in «Studies in Philology», 43, 1946, 2, pp. 233-257, at p. 241.

[98] *Ibid*., p. 240.

[99] *Ibid*., p. 242.

[100] J.P. Rosenblatt, *John Selden: Scholar, Statesman, Advocate for Milton's Muse*, Oxford, Oxford University Press, 2021, pp. 151-153.

[101] *Ibid*., p. 139.

[102] According to Toomer, there is no evidence of contact between Milton and Selden. Selden does not mention Milton's works or anything written on the subject in the previous years, perhaps to distance *Uxor* from the current controversy. See G.J. Toomer, *John Selden*, pp. 690-691.

marriage, but of the entire ecclesiastical system, as is also evident in works such as *Samson Agonistes* or *Commonplace Book*[103] – one could hypothesize that Selden chose not to publish *Uxor* immediately to avoid becoming entangled in the same controversies sparked by Milton's pamphlets.

Moreover, the delay in the work's publication may plausibly be associated with Selden's role as a lay delegate in the Westminster Assembly of Divines. Convened between 1643 and 1653, the Assembly consisted of theologians and members of Parliament who were tasked with reforming the Church of England. Emerging from the Puritan-leaning Long Parliament, the Assembly focused on issues of divine law and ecclesiastical legitimacy. It produced key documents, such as a new Form of Church Government, intended to reorient the English Church toward a Presbyterian-Calvinist model[104].

In his other writings – most notably *De successione* and *De Synedriis* – Selden had ample opportunity to elaborate on his ideas about judicial competence. In these works, he provided a detailed discussion of the authority of Jewish courts to adjudicate priestly qualifications and conduct. Selden argued that the responsibility traditionally attributed to priestly oversight was, in fact, assumed by the Great Sanhedrin – a body composed not of priests but of lay jurists[105].

According to Selden, the Puritans' claim that the Church inherited the functions of the ancient Israelite Sanhedrin was a misunderstanding of the historical context. They erroneously posited a division between *temporalia* and *spiritualia* that had no basis in Israelite antiquity. As Selden emphasized, the Sanhedrin exercised authority over Temple administration, the priesthood, and marriage. These domains were later labeled *spiritualia* by Christian thinkers, but in the Israelite context they were integral to unified juridical governance[106]. Thus, *Uxor* also belongs among the conflicts over marriage jurisdiction, the structure of the Anglican Church, and its relationship to liberty and the State. Even in a text seemingly detached from

[103] J.P. Rosenblatt, *Renaissance England's Chief Rabbi*, p. 103.

[104] M.P. Winship, *Hot Protestants. A History of Puritanism in England and America*, New Haven - London, Yale University Press, 2018, pp. 118-135.

[105] J. Ziskind, *John Selden on Jewish Marriage Law*, p. 10.

[106] *Ibid*., p. 14.

the political tensions of the time, Selden upheld the view that Parliament had the ultimate authority over the Church[107].

While English matrimonial cases traditionally fell under ecclesiastical control, Selden found an exception in a fourteenth-century deed (quoted in full in *Uxor*) from the Parliamentary Roll of Edward I, in which John de Camoys relinquished his wife Margaret and her property to William Paynel. After John's death, Parliament denied Margaret's petition for dower on grounds of adultery – despite exculpatory testimony from both the Archbishop of Canterbury and the Bishop of Chichester[108]. Selden viewed the case as emblematic of the tension between civil and Church authority. Although he believed that marriage was divinely instituted by natural law, he argued that its regulation rested on human law and customs. Since rites were of human origin, he believed that ecclesiastical jurisdiction over marriage was misplaced. In this light, he bolstered the idea that only natural law, not canon law, transcended all boundaries. This was essentially a clear defense of English common law and an unprecedented endorsement of the principle of a nation's legal sovereignty over external religious interference.

Moreover, John Selden is often categorized as a rationalist due to his civil, contractualist, and parliamentary leanings; closer examination would also reveal a more complex intellectual and theological profile, marked by nuanced engagements with Scripture and theology. Particularly compelling is Selden's apparent affinity with the Latitudinarian religious movement and its theological roots in Richard Hooker's *Of the Lawes of Ecclesiasticall Politie* (1594-1597)[109]. As Ofir Haivry rightly observed, given the current state of research, further and more in-depth studies on Hooker's influence

[107] «Is Church or Scripture the judge of Religion? In truth neither, but the State», J. Selden, *Table Talk*, p. 51.

[108] *UE*, pp. 593-594.

[109] S. Caruso, *La miglior legge del Regno*, p. 294. Richard Hooker (1554-1600) was a foundational figure in early Anglican theology, best known for his work *Of the Lawes of Ecclesiasticall Politie*. He articulated a vision of the Church that balanced scriptural authority, reason, and tradition, opposing both Puritan rigorism and Roman Catholic dogmatism. Hooker's synthesis of Thomistic natural law with English legal tradition profoundly shaped the doctrinal and institutional identity of the Church of England. Hooker viewed most Christian customs, and even Mosaic corpus, as contingent on time, place, and national character. His approach is then believed to have fostered a sort of Anglican tolerance, envisioning a National Church encompassing all but outright heretics, with civil authorities overseeing Church discipline; see G. Gugliermetto, *Il pensiero di Richard Hooker all'origine della teologia anglicana*, in «Protestantesimo. Rivista della Facoltà valdese di Teologia», 69, 2014, 4, p. 351-384.

on Selden are truly necessary[110]. This is not to mention the extensive conceptual recurrences of the Anglican theologian's thought in Selden's works, evident even upon a cursory examination.

In sum, John Selden's *Uxor Ebraica* is not merely a scholarly exposition of Jewish marital norms, but a profound exercise in legal translation, jurisdictional critique, and political thought. By navigating the conceptual thresholds between natural law, rabbinic authority and civil sovereignty, Selden establishes a legal framework in which marriage emerges not as a sacrament but as a historically contingent contract. Throughout the three books, he consistently prioritizes sound interpretive pragmatism over theological rigidity. His sustained comparison with Roman, Islamic, and Christian traditions frames Jewish law as a model of procedural rationality, thereby subtly undermining the Church's monopoly over marriage and its dissolution. In doing so, Selden exposes the doctrinal fragility of Christian indissolubility and reclaims the civil realm as the proper locus of matrimonial governance. *Uxor* thus becomes a site of legal reinvention, where philology serves politics, and rabbinic sources become weapons in the arsenal of parliamentary power.

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[110] O. Haivry, *John Selden and the Western Political Tradition*, p. 362.

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Johann Buxtorf's *De Sponsalibus et divortiis*
Multiple Perspectives on Jewish Marriage in Christian Scholarship

by *Guido Bartolucci*

ABSTRACT

This paper examines Johann Buxtorf the Younger's *De Sponsalibus et divortiis* (1652), a seminal work on Jewish matrimonial law, within the broader context of Christian scholarly engagement with Jewish traditions in the early modern period. It explores the theological and legal implications of Buxtorf's analysis of Jewish marriage, divorce, and levirate marriage, emphasizing its role in shaping Protestant thought on these matters. By placing Buxtorf's work alongside the contributions of other contemporary scholars, including John Selden and Biagio Ugolini, the essay highlights the multifaceted nature of Christian interest in Jewish legal practices. While these studies were often motivated by polemical intentions, they also contributed significantly to the intellectual discourse of the period, influencing debates on marriage, divorce, and the interpretation of Scripture. The paper also discusses the transformation of Jewish studies from a tool of theological critique to an area of academic inquiry, shedding light on the broader cultural and intellectual reception of Jewish traditions within Christian Europe.

Keywords: Johann Buxtorf – Jewish law – Jewish marriage – divorce – Hebraism

In recent years, scholarship on early modern erudition has increasingly drawn attention to the intricate interplay between confessional polemics, historical methodology, and the appropriation of learned traditions[1]. One of the most telling examples of this dynamic is the Christian engagement with Jewish legal and historical sources in the sixteenth and seventeenth centuries. While never abandoning its anti-Jewish polemical thrust, Christian interest in Judaism also became a means to rethink and negotiate the transformations within Christianity itself that were unfolding in the

[1] N. Hardy, *Criticism and Confession. The Bible in the Seventeenth Century Republic of Letters*, Oxford, Oxford University Press, 2017; N. Hardy - D. Levitin (eds.), *Faith and History. Confessionalisation and Erudition in Early Modern Europe*, Oxford, Oxford University Press, 2019.

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wake of the Reformation. The centrality of Scripture and its interpretation in shaping new theological frameworks fostered a renewed interest in the Hebrew and post-biblical Jewish tradition, expanding Christian curiosity about Jewish thought, ritual practices, and social customs[2]. Among these, Jewish marriage attracted particular attention and was studied in depth by scholars and theologians from a variety of confessional backgrounds between the late sixteenth and seventeenth centuries. The corpus of works devoted to this topic provides a privileged lens through which to explore both the role that Jewish studies played in the *Respublica literaria* of the early modern period and the ways in which this role evolved over time.

Between 1744 and 1769, the Venetian scholar Biagio Ugolini (1702-1769) published in thirty-four folio volumes the most extensive collection of treatises and translations on every aspect of Jewish tradition and culture then available in Europe. He was an Italian scholar born in Vitorchiano, Viterbo. He studied under Domenico Lazzerini in Padua, where he developed a deep interest in Hebrew studies, likely influenced by interactions with the local Jewish community. Organized thematically, the *Thesaurus* covers a wide array of topics, including festivals, geography, priesthood, and rituals, and includes translations from Hebrew texts such as the Talmud and Midrashim, as well as Ugolini's original works and previously published texts that vary widely in terms of period and place of composition. The collection ranged from medieval treatises, such as the *Pugio Fidei* (1265) by the Dominican friar Ramon Martí, to works produced and discussed in German and Dutch universities or published in England[3]. The confessional diversity within the *Thesaurus* was equally broad: Catholic, Lutheran, Calvinist, and Anglican works were published side by side without distinction. Ugolini did not feel the need to indicate the religious background of the texts he included. His goal was to present the vast intellectual effort

[2] See, for example, A. Grafton - J. Weinberg, *I have always loved the Holy Tongue». Isaac Casaubon, the Jews, and a Forgotten Chapter in Renaissance Scholarship*, Cambridge, The Belknap Press of Harvard University Press, 2011.

[3] B. Ugolini, *Thesaurus antiquitatum sacrarum*, Venetiis, apud Ioannem Gabrielem Hertz, 1744-1769, 34 vols. On Ugolini, see P.L. Bernardini, *Ugolini, Biagio*, in DBI online https://www.treccani.it/enciclopedia/biagio-ugolini_(Dizionario-Biografico)/; A. Vivian, *Biagio Ugolini et son Thesaurus antiquitatum sacrarum: bilan des études juives au milieu du XVIIIe siècle*, in C. Grell - F. Laplance (eds.), *La République des lettres et l'histoire du Judaisme antique XVIe-XVIIIe siècles*, Paris, Presses de l'Université de Paris-Sorbonne, 1992, pp. 116-147; M. Andreatta, *Collecting Hebrew Epitaphs in the Early Modern Age. The Christian Hebraists as Antiquarian*, in S. Mandelbrote - J. Weinberg (eds.), *Jewish Books and Their Readers*, Leiden, Brill, 2016, pp. 260-288.

that had engaged hundreds of scholars across Europe as a single unified effort to study and understand the Jewish tradition, its rituals, and its texts[4].

An example of this juxtaposition can be found in Volume 4, devoted to the political organization of the Jewish people. Here, Ugolini included the work of a Catholic scholar, Carlo Sigonio, alongside that of two Calvinists, Corneille Bonaventure Bertram and Johannes Buxtorf, and a Lutheran, August Pfeiffer[5]. Indeed, in his introduction to the volume, he praised the erudition of certain Protestant scholars, such as Buxtorf, highlighting their central role in the founding and development of Jewish studies[6].

Volume 30 was devoted to the institution of marriage, divorce, *yibbum* (levirate marriage), and ancient Jewish medicine[7]. The section on marriage included both previously published works and Ugolini's original contributions. Among his own writings were a treatise titled *Uxor Hebraea*, as well as his translations from Hebrew of three tractates of the Jerusalem Talmud on marriage: *Kiddushin*, *Sotah*, and *Ketubot*. Many of the texts published in this volume, however, were of Calvinist and Lutheran origin. They included *De Sponsalibus et divortiis* by Johann Buxtorf the Younger (1599-1664), son of the renowned Hebraist Johannes Buxtorf the Elder; *Vidua Hebraea* by Theodor Dassow (1648-1721), a professor of Hebrew at Wittenberg, and *De Chuppa Hebraeorum* by another Lutheran scholar, Johann Benedict Carpzov (1639-1699)[8]. Of the works included in this volume, only

[4] On the different interpretations of Ugolini's work, see A. Sutcliffe, *Judaism and Enlightenment*, Cambridge, Cambridge University Press, 2005, p. 40; F.E. Manuel, *Chiesa e Sinagoga. Il Giudaismo visto dai cristiani*, Genova, Ecig, 1998, pp. 140-141.

[5] B. Ugolini, *Thesaurus antiquitatum sacrarum*, 1745, vol. 4. The works included in this volume are: Bonaventura Corn. Bertramus, *De republica Hebraeorum cum commentario Constantini l'Empereur*; Caroli Sigonii, *De republica Hebraeorum libri VII cum Io. Nicolai notis*; Johannis Buxtorfii, *Synagoga Judaica*; Augusti Pfeifferi, *Antiquitates selectae nunc primum a Blasio Ugolino notis illustratae*.

[6] B. Ugolini, *Thesaurus antiquitatum sacrarum*, vol. 4, [p. 6]: «Hoc unum praemonendum esse censuimus, quod Johannes Buxtorfius cui omnia Hebraicae literae debent, in sua Synagoga Iudaica ea, quae in maleferiatis quibusdam fabulatoribus deprehenduntur, deliramenta omnia congesserit, quae tantum abest, ut cordatioribus Iudaeis probate illa sint, ut etiam, si literali sensu explicentur, magnopere ab iis improbari atque irrideri certo sciam».

[7] B. Ugolini, *Thesaurus antiquitatum sacrarum*, vol. 30, 1765.

[8] The original editions of the works were as follows: J. Buxtorf, *De Sponsalibus et divortiis, cui accessit Isaaci Abarbenelis diatribe de excidii poena*, Basel, König, 1652; Th. Dassow - G. Fronmuller, *Vidua Hebraea*, Wittenberg, Schlomach, 1699; J.B. Carpzov - J. Schmer, *Dissertatio philologico-theologica De Chuppa Hebraeorum*, Leipzig, Brand, 1680.

Buxtorf's *De Sponsalibus et divortiis*, published in Basel in 1652, offered a comprehensive examination of Jewish matrimonial law and ceremonies. Ugolini's most striking omission, however, was the English scholar John Selden's *Uxor Ebraica*, published in London in 1646. Its exclusion is quite surprising, since Ugolini published all his other works[9]. The reason may lie in the lack of systematization of Selden's text, in contrast to Buxtorf's, which Ugolini chose as an introduction to the subject.

1. The multiple perspectives on Jewish marriage in Christian thought

Ugolini's choice testified to the interest that Christians had shown in many Jewish rites, particularly that of marriage. The study of Jewish matrimonial institutions had been the subject of sustained Christian scholarly engagement for at least two centuries prior to Ugolini's compilation – arguably more so than many other areas of Jewish studies. This sustained intellectual investment underscores the complexity of the Christian engagement with Jewish legal traditions and highlights the significance of Ugolini's editorial choices within the broader discourse of early modern scholarship.

Since the time of Giovanni Pico della Mirandola and his attempt to translate and use the Kabbalistic tradition for the renewal of Christianity and the Church, the study of the Hebrew language and tradition had never been a neutral or purely intellectual exercise. In the sixteenth century, humanist interest in revising the Vulgate translation expanded into a broader engagement with the Jewish tradition, which became a source of material for the increasingly intense debates over Church reform in Western Europe[10].

[9] For the publication of Selden's works in Ugolini's *Thesaurus*, see the *Thesaurus Index* in B. Ugolini, *Thesaurus antiquitatum sacrarum*, vol. 34, 1769, ad Ind. See the paragraph below.

[10] On the Christian interest in Jewish tradition, see S.G. Burnett, *Christian Hebraism in the Reformation Era (1500-1660). Authors, Books, and the Transmission of Jewish Learning*, Leiden, Brill, 2012; T. Dunkelgrün, *The Christian Study of Judaism in Early Modern Europe*, in J. Karp - A. Sutcliffe (eds.), *The Cambridge History of Judaism*, vol. 7: *The Early Modern World, 1500-1815*, Cambridge, Cambridge University Press, 2017, pp. 316-348; G. Busi - S. Greco (eds.) *The Renaissance Speaks Hebrew*, Milano, Silvana Editoriale, 2019. On the question of the relationship between scholarship and confessional interpretation, see D. Levitin, *From a Sacred History to the History of Religion. Paganism, Judaism, and Christianity in European Historiography from Reformation to 'Enlightenment'*, in «Historical Journal», 55, 2012, 4, pp. 1117-1160.

The growing confessional divisions of the early modern period further intensified the study and use of Jewish tradition, turning it into a battleground where Catholics, Lutherans, and Calvinists engaged in theological disputes and criticisms. While anti-Jewish polemics persisted – often using Jewish texts to demonstrate the supposed blindness of the Jewish people – these arguments frequently intersected with intra- and inter-confessional debates. As David Nirenberg has pointed out, anti-Jewish discourse absorbed and reflected the conflicts that dominated Christian society[11]. But in the early modern period, Jewish sources were used not only as weapons in religious disputes but also [as means] to legitimize and reinforce different theological positions.

A major reason Christian scholars and theologians were interested in Jewish marriage and divorce was theological. They believed that the study of Jewish law could illuminate the proper understanding of biblical teachings and even inform Christian doctrinal debates. Since marriage and divorce are addressed in the Hebrew Bible (Old Testament), early modern theologians looked to how Jews interpreted and practiced these biblical laws. This was especially relevant in the Reformation and post-Reformation periods, when Christians fiercely debated marriage doctrines – such as the indissolubility of marriage, the grounds for divorce, and the permissibility of polygamy – often with reference to biblical precedent[12]. By examining Jewish practices, these writers sought either to bolster their arguments or to contrast Christian ideals with Jewish 'errors'.

For example, the question of divorce was a theological flashpoint between Protestants and Catholics. Jesus' statements in the New Testament seemed to forbid divorce (with a few exceptions), whereas Mosaic law in Deuteronomy 24 permitted a man to issue his wife a bill of divorce[13]. Protestant reformers, who allowed divorce in certain cases, were eager to understand how the Jews handled divorce, since it might provide a biblical context for more lenient policies. Some found it noteworthy that in Jewish law a divorce (*get*) freed both parties to remarry, which was consistent with the Protestant view that remarriage was permitted after a valid divorce.

[11] D. Nierenberg, *Anti-Judaism. The Western Tradition*, New York, W.W. Norton and Company, 2013.

[12] On the question of marriage in the Reformation era, see J. Witte Jr., *From Sacrament to Contract. Marriage, Religion, and Law in the Western Tradition*, Louisville, Westminster John Know Press, 2012. On Catholic marriage, see Fernanda Alfieri's essay in this issue.

[13] The reference is especially to Matt. 19:7, and Deut. 24:1-4.

By studying Talmudic rulings on divorce, Christians were effectively grappling with the tension between Old Testament law and New Testament teaching. In this way, Jewish marriage law became fodder for theological reflection on Christian marriage.

In addition to theology, legal and practical considerations fueled Christian interest in Jewish marriage and divorce. Jews in early modern Europe lived under Christian rule, yet they largely governed their own family affairs according to Jewish law (*Halakhah*)[14]. This arrangement raised questions for Christian rulers and jurists. Should Jewish marriages and divorces be recognized by the state? Could Christian courts intervene in or adjudicate Jewish domestic disputes? To answer these questions, magistrates and scholars needed to know how Jewish marital law worked. Several Christian writers, therefore, examined Jewish matrimonial customs from a legal perspective, sometimes to guide policy and sometimes out of a comparative legal impulse.

One area of interest was the 'status of Jewish marriage' in Christian eyes: was it a sacrament or a civil contract? Early modern jurists' opinions changed over time, and this had practical consequences for Jewish families. In some cases, Christian courts took it upon themselves to settle Jewish divorce cases, especially when the marriage was viewed in secular terms. As one historian notes, depending on whether Christian authorities regarded Jewish marriage «primarily as a religious ritual or rather as an act of purchase – the latter being closer to the Jewish understanding – Christian courts would try Jewish divorce claims»[15]. In other words, if Jewish marriage was seen as a mere contract, a Christian civil court might feel competent to enforce or dissolve it; if it was seen as a religious matter, they might leave it to rabbinical courts. In parts of Germany, for example, city councils sometimes had to certify that a Jewish bill of divorce (*get*) had been properly issued so that the parties could legally remarry. Some jurists argued about whether a Jewish *get* was valid under canon law or imperial law. These

[14] On these questions, see, for Italy, V. Colorni, *Jewish Law and Italian Local Laws. From Roman Age to the 19th Century*, Leiden - Boston, Brill, 2024; K.R. Stow, *Jewish Pre-Emancipation: Ius Commune, the Roman Comunità, and Marriage in the Early Modern Papal State*, in K.R. Stow, *Jewish Life in Early Modern Rome. Challenge, Conversion, and Private Life*, Aldershot, Ashgate, 2007, essay n. XVIII. For the German Empire, see A. Gotzmann, *The Shifting Legal and Political Status of Early Modern Jewries*, in *The Cambridge History of Judaism*, vol. 7: J. Karp - A. Sutcliffe (eds.), *The Early Modern World, 1500-1815*, Cambridge, Cambridge University Press, 2017, pp. 113-137, 123-128.

[15] A. Gotzmann, *The Shifting Legal and Political Status*, pp. 123-124.

practical legal debates required an understanding of the Jewish divorce procedure – the requirement of a written bill presented by the husband and accepted by the wife, and the rabbinic court's role in facilitating it. Christian scholars who advised governments often consulted works written by Hebraists to grasp these details. Even in the Catholic world, we often find Jews bringing questions of a matrimonial nature before courts that had different jurisdictions, including ecclesiastical ones, forcing judges and theologians to question Jewish marriage, its structure, and its rites[16].

Another legal motivation was to deal with cases of conversion and intermarriage. Occasionally, a Jew in Europe would convert to Christianity, raising the question of the status of his or her Jewish marriage. Church authorities wrestled with whether a converted Jewish husband was still bound to a Jewish wife who refused to convert, or whether the conversion itself dissolved the original marriage (a concept known in canon law as the Pauline privilege)[17]. To navigate this, Christian scholars and officials studied Jewish law on marriage. There are recorded cases from the seventeenth-eighteenth centuries in which a converted Jewish man sought to remarry; Church courts then had to determine whether a Jewish divorce was necessary or whether the previous marriage could be declared void. Familiarity with Jewish requirements (such as obtaining a *get*) sometimes led Christian officials to coordinate with rabbis to ensure that the first marriage was properly dissolved before a convert's new marriage On the other hand, if a Jewish woman converted but her Jewish husband did not, the Church would not recognize the Jewish marriage as sacramental and thus might consider her free to marry a Christian. These complicated situations demonstrate the practical need for knowledge of Jewish marriage law in Christian jurisprudence.

Beyond explicit theological, legal, and practical concerns, many Christian scholars were simply fascinated by the details of Jewish life, including marriage and family customs. This period saw the rise of what might be called polemical ethnographic writing about the Jews, as well as the nascent development of Jewish studies as an academic pursuit (albeit conducted by

[16] See Alfieri's essay in this issue and V. Colorni, *Jewish Law and Italian Local Laws*, pp. 146-156.

[17] On this case, see, for example, M. Caffiero, *Battesimi forzati. Storie di ebrei, cristiani e convertiti nella Roma dei papi*, Roma, Viella, 2004, pp. 299-328.

non-Jews)[18]. In this context, marriage and divorce were natural topics of inquiry. Descriptions of how 'the other' conducted such basic social institutions provided material for comparison and reflection on one's own society. Christian scholars approached Jewish marriage practices with a mixture of curiosity and sometimes scorn, often depending on their personal attitudes toward Jews[19]. Recent scholarship has critically re-evaluated this kind of ethnographic gaze, even when it is motivated by polemical intent. This is especially true in the case of Johann Buxtorf, whose anti-Jewish aims ultimately obscure any genuine attempt at cultural or ritual description[20].

Between the sixteenth and seventeenth centuries, two examples stand out as particularly representative of Christian intellectual attitudes toward the institution of Jewish marriage. The first was the jurist Marquardus de Susannis, whose *De Iudeiis* was published in Venice in 1568[21]. He used the example of marriage to demonstrate that Jews were not bound by canon law (although in many cases they were subject to common law or local statutes). Consequently, Jews could marry closer relatives than Christians could (within the limits of human law, i.e. incest) and had the right to divorce. A more nuanced treatment was provided by Johann Buxtorf the Elder in his *Synagoga Iudaica*, first published in German in 1603 and then in Latin from 1621[22]. Chapters 28 and 29 of both the German edition and the first Latin one provided extensive descriptions of Jewish matrimonial institutions and divorce practices. Buxtorf's approach was not purely scholarly; rather than reconstructing the origins of Jewish marriage, he described contemporary Jewish rituals as they were practiced in his

[18] On this, see Y. Deutsch, *Judaism in Christian Eyes. Ethnographic Descriptions of Jews and Judaism in Early Modern Europe*, Oxford, Oxford University Press, 2012.

[19] See *ibid.*, pp. 35-37 and *ad Indicem*.

[20] A. Grafton - J. Weinberg, *Johann Buxtorf, Impresario of Hebrew and Jewish Books,* Toronto, Pontifical Institute of Mediaeval Studies, 2025, pp. 47-79.

[21] M. de Susanis, *De Iudaeis et aliis infidelibus et inimicis Crucis Christi tam visilibus quam invisilibus*, Venetiis, apud Cominum de Tridino Montisferrati, 1558, pp. 78v-79r-v. On this author and work, see K. Stow, *Catholic Thought and Papal Jewry Policy*, New York, Jewish Theological Seminary, 1977.

[22] J. Buxtorf, *Jüden Schul*, Basel, Sebastian Henricpetri, 1603 and, by the same author, *Synagoga Iudaica*, Basel, Ludovicus König, 1621. On Buxtorf, see S.G. Burnett, *From Christian Hebraism to Jewish Studies. Johannes Buxtorf (1564-1629) and Hebrew Learning in the Seventeenth Century*, Leiden - New York - Köln, Brill, 1996; A. Grafton - J. Weinberg, *Johann Buxtorf, Impresario of Hebrew and Jewish Books*. On the *Synagoga*, see S.G. Burnett, *From Christian Hebraism*, pp. 54-102; A. Grafton - J. Weinberg, *Johann Buxtorf, Impresario of Hebrew and Jewish Books*, pp. 47-79.

time, presenting translated Latin texts of primary documents, such as the *ketubbah* (marriage contract) and comparing them to Old Testament and rabbinic sources[23]. Buxtorf referred primarily to traditional literature when explaining the reasons for certain rituals, such as the bride's hairstyle and the custom of adorning her with trinkets and jewelry. This ritual drew a vehement critique from Buxtorf, who underscored the blasphemy of rabbis attributing such customs to the union of Adam and Eve in paradise[24]. He noted that this idea was corroborated by a Yiddish text on rituals published in Cracow[25]. This illustrates the ambivalence in Buxtorf's work: these descriptions were instrumental in criticizing Jews and their beliefs. The chapter on divorce began with a traditional definition of the reasons why Jews were permitted to divorce in Deuteronomy. The reasons lay in the *duritia cordis* (hardness of heart) of the Jews, as Jesus had already claimed in the Gospel (Matt. 19:7), and to prevent them from committing more grievous sins[26]. This chapter also focused on the ritual, particularly the text contained in the bill of divorce (*get*), but again concluded with a polemical note against the Jews. Just as, Buxtorf wrote, the Jews had written numerous pages on carnal divorce (*carnale divortium*), they had completely neglected the spiritual divorce between themselves and God, which had condemned them to eternal punishment and wandering on the earth[27].

The examples of Marquardus and Buxtorf illustrate how, in certain Christian milieus, Jewish marriage was part of a strategy to attack the Jews that went

[23] For the Latin Translation of the *ketubbah* text, see J. Buxtorf, *Synagoga Iudaica*, pp. 404-405.

[24] *Ibid*., pp. 406-407.

[25] *Ibid*., p. 407: «In hunc modum quoque blaspheme scribit Iudaeus ille qui Speculum ardens paucis abhinc annis composuit et Cracoviae in Polonia, Hebraicis quidem characteribus, verum dialecto Germanica primum edi curavit». [In this manner, the Jew who composed the *Speculum Ardens* a few years ago also writes blasphemously. He arranged for its initial publication in Cracow, Poland, using Hebrew characters but in the German dialect]. The reference is to M. Altschul-Yerushalmi, *Sefer Brantshpigel*, Cracow 1596. For a modern edition of this work, see Moshe Henoch's Altschul-Yerushalmi, *Sefer Brantshpigl*, ed. by M. Faierstein, Berlin, De Gruyter, 2024.

[26] See J. Buxtorf, *Synagoga Iudaica*, p. 413. Buxtorf also cites the Talmudic tractate *Gittin*, where, as we shall soon see, the schools of Hillel and Shammai, along with Rabbi Akiva, discuss the grounds for divorce, starting from the same biblical passage (Deut. 24:1-4) but arriving at markedly different and even opposite conclusions.

[27] J. Buxtorf, *Synagoga Iudaica*, p. 415: «De hoc carnali divortio solliciti admodum sunt Iudaei et ingentes de illo libros conscripsere, spirituale vero divotium, quo a Deo separantur, et de quo omnes prophetae conquesti sunt, prae cordis sui stupore perpendere non possunt. A Deo itaque alienati manent et errantes per totum orbem meritissimo ferunt».

beyond the traditional anti-Judaic literature based on theological interpretations of Old Testament passages. The analysis of the matrimonial institution, its rituals – especially divorce – and its relationship to canon law became a new tool for reiterating old concepts: the hardness of the Jewish heart and their separation from Christian society.

2. New confessional approaches to Jewish marriage: John Selden's *Uxor Ebraica*

Christian thinking about Jewish marriage underwent a significant transformation with the publication of *Uxor Ebraica* in 1646 by the English scholar and jurist John Selden[28]. This three-volume treatise offered a comprehensive analysis of the Jewish matrimonial institution, drawing extensively from Jewish traditional texts, most notably Moses Maimonides' *Mishneh Torah*, which served as the central framework for Selden's interpretation.

Selden's interpretative effort, complemented by a meticulous comparative analysis between Jewish marriage and that of other traditions, was directed toward the ongoing debate within English society and its institutions regarding the introduction of divorce, since marriage was still governed by canon law[29]. In addition to analyzing the aspects of marriage as a natural institution – a topic related to his other works on natural law – Selden devoted considerable attention in Book III to the workings of Jewish divorce, particularly the reasons that might lead a husband to present a *get* (bill of divorce) to his wife. Selden focused on three texts: Deuteronomy 24:1-4, where Moses laid out the grounds on which a husband could issue his wife a bill of divorce; the Gospel of Matthew 19:1-12, where Jesus responded to the Pharisees' questions on the very issue of divorce under Jewish law; and finally, the passage from the Mishnaic tractate *Gittin* 9:11, where the Deuteronomy passage was discussed by the rabbinic schools of Hillel and Schammai[30]. The central question in all three

[28] For a complete analysis of this work, see Scigliano's essay in this issue. See also J. Selden, *On Jewish Marriage Law. The Uxor Hebraica*, ed. and trans. by J.R. Ziskind, Leiden - New York - Kobenhaven - Köln, Brill, 1991.

[29] On Anglican marriage, see J. Witte Jr., *From Sacrament to Contract*, pp. 217-285.

[30] The passages were as follows: «If a man marries a woman who becomes displeasing to him because he finds 'something indecent' [*ervat davar*] about her, and he writes her a certificate of divorce, gives it to her and sends her from his house» (Deut. 24:1); «I tell you that anyone who divorces his wife, except for 'sexual immorality' [*porneia*], and marries another woman commits adultery» (Matt. 19:9); «Beit Shammai says: A man

texts was the justification for a husband to divorce his wife – whether for adultery alone or for other reasons as well. The philological analysis of these texts, both in Hebrew and in Greek, was primarily aimed at examining the Gospel passage and understanding the legitimacy of the divorce that Jesus allowed. The issue traditionally revolved around the interpretation of two key terms: the Hebrew *ervat davar*, found in the Deuteronomy passage (and also discussed by the various rabbinical schools), and the Greek *porneia*, used by Jesus in response to the Pharisees as the only reason a husband could divorce his wife[31].

The interpretation of these two terms, with the Greek drawing on the meaning of the Hebrew, ranged from a narrower definition, namely adultery, to a broader one, encompassing general immorality. Consequently, the meaning of these terms influenced the interpretation of Jesus' words and, in turn, the legitimacy of divorce in Christian society and the grounds for its implementation. Through an extensive philological study, which included Aramaic (the language spoken by Jesus according to Selden), the English scholar concluded that *porneia* had a much broader range of meanings than simply adultery. However, this did not lead him to propose

may not divorce his wife unless he finds out about her having engaged in a matter of forbidden sexual intercourse [*devar erva*], i.e., she committed adultery or is suspected of doing so, as it is stated: «Because he has found some unseemly matter [*ervat davar*] in her, and he writes her a scroll of severance» (Deut. 24:1). And Beit Hillel says: «He may divorce her even due to a minor issue, e.g., because she burned or over-salted his dish, as it is stated: 'Because he has found some unseemly matter in her', meaning that he has found some kind of shortcoming in her». Rabbi Akiva says: «He may divorce her even if he has found another woman who is better looking than her and wishes to marry her, as it is stated in that verse: 'And it comes to pass, if she finds no favor in his eyes' (Deuteronomy 24:1)». (Mishnah, *Gittin*, 9:10, https://www.sefaria.org/Mishnah_Gittin.9?lang=bi&with=About&lang2=en). The rabbinic schools of Hillel and Shammai, known respectively as Beit Hillel and Beit Shammai, were prominent Jewish academies during the late Second Temple period (first century BCE to first century CE). Founded by the sages Hillel and Shammai, these schools frequently engaged in debates over interpretations of Jewish law, ethics, and theology. Their differing opinions are extensively documented in the Mishnah and Talmud, with over 300 disputes recorded. Beit Hillel is generally characterized by more lenient and inclusive rulings, while Beit Shammai is known for its stringent and rigorous approach. Despite their differences, both perspectives were considered valuable. The Hebrew term *ervat davar* and the Greek *porneia* did not explicitly denote adultery; rather, in both Jewish and Christian traditions, they had come to signify a range of meanings that extended well beyond that specific context. For this reason, both terms became the subject of extensive interpretative debates, which very likely included the dispute between the Pharisees and Jesus. On this point, I will limit myself to referring to L.F. Massey, *The Synoptic Divorce Material Rethinking Traditional Interpretations*, in «Pennsylvania Literary Journal», 12, 2020, 1, pp. 85-116.

[31] J. Selden, *On Jewish Marriage Law*, pp. 372-374 (III, 18); 383-399 (III, 19-20).

a definitive solution to the debate of his time. Instead, he argued that the authorities' decisions should be based on many other parameters, not just textual interpretations. In a certain sense, Selden was distancing himself from the contemporary debate: rather than offering a definitive resolution in his treatise, he provided the exegetical tools necessary for those who wished to argue that divorce could be based on broader grounds than just adultery[32]. This interpretation conflicted not only with traditional canon law, but also with many Puritan positions based on Calvinist doctrine, which Selden explicitly criticized in various parts of his work.

3. Johann Buxtorf's *De Sponsalibus et divortiis* and the Calvinist interpretation of Jewish Marriage

Selden's work received widespread attention and was reprinted within the German Empire in 1673 and 1695[33]. We have no evidence of the reception of his interpretation of Jewish marriage – and particularly of the grounds for divorce – within Lutheran and Calvinist theological debates[34]. Nevertheless, it can hardly be considered a coincidence that exactly six years after the publication of Selden's treatise, another prominent Hebraist, Johann Buxtorf the Younger, published a work on the same subject. Although he never directly mentioned Selden, this work could be seen as a response from the heart of Calvinism to the English proposal, drawing on Jewish tradition[35].

[32] *Ibid*., p. 508: «Let me only add this much: if what has been pointed out is correctly reflected upon, it is not difficult to ascertain what was to be decided with respect to the several important questions that were wont to be controverted and discussed in regard to the law of marriage and divorce, both human and divine. But these questions are usually settled, as others are, by a variety of determinations of understanding in every disposition of mind and persuasion, as well as (as usual) by the admission or rejection of a wide variety of principles and premises». On the influence of Selden's work on the English debate on divorce and especially on John Milton's position, see E. Owen, *Milton and Selden on Divorce*, in «Studies in Philology», 43, 1946, 2, pp. 233-257; J.P. Rosenblatt, *Renaissance England's Chief Rabbi: John Selden*, Oxford, Oxford University Press, 2006, pp. 14-53.

[33] J. Selden, *Uxor Ebraica*, Francofurti ad Oderam, Becmanus, 1673, by the same author, *Uxor Ebraica*, Francofurti ad Oderam, Schrey, 1695.

[34] On the reception of Selden's work (but not the *Uxor Ebraica*) in the German Empire, see M. Mulsow, *John Selden in Germany. Religion and Natural Law from Boecler to Buddeus (1665-1695)*, in A. Blair - A.S. Goeing (eds.), *For the Sake of Learning. Essays in Honor of Anthony Grafton*, Leiden, Brill, 2016, 2 vols., 1, pp. 286-308.

[35] J. Buxtorf, *Dissertatio de sponsalibus et divortiis cui accessit Isaaci Abarbenelis diatriba de excidii poena, cuius frequens in lege et in hac ipsa materia fit mentio*, Basel, Ludovicus

Buxtorf was the son of Johann Buxtorf the Elder, author – as we have seen above – of the *Synagoga Iudaica*. He was a prominent Hebraist: he translated *The Guide for the Perplexed* by Moses Maimonides (1138-1204) and the Yehuda ha-Levi's (1075/85-1141) *Sefer ha-Kuzari*, and he contributed to the completion and reissue of his father's works. He also played a significant role in translating numerous passages from the writings of the Spanish philosopher and exegete Isaac Abravanel (1437-1508), helping to establish Abravanel's thought in the intellectual culture of the time. Buxtorf received a rigorous Calvinist education and even taught theology in Basel for a period[36].

Buxtorf divided his work into three parts: a detailed treatment of marriage and divorce in Judaism; an attempt to reconcile the positions of Moses and Jesus on divorce; and an interpretation of the episode described in Matthew 1:19, in which Joseph intended to separate from Mary upon discovering her pregnancy. Buxtorf added that it was a friend's question about this last point, Joseph's intention to repudiate his betrothed Mary, that prompted the composition of the entire work[37].

Rex, 1652. A possible indication that Buxtorf was well acquainted with Selden's work can be found in the revised and expanded edition of the *Synagoga Iudaica* he published in 1661. In this edition, Buxtorf made substantial additions to numerous entries, significantly expanding his father's original work. Of particular note is the chapter on marriage, which includes an analysis of the categories of individuals forbidden to marry according to Jewish law. Buxtorf introduces a new section on the Karaites, who, according to rabbinic tradition, were considered impure and thus ineligible for marriage because of their markedly different traditions regarding marriage and divorce. A lengthy discussion of the Karaites and their marital practices also appears in the early chapters of the *Uxor Ebraica*, providing evidence, however tenuous, of Buxtorf's familiarity with and use of Selden's work. Cf. J. Buxtorf, *Synagoga Iudaica aucta et locupletata a Iohanne Buxtorfio filio*, Basel, Jacob Decker, 1661, p. 625: «Hoc tantum praemittimus, prohibitum esse rabbanitis nuptias aut affinitatem contrahere cum Karraitis … quod omnes pro spuriis habeantur»; J. Selden, *On Jewish Marriage Law*, p. 64: «doubtless it clearly follows that in the view of these differing opinions on incestuous intercourse between the Talmudists and the Karaites, which we have hitherto pointed out … the latter group in particular would necessarily regard the former with great abhorrence, not only on the grounds of their great impiety, but also because of the impurity of their offspring». On Buxtorf's additions to his father's work, see A. Grafton - J. Weinberg, *Johann Buxtorf, Impresario of Hebrew and Jewish Books*, pp. 224-230.

[36] On his life, see S.G. Burnett, *From Christian Hebraism*, pp. 22-23.

[37] J. Buxtorf, *Dissertatio*, p. 2r-v. As the title suggests, the work concluded with the translation of a portion of the Spanish exegete and philosopher Isaac Abravanel's commentary on Numbers 15:30, in which he discusses *karet*, the punishment for a willful transgression against God. This translation was part of Buxtorf's broader project to translate and disseminate Abravanel's thought. The reasons for this interest are not yet fully understood. See, for example, J. Buxtorf, *Dissertationes philologico-theologicae, accesserunt R. Isaaci Abarbenelis Hispani aliquot elegantes et eruditae dissertationes*, Basel,

Buxtorf's aim was not merely to understand Jewish rites in depth, but to use the Hebrew language and the study of biblical and rabbinic tradition to grasp the true meaning of Scripture, on which the Church (in the Calvinist sense) was founded[38]. Therefore, his meticulous reconstruction of Jewish marriage became instrumental in understanding the relationship between Jewish and Christian law. The analysis of Jewish marriage, then, was not – as it had been for his father – a means of attacking the Jews, but rather formed part of a theological discussion concerning the interpretation of certain Gospel passages. More importantly, as we shall see, it functioned as a way of legitimizing the Calvinist understanding of marriage as described by Christ. Buxtorf's work, much like that of John Selden, was therefore closely tied to the intellectual and religious debates of his time.

The first section provides a highly detailed description of the various stages of the Jewish institution of marriage. Buxtorf presents his analysis using a wide range of sources, from the biblical text to the Mishnah and the Talmud, extending to other Jewish sources such as the works of the medieval rabbis and philosophers Moses Maimonides and Moses ben Nahman (1194-1270), as well as more recent interpreters such as the Sephardic philosopher and exegete Isaac Abravanel. Buxtorf shows an interest in all aspects of Jewish marriage, tracing not only its origins but also its transformation over time. He focuses, for instance, on the different stages that constitute

Jacob Decker, 1662. See C. Coen-Skalli, *Don Isaac Abravanel. An Intellectual Biography*, Waltham, Brandeis University Press, 2021, pp. 282-283.

[38] J. Buxtorf, *Dissertatio*, p. Av: «Nobis vero non est propositum ex professo locum istum hic tractare et omnia, quae de eo dici aut scribi possent, ex auctoribus variis convectare, multo minus aliorum sententias superciliose examinare, vellicare, aut confutare, sed Hebraeorum duntaxat doctrinam, Iura, ritus non quidem omnes, sed quantum ex illis ad nostrum scopum utile et necessarium videbitur, ex ipsorum scriptis eruere et producere; dehinc num istarum rerum cognition aliquid ad verbi Dei et locorumn aliquot scripturae uberiorem et pleniorem illustrationem facere possit dispicere. Ad quem usum omnis nostra linguarum cognitio spectare debet, utpote quae, ex doctrina apostoli, sine prophetia, h.e. scripturarum explicatione, per quam solam ecclesia aedificatur, nihil prodest 1 Cor. 14». [However, it is not our purpose to discuss this passage here in detail, nor to compile everything that could be said or written about it from various authors; much less to superficially examine, criticize, or refute the opinions of others. Rather, we intend only to extract and present the doctrine, laws, and rites of the Hebrews – not all of them, but only as much as appears useful and necessary for our purpose – from their own writings. Then, we must consider whether the knowledge of these matters contributes in any way to the word of God and to a fuller and more abundant understanding of certain Scriptural passages. To this end, all our study of languages must be directed, since, according to the teaching of the Apostle, without prophecy, that is, without the interpretation of Scripture – by which alone the Church is edified – such knowledge is of no benefit].

marriage: the *shidukhin*, which he interprets through the Latin formula of «sponsio, desponsatio quasi privata et de futuro»; the *kiddushin*, a solemn betrothal understood as «sponsalia solemnia et de praesenti»; and finally, the *nissuin*, that is, the consummation of the union between the spouses[39].

After an extensive discussion of the persons permitted to marry, the conditions for a valid Jewish marriage, and the marriage ritual itself – analyzed through rabbinic sources – Buxtorf turns his attention to divorce, and, more importantly, to its causes. This section constitutes the true core of his analysis, which, as he himself states, is intended to clarify the interpretation of two key Gospel passages in which divorce plays a crucial role. Buxtorf structures his analysis of divorce following the same method he has used for marriage, reconstructing its origins from Deuteronomy 24:1-4, outlining the procedure (the delivery of the *get* to the wife), and identifying the individuals involved (not only the wife but also the betrothed woman)[40]. At the heart of his discussion, however, are the causes of divorce and, as with Selden, the meaning of the Hebrew words *ervat davar*[41]. Revisiting the rabbinic debate between the schools of Shammai and Hillel, Buxtorf concludes by highlighting the uncertainty among the rabbis regarding the grounds for divorce and notes that Maimonides, in the *Mishneh Torah*, upheld Hillel's position as authoritative in halakhic terms, arguing that it should be regarded as the normative ruling for Jews[42].

[39] In this reflection on the various stages of marriage, Buxtorf appears to have Selden's work in mind. Indeed, in his discussion of the term *shidukh*, he refers to two sources – Elias Levita's *Tishbi* and David de Pomis's *Dictionarium* – the very same sources that Selden cites in his own work. See the discussion of the term *shidukh* and the sources Elias Levita and David de Pomis in J. Buxtorf, *Dissertatio*, pp. 68-69, and J. Selden, *On Jewish Marriage Law*, p. 143. For various aspects of marriage according to Jewish law and its adaptation to different Jewish communities, see R. Weinstein, *Marriage Rituals, Italian Styles. A Historical Anthropological Perspective on Early Modern Italian Jews*, Leiden - Boston, Brill, 2004. Buxtorf's discussion – as well as Selden's – of the stages of marriage and their translation into Latin legal terminology would later play a crucial role in legal and judicial debates regarding marital disputes among Jews. See, for instance, the essay by Fernanda Alfieri and the case of De Luca.

[40] J. Buxtorf, *Dissertatio*, pp. 79-106.

[41] *Ibid*., p. 88.

[42] *Ibid*., p. 90: «Rambam scribit Halacham seu consuetudinem et observantiam esse secundum domum Hillelis». The debate on rabbinical schools was also discussed in the Catholic world. An interesting use of this debate was made by the Spanish Hebraist Benito Arias Montano in his commentary on the Gospels, where he introduces the divergences between the school of Hillel and the school of Shammai in his commentary on the episode of the debate between the Pharisees and Jesus (Matt. 19:1-12) in 1575. The Spanish scholar introduced this debate with a reflection on the discussions that took

Buxtorf's final point turns to a critique of Jewish customs. He observes that, in earlier times, divorce was entirely at the discretion of the husband, without institutional or magisterial oversight. He notes, however, that in his days divorce has become rare among Jews – and, he adds, among Christians – because it is now regulated by rabbinic authorities[43].

The second part of Buxtorf's treatise attempts to reconcile Mosaic law – as established in the Jewish exegetical tradition examined in the first section – with Christ's interpretation of the same legal precepts. Buxtorf formulates two central questions: first, whether Christ, like Moses, presented divorce as a legal precept; and second, what the legitimate grounds for divorce are according to Christ's teaching[44]. To both of these, Buxtorf gives clear and definitive answers: (1) divorce is not a divine commandment, and (2) according to Christ, there is only one legitimate ground for divorce – adultery.

With regard to the first issue, Buxtorf underscores that Christ explicitly confirmed that Moses had permitted divorce to the Jews as a concession to their hardness of heart and their innate disposition. But Buxtorf also undertakes a brief philological examination of various Latin Christian translations that have, in numerous instances, rendered Deuteronomy 24:1-2 in a prescriptive sense[45]. He systematically dismantles these translations by invoking the authority of John Calvin, who has categorically rejected the notion that Mosaic divorce constitutes a divine precept[46]. However, Buxtorf is careful to add a crucial qualification: while divorce is not a divine commandment, Moses has not forbidden it either. It remains a concession granted to the Jewish people, a pragmatic solution to their inherently lascivious nature[47].

place on this passage during the Council of Trent. I will return to this subject in a forthcoming work. See B. Arias Montana, *Elucidationes in Quatuor Evangelia*, Antverpiae, ex officina Christophori Plantini, 1575, pp. 62-63; T. Dunkelgrün, *The Christian Study of Judaism in Early Modern Europe*, p. 337.

[43] J. Buxtorf, *Dissertatio*, p. 90: «Hodie tamen rarissima sunt inter Iudaeos divortia, et forte aeque rara et difficilia ac inter Christianos, nec nisi scitu et approbatione rabbinorum fieri possunt».

[44] *Ibid*., pp. 106-146.

[45] *Ibid*., pp. 108-109.

[46] *Ibid*., p. 109: «Et Calvinus ad hunc locum scribit … Rectissime et iudiciose! Neque sine vi alium sensum admittunt verba Mosis».

[47] *Ibid*., p. 114. Buxtorf here uses the Hebrew definition *davar reshut*. In rabbinic literature, the term *davar reshut* refers to actions that are permissible but not obligatory under Jewish law.

With regard to the second question, Buxtorf interprets Christ's response to the Pharisees not as a rejection of Mosaic law, but rather as its proper exegesis. He insists that the term *porneia*, which Christ uses in the Gospel of Matthew to indicate the sole ground for divorce, can only mean 'adultery' and serves to clarify the true meaning of the Hebrew expression *ervat davar*[48]. Christ's discussion of the reasons for divorce is thus closely tied to Jewish law, from which it also derives its legitimacy. This perspective allows Buxtorf to challenge the Catholic position. He argues that those who interpreted Christ's words as legitimizing the indissolubility of marriage – and who introduced *separatio thori et mensae* as the only acceptable form of separation – were mistaken. Their error lay not only in the fact that Christ was not establishing a dogma in this passage, but was merely answering the question posed by the Pharisees. A second reason, according to Buxtorf, is that the Jews had never written anything about the kind of separation proposed by the Catholics; as a result, Christ could not have referred to it or, indeed, approved of it[49].

Furthermore, Buxtorf contends that Christ's response was intended to curb the arbitrary manner in which Jewish husbands had historically repudiated their wives, transforming divorce from a private decision into a public and legally regulated act. Just as marriage is a public, formal ceremony, conducted before the community, God, and magistrates, so too, he argues, must its dissolution be a public affair, justified only in the most grievous of circumstances – adultery. He concludes this section by turning again to contemporary Jewish practice. Emphasizing Christ's true interpretation of Jewish law – and his intention to limit the arbitrary power of husbands to issue a bill of divorce – Buxtorf argues, though without providing explicit references, that in his day Jews grant the bill of divorce with the knowledge of one or more rabbis, or with the consent of the community, which the parties are required to summon at their own expense[50]. But the real culmination of his argument comes in his final engagement with Calvinist

[48] *Ibid*., p. 117.

[49] *Ibid*., p. 119: «Et de repudio seu separatione partiali respectu thori et mesae, ut utraque pars innupta maneat, Iudaei nihil unquem sciverunt, nec sciunt, unde et illud hic non est fundatum. De tali divortio neque Iudaei interrogarunt, neque Christus respondit».

[50] *Ibid*., p. 125. In this context, Buxtorf refers to Jacob Moellin, also known as the Maharil (c. 1365-1427), a prominent rabbi of the fourteenth and fifteenth centuries. The Maharil is known for his work *Minhagei Maharil* (Customs of the Maharil), which meticulously documents the religious customs of German Jewry. This compilation was first published in 1556 and was influential in shaping Ashkenazi practice. See A. Grafton - J. Weinberg, *Johann Buxtorf, Impresario of Hebrew and Jewish Books*, pp. 226-227.

literature on marriage and divorce – specifically, the writings of Theodor de Beza, Calvin's successor in Geneva, along with other leading Calvinist and Puritan theologians[51].

In the third part of his work, devoted to the episode of Mary and Joseph, Buxtorf revisits the discussion of Jewish marriage developed in the preceding pages in order to interpret the Gospel passage and Joseph's actions[52]. First and foremost, he identifies in Joseph's conduct a perfect alignment with Jewish law – namely, the intention to dissolve the marriage with Mary, presumed to be guilty of adultery. Joseph, however, did not wish to expose her to public shame and therefore, according to Buxtorf's interpretation – supported by certain Jewish sources – he chose not to denounce her publicly as an adulteress in a court of law. Instead, as permitted by Jewish law, he intended to issue her a bill of divorce in front of witnesses, but without providing an explicit reason[53]. In Buxtorf's view, Joseph acted in full accordance with Jewish legal norms while at the same time showing compassion and charity toward Mary[54]. This aspect allows Buxtorf to place Joseph within the Jewish tradition. The Gospel refers to Joseph as *dikaios*, meaning righteous. The Greek term could denote either a man who observes Jewish law or, more generally, a just person. In this context, however, Buxtorf invokes the Jewish tradition, asserting that Joseph should not be regarded as only generally just. Instead, Buxtorf emphasizes that Joseph sought justice in the technical Jewish sense of *tzedakah*, which embodies a concept of righteousness and justice that goes beyond mere charity and signifies a moral obligation to support those in need.

The text concludes with the transcription, in both Hebrew and Latin, of the most important documents related to the Jewish marriage ritual: the

[51] *Ibid.*, p. 127: «Qui vero plura de his desiderat, consulat Bezam *de Repudiis et Divortiis*». The reference is to T. Beza, *De repudiis et divortiis*, Genevae, Jo.Crispin, 1569. He also quotes the Puritan theologian William Perkins (1558-1602) and the Calvinist theologian Pietro Martire Vermigli (1499-1562).

[52] J. Buxtorf, *Dissertatio*, pp. 147-155. See Math., 1, 19: «Because Joseph her husband was faithful to the law, and yet did not want to expose her to public disgrace, he had in mind to divorce her quietly».

[53] To support his claim, Buxtorf cites a *responsum* – a legal opinion – by Meir Katzenellenbogen (1482-1565), a rabbi from Padua, who affirmed the possibility for a husband to withhold the reason for issuing a bill of divorce. See J. Buxtorf, *Dissertatio*, p. 153.

[54] J. Buxtorf, *Dissertatio*, pp. 153-154.

various formulas for *shidukhin* and *erusin*, as well as the texts of the *ketubbah* and the *get*[55].

4. Conclusions

The work of Johann Buxtorf the Younger provides valuable insight into how Christian scholars dealt with Jewish rites and ceremonies – particularly the institution of marriage. Several layers can be discerned in his treatise. On one level, Buxtorf appears as the erudite scholar who followed in his father's footsteps by collecting and analyzing a vast array of texts from diverse sources. Yet he expanded this scholarly approach beyond the Ashkenazi tradition to include sources from the Sephardic and Italian Jewish worlds. With access to a wide range of materials, he was able to construct a highly detailed and nuanced study of Jewish marriage practices. As in his father's case, however, this scholarly endeavor also served polemical purposes. The detailed account of various aspects of Jewish marriage – particularly the arbitrary power granted to the husband in matters of divorce – became the basis for sharp criticism of Judaism and its legal traditions. That said, Johann the Younger's anti-Judaism cannot be equated with his father's. Scholars have noted that even when he revised the *Synagoga Iudaica*, he did not eliminate his father's anti-Jewish assertions, but often supplemented them with texts and sources that, in some cases, softened their tone or effect[56].

Buxtorf's study of Jewish marriage, however, had a primarily theological purpose. By interpreting certain Gospel passages – especially Matthew 19:1-12 – and using Jewish sources, he sought to legitimize the Calvinist position on marriage: that it was a divine institution but not a sacrament, and that divorce was permissible only in cases of adultery.

In this case, Buxtorf's reference to Beza is particularly revealing, highlighting the extent to which his reading of Jewish matrimonial law was shaped by the interpretative framework established by Calvin and his successors[57]. His argument that divorce was legitimate only in cases of adultery was

[55] The treatise also includes an appendix containing the Hebrew text and Latin translation of Isaac Abravanel's commentary on Numbers 15:30, a passage that discusses *karet*, or the punishment of extirpation.

[56] See, for example, A. Grafton - J. Weinberg, *Johann Buxtorf, Impresario of Hebrew and Jewish Books*, pp. 224-230.

[57] See J. Witte, *From Sacrament to Contract*, pp. 159-215.

a direct reflection of this theological inheritance[58]. But Calvinist eyes had influenced not only his conclusions about divorce, but also his structural interpretation of Jewish marriage itself. It is particularly interesting to note how Buxtorf's emphasis on the public dimension of both Jewish marriage and divorce mirrored the marriage ordinances introduced in Geneva under Calvin's influence as early as 1546, in which the consent of civil and ecclesiastical institutions played a crucial role[59].

Although John Selden was not explicitly mentioned, it is difficult to ignore the implicit dialogue between Buxtorf's treatise and the English debates about marriage and divorce. Some English writers, not only Selden, but also John Milton, had posed a direct challenge to Calvinist orthodoxy, drawing on an extensive array of Jewish sources to argue that divorce could be justified on grounds far broader than adultery alone. In this sense, Buxtorf's work can be read as a rebuttal, an attempt to reaffirm the traditional Calvinist position through an equally rigorous engagement with Jewish legal texts.

Although Buxtorf's anti-Judaism and, more importantly, his theological positions influenced the composition of his treatise, within a few years his work came to serve a different purpose: it became a repertoire for those seeking a deeper understanding of Jewish marriage structures, including scholars from diverse confessional backgrounds. Lutheran Hebraists and theologians such as Johann Benedict Carpzov and Johann Palmroot found in Buxtorf's study a confirmation of key Lutheran principles regarding marriage[60]. These are not merely erudite works, but writings that actively participated in the theological debates of their time and, as in the case of Palmroot, had to provide a scriptural justification for divorce (based on Jewish sources). But here we are dealing with works produced within the Lutheran world, which took a similar position on the institution of marriage and divorce.

More surprising is the presence of Buxtorf's writings in the work of a pope, Benedict XIV (1675-1758). In Pope Lambertini's treatise, the issue under discussion was the validity of the marriages of baptized Jews. He therefore needed to understand the main features of the Jewish matrimonial

[58] On Calvin and divorce, see C. Seeger, *Nullité de mariage, divorce et séparation de corps à Genève, au temps de Calvin. Fondaments doctrinaux, loi et jurisprudence*, Lausanne, Société d'Histoire de la Suisse Romande, 1989.

[59] J. Witte, *From Sacrament to Contract*, pp. 169-174.

[60] See, for example, J.B. Carpzov, *De chuppa*; J. Palmroot - S. Huss, *De libello repudii*, Upsaliae, Werner, 1703.

institution and turned to the sources available at the time, Selden and Buxtorf – regardless of their confessional origin or their authors' non-Catholic affiliation[61].

This broad reception underscores a central paradox in early modern Hebraism that warrants closer examination. Though rooted in polemical intent, these texts came to embody a substantial repository of historical and legal knowledge, gradually turning into essential reference works for both ecclesiastical and secular authorities. Whether assisting Christian judges in adjudicating cases involving Jewish matrimonial law, or informing theologians navigating the complexities of early modern legal thought, the study of Jewish tradition extended far beyond its original polemical framework.

Buxtorf's contribution exemplifies the evolving role of Jewish scholarship within the broader intellectual culture of the early modern period. The eventual publication of Volume 30 of Ugolini's *Thesaurus* – devoted entirely to Jewish matrimonial law – can be seen as the culmination of this trajectory. In this context, the study of Jewish marriage played a significant role, providing a concrete and complex legal domain through which Christian scholars could engage with rabbinic sources. It served not only as a focal point for theological and juridical reflection, but also as a gateway to a deeper understanding of Jewish legal reasoning and social organization. Over time, the study of Jewish traditions – once an integral part of theological, juridical, and philosophical debate – became increasingly decontextualized, losing its polemical urgency and taking on the character of a scholarly pursuit. No longer a battleground of confessional conflict, Jewish tradition was gradually relegated to the periphery of European intellectual life, distanced from the dynamic cultural and legal conversations to which it had once contributed significantly.

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[61] See Benedict XIV, *Lettera a monsignor Arcivescovo di Tarso sopra il battesimo degli Ebrei o infanti o adulti*, Roma 1751, p. 70: «Ammaestrati da S. Gregorio, e per arrivare come suol dirsi al fondo della materia degli sponsali degli ebrei, abbiamo creduto opportuno il vedere il Seldeno, il Buxtorfio, Leone Modena ed altri che trattano di detti sponsali». On Benedict XIV and the Jews, see M. Caffiero, *Battesimi forzati*, pp. 73-110.

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Familiar and Foreign
Early Modern Catholic Theologians and Jurists Faced with Jewish Marriage

by *Fernanda Alfieri*

ABSTRACT

The Council of Trent's canons and decrees on marriage, as well as the moral-theological discourse produced in the following decades, viewed Reformed marriage as the negative other in contrast to which Catholic marriage was to be redefined. Indeed, it was Reformation theorists who were anathematized. However, additional forms of union between a man and a woman were scrutinized. The essay focuses on how some of the greatest Catholic authorities regarded Jewish marriage, such as Martín Azpilcueta, alias Navarrus, Tomás Sánchez, and Giovanni Battista De Luca. In their eyes Jewish marriage seems to represent an inevitable archetype, but also one that has been surpassed as a matter of course, something at once familiar and foreign.

Keywords: Catholic marriage – Jewish marriage – consent – moral theology – canon law

In his essay *Religious Refugees in the Early Modern World*, Nicholas Terpstra points to the laying down of boundaries and to separation, first and foremost among groups of different faiths, as the defining features of early modern Christianity. Family is one of the spheres affected by these dynamics[1], starting with the conjugal couple, viewed at once as an inseparable unit, welded together by the reciprocity of the sexual contract and its

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Translation by Riccardo James Vargiu.

[1] N. Terpstra, *Religious Refugees in the Early Modern World. An Alternative History of the Reformation*, Cambridge, Cambridge University Press, 2015, esp. pp. 92-93 (Italian translation, Bologna, Il Mulino, 2019).

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mystical symbolism, and as a unit separated from all other possible relations, by virtue of the bond's exclusivity and unique legitimacy. For well-known reasons, the Council of Trent's canons and decrees on marriage, as well as the moral-theological discourse produced in the following decades, viewed Reformed marriage as the negative *other* in contrast to which Catholic marriage was to be redefined. Indeed, it was Reformation theorists who were anathematized. However, in keeping with a rhetoric of opposition – which not only belonged to controversialist literature, but also effectively structured scholastic modes of reasoning (the polarization between *sic* and *non*, the use of *disputatio* as a means to distill the most authoritative opinion) – additional forms of union between a man and a woman were scrutinized. I will not dwell on the customs found in non-European populations, a huge issue that likewise entered the theological-legal debate. Instead, I will focus on how some of the greatest Catholic authorities regarded Jewish marriage. In their eyes, the latter seems to represent an inevitable archetype, but also one that has been surpassed as a matter of course, something at once familiar and foreign.

1. «Iudaeus & Iudaea» in a *consilium* by Martín Azpilcueta

The *Consilia et responsa* by the theologian and jurist Martín Azpilcueta, alias Navarrus (1492-1586), published posthumously, collect his opinions on issues addressed over the course of twenty years' service at the Apostolic Penitentiary, from 1567 to his death[2]. The work is organized following the structure of Gregory IX's *Decretals*. In the section devoted to the conversion of infidels, Azpilcueta deals with a Jewish couple that embraced Catholicism. His priority is to establish the nature of their bond after they crossed the threshold between Judaism and Christianity. However, the nature of the bond they had entered into *before* their espousal of the Christian faith and, as a result, the nature of Jewish marriage itself are also examined.

[2] On Martín de Azpilcueta, see V. Lavenia, *Martín Azpilcueta: un profilo*, in «Archivio italiano per la storia della pietà», 16, 2004, pp. 15-148 (on the *Consilia*, esp. pp. 144-148); W. Decock, *Martín de Azpilcueta*, in R. Domingo - J. Martínez-Torrón (eds.), *Great Christian Jurists in Spanish History*, Cambridge, Cambridge University Press, 2018, pp. 116-133; M. Bragagnolo (ed.), *The Production of Knowledge of Normativity in the Age of the Printing Press. Martín de Azpilcueta's Manual de Confessores from a Global Perspective*, Leiden, Brill, 2024.

We have here a Jewish man and woman («Iudaeus & Iudaea»)[3], whose provenance, status, and age remain undefined. They are identified solely by their religious affiliation. The two contracted a bond that Azpilcueta does not hesitate to call, in the terms of canon law, *sponsalia per verba de praesenti*. The man and woman consummated the sexual act without performing the ceremonies called for by the Jewish custom («secundum usum Iudaeorum»), which Azpilcueta does not describe. At a later time, they adhered to the Catholic faith. Was the bond entered into before the conversion a real marriage? If it was valid, did it continue to be so after the conversion, or would the formalities prescribed by the Council of Trent need to be carried out first? Azpilcueta thus surveys an institution over which canon law has no jurisdiction through a Tridentine lens. Indeed, Jewish marriage is not a sacrament, and therefore does not fall within the purview of ecclesiastical authorities, at least in theory[4]. Things are not so clear-cut in practice, as we will see in this paragraph and in the next one. As regards the Penitentiary, it is attested that Jews issued pleas for the apostolic authority to recognize their unions as marriages, or to endorse their divorces. These requests are often explicitly made «pro maiori securitate», that is, in hopes that the pope's approval would safeguard the pleaders from the enmity of their host communities, or of other ecclesiastical authorities (local bishops, for instance)[5].

Azpilcueta's authority in the mentioned *consilium* applied on an interpretive level, but the repercussions of his opinions were tangible, because of his institutional role at the time, and of the weight he carried among contemporary and later experts in the field. The case is intricate. To begin with, in the long history of Christian marriage, the formula Azpilcueta used to define the tie between the two Jews, *sponsalia per verba de praesenti*, is

[3] Citations are from M. de Azpilcueta, *Consiliorum seu responsorum … tomi duo*, Venetiis, apud Iuntas, 1603, lib. 3, tit. De conversione infidelium, cons. 2, pp. 609-610 (1601[1]).

[4] See V. Colorni, *Legge ebraica e leggi locali. Ricerche sull'ambito del diritto ebraico in Italia dall'epoca romana al secolo XIX*, Milano, Giuffrè, 1945, pp. 181-185 (English translation Leiden - Boston, Brill, 2025), and below.

[5] See the selection from the period between the 1450s and 1550s in F. Tamburini, *Ebrei saraceni cristiani. Vita sociale e religiosa dai registri della Penitenzieria apostolica (secoli XIV-XVI)*, Milano, Istituto di Propaganda Libraria, 1996, pp. 37, 43-45, 83, 89, 128, 132, 148; a bigamy case is reported on p. 42. In the timeframe considered by Tamburini, the Penitentiary still had competence in both the penitential and the judicial forums, and this helps to explain why these pleas were made to the tribunal. Following Pius V's 1569 reform, competence was limited to the matter, in itself extensive, of the internal forum. Refer to Eleonora Faricelli's ongoing research on this.

problematic. On the one hand, it is rooted in a conception of the matrimonial bond centered on expressed individual consent as its only requisite[6]. On the other, it fits into a centuries-long practice that not only witnessed many variations in the form of the expressed consent, and in the time of its production, making it complicated to establish when a marriage became effective, but also heavily involved the wills of the spouses' families, as well as economic interests, conflicts and alliances, multiplying the implicated parties. The endless debates in court and discussions among specialists, which historiography has been addressing for some years now, bear witness to this[7]. *Sponsalia per verba de praesenti* do not express the promise to enter into a matrimonial bond, the way *sponsalia per verba de futuro* do. Rather, they are an affirmation of the actual and present will to contract the bond[8]. And because, as already mentioned, expressed consent constitutes the essential foundation for Christian marriage, it might be considered enough to make the bond properly matrimonial, all the more so if the latter is perfected by subsequent consummation. Yet, while the Council of Trent's *Tametsi* decree confirmed the essential requisite of consent, it also established a number of necessary formalities, including the circulation in the community, in the days leading up to the wedding, of a public notice of the intention to marry, the presence of a priest and witnesses, and the ceremony *in facie ecclesiae* as the 'single act' by which a

[6] T. Sanchez, *Disputationum de sancto matrimonii sacramento … tomus primus*, Venetiis, apud Iuntas, 1625, lib. 1, disp. 30, n. 1, p. 172: «Res est certa inter catholicos non satis esse consensum internum, sed oportere verbis vel signis exprimi [it is certain among Catholics that internal consent does not suffice but must be expressed by way of words or signs]».

[7] See D. Lombardi, *Matrimoni di antico regime*, Bologna, Il Mulino, 2011, and, by the same author, *Storia del matrimonio. Dal Medioevo a oggi*, Bologna, Il Mulino, 2008. See also the volumes of the series «I processi matrimoniali degli archivi ecclesiastici italiani», edited by S. Seidel Menchi and D. Quaglioni: vol. I, *Coniugi nemici. La separazione in Italia dal XII al XVIII secolo*, Bologna, Il Mulino, 2000; vol. II, *Matrimoni in dubbio. Unioni controverse e nozze clandestine in Italia dal XIV al XVIII secolo*, Bologna, Il Mulino, 2001; vol. III, *Trasgressioni. Seduzione, concubinato, adulterio, bigamia (XIV-XVIII secolo)*, Bologna, Il Mulino, 2004; vol. IV, *I tribunali del matrimonio, secoli XV-XVIII*, Bologna, Il Mulino, 2006.

[8] For centuries, it was the most solemn form of «pre-Tridentine civil marriage», as E. Brambilla puts it in *Il Concilio di Trento e i mutamenti nella legittimità dei rapporti tra sposi*, in A. Bellavitis - I. Chabod (eds.), *Famiglie e poteri in Italia tra Medioevo ed Età moderna (atti del convegno internazionale di Lucca, 9-11 giugno 2005)*, Roma, École Française de Rome, 2009, pp. 51-76.

marriage was realized[9]. From the Christian point of view, the union of the «Iudaeus & Iudaea» is on a threshold: is it an alleged marriage, an imperfect but valid marriage, a *de facto* marriage?[10]

It is not simple, and perhaps it is not necessary, to translate the type of bond Azpilcueta attributes to the two protagonists of his *consilium* into contemporary categories. Not least, because he mentions neither the requisites qualifying a bond between a man and a woman as marriage for Jews, nor the ceremonies the two apparently failed to perform. Referring only to the «Sacred Letters» and «Church Canons», without offering specific textual references, Azpilcueta solves the dilemma by claiming that Jewish marriage does not call for any strictly necessary formality, excepting the spouses' mutual and free consent, on the forms of which, however, he adds nothing. Indeed, Christ's coming removed normative value from anything stated in the Old Testament on the subject of marriage, apart from the laws the theologian calls «naturales» (presumably, the prohibition of incest; we will return to nature's normativity in the final part of this essay). Thus, the essentiality of consent was something Jewish and Christian marriages shared, according to the theologian. But, whereas the Council of Trent established certain formal requisites for Catholic Christians, until then not essential for a promise exchanged between a free man and woman to be recognized as matrimonial, no such thing occurred for Jews[11]. That's because, ever since the world was redeemed by Christ's coming, their «respublica» stopped being «libera [free]». They no longer have a «Princeps», nor a «Rex» endowed with the power to introduce any «solemnitas extrinseca», and to determine when a marriage is valid. It was all written in the book of Genesis (49:10), where Jacob predicted to Judah – one of the twelve tribes of Israel – that he would lose the scepter with the coming of «he to whom it belonged, and to whom the obedience of the peoples is owed»[12].

[9] G. Alberigo et al. (eds.), *Conciliorum oecumenicorum decreta*, Bologna, Istituto per le Scienze Religiose, 1973, Concilium tridentinum, sess. 24, 11 Nov. 1563, Canones super reformatione circa matrimonium, cap. 1, pp. 755-756.

[10] See S. Seidel Menchi, *Percorsi variegati, percorsi obbligati. Elogio del matrimonio pre-tridentino*, pp. 17-60, and D. Quaglioni, *«Sacramenti detestabili». La forma del matrimonio prima e dopo Trento*, pp. 61-79, in S. Seidel Menchi - D. Quaglioni (eds.), *Matrimoni in dubbio*; G. Mazzanti, *Dopo il Tridentino. Una querelle dottrinale intorno al matrimonio presunto*, in «Historia et ius», 2, 2012, accessible online at https://www.historiaetius.eu/uploads/5/9/4/8/5948821/mazzanti2.pdf.

[11] M. de Azpilcueta, *Consiliorum*, lib. 3, tit. De conversione infidelium, cons. 2, n. 4, p. 609.

[12] *Ibid*., n. 5, pp. 609-610.

The Council of Trent is the great, recent normative watershed for Christian marriage, whereas the only turning point for Jewish marriage was Christ's coming. Since then, its core resides in the will of the individual parties entering into wedlock. The «Iudaeus & Iudaea» are therefore to be considered fully husband and wife, united by a true and indissoluble bond[13].

What could follow from qualifying a marriage between two Jews as 'true' despite its being a-formal – or, according to Azpilcueta, despite its having relied not on external rites for formal substantiation, but only on internal consent[14]? If both converted to Catholicism, it could facilitate the recognition of their marriage. But it could also complicate matters if only one of them chose to do so. We do not wish, here, to enter into the field of conversions, on which there exists a rich historiography. Suffice it to mention that, according to the so-called Pauline privilege, if one spouse converted and the other was hostile to him or her, the convert could contract a new marriage with someone sharing his or her new faith. This, from the Christian perspective, bearing in mind the purely spiritual aspects of the matter, notwithstanding the intricate web of material, sentimental, and social bonds implicated in the first marriage.

From the Jewish perspective, the situation would be very different. Let us assume a man converts to Christianity, and his wife does not. He can now marry a Christian. What about her? She is at danger of remaining within the community as an *agunah*, a woman 'chained' to her first husband and unable to remarry, a condition rife with negative economic and social consequences. That is, unless he grants her a divorce, makes it possible for her to remarry, and also gives her back her dowry. But what if the latter is large, has been invested, and is hard to recoup? The community might press him either to reverse course, or to release her from her bond[15]. This

[13] *Ibid*., n. 6, p. 610.

[14] D. Quaglioni, «*Sacramenti detestabili*», on the apparent a-formality of pre-Tridentine marriage, which found its form in consent.

[15] I. Poutrin, *Les convertis du pape. Une famille de banquiers juifs à Rome au 16ème siècle*, Paris, Éditions du Seuil, 2023, esp. pp. 11-114 and 163-185. The handling of the dowry varies from place to place. On Rome, see S. Di Nepi, *Io come madre cercava ogni strada. Una madre ebrea e un figlio nei guai nella Roma del Cinquecento*, in «Storia delle donne», 3, 2007, 1, pp. 99-121; by the same author, *Sopravvivere al ghetto. Per una storia sociale della comunità ebraica nella Roma del Cinquecento*, Roma, Viella, 2013 (English translation Leiden, Brill, 2021), pp. 215-233. For a survey of the condition of Jewish women in the early modern Italian peninsula, see F. Francesconi, *Jewish Women in Early Modern Italy*, in F. Francesconi - R. Lynn Winer (eds.), *Jewish Women's History from Antiquity to the Present*, Detroit, Wayne State University Press, 2021, pp. 141-167.

is but one of the possible scenarios, which casts into relief, among other things, how individual consent, in conversions as well as when it comes to marriage, can hardly be abstracted from contextual pressures[16].

2. Ester and Leone in Giovanni Battista De Luca's *Theatrum*

An interpretive view on Jewish marriage, in this instance attempting to understand its phases and necessary formalities, is present in another monument of Catholic jurisprudence – the *Theatrum veritatis* by the cardinal Giovanni Battista De Luca, born in Venosa (Kingdom of Naples), but Roman by adoption, and often remembered for having said that Jews were to be considered «veri cives in omnibus [true citizens in every regard]» in the sphere of secular laws, if they were natives or permanent residents[17]. Published between 1669 and 1673, and reprinted multiple times to the end of the eighteenth century, the *Theatrum* is a collection of two thousand five hundred opinions on disparate subjects, aimed at solving situations of legal uncertainty in an exemplary way. Among these, a seemingly small fraction of seventeen cases, one of them involving Jews, deals with betrothals, marriage, and divorce[18]. Having addressed Azpilcueta's «Iudaeus & Iudaea», it is worth spending some time with Ester Annuba and Leone da Marino, two Jews from Rome. The digression is not incidental, as Azpilcueta's authority was called on by the judge in their case.

Ester and Leone's case, which Vittore Colorni describes as the «only one passed down to us involving a litigation between Jews brought to a tribunal

[16] See C. Petrolini - V. Lavenia - S. Pavone, *Sacre metamorfosi. Racconti di conversione tra Roma e il mondo in età moderna*, Roma, Viella, 2022. On Jewish marriage and conversions, C. Cristellon, *Borach Levi, la censura e la giurisdizione sul matrimonio degli ebrei (secc. XVI-XVIII)*, in M. Caffiero (ed.), *L'Inquisizione e gli ebrei: nuove ricerche*, Roma, Edizioni di Storia e Letteratura, 2021, pp. 111-127.

[17] See V. Colorni, *Gli Ebrei nel sistema del diritto comune fino alla prima emancipazione*, Milano, Giuffrè, 1956, p. 16.

[18] On De Luca, see A. Mazzacane, *sub voce*, in *Dizionario Biografico degli Italiani*, vol. 38, 1990, accessible online at https://www.treccani.it/enciclopedia/de-luca-giovanni-battista_(Dizionario-Biografico)/. A matrimonial case from the *Theatrum* is examined in D. Moscarda, *Il cardinale Giovan Battista De Luca giudice rotale e la causa matrimoniale tra Michele de Vaez e Giovanna Maria De Sciart (Napoli 1650)*, in S. Seidel Menchi - D. Quaglioni (eds.), *Matrimoni in dubbio*, pp. 415-429. The following edition was consulted: I.B. De Luca, *Theatrum veritatis et iustitiae*, Venetiis, apud Paulum Balleonium, 1706, Pars secunda de matrimonio, sponsalibus et divortio, lib. 14, disc. 15, pp. 26-28.

of the state on the issue of the celebration of marriage»[19], was argued before the *Auditor Camerae*. This court had broad civil and criminal competences, even though originally it mainly adjudicated on the rights and interests of the administrative government of the Church of Rome, on members of the Curia, and on the latter's *familiares* and dependents[20]. When it came to Jews, it took on lawsuits in which financial assets were particularly implicated, most prominently when bankers were involved. This suggests that the material stakes in the conflict between Ester and Leone were high, though no mention of this is made in the text. Of the Roman tribunals, the one presided by the Vicar normally had competence over Jews in civil and criminal cases, notwithstanding the fact that some such lawsuits were handled by the Governor's criminal tribunal[21]. As for matrimonial cases, these were usually submitted to the authorities of the community (even in Rome, where the state's interference was greater than elsewhere)[22]. The ecclesiastical authority concerned itself with the validity of the bond in cases involving the conversion of one of the spouses, or of both of them, as shown at the outset of this essay. Let us mention again, though, that pleas to the Penitentiary asking for the ratification of unions and divorces between Jews are attested, as is, for now, a single plea by a Jewish woman asking to be separated from her husband, who mistreated

[19] V. Colorni, *Legge ebraica e leggi locali*, p. 184n.

[20] I. Fosi, *La giustizia del papa. Sudditi e tribunali nello Stato Pontificio in età moderna*, Roma - Bari, Laterza, 2007, pp. 26-27, 29-32; A. Cicerchia, *Giuristi al servizio del papa. Il Tribunale dell'auditor Camerae nella giustizia pontificia di età moderna*, Città del Vaticano, Archivio Segreto Vaticano, 2016. Regarding the court's competences in the seventeenth century, A. Cicerchia (pp. 184-185) cites G.B. De Luca, *Il dottor volgare, libro decimoquinto, parte terza* [s.d., s.l.], cap. 31, p. 279: «owing to the multiplicity of cases [it deals with,] it is perhaps the largest [tribunal] in the Curia», and can have competence «in matrimonial lawsuits» (n. 5, p. 280).

[21] S. Feci, *Tra il tribunale e il ghetto: le magistrature, la comunità e gli individui di fronte ai reati degli ebrei romani nel Seicento*, in «Quaderni storici», 3, 1998, pp. 575-600.

[22] K.R. Stow, *Jewish Pre-Emancipation. Ius Commune, the Roman Comunità, and Marriage in the Early Modern Papal State*, in K.R. Stow, *Jewish Life in Early Modern Rome. Challenge, Conversion, and Private Life*, Ashgate, Aldershot, 2007, essay n. XVIII, and, by the same author, *Marriages are Made in Heaven. Marriage and the Individual in the Roman Jewish Ghetto*, *ibid*., essay n. XVI; *Theater of Acculturation. The Roman Ghetto in the Sixteenth Century*, Seattle - London, University of Washington Press; Northampton, Smith College, 2001, esp. pp. 119-121; see also S. Di Nepi, *Sopravvivere al ghetto*. On the seventeenth century, see A.Y. Lattes, *La società dentro le mura. La comunità ebraica di Roma nel Seicento*, Roma, Gangemi, 2021.

and threatened to kill her[23]. Ester too denounced the abuse she was subjected to. At present, it has not been possible to identify material pertaining to this lawsuit, which would help to understand, among other things, why it was adjudicated by the *Auditor Camerae*. Perhaps the authorities of the Jewish community had not supported her request? Thus, for now, I will primarily follow the text found in the *Theatrum*.

De Luca summarizes the events in the opening paragraph, devoted to the *facti series*, where he offers no precise definition of the nature of the bond between the two. For many years Leone had a «conversatio [relation]» with Ester «in figura maritali [in the guise of a husband]». When, in time, he started mistreating her, she turned to the tribunal of the *Auditor Camerae*. Writing on Ester's behalf («scribens pro muliere»), De Luca gives an account of his arguments and counterarguments, which we will now try to outline.

The first step is to clarify the nature of the bond. The woman's fate – whether she may be considered entirely released on the grounds that the bond is not a real marriage, or only separated from her husband, and thus unable to remarry – follows. This line of reasoning, of course, rests on canon law, for which the conjugal bond is indissoluble. In the text only a brief mention is made to Ester's situation in relation to Jewish marriage. From that perspective the question is: can Ester be considered released for never having contracted marriage, or, if her bond with Leone is a real marriage, can she only hope in divorce?[24] De Luca prefaces his account with the same observation made at the beginning of this essay: the holy canons and the decisions of the Council of Trent do not apply to marriages between infidels. Such rules are aimed at the government of souls, a spiritual dimension absent from non-Christian marriage[25]. While the nature

[23] F. Tamburini, *Ebrei saraceni cristiani*, n. 33, p. 148. V. Colorni, *Autonomie ebraiche in Italia nel Medioevo e nel Rinascimento*, in V. Colorni, *Judaica minora. Saggi sulla storia dell'ebraismo italiano dall'antichità all'età moderna*, Milano, Giuffrè, 1983, pp. 493-505, esp. p. 499, also points to requests to the ecclesiastical authority for permission to engage in bigamy. See also the case of the Roman Jew Servidio Croccoli in I. Poutrin, *Les convertis du pape*, pp. 164-165.

[24] I.B. De Luca, *Theatrum veritatis et iustitiae*, Pars secunda de matrimonio, sponsalibus et divortio, lib. 14, disc. 15, n. 6, p. 27.

[25] *Ibid*., n. 1, p. 26. De Luca refers to the bishop of Cosenza, and vicegerent of Rome between 1627 and 1632, A. Ricciullus (1582-1643), *Tractatus de iure personarum extra Ecclesiae gremium existentes*, Romae, sumptibus Blasii [et al.], 1651, lib. 2, cap. 3, n. 1, p. 38, and to the Barnabite from Milan G.A. Bossius (1590-1665), *De matrimonii contractu tractatus*, Venetiis, apud Bertanos, 1643, cap. 1, § 31, n. 82, p. 17.

of the Christian bond is sacramental, meaning that the salvation of the spouses' souls is at stake[26], marriage between infidels is a «simple contract» based on the consent of those involved and governed by other laws[27].

Christian marriage is also a contract, based on mutual consent. The reform canons produced in Trent specify that it must be free and reciprocal, but they do not go into further detail[28]. Canonistic and moral-theological works attest to intense debates on the ways consent was to be expressed. They identify words as the ideal form and allow for signs in the case of people affected by mutism, but never offer a precise and universal definition for either the former or the latter[29]. In practice, a multiplicity of expressions based on gestures in addition to words, or as an alternative to them, continued to be relied on after Trent (including the touching of the hand, the giving of the ring, eating and drinking together, kissing, not openly resisting sex)[30].

As for Jewish marriage, let us briefly bear in mind that it is a contract, understood as «an emption of the bride by the groom, completed through a written contract and formal act of symbolic acquisition. The 'purchaser' was the husband, whose consent was embodied in the act of 'purchase' at the betrothal, when a binding marital state was created and through the formula 'Behold you are sanctified [actually, reserved] for me by this

[26] On the spiritual stakes of consent in Catholic theology, see I. Poutrin, *Assessing Consent through External Signs. Three Cases of Madness, Repulsion and Love before the Tribunal of the Roman Rota (1579-1619)*, in «Culture and History Digital Journal», 6, 2017, 2, accessible online at http://dx.doi.org/10.3989/chdj.2017.014.

[27] I.B. De Luca, *Theatrum veritatis et iustitiae*, Pars secunda de matrimonio, sponsalibus et divortio, lib. 14, disc. 15, n. 2, p. 26. See also J. Gaudemet, *Le mariage en Occident: les moeurs et le droit*, Paris, Cerf, 1987, pp. 151-152.

[28] G. Alberigo et al. (eds.), *Conciliorum oecumenicorum decreta*, Concilium tridentinum, sess. 24, 11 Nov. 1563, Canones super reformatione circa matrimonium, cap. 1, p. 755.

[29] A case from 1641, involving Juan de Peregrina y Lorençana and Catarina de Turbica y Lara, from the diocese of Sagunto, discussed in *votum* 94 by the Portuguese canonist Agostinho Barbosa (1590-1649), is exemplary: did the words exchanged by the two constitute *sponsalia de futuro* or a marriage? See A. Barbosa, *Votorum decisivorum, et consultivorum canonicorum tomus secundus*, Lugduni, Sumptibus Haeredi Prost [et al.], 1647, pp. 140-144.

[30] See O. Niccoli, *Baci rubati. Gesti e riti nuziali in Italia prima e dopo il concilio di Trento*, in S. Bertelli - M. Centanni (eds.), *Il gesto nel rito e nel cerimoniale dal mondo antico ad oggi*, Firenze, Ponte alle Grazie, 1995, pp. 224-247, in addition to the essays mentioned above, n. 7.

ring'. The bride's consent was passive» and in a way implicit in the performance[31]. Jewish rituals too face interpretive ambiguity, and historiography has brought to light many controversies dealing with the nature of the bond, to which we will return later. Anyway, even in the case of Roman Jews, who in all other matters are subject to the *ius commune*, marriage should be regulated exclusively by the «Law of Moses». This had been clarified as early as the twelfth century on the authority of Innocent III[32], but De Luca refers to the work of lay jurists of his own time: Marquardo Susanna (1508-1578)[33], Francesco Ciriaco Negri (d. 1637)[34], and Prospero Farinacci (1554-1618)[35]. Of the first author, a Venetian, he cites a well-known work on the peculiar legal status of Jews; of the somewhat more obscure second author, he cites a collection of forensic controversies based on the jurist's experience in Mantua; of the third author, a Roman, and an authority in matters of criminal law, he cites a miscellanea in which, under the heading *Iudaei*, an attempt is made to address the regulation of all aspects of Jewish civil life. These authors confirm that the «Lex Mosayca» is the only relevant law for Jewish marriage. This begs the question of why De Luca would concern himself with it at all. Indeed, this was not his only time doing so. In *Il dottor volgare* (1673), he writes that «in Rome it is sometimes necessary in practice to debate the marriage of Hebrews, or Jews, on account of their large resident population. To wit, [it is necessary to determine] when it is indissoluble marriage, and perfect according to the Law of Moses, that is, according to their customs»[36].

[31] K.R. Stow, *Marriages are Made in Heaven*, p. 451, and, by the same author, *Theater of Acculturation*, pp. 78-79.

[32] In Gregory IX's compilation, lib. 4, tit. 14, De consanguinitate et affinitate, chapter 4 (*Infideles*) states that infidels united in marriage despite being more closely related than would be allowed for members of the Church of Rome must not be separated after baptism, for no one can separate what God has joined together.

[33] De Luca refers to M. de Susannis, *De iudaeis et aliis infidelibus, et de inimicis crucis Christi, tam visibilibus, quam invisibilibus*, Venetiis, apud Cominum de Tridino Montisferrati, 1568; the sections on marriage are found in part 2, cap. 3, n. 16, fol. 69r, and cap. 8, nn. 1-4, fols. 95v ff.

[34] F. Cyriacus Nigrus, *Controversiarum forensium liber secundus*, Genevae, sumptibus Samuelis Chouët, 1652, esp. controversy 241, n. 5, p. 166.

[35] P. Farinacius, *Fragmentorum variarum … pars secunda, Operum criminalium partem septimam pertinens*, Francofurti, Thypis Hartmannii Palthenii, 1622, n. 651, p. 97.

[36] G.B. De Luca, *Il dottor volgare, parte seconda*, [s.l., s.e., s.d.], lib. 14, cap. 10, n. 6, pp. 97-98.

The other cases De Luca hints at here, implying that they center on the matter of indissolubility, a feature of Christian marriage apparently sought in Jewish marriage as well, will hopefully be identified in the future[37]. The case described in the *Theatrum veritatis* involves Ester, who claims that a formal step necessary for her to be Leone's wife was never taken, and Leone, who regards his relationship with Ester as fully conjugal. According to the cardinal, the *punctum* is understanding («intelligentia») the Law of Moses[38], and establishing where, in light of that law, the boundary lies between a matrimonial bond and a bond that cannot be termed such. With a sharp pronouncement, he claims that three «acts» are required by that law: «aras, chidusin, et nissuin»[39]. He does not explain what they consist of but wonders whether the first two are to be understood as a commitment to a marriage to come, «like our *sponsalia de futuro*»[40], and the third one as the definitive seal, which, as stated by Ester, was never placed on her relationship with Leone.

The text is not easy to decipher. Not only because De Luca, much like this author, has the framework of canonical marriage in mind, and thus views things through a refracting lens that tends to obfuscate the 'essence' of Ester and Leone's bond. But also, because the text offers no identifiable counterpart to the cardinal's prevailing perspective. He claims that many rabbis and Jewish experts in «hebraicis literis» also expressed their opinion on the case. According to Colorni, this means that De Luca examined rabbinic sources[41], but it stands to reason that rabbis and experts may have actively participated in the controversy as well. However, no clues are given leading to outside references. The matter is further complicated by the fact that, as far as De Luca can see, rabbis themselves are not of one mind on this. As a result, he draws the reader into a tangled interpretive web, a veritable *theatrum* in which it is hard to put the truth into focus. In one passage, he claims that, according to many rabbis, «aras, chidusin, et nissuin» are essentially synonyms. They refer to the giving of a ring or coins to the bride, preliminary steps that, to be perfected, would have to be followed by «other solemnities». Yet, once again, he fails to say what

[37] On the indissolubility of marriage between infidels, see below, par. 3.

[38] I.B. De Luca, *Theatrum veritatis et iustitiae*, Pars secunda de matrimonio, sponsalibus et divortio, lib. 14, disc. 15, n. 4, p. 26.

[39] *Ibid*., n. 5, p. 26.

[40] *Ibid*.

[41] V. Colorni, *Legge ebraica e leggi locali*, p. 184.

these might be[42]. Shortly after, he points out that for the experts consulted the «other solemnities» are the *nissuin* (which, in this case, cannot be a synonym of «aras» and «chidusin»), and that only after the *nissuin* does the main effect of marriage, the exclusive right and duty of both parties to engage in sex, ensue. Before this step is taken, then, the woman would appear to be free.

But what do these words mean? As pointed out, De Luca offers no definitions, and it would be impossible to do so on his behalf. However, we can attempt to formulate some hypotheses. If De Luca is assumed to be speaking from the perspective of the *ius commune*, then the first term, «aras», would seem to echo the *arrhae sponsaliciae* (prenuptial gifts) of post-classical Roman law, indicating a betrothal sealed by the giving of gifts, the acceptance of which is binding. If we look to the sections devoted to the *arrhae* in the *Disputationes de sancto matrimonii sacramento* by Tomás Sánchez, the greatest authority on post-Tridentine marriage, to whom we will return shortly, we will find several acceptations, referring to marriage or betrothal. Indeed, the *arrhae* can be an endowment a husband gives his wife in recompense for her dowry, but it can also be a simple wedding gift, or a token the betrothed exchange committing to keep their promise, the way anyone pledging to a contract might supply a security before the latter is made final. In this acceptation, the *arrhae* are a sign attesting that the marital contract has been agreed on, pending its fulfilment through marriage. Still different are the «arrhae hispanae», an endowment the *sponsus* gives the *sponsa* in remuneration «for her modesty, her nobility, or her dowry», and which she is entitled to keep even if the bond is dissolved[43]. Based on the accounts of Jewish nuptial customs in the Italian peninsula reconstructed by Roni Weinstein, it appears that the giving of gifts to the bride-to-be, along with the signing of a dowry agreement in the presence of family and friends, could accompany the formalization of the matchmaking (*shidukhin*) conducted by the families of the future bride and groom. Perhaps, De Luca is alluding to this, and thinking about the corresponding moment of the «fidanze», a term indicating the formalization of *sponsalia de futuro* in contemporary Christian marriage rituals in

[42] I.B. De Luca, *Theatrum veritatis et iustitiae*, Pars secunda de matrimonio, sponsalibus et divortio, lib. 14, disc. 15, n. 5, pp. 26-27.

[43] T. Sanchez, *Disputationum … tomus primus*, lib. 1, disp. 35, n. 1, p. 89. On the *arrhae hispanae*, *ibid.*, disp. 1, p. 470. On the Sephardic custom, see M. Girona Berenguer, *Los regímenes económicos del matrimonio judío a través de las ketubot de Castilla (siglo XV)*, in «MEAH. Miscelánea De Estudios Árabes Y Hebraicos. Sección Hebreo», 73, 2024, pp. 37-58, accessible online at https://doi.org/10.30827/meahhebreo.v73.30590.

Rome[44]? Even though the *shidukhin*, much like the «fidanze», does not theoretically entail serious legal consequences on the status of the betrothed, nevertheless «the gap between the halakhic norms and the public feeling that 'something did happen' created a legal opaqueness»[45]: the line separating the stipulation of a preliminary agreement and the sealing of what was expected to be a long-lived union was certainly very fine. The historiography on Christian marriage points to similar dynamics[46].

Another hypothesis about the meaning of «aras» comes from Christian marriage rituals in place in Rome between the late fifteenth and the early sixteenth centuries and theoretically extinct in De Luca's time. «Araglia» indicated a solemn and public act carried out before a notary, in which, following the «fidanze», the spouses-to-be exchanged consent *de praesenti*, and the woman received the ring (in De Luca's time, it would have been required for this to occur before a priest)[47]. In Jewish rituals, this is what happens in *kiddushin*, which De Luca calls «chidusin». In this case too, it would be impossible to reconstruct what the author meant by this word exactly, but attention may usefully be drawn to additional elements of the Roman Jewish rituality, as reconstructed by historiography. The nuptial bond was formed in three stages. First, the already-mentioned matchmaking (*shidukhin*), followed, roughly three weeks later, by «the essential act of the matrimony»[48], the betrothal (*kiddushin*), an engagement with binding legal consequences. This involved the acquirement of the bride by the groom, who gave her the ring or objects symbolically connected with marriage, and recited the formula «Behold you are sanctified …» cited above. Then, after an interval of between six months and a year, during which the woman could not have sexual relations either with her husband-to-be or with others, the nuptials (*nissuin*), the third and final stage mentioned by De Luca, took place. After the matrimonial contract was read and signed,

[44] A. Esposito, *L'iter matrimoniale a Roma e nella regione romana tra atti notarili e atti cerimoniali (secolo XV-XVI)*, in S. Seidel Menchi - D. Quaglioni (eds.), *I tribunali del matrimonio*, pp. 411-430; K.R. Stow, *Marriages are Made in Heaven*, p. 452.

[45] R. Weinstein, *Marriage Rituals, Italian Style. A Historical Anthropological Perspective on Early Modern Italian Jews*, Leiden - London, Brill, 2004, p. 116; by the same author, *Rituali matrimoniali nelle comunità italiane nella prima età moderna. Alcune riflessioni metodologiche*, in S. Seidel Menchi - D. Quaglioni (eds.), *I tribunali del matrimonio*, pp. 327-355.

[46] D. Lombardi, *Matrimoni di antico regime*, esp. pp. 205-210.

[47] A. Esposito, *L'iter matrimoniale*, p. 414.

[48] V. Colorni, *Legge ebraica e leggi locali*, p. 183.

the bride was taken to her husband, who waited for her under a canopy symbolizing the marital house. Ten adult males presided over the ceremony, and a rabbi recited seven blessings of the matrimonial state under the canopy. Only from this time on could the two consummate the marriage (as in the case of Christian marriage's *transductio*). As already mentioned, this combination of acts, performed at separate times, did not fail to be a source of misunderstandings and conflicts. For example, the gifts exchanged during the *shidukhin* could be interpreted as being as binding as the ring or other objects accepted during the *kiddushin*. And what if the groom-to-be didn't recite the betrothal formula? Or if the adult males present at the *nissuin* were less than ten? Often the evidence was not full, and, as in the case recounted by De Luca, it needed to be clarified whether the woman could consider herself released, or whether she had to wait for a bill of divorce (*get*)[49].

Returning to De Luca, which of the three acts – «aras, chidusin, et nissuin» – was truly binding? According to the cardinal, Ester and Leone, through «aras» and «chidusin», had promised to contract a bond, but had never perfected it, in the absence of *nissuin*. The *kiddushin*, essentially, only bound the woman not to have sex with anyone, on pain of death[50]. The relevant biblical passage referenced by De Luca is Deuteronomy 22:23-24[51]. In the Vulgate it says that a «desponsata» virgin who lies with a man other than her husband-to-be must be stoned to death with him, if she did not resist the sexual relation forced on her by screaming. The word

[49] In addition to the essays cited above, regarding Rome, see also A. Esposito, *Matrimonio, convivenza, divorzio: rapporti coniugali nella comunità ebraica di Roma tra Quattro e Cinquecento*, in «Zakhor», 1999, pp. 109-124; M. Caffiero, *Donne ebree a Roma nell'età del ghetto*, in A. Lirosi - A. Saggioro (eds.), *Religione e parità di genere. Percorsi accidentati*, Roma, Edizioni di Storia e Letteratura, 2022, pp. 111-126; regarding Livorno, see C. Galasso, *«La moglie duplicata». Bigamia e levirato nella comunità ebraica di Livorno (secolo XVII)*, in S. Seidel Menchi - D. Quaglioni (eds.), *Trasgressioni*, pp. 417-441. See also H.T. Adelman, *Women and Jewish Marriage Negotiations in Early Modern Italy. For Love and Money*, New York, Routledge, 2018, esp. pp. 71-96.

[50] I.B. De Luca, *Theatrum veritatis et iustitiae*, Pars secunda de matrimonio, sponsalibus et divortio, lib. 14, disc. 15, n. 9, p. 27. The passage is cited by Benedict XIV to prove that «to this day the crime [of adultery] incurs the penalty of death among them», in *Lettera della Santità di nostro signore Benedetto papa XIV … sopra il battesimo degli ebrei o infanti o adulti*, [s.d., s.l.], p. 68. On pages 71-74, «marriage» is referred to as *kiddushin*. Concerning Jewish marriage in the eyes of the pope, see M. Caffiero, *Battesimi forzati. Storie di ebrei, cristiani e convertiti nella Roma dei papi*, Roma, Viella, 2004, pp. 211-212.

[51] I.B. De Luca, *Theatrum veritatis et iustitiae*, Pars secunda de matrimonio, sponsalibus et divortio, lib. 14, disc. 15, n. 9, p. 27.

«desponsata» translates the past participle of the verb *aras* (אָרַשׂ) used in Biblical Hebrew, and can be understood to mean *betrothed*[52]: and here, at last, is the non-Christian acceptation of the «aras» mentioned by De Luca, identified by him both as the first of the three acts of Jewish marriage, and as a synonym of «chidusin» (as allegedly claimed by some rabbis, let us remember). In fact, as Roni Weinstein points out, Talmudic usage interchangeably employed the terms *kiddushin* and *erusin*, with the latter meaning both matchmaking and betrothal[53]. Perhaps this is what De Luca meant by «aras», equating it with «chidusin» and depriving this key step of Jewish marriage of its binding value?

As observed by the cardinal, the passage in Deuteronomy does not explain what «desponsata» actually means[54]. Lacking the certainty that the word «desponsatio» stands for 'marriage', the «desponsata» of Deuteronomy 22:23-24 cannot be treated as an adulteress. Indeed, only adultery incurs the death penalty, and for there to be adultery there must be a marriage. This is not the case of the «desponsata» virgin of the Old Testament, nor is it Ester's, because the *nissuin* with Leone never took place. «Aras» and «chidusin», De Luca claims, are like «sponsalia per verba de futuro», and, what's more, far less binding than «ours». Ester is released from Leone, therefore, because she was never fully joined with him in the first place, and can remarry without waiting for a divorce, or incurring sanctions.

However, the judge presiding over Leone and Ester's case holds a different view. Drawing on the authority of Azpilcueta, the theologian mentioned at the outset of this essay, he believes that the bond between the two is fully a marriage, even if it was not formalized (Azpilcueta calls it «sponsalia per verba de praesenti»)[55]. He then goes on to say that, if the two

[52] See *Biblia sacra Hebraice, Chaldaice, Graece, et Latine … ad Sacrosanctae Ecclesiae usum*, Antwerpiae, excud. Christoph. Plantinus, 1568, vol. 1, p. 692. I referred also to the resources in https://www.sefaria.org/Deuteronomy.22?lang=bi&aliyot=0 and https://biblehub.com/interlinear/deuteronomy/22.htm.

[53] R. Weinstein, *Marriage Rituals, Italian Style*, pp. 55, 154; see also V. Colorni, *Legge ebraica e leggi locali*, pp. 183, 184n.

[54] I.B. De Luca, *Theatrum veritatis et iustitiae*, Pars secunda de matrimonio, sponsalibus et divortio, lib. 14, disc. 15, n. 9, p. 2. See G. Marchetto, *Il divorzio imperfetto. I giuristi medievali e la separazione dei coniugi*, Bologna, Il Mulino, 2008, p. 204, on the differences between *uxor*, *sponsa*, and *desponsata*.

[55] And *sponsalia per verba de praesenti* are generally assimilated to *kiddushin*; see A.M. Rabello, *Introduzione al diritto ebraico. Fonti, matrimonio e divorzio, bioetica*, Torino, Giappichelli, 2002, p. 98.

cohabited after their promise, they must have had intercourse. And that their carnal union, though illicit for having occurred without the solemnities of the *nissuin*, sealed the already-started marriage. The judge's solution, which assigns to sex in Jewish marriage the same power to complete the bond it holds in Christian marriage, is paradoxical. In Christian marriage, sex makes the bond indissoluble because it symbolizes God who turned into flesh through Christ's coming, and bound himself forever to the Church, as a husband does to his wife. This mystical symbolism cannot properly apply to Jewish marriage. Marquardo Susanna, the above-mentioned lay jurist and author of a well-known treatise on Jews' legal status, pointed out as much[56]. As we will see shortly, other arguments had been found in the debates among theologians to attribute an indissoluble nature to all marriages, including those between infidels.

Unfortunately, we don't know how everything actually played out for Ester. Was she thought to be released from Leone? Did she secure a bill of divorce? We have no idea of the degree of violence she was exposed to; contemporary cases pertaining to the Roman ghetto indicate that violence was met with a certain degree of tolerance among Jews, as well as among Christians[57]. De Luca leaves us hanging: the suit was not pursued further before the tribunal of the *Auditor Camerae*, and the «Jewish experts» too disagreed among themselves[58].

Indeed, the lack of agreement involved Christian authorities and *auctoritates* as well. De Luca disagrees with the judge, who concurs with Azpilcueta. Nor does De Luca agree with another great classic of post-Tridentine moral-theology on Catholic marriage, the already-mentioned Jesuit Sánchez[59].

[56] M. de Susannis, *De iudaeis*, pars 2, cap. 3, n. 16, fol. 69r.

[57] See A. Esposito, *Matrimonio, convivenza, divorzio*, pp. 119-120; K.R. Stow - A. Debenedetti Stow, *Donne ebree a Roma nell'età del ghetto: affetto, dipendenza, autonomia*, in «La Rassegna Mensile di Israel», third series, 52, 1986, 1, pp. 63-103-116; S. Feci, *L'acquetta di Giulia. Mogli avvelenatrici e mariti violenti nella Roma del Seicento*, Roma, Viella, 2024, pp. 111-121 (a comparison is made with the Jewish context on p. 116).

[58] I.B. De Luca, *Theatrum veritatis et iustitiae*, Pars secunda de matrimonio, sponsalibus et divortio, lib. 14, disc. 15, n. 10, p. 27. Also in fixteenth century Ferrara, the Rabbis' opinions had been divergent. See L. Graziani Secchieri, *Spose senza marito: mancate nozze, conversione, divorzio e ripudio nella Ferrara ebraica tardo medievale e di prima età moderna*, in L. Graziani Secchieri (ed.), *Vicino al focolare e oltre. Spazi pubblici e privati, fisici e virtuali della donna ebrea in Italia (secc. XV-XX)*, Firenze, Giuntina, 2015, pp. 47-96.

[59] *Ibid*., n. 8, p. 27; the exact passage of the *Disputationes* is not cited, however.

In the following paragraph we will question him on the issue of divorce, particularly problematic in the eyes of Catholics. Let us bear in mind that the Council of Trent had pronounced an anathema against anyone claiming that marriage could be broken, in response to the Lutheran stance on the matter[60].

3. The explanation and justification of divorce in Tomás Sánchez's *Disputationes*: Jews' «fragilitas», and God's willingness to turn a blind eye

Originally from Cordoba, Tomás Sánchez lived in Granada his whole life, dying there aged sixty in 1610. He entered the Society of Jesus before the order adopted its *limpieza de sangre* statutes. Thus, it cannot be ruled out that he hailed from a family of *conversos*, though no research has been done on this[61]. His best-known work are the three multi-book tomes of the *Disputationes*, published between the end of the sixteenth and the beginning of the seventeenth centuries, and reprinted well into the nineteenth century throughout Europe, sometimes in expurgated editions[62]. As with Azpilcueta's *Consilia* and De Luca's *Theatrum*, the fact that the *Disputationes* constitute a *summa* makes them impossible to synthesize. Only a small portion of them can be probed here, giving precedence to crucial issues, whose treatment calls for a comparative view between different legal traditions.

Of the ten books that make up the treatise, exhaustively dealing with the rules of marriage (what allows and what hinders the bond to be formed, how it is celebrated and consummated, and so forth), the last one is devoted to *divortium*. The definition of the term is given at the outset, and it is not univocal. For theologians it signifies temporary separation as to bed and table and does not entail the possibility of remarrying. Conversely, for *iureconsulti* (legal experts), *divortium* does provide scope for remarrying on the plane of civil law[63]. If understood in the second acceptation,

[60] G. Alberigo et al. (eds.), *Conciliorum oecumenicorum decreta*, Concilium tridentinum, sess. 24, 11 Nov. 1563, Canones de sacramento matrimonii, cann. 5-8, pp. 754-755.

[61] See R.A. Maryks, *The Jesuit Order as a Synagogue of Jews. Jesuits of Jewish Ancestry and Purity-of-Blood Laws in the Early Society of Jesus*, Leiden - Boston, Brill, 2010.

[62] See F. Alfieri, *Nella camera degli sposi. Tomás Sánchez, il matrimonio, la sessualità (secoli XVI-XVII)*, Bologna, Il Mulino, 2010.

[63] T. Sanchez, *Disputationum … tomus tertius*, Venetiis, apud Iuntas, 1612, lib. 10, disp. 1, n. 1, p. 330.

a distinction immediately needs to be made between *divortium* and *repudium*. The latter breaks the bond entirely not only with the «uxor» (the wife with whom marital copulation was consummated), but also with the «sponsa de praesenti nondum cognita» (the woman with whom consent to marry has been exchanged, but with whom sex has yet to be consummated). As Christians are not allowed repudiation, the theologian must be thinking about other matrimonial customs. In the case of Jewish marriage, this would apply to a woman who has contracted *kiddushin*, a word not used here. But the institution of *repudium* was also present in Roman law, which founded marriage on the two parties' desire to stay together, and allowed for the possibility that one of them might stop wanting to fulfil his or her conjugal role[64]. If the desire to dissolve the bond belongs to one party what follows is *repudium*, whereas *divortium* implies *diversitas mentium*, literally, that both spouses have come to hold different views and wish to go their separate ways[65].

Why draw attention to divorce, an institution not provided for in Catholic marriage, in a work intended as the latter's monumental legal compendium? The existence of divorce is investigated among Romans, and Jews, and with regard to the relationship between the different laws on marriage: the law of nature, which universally imposes the bond as indissoluble to make possible the rearing of children, and which precedes history, as it is rooted in creation; evangelical law, which places marriage in the order of grace, and, through the symbolism of Christ's union with the Church, seals the conjugal bond for all eternity; and a multiplicity of normative systems whose historical existence is sometimes at odds with the natural and the evangelical laws. If marriage, in addition to being an institution of nature, thus present among all peoples, is a divine institution, which God himself established as being indissoluble, how can it be that it has not always been the way God willed it?

The different ways the marital bond could be broken among the Romans are dealt with in a detailed treatise, on which we will not dwell here, explicitly referencing two roughly contemporary scholars, the historian and

[64] D. Quaglioni, *«Divortium a diversitate mentium». La separazione personale dei coniugi nelle dottrine di diritto comune (appunti per una discussione)*, in S. Seidel Menchi - D. Quaglioni (eds.), *Coniugi nemici*, pp. 95-118; A.M. Rabello, *Il divorzio degli ebrei nell'Impero romano*, in «Zakhor», 3, 1999, pp. 11-32; G. Di Renzo Villata, *Separazione personale (storia)*, in *Enciclopedia del diritto*, vol. 41, Milano, Giuffrè, 1989, pp. 1350-1368.

[65] T. Sanchez, *Disputationum … tomus tertius*, lib. 10, disp. 1, n. 1, p. 330 (I am referring specifically to *Digestum*, 24.2.2).

Lutheran minister Johannes Roszfeld, with his *Antiquitates*, and the Flemish Catholic jurist Jacob Raewaerd[66], who authored a commentary on Roman laws. Conversely, Sánchez does not broach Jewish custom. He believes describing the Jewish ways is unnecessary, on the grounds of their irrelevance to the moral question at hand («ad rem moralem praesentem»), to wit, the sinfulness of divorce, an act severing a bond deemed infrangible by Christians, and which Jews also ought to view as unbreakable. The main authority Sánchez identifies on the issue of divorce among Jews is Thomas Aquinas's comment to Peter Lombard's *Sententiae*, where the matrimonial laws of the patriarchs are addressed, and it is asked whether their having had concubines, or multiple wives, and their custom of divorcing them, was sinful or not[67]. Unlike De Luca, Sánchez concerns himself with Jewish marriage not in the present, but in the past, under the old law, before the regime of evangelical law – with which it would have been at variance on crucial aspects – was in place. Indeed, divorce lies at the heart of the conflict between the old and the new law. Deuteronomy 24:1 reads as follows: «If a man marries a woman who becomes displeasing to him because he finds something indecent about her, and he writes her a certificate of divorce, gives it to her and sends her from his house». How can it be, the theologian asks, that God allowed Moses to pronounce such words?

In the style typical of disputations, several different opinions are expressed in a polyphony of voices. The most truthful is perhaps that God did not make divorce licit, but only turned a blind eye («conivens») on the frailty («fragilitas») of Jews and on the obstinate hardness of their heart, so they would not fall prey to worse vices[68]. The first authority is evangelical, Matthew 19:8. Questioned by the Pharisees as to why Moses allowed divorce in spite of God's order that man not separate what God had joined together, Jesus answered: «Moses permitted you to divorce your wives because your hearts were hard. But it was not this way from the beginning». The passage is taken up repeatedly in a centuries-long textual tradition, including Jerome's commentary to the Gospel of Matthew, the *Glossa ordinaria*, Nicholas of Lyra's commentary, and literature from Sánchez's own

[66] *Ibid*.; I. Rosinus (1550-1626), *Antiquitatum romanarum corpus absolutissimus*, Basileae, 1585[1]; I. Raevardus (1535-1568), *Ad leges duodecim tabularum liber singularis*, Brugis Flandrorum, apud Hubertum Goltzium Herbipolitam Venlonianum, 1563[1].

[67] T. Sanchez, *Disputationum … tomus tertius*, lib. 10, disp. 1, n. 4, p. 331; P. Lombardus, *Sententiae*, lib. 4, dist. 33, in *PL* 192, coll. 924-926 and Thomas Aquinas, *Super Sententiis*, lib. 4 d. 33, in https://www.corpusthomisticum.org/snp4027.html#19926.

[68] T. Sanchez, *Disputationum … tomus tertius*, lib. 10, disp. 1, n. 13, p. 333.

time, theological or otherwise. Drawing from the *Syntagma iuris*, by the Toulouse lay jurist Pierre Grégoire (1540-1597), Sánchez likens the divine concession of divorce to that of usury. The legislator, wrote Grégoire, cannot expect too much of subjects who, like the Jews, are unable to follow laws to their full extent[69]. But Sánchez is interested in the moral sphere, in the history of salvation, rather than in secular law. Why would God have kept his chosen people in sin, allowing them to break the indissolubility of the bond between a married man and woman through divorce? Does this mean the matrimonial bond has not, by its very nature, been indivisible since the creation of Adam and Eve? What weight do the tales of creation given in Genesis carry, if the human history that followed did not comply with their teachings? Let us bear in mind that the *Doctrina de sacramento matrimonii* established by the Council of Trent traced the divine institution of indissoluble marriage back to Genesis 2:23, to the creation of humanity's progenitors[70].

Once again, the solution to these dilemmas comes from the conclusion that it was only through the coming of Christ, the Church's groom, that the matrimonial bond assumed its eternal nature, becoming the symbol of the union between Christ and Church. Before then, the bond could be dissolved, because, at the time of the *Lex Mosayca*, a divine dispensation (something of an unrepeatable ad hoc privilege) had simply suspended the natural law, which Christ restored. As stated in the *Glossa interlinearis*, «Christ's doctrine concurs with the natural law, for his is the time of completion (*perfectionis*)»[71]. This means that following Christ's coming (a watershed moment after which history knows no other breaks), all those who divorce their wives, Jews included, commit a deadly sin. Considering the oft-mentioned separate jurisdiction of Jewish marriage and the idea that the latter is merely a contract devoid of any spiritual dimension, extending this moral prohibition to Jews is unfeasible in point of fact, but still serves the purpose of reinforcing the rule's universality.

The relationship between princes and subjects on the matter of marriage is also scrutinized from the perspective of salvation history, and considering

[69] *Ibid*., disp. 1, n. 5, p. 331; P. Gregorius, *Syntagma juris universi*, Lugduni, Apud Antonium Gryphium, 1582, pars 3, lib. 22, cap. 3, n. 20, p. 105.

[70] G. Alberigo et al. (eds.), *Conciliorum oecumenicorum decreta*, Concilium tridentinum, sess. 24, 11 Nov. 1563, Doctrina de sacramento matrimonii, pp. 753-754.

[71] T. Sanchez, *Disputationum … tomus tertius*, lib. 10, disp. 1, n. 9, p. 333; *Bibliorum sacrorum tomus quintus cum Glossis, interlineari et ordinaria, Nicolai Lyrani expositionibus*, Lugduni [s.e.], 1545, Matthaei cap. 19, fol. 58v.

the variety of relations between princes and Christian peoples, princes and infidel peoples, infidels governed by Christians, and vice versa[72]. When it comes to Christian marriage, no one, save the pope, can intervene, for «today» marriage is a sacrament (the adverb *hodie* recurs frequently in association with *sacramentum*, indicating both Christ's time and the time following the Tridentine confirmation of the sacramental nature of matrimony). A union between infidels is not a sacrament, and so an infidel prince can establish impediments to the marriages of his subjects, introduce elements in the ritual to prevent clandestine marriages, or impose marriages between people belonging to different sects for a just cause, such as the assurance of peace.

The above does not apply, however, to the «respublica hebraeorum». At present, the latter is not «free», and so it is not governed by a Jewish prince who can establish new matrimonial rules for his subjects[73]. For the same reason Azpilcueta maintained that Jews could never have a Council of Trent. Like the Navarrese theologian, Sánchez wonders about the value of the rules established before Christ's coming, when the *respublica hebraeorum* was free. As we have seen, according to Azpilcueta, Jewish marriage had never even required the carrying out of strictly necessary formalities, excepting the expression of free and mutual consent by the spouses. Of the norms established in the Old Testament, Azpilcueta safeguarded only those he called «naturales». Sánchez agrees and specifies that these are the prescriptions found in Leviticus 18, pertaining to the degrees of kinship making certain types of sexual unions impossible to be viewed as marriage, and to sexual purity[74]. The two theologians do not see eye to eye on whether these have entirely lost their efficacy after Christ's coming. Sánchez is inclined to continue to regard them as valid for Jews only, on the grounds that they were established at a time when the Jewish *respublica* was free[75].

[72] T. Sanchez, *Disputationum … tomus secundus*, Venetiis, apud Iuntas, 1612, lib. 7, disp. 3, pp. 5 ff.

[73] *Ibid*., n. 6, p. 6.

[74] See K. Stone, *Marriage and Sexual Relations in the World of the Hebrew Bible*, in A. Thatcher (ed.), *The Oxford Handbook of Theology, Sexuality, and Gender*, online edition, Oxford Academic, 5 May 2015, https://doi-org.ezproxy.unibo.it/10.1093/oxfordhb/9780199664153.013.020, accessed 27 Feb. 2025.

[75] T. Sanchez, *Disputationum … tomus secundus*, lib. 7, disp. 3, n. 6, p. 6.

In Sánchez, too, all this serves the purpose not only of redefining the boundaries of Catholic marriage (that is, of confirming the primacy of evangelical law, the only one able to make natural law fully effective), but also of establishing what to do with Jews married *more hebraeorum* who converted to Christianity: is their old marriage still valid, or must a new one be celebrated? The solution to this dilemma is once again derived from Thomas Aquinas. Holding together Aristotelian biology and Roman law, Aquinas corroborates and secures within the Scholastic tradition the idea that even marriages between infidels, Jews included, once consummated, are true and valid, and remain so even when both parties convert. As to the jurisdiction over Jewish marriages in lands subjected to Christian princes, Sánchez claims that only stately courts are to admit cases having to do with conflicts between spouses, impediments to the bond, adultery or maltreatment, for such marriages are the result of purely secular contracts[76]. This perhaps makes it easier to understand why Ester, in the Rome of the second half of the seventeenth century, turned to the *Auditor Camerae* to denounce the abuse suffered at the hands of her (dubious) husband Leone.

4. Necessary boundaries, uncertain boundaries, and research perspectives

The history of Tridentine marriage, and of the difficult application of its rules, is also a history of the attempted imposition of a precise and inescapable boundary between marriages and informal unions, concubines and wives, grooms-to-be and husbands, the disorder of lust and the legitimate exercise of sexual practice, regulated by the contract and blessed by the sacrament. Yet how can the separateness and primacy of Catholic marriage be established definitively, when marriage itself is regarded by doctrine as an institution of nature, thus theoretically present in all cultures, including those untouched by faith, and those failing to recognize Christ, the son of God, as the source of true faith? The presumed ubiquity of marriage as a 'human' institution is at odds with the presumed universality and primacy of Christian sacramental marriage. The intense activity of theologians and jurists, observed here as they tackled Jewish marriage, attests to their desire to establish a boundary, as well as to the difficulty they faced in identifying one. Research on the history of marriage in the context of colonial evangelization has also helped to shed light on this uncertainty, emphasizing its functional implications. Precisely by virtue of its alleged

[76] *Ibid*., n. 9. p. 7.

ubiquity in all faiths and cultures, and of the porosity of the boundaries between the legitimacy and illegitimacy of the bond, marriage has been a powerful tool for the conquest of souls, a facilitator in the conversion of infidels[77]. And, finally, it has been a powerful lens through which to observe and judge 'others'. The many *dubia* missionaries sent to Rome regarding the sexual habits of the peoples they were to evangelize point in this direction. The tone of these texts varies between scandalized attitudes, an attempt to classify based on familiar behavioral schemes, and a will to assimilate[78]. Was the ease with which a wife could be forsaken so that another might be married in her place, witnessed in the Philippines, equivalent to divorce? And how did that behavior relate to Jewish divorce? These were some of the questions raised by a Jesuit missionary whose treatise *De matrimoniis Indorum apud Insulas Philippinas* constitutes a part of the manuscript collection of moral cases belonging to the Jesuit theologian and cardinal Juan de Lugo y de Quiroga (1583-1660)[79]. The author of the opinion was inclined to equate the two practices, and, as a result, regarded as 'true' neither Filipino nor Jewish marriages. In the missionary's daily life, this would have made it easier for him to release neophytes from pre-existing bonds, and to favor new marriages occurring in keeping with the faith into which they entered by converting. Recourse to the model of Jewish marriage as a prototype and interpretive key for foreign matrimonial customs, of which the one mentioned above is but an example, warrants further research. Additional investigation could focus not only on the issue of the bond's indissolubility, but also on the matter of monogamy and on prohibited degrees of kinship.

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[77] Most recently, see C. de Castelnau-L'Estoile, *Un catholicisme colonial. Le mariage des Indiens et des esclaves au Brésil, XVIe-XVIIIe siècle*, Paris, PUF, 2019.

[78] P. Scaramella, *I dubbi sul sacramento del matrimonio e la questione dei matrimoni misti nella casistica delle congregazioni romane (secc. XVI-XVIII)*, in «Mélanges de l'École française de Rome. Italie et Méditerranée», 121, 2009, 1, pp. 75-94; I.G. Županov, *Lust, Marriage and Free Will. Jesuit Critique of Paganism in South India (Seventeenth Century)*, in «Studies in History», 16, 2000, 2, pp. 199-220, accessible online at https://doi.org/10.1177/025764300001600202.

[79] Archivum Romanum Societatis Iesu (ARSI), Fondo Gesuitico (FG), Opera nostrorum (Opp. NN.) 150, fols. 121r-136r. The corpus is examined by S. Tutino, *Uncertainty in Post-Reformation Catholicism. A History of Probabilism*, New York, Oxford University Press, 2018, pp. 295-312.

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Jewish and Catholic Marriages in Early Modern Italy
Affinities, Differences, Interactions

by *Germano Maifreda*

ABSTRACT

The article analyzes and compares the marriage rituals and civil norms of Jews and Catholics in early modern Italy. The text highlights crucial differences: Jewish women enjoyed greater autonomy and superior economic protection, particularly regarding the dowry, which was safeguarded even in the event of the husband's bankruptcy. Unlike Christian women, who faced increasing control from the Church (especially after the Council of Trent), Jewish women could rely on a more favorable legal system and marriage contract (the *ketubbah*). Based on the communities of Livorno and Ferrara, the analysis demonstrates how this autonomy and the structure of the Jewish dowry not only protected the woman but also the family business. Finally, the essay suggests that, in Counter-Reformation Italy, a gradual convergence was taking place between the Jewish and Christian models of marriage. This is analyzed also by examining several rabbinical opinions, including a previously unpublished one by the eminent Roman rabbi Tranquillo Vita Corcos.

Keywords: Jewish marriage – female autonomy – dowry – early modern Italy – Council of Trent

A distinctive feature of Italian cultural and social history is the strong affinities observable in the traditional Jewish and Christian marriage rituals, which are not found elsewhere in Europe and the Mediterranean region. The existence of these affinities is attributable to millennia of continuity and the physical and social contiguity between minority and majority religious groups that have historically been established on the peninsula[1]. However, during the sixteenth and seventeenth centuries, the legal and symbolic parallels between Christian and Jewish matrimony underwent

[1] For a comprehensive overview, consult R. Weinstein's seminal work, *Marriage Rituals Italian Style. A Historical Anthropological Perspective on Early Modern Italian Jews*, Leiden, Brill, 2004.

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a marked shift. The Catholic Church intensified control and delegitimization of the legal significance of the matrimonial promise, known as the *sponsali* or *sponsalia*, which, in contrast, remained a substantial legal and moral milestone for the Jewish community. In addition to the possibility for Jewish spouses to gain access to divorce through the granting of the man's bill of divorce to the woman, the *get*, the preservation of the legal significance of the Jewish betrothal meant that Jewish women retained some freedom of choice[2].

Gradually, however, as I will try to demonstrate further, a single pivotal moment of union for the Jewish population of Italy emerged as the cultural archetype of marriage, as had previously been the case for Christians. Consequently, the autonomy of Jewish women in determining their marital status was also subject to scrutiny.

1. Freedom and constraint in early modern marriage(s)

In Roman times, the term *sponsalia* was used to describe the promises made by a woman's *pater familias* and her future husband: the former to give her in marriage and the latter to take her as his wife. Therefore, *sponsalia* were the mutual promises of future marriage. It is also acknowledged that, within the framework of Roman law, marriage is regarded as a status that is established through a straightforward private agreement. The validity of the marriage was predicated on this understanding, and was independent of the betrothal, the *sponsalia*, which ordinarily preceded it, as well as of physical cohabitation. In the Roman world, marriage was also considered to be independent of any settlement that confirmed the pecuniary terms of the union. Furthermore, it was considered to be independent of the accompanying festivities or religious ceremonies[3].

[2] On this vast topic, see initially G. Labovitz, *«With Righteousness and with Justice»: To Create Equitable Jewish Divorce, Create Equitable Jewish Marriage*, in «Nashim: A Journal of Jewish Women's Studies & Gender Issues», 31, 2017, special issue on *New Historical and Socio-Legal Perspectives on Jewish Divorce*, pp. 91-122; with regard to gender inequality in Christian marriage, an excellent starting point is F. Alfieri, *Nella camera degli sposi. Tomás Sánchez, il matrimonio, la sessualità (secoli XVI-XVII)*, Bologna, Il Mulino, 2010; see also M. Madero, *La loi de la chair. Le droit au corps du conjoint dans l'oeuvre des canonistes (XII–XVe siècle)* (Paris, Éditions de la Sorbonne, 2015).

[3] See the classic study by J. Gaudemet, *Le mariage en Occident. Les mœurs et le droit*, Paris, Les éditions du Cerf, 1987. A recent reconsideration is C.-E. Centlivres Challet (ed.), *Married Life in Greco-Roman Antiquity*, New York -Abigdon, Routledge, 2022;

Matrimony has been a matter of significant concern for the Church since the advent of Christianity. In Medieval Europe, the institution of marriage occupied a unique position at the intersection of the secular and religious spheres. In both Christianity and Judaism, the spiritual dimension of marriage was overseen by religious authorities, while the secular authorities were responsible for the administration of the material dimension of marriage, with this aspect being shaped by the interests of families and communities. The Counter-Reformation Catholic Church identified marriage as a relationship that required regulation, and it was confirmed as a sacrament in the sixteenth century, following the Council of Trent (1545-1563). This development resulted in an increased focus on marriage in canon law. Over time, canon law gradually and slowly began to regulate all aspects of marriage.

In order to provide a context for the subsequent discussion, a brief review of the legal framework within which Christian marriages took place in Italy prior to these developments is necessary. Pre-Tridentine marriage did not consist of a single act, but rather of a series of stages. In the Middle Ages, the exchange of consent between the two parties, expressed in a verbal promise to enter marriage, was sufficient to legally and religiously seal a Christian union. Two principal forms of civil marriage prevailed.

The first of these comprised solemn nuptial ceremonies, conducted without a priest. The performance of such ceremonies was contingent on the presence of contracts and family consent. In many cases, the supervision of these ceremonies was undertaken by family members. This tradition was predominantly observed by the elite and ruling classes and was commonly termed «dynastic» or «combined» marriage. The second type of marriage was characterized by private nuptial ceremonies involving betrothed couples and was regulated by custom. The union of betrothed couples was traditionally conducted in rural and mountainous regions. The commitment of the betrothed individuals was fundamental and was followed by the consummation of marriage through sexual intercourse. The recognition of this nuptial practice was consistent across both canon law and secular legislation, which categorized such unions as clandestine marriages[4].

for a perspective on Judaism see initially M.L. Satlow, *Jewish Marriage in Antiquity*, Princeton, Princeton University Press, 2001.

[4] S. Seidel Menchi - D. Quaglioni (eds.), *Matrimoni in dubbio. Unioni controverse e nozze clandestine in Italia dal XIV al XVIII secolo*, Bologna, Il Mulino, 2001; E. Brambilla, *Il Concilio di Trento e i mutamenti nella legittimità dei rapporti tra sposi*, in

The inherent difficulty in providing definitive evidence for the mere exchange of consent meant that this purely consensual conception of marriage opened the way to bigamy and to the rejection or denial of betrothal. This created a sense of anarchy, on which the Counter-Reformation Church sought to impose order. The canons ratified at Trent, in conjunction with the bishops' edicts that enforced them, endeavored – and ultimately prevailed, albeit gradually – to establish the prevailing perspective that prior agreements held the equivalent of a betrothal promise. The institution of marriage was thus understood to occur solely following a public and solemn ceremony conducted by parish priests, imbued with the essence of a sacrament.

Following the Council of Trent, the formalization of a sacramental union between a man and a woman was contingent on the official notification of the Catholic Church and the absence of any impediments. Such impediments might include kinship ties, prior marriages, and the absence of consent on the part of the woman. In order for the marriage to be officially recognized, it was necessary for it to be certified in special parish registers, and this process had to be carried out in the presence of witnesses. Matrimonial unions that did not conform to this model were designated as clandestine and declared invalid, thereby placing the partners in the legal category of concubines.

The volatility of the matrimonial status during the Medieval and early modern centuries, coupled with the emergent emphasis on standardization and consolidation of marriage procedures, resonated with the Jewish world, which concurrently confronted analogous challenges. Although there were relevant subcultural variations, Jewish marriage was a ritual that followed ancient rules and traditions.

Originally, the Jewish matrimonial process comprised three stages: the promise (engagement), *kiddushin*, and *nissuin*. During the Talmudic period, which spanned the destruction of the Second Temple in 70 CE to the Muslim conquest in 638 CE, sanctions were issued against those who performed *kiddushin* without prior agreements. Gradually, these agreements evolved into a formal ceremony. In the post-Talmudic era, i.e. roughly the Christian Middle Ages, the tradition of the groom giving a ring to the bride as part of the *kiddushin* ceremony emerged.

A. Bellavitis - I. Chabot (eds.), *Famiglie e poteri in Italia tra Medioevo ed Età moderna*, Roma, Publications de l'École Française de Rome, 2009, pp. 51-76.

The matrimonial rite was fundamentally structured in two phases. Men pledged to woman. In the context of *kiddushin*, the man would present the woman with a precious object, frequently a ring or other piece of jewelry, in the presence of witnesses. This act served to legitimize the consent of the betrothed and was customarily conducted within the framework of an official ceremony, often in the form of a banquet attended by family members, friends, and relatives. The purpose of this formality was to initiate the process of contractual agreement, encompassing the delineation of the terms of engagement, financial obligations, and the designated date of the nuptials. The finalization of these arrangements could also extend over a period of years following the engagement, with the objective of allowing families to accumulate the stipulated dowry or to ensure that very young future spouses reach the age deemed appropriate for marriage.

In the Jewish tradition, as well as in Christianity prior to the Tridentine reforms, the period between betrothal and marriage permitted the woman to repent and rescind her commitment. In such cases, a series of financial and property adjustments between the families of the failed spouses typically ensued. While the Council of Trent was underway in 1548, a Ferrara Jewess by the name of Sole Barochas – the daughter of a prominent Sephardic merchant who had been at the helm of the Portuguese Jewish community for several years following her settlement in the Duchy of Este – had a change of heart about her commitment to marriage. Her former fiancé, Alvaro, who was also a merchant of Portuguese origin residing in Ancona, paid Sole 200 gold ducats on the understanding that she would enter into matrimony with another man within a period of six years. In the event that the woman was unable to locate a husband within the specified timeframe, the sum would be returned to Alvaro. The valuable gifts bestowed on her by her fiancé remained the property of the girl. The agreement was also ratified by Sole's brothers[5].

Another example is provided by a seventeenth-century Ferrara Jewess, Laura Vita. Born to an affluent merchant, Vita was betrothed to her cousin. This privileged position enabled her to enjoy time and liberty to contemplate her own decisions, an opportunity by then denied to Christian women. In 1651, her betrothed presented her with a gold necklace in front of two

[5] L. Graziani Secchieri, *Spose senza marito. Mancate nozze, conversione, divorzio e ripudio nella Ferrara ebraica tardo medievale e di prima età moderna*, in L. Graziani Secchieri (ed.), *Vicino al focolare e oltre. Spazi pubblici e private, fisici e virtuali della donna ebrea in Italia (secc. XV-XVIII)*, Firenze, Giuntina, 2015, pp. 47-96, here pp. 60-61.

rabbis, relatives and friends, who had witnessed the lacing of the necklace around the woman's neck. The agreements, written in both Hebrew and Italian, stipulated that the groom would receive the agreed dowry of 40,000 scudi, comprised of both movable property and cash, without any claim to Laura's estate until the marriage was formally celebrated, which was scheduled to take place within five years.

However, it is evident that the events did not unfold as the betrothed's parents had anticipated. In the subsequent years, Laura's enthusiasm diminished, as evidenced by the following statement that her mother, Regina, wrote in a memoir five years after the engagement: «Laura used to sigh when she felt time was going slowly, and then she would try to make it go even more slowly». In late May 1657, Laura relocated to the residence of Count Ippolito Strozzi, where she underwent a religious conversion to Catholicism. Subsequently, the commitments were mutually cancelled through a protracted legal process that concluded in 1660. It is worthy of note that Laura, who adopted the surname Pio di Savoia, ultimately entered into matrimony with the nephew of the monsignore who had facilitated her conversion[6].

The significance of the Jewish betrothal within the legal framework ensured the retention of decision-making autonomy for Jewish women in Italy, a prerogative that was progressively eroded for their Catholic counterparts[7]. It should be further noted that this phenomenon occurred in addition to the possibility for Jewish spouses to gain access to divorce through the granting of the man's bill of repudiation to the woman[8]. It is imperative that these elements be anchored in a wider historical framework.

In the late Middle Ages, early marriages became increasingly prevalent in Jewish Europe, as well as in Christian Europe and the Muslim world. This

[6] L. Graziani Secchieri, *Il singolare caso di Laura de Vita. Da erede del banco da Po a 'illustre signora' dei Pio di Savoia nella Ferrara di metà Seicento*, in «Materia giudaica», 19, 2014, 1-2, pp. 169-199.

[7] M. Caffiero, *Il matrimonio ebraico e i cristiani. Doti, 'ghet', sponsali*, in O. Melasecchi - A. Spagnoletto (eds.), *Antiche 'ketubbòt' romane. I contratti nuziali della Comunità Ebraica di Roma*, Roma, Campisano, 2018, pp. 55-66.

[8] A. Grossman, *Pious and Rebellious. Jewish Women in Medieval Europe*, Waltham, Brandeis University Press, 2004; A. Veronese, *Donne ebree italiane e ashkenazite in Italia centro-settentrionale. Doti, testamenti, ruolo economico*, in L. Graziani Secchieri (ed.), *Vicino al focolare e oltre*, pp. 153-163. See also A. Foa, *La donna nella storia degli ebrei in Italia*, in C.E. Honess - V.R. Jones (eds.), *Le donne delle minoranze. Le ebree e le protestanti in Italia*, Torino, Claudiana, 1999, pp. 11-30.

phenomenon can be attributed, at least in part, to economic and residential uncertainty, as evidenced by contemporary rabbinical texts. Additionally, the expansion of trade played a significant role in this development. The uncertainty surrounding the future, engendered by the expulsion of Jews from significant regions of Western Europe, precipitated a swift and decisive response from families when the opportunity to formalize marriages arose. In Italy, the dispersed nature of Jewish settlements, frequently comprising only a small number of families, contributed to the contraction of the marriage market, as has previously been observed. This dynamic prompted parents to engage in arduous negotiations necessitating their physical presence, a factor that rendered such negotiations impractical in the context of increasing spatial mobility and intensity of trade, which often resulted in fathers being absent for extended periods. This phenomenon also gave rise to the practice of betrothing underage girls in absentia, with paternal promises inscribed during perilous international business trips. This phenomenon, among others, contributed to the emergence of a more uniform Jewish female demographic across Europe and the Mediterranean region, aligning with the prevailing trends observed in the surrounding societies.

In the context of early marriage, the outcome manifested as a profound material and psychological reliance on parents by the young couple. In the case of women, this often led to a restriction on their daughters' education, which remained under the control of the grandparents. The phenomenon of medieval Jewish bigamy has been subject to greater documentation in predominantly Muslim regions, where the practice of polygamy was prevalent. Cases are exceedingly rare even within medieval Muslim Spain. In the Franco-German area, bigamy was formally prohibited by the rabbinical authorities between the eleventh and twelfth centuries, thereby establishing a precedent that was subsequently adopted throughout Christian Europe. The medieval Ashkenazi rabbinate was characterized by a greater degree of intellectual openness, which resulted in the provision of enhanced guarantees of freedom, autonomy and mobility for women. There are extant records of German Jewish women who traveled extensively, even in the company of men, for work and business purposes.

In European Jewish society during these centuries, the practice of 'divorce' between Jews was permitted, albeit not endorsed by the rabbinical authorities. In this respect, the concrete historical experience of Jews did not differ so radically from Christian customs, since Catholic spouses had been able to revoke their marriage since the Middle Ages by appealing to the ecclesiastical authorities and courts, which declared it null and void or, in

some cases, dissolved it. Within the Jewish legal framework, divorce was recognized as a legal repudiation of the woman by the man. However, an analysis of rabbinical *responsa* suggests that pressure from wives to obtain a divorce could be a contributing factor. These *responsa* indicate that, while the process was difficult, wives were sometimes able to secure a divorce through such means. In the Medieval centuries closest to the early modern period the legal status of women within marriage was made more secure by court rulings and *responsa*. The Franco-German rabbinical authorities made repudiation more difficult by establishing that the man needed the woman's consent to separate from her and by transforming the act from private to public. This introduced the requirement for the husband to argue his case and obtain the approval of the rabbis or the *parnassim*, the 'Elders' of the Community.

The pivotal issue of women's autonomy, including that of Jewish women, in selecting a spouse – within a Jewish legal framework that ascribes a crucial role to the consent of spouses in establishing the marital bond – must also be contemplated in relation to the prevailing framework and the subcultural features of the Jewish group. The pervasive phenomenon of interpenetration between female dowry assets and the share capital of Jewish-run companies, in conjunction with the legal protection afforded to the dowry itself if incorporated, signified that religiously or socially exogamous marriages diminished the capacity of merchant families to utilize the financial and land contributions of the female spouse. The degree of autonomy enjoyed by women in their marital choices was therefore contingent on the dowry system, kinship systems, and the privileged forms of patrimonial and hereditary transmission within them. Among the Sephardic Jews of Livorno, for example, and in contrast to other Jewish contexts on the peninsula, customs more akin to those of the Christian elite prevailed throughout the modern period. This resulted in young women often having little choice in the selection of their future husbands[9].

2. An engagement that «forms and binds the marriage bond»

The Jewish wedding ceremony, the *nissuin*, is traditionally conducted under a decorated canopy known as a *huppah*, in the presence of two witnesses.

[9] F. Trivellato, *The Familiarity of Strangers. The Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period*, New Haven, Yale University Press, 2009, pp. 264-265.

The reading of the marriage contract is a central tenet of the ceremony, and is regulated by a *tenaim*, a written agreement usually drawn up by friends or parents of the bride and groom and notarized. A *ketubbah*, or dowry agreement, is also a component of the ceremony. Subsequently, the man articulates the established formulas in a ceremonial manner. Following the ritual blessings, the spouses are permitted to commence cohabitation. Jewish marriage also naturally entailed the assumption of specific duties: the man was obliged to provide sustenance, attire, and household furnishings. Both spouses were obliged to engage in regular sexual relations, the frequency of which was contingent on the man's occupation. The man was also obliged to ensure financial security for the woman in the event of divorce or of his own death, to cover medical expenses and ransom in the event of kidnapping, and to provide for his own burial and support his widow with his own resources, allowing her to reside in his home for the duration of her widowhood. Finally, it was incumbent upon the man, once more through his offspring, to provide financial support to any daughters he had by his wife[10].

The performance of mutual marriage rituals was, for Jews and Christians, an occasion for joint celebrations and libations. The former occasionally adopted Christian practices, while the latter participated in events and matrimonial ceremonies within the ghetto, typically without significant concern for potential transgressions of canonical restrictions[11]. This phenomenon is exemplified by the acts of Giorgio, a young sailor, who, at the close of the sixteenth century, was formally accused before the Venetian Inquisition by the relatives of a Jewish girl, Rachele, with whom he had fallen in love. The accusation was made through an anonymous complaint, which, as Giorgio immediately informed the inquisitor, had been lodged there (and in other courts of which the paper provides no direct knowledge) by the girl's family. The latter was concerned about his intention – known, it would seem, to everyone in the Venice ghetto, as Jewish

[10] L.M. Epstein, *The Jewish Marriage Contract. A Study in the Status of the Woman in the Jewish Law*, Clark, Lawbook Exchange, 2004; J.R. Baskin, *Jewish Private Life. Gender, Marriage, and the Lives of Women*, in J.R. Baskin - K. Seeskin (eds.), *The Cambridge Guide to Jewish History, Religion, and Culture*, Cambridge, Cambridge University Press, 2010, pp. 357-380. For subcultural specifications, see initially S. Yahalom, *The Marriage Ceremony in Early Medieval Ashkenaz*, in «Review of Rabbinic Judaism», 27, 2024, 2, pp. 109-131.

[11] Examples of Christians participating at *qiddushim* are in G. Tomasi - S. Tomasi, *Ebrei nel Veneto orientale. Conegliano, Ceneda e insediamenti minori*, Firenze, Giuntina, 2012, p. 91.

witnesses later stated – to convert to Judaism in order to marry Rachele. Alternatively, according to Giorgio's account provided during his interrogation by the Venetian inquisitors, the objective was to convert the young woman to Catholicism, to achieve the same outcome[12].

We thus discover that Giorgio often visited the Venetian ghetto, thereby becoming involved in all aspects of Venetian Jewish social life, including nuptial ceremonies. Jewish weddings in Venice were usually celebrated on Wednesdays, and it was customary for Christians to attend the evening celebrations, despite the gates of the ghetto being supposed to be closed at that time. On such occasions, the sailor participated actively in the banquets, fetching food from the oven and welcoming guests with a lit double candle in his hand. He also performed this role at the wedding of a «Salamon Maestro», even acting as host: «inviting the Jewish people and welcoming them as Jews do», said a Jewish witness[13]. It is also documented that Giorgio was seen by the Jew Iacob «eating many times, mostly on the street in the ghetto, and I saw him eating focaccia and puine [ricotta], which he took by force from those who were selling them». The butcher Sansone had observed him «taking [from him] some bresuole [chops] and meat to go and eat with the Jews»[14]. The young Christian baker, Alessandro, who resided in the parish of Santa Maria Formosa and who, without significant difficulty, traveled to the ghetto to bake and sell unleavened bread, had observed Giorgio in the period immediately preceding *Pesah*, the Jewish Passover, «last year and this year in the ghetto [where I was] cooking their unleavened bread, and in this oven the Jews cook capons, pigeons, veal, and other things of various kinds, often on a regular basis». On Friday, in accordance with the Sabbath observances, the pots were placed in the oven in the evening, with the intention of being utilized the following morning, Saturday. This practice coincided with a period of relative inactivity for the majority of the population.

[12] A more detailed examination of the Inquisitorial trial is available in G. Maifreda, *Italya. Storie di ebrei, storia italiana,* Roma - Bari, Laterza, 2021, pp. 18-35.

[13] *Processi del Sant'Uffizio di Venezia contro ebrei e giudaizzanti*, ed. by P.C. Ioly Zorattini, 14 vols., Firenze, Olschki, 1980-1999, VIII, pp. 94 and 81; the episode is confirmed by other witnesses on pp. 86 and 87, where a ghetto guard also mentions the marriage of a Moisè, «servitor» of the banker Samuel. The cuisine of the ghetto festivities included, among other things, various cuts of meat, chickens, capons, and «melina de carne pesta» (from the Yiddish *melem* or German *mehl*, meaning flour, which was the main ingredient) (*ibid*., pp. 85 and 93).

[14] *Ibid*., pp. 85-86 and 88.

Alessandro proceeded to elaborate further on this point, with reference to Jewish weddings:

«I know a Giorgio, who called himself that in the ghetto, he has a pointed beard, he is older than me, about 22 or 23 years old… Last Lent, there were a couple of Jewish weddings in the ghetto, I think they were Levantines, and after baking the unleavened bread, they took it to the bakery, along with capons, cakes, and little pigeons to bake, and those who were organizing the wedding, or the patron, or the servants who had brought the food to be baked, said to the owner of the oven, who was a Jew, where I was cooking: 'Take one of the best capons for your regalia!' And Giorgio tore off a leg or wing of a capon that was cooked and ate it, contaminating me, and the oven owner, who is a Jew, laughed, and his name is Gneccole»[15].

Giorgio even attended the nightly vigil that preceded the ritual circumcision ceremony, which is of considerable religious and symbolic significance to the Jewish people. In accordance with the ancient ritual expressing the protection of the child from the weakness in which he lives in the phase of life prior to circumcision, the home of the child in some communities on the peninsula saw the gathering of friends of the family in vigil. In some cases, as in Rome, the night was spent singing psalms, reciting invocations, or reading and commenting on passages from the *Talmud* or the *Kabbalah*. «And while they are keeping vigil over male children who are uncircumcised», it was said of Giorgio in the Inquisitorial trial, «he goes there and stays with them all night until morning, with the Jews, as they do»[16]. The presence of a Christian at such a moment, rich in religious and identity significance, highlights the high degree of ceremonial familiarity that could exist between Christians and Jews in early modern Italy, despite the existence of the ghettos.

It is well known that early modern mechanisms of access to marriage frequently involved plans to increase power, prestige, and wealth shared among dynasties, factions, and families. Despite the establishment of the principle of free choice for spouses, particularly women, by the Council of Trent, the objective of marriage was frequently realized in the early modern period – for both Christians and Jews – following protracted negotiations between families. It is challenging to ascertain the rationale that guided the individual negotiations in retrospect. However, the transmission, through dowries, of a crucial right such as that of using houses in Italian ghettos – the *jus gazagà*, or perpetual usufruct right that allowed

[15] *Ibid*., pp. 85-86.

[16] *Ibid*., p. 82.

Jews to live in and use properties within the ghettos in exchange for a fixed rent – can provide valuable insights.

The example of Gabriele Bolaffi, a Jew from Pesaro, who in 1723 married his niece (his brother's daughter) Ester, obtaining a dowry consisting of «the sole jus of gazacà that they have, hold, and possess over the house belonging to the parish church of San Nicolò in this city, located within the ghetto»[17], appears to refute the hypothesis that agnatic marriages (i.e., between relatives, frequently patrilineal cousins) were the result of strategies to keep substantial assets within the family. In this case, it would be more reasonable to consider the difficulty for Jews living in small communities of contracting marriage alliances outside the family itself. Poverty – the same condition that led less well-off Christians to request marriage dispensations among close relatives from the ecclesiastical hierarchy – may therefore also have played a role in persuading Jews to preserve social acceptance of marriage between first cousins or between uncles and nieces, which was common in Italy throughout the early modern period, especially in the Sephardic subculture[18].

Jewish marriage customs, like Christian ones, could therefore be influenced by financial considerations. This aspect had arguably a more substantial impact on the Jewish sphere, since the limited implementation of primogeniture or fideicommissum – a widespread institution in the Christian world that concentrated inheritance on the eldest son – allowed for the distribution of inheritance to younger sons and even to daughters, who were usually given a dowry. Shrewd kinship strategies could therefore providentially remedy the risk of excessive fragmentation of family assets. However, even in terms of marriage and inheritance strategies, there were various forms of cultural transfer between Christians and Jews during the early modern period. Where primogeniture was a widespread inheritance practice among Christians, as was the case in southern Europe and also in Italy, Jewish families (especially in Venice and Livorno) began to apply testamentary provisions requiring male children to live together and manage their father's assets jointly. Starting in the seventeenth century, throughout Europe, the families of large Sephardic merchants began

[17] M. Gasperoni, *La misura della dote. Alcune riflessioni sulla storia della famiglia ebraica nello Stato della Chiesa in età moderna*, in L. Graziani Secchieri (ed.), *Vicino al focolare e oltre*, pp. 175-216.

[18] See initially *Genre et dispenses matrimoniales: représentations et pratiques juridiques et généalogiques au Moyen Âge et à l'*époque moderne, special issue of «Genre & Histoire», ed. by M. Gasperoni - J. Hauck, 21, 2018.

to apply actual fideicommissary provisions similar to those applied by the majority, to ensure the future management of at least part of the business to the son most gifted with entrepreneurial talent[19].

Of course, important differences remained, even in matters of dowries. In Italian Christianity, with the end of the Middle Ages, the custom of the groom's family contributing to the couple's dowry disappeared, but it remained very much a part of Jewish wedding arrangements. In the patrilineal Christian system, the dowry thus took on the form of an inheritance conferred on the new family solely by the bride's family; in wealthier families, this inheritance could be very substantial and even include palaces and extensive land holdings. At the same time, Christian wives were excluded from any guaranteed rights to their husband's future inheritance, being able to recover their dowry only in the event of widowhood.

Things were often different in the Jewish sphere. If we remain in Sephardic Livorno – a relevant example from an economic point of view, given the financial weight and international scope of the commercial companies founded there by Jews who had flocked to the port since the end of the sixteenth century – we find, for example, that traditional Jewish law and customs were generally respected. They prescribed that the dowry should consist of a female part (*nedynya*) and a male part (*tosefet*), in addition to a small sum (*mohar*) which varied according to the woman's status and was not paid by the husband to widows and divorced women. The *tosefet* paid by the man's family usually amounted to 50 percent of the amount given by the bride's family. The two dowries were thus merged into a dowry estate that was administered by the husband and became his definitive property in the event of his wife's death. If the woman was widowed, she received the entire dowry, including the part from the man's family[20].

In the event of bankruptcy of the company owned by the husband, the Jewish woman was entitled to the return of both parts of the dowry; the part originally given by the husband's family was reduced by half if the couple had no children. This system of asset protection was not only much more favorable to women than the Christian system, but also proved providential for commercial enterprises in difficulty. In the event of bankruptcy, Jewish law made the dowry a shield against creditors' claims on the commercial capital contributed to the business by the family. Emblematically, this type of provision began to be applied by Christian merchant families

[19] F. Trivellato, *The Familiarity of Strangers*, p. 134.

[20] *Ibid*., pp. 135-136.

as well, although what made it particularly effective among Sephardic Jews was the strict endogamy of the community, thanks to which families able to provide rich dowries on both the male and female sides were able to 'shield' the large capital on which the operations and prestige of commercial enterprises were based.

In this frame, among some Jewish families, especially Sephardic ones in modern times, the application of the biblical law of levirate marriage – which required a woman or man who had been widowed without children to marry the older brother or sister of their husband or wife – served to minimize the risk that a drain on resources would compromise the integrity of the family fortune. Polygamy, which had already fallen into disuse in Talmudic times, was formally prohibited in the Middle Ages among Ashkenazim by a rabbinical ruling, while it remained formally accessible in the Sephardic world in early modern times. However, most families on the Italian peninsula adapted to the traditional monogamy prescribed within Catholic society. Some marriage contracts of the wealthiest Sephardic families in Venice or Livorno (written in highly ornate *kettubot*) expressly prohibited men from remarrying. This can be read, for example, in the marriage agreements drawn up in Livorno before the marriage of the very wealthy Sarah Baruch Carvaglio, to whose future husband Moses Attias the girl's family paid the exceptional sum of 17,000 ducats in 1667. In 1721, the same clause was included, again in the Tuscan port, in the marriage contract between Rebecca Francia and Moses Alvares Vega. When, seven years later, the husband violated the clause and took a second wife, the leaders of the Jewish community of Livorno forced him to divorce Rebecca, as partial compensation for the damages she had suffered, including the financial ones[21].

In sum, the daily custom of interaction and cross-fertilization in early modern Italy played a significant role in the gradual fading of the ancient, strong similarities between Christian and Jewish marital customs. This shift coincided with the actions of Catholics following the Council of Trent, which effectively diminished the legal and moral significance of the promise of marriage, a practice that remained legally unaltered among Jews. In addition to the possibility for Jewish spouses to obtain a divorce through the granting of a bill of divorce (the *get*) by the man to the woman, the maintenance of the legal importance of Jewish betrothal, and the central role of women in Jewish patrimonial and familial internal dynamics, meant that

[21] *Ibid*.

Jewish women in particular retained a degree of freedom of choice that the Council of Trent began to deny to Christian women. However, there are some indications that suggest that in early modern Italy, in the concrete world of juridical, social and cultural interactions, Jewish and Christian cultures regarding marriage were also converging.

As previously discussed, the recourse by the Jews to the inquisitorial court through an anonymous complaint resulted in an inquisitorial trial against the sailor Giorgio. This case is indicative of the well-known intertwining of Christian powers and Jewish universities in both the legislative and judicial spheres, as well as the practice of Jews resorting to Christian tribunals[22]. But, of course, in early modern Italian Jewish society marriage was primarily handled by rabbinical courts (*Bet Din*) established within Jewish communities, where permitted (for example, they were prohibited in the Papal States). The courts were primarily responsible for administering Jewish law in areas where it differed most from the majority's *ius commune*, including matters relating to marriage, divorce, inheritance and the protection of minors. A rabbi's personal actions could also effectively substitute for judicial practice. In areas where the Bet Din were not expressly prohibited, such as the Duchy of Mantua, we may hear the voices of communities committed to preserving their legal and judicial traditions with direct reference to the institution of marriage. It is the case of the following request for the establishment of a Jewish court, submitted by Mantua representatives to Duke Guglielmo Gonzaga in 1577[23]:

[22] F. Trivellato, *Jews and the Early Modern Economy*, in J. Karp - A. Sutcliffe (eds.), *The Cambridge History of Judaism*, vol. 7, *1500-1815*, Cambridge, Cambridge University Press, 2017, pp. 139-167; M. Caffiero, *Regiudaizzanti in fuga, ebrei complici. L'Inquisizione romana e i convertiti pentiti*, in A. Del Col - A. Jacobson Schutte (eds.), *L'Inquisizione romana, i giudici e gli eretici. Studi in onore di John Tedeschi*, Roma, Viella, 2017, pp. 157-175, by the same author, *The History of the Jews in Early Modern Italy. From the Renaissance to the Restoration*, New York - London, Routledge, 2022; S. Di Nepi, *Surviving the Ghetto. Toward a Social History of the Jewish Community in 16th-Century Rome*, Leiden - Boston, Brill, 2020, by the same author, *(Un)stable Ghettos. The Current State of the History of Jewry in Early Modern Italy*, in «Church History and Religious Culture», 104, 2024, 3-4, pp. 403-421; K. Aron-Beller, *The Practicing Jew in Early Modern Inquisitorial Strategy*, in B. Dov Cooperman - S. Di Nepi - G. Maifreda (eds.), *Jews and State Building. Early Modern Italy, and Beyond*, Leiden - Boston, Brill, 2024, pp. 182-204.

[23] Mantua, Archivio Storico della Comunità ebraica di Mantova, filza 1, file 50, p. 29, 10 September 1577; as well as for the following testimonies, given during the ducal investigation carried out in 1579.

«Since it is often necessary, suddenly, in the interests of wards or in cases of marriage, divorce, or renunciation, or oaths of widows on their marriage certificates, to make certain immediate declarations with ceremonies, according to the rite already celebrated by all of Judaism, and likewise, when necessary, according to their custom, to have some of their Hebrew writings recognized and to receive testimony for Jews, both local and foreign, all of which must be done in the presence of three or more elected persons who in such cases are called *Bet din*, which means constitution of judgment, … the [Jewish] University … devoutly requests … that a declaration be made that they may, in accordance with Jewish custom, appoint persons to act in such cases».

When the Gonzagas subsequently conducted an investigation to gain a better understanding of the nature and scope of the Jewish courts, Moisé Salim, who described himself as «agent of the Heads of the University of the Jews of Mantua» in Venice, attested that, at that time, the Serenissima also granted the appointment of «three Jewish persons called *Betdin* in Hebrew» with similar powers to those indicated by their co-religionists in Mantua. The Cremonese Jews also attested that in their city – as an «Anselmus de Levi» wrote – «Hebraic courts are held as if they were *Betdin* … so that those who wish to avail themselves of these courts … may verify and justify that the things decided in these courts are true». Simon de Todeschis testified that the same was true in Frankfurt, where he was born: «These courts, established in this manner, have full and ample credibility, and are treated as if they were public documents. I have been present at several similar courts, which I cannot recall at present». Where communities were unable to resolve internal conflicts through rabbinical justice, notarial guarantees, or arbitration, which was also often administered by rabbis, they could always resort to the Jewish courts located in large cities.

This same oscillation between the use of internal justice within Jewish communities and recourse to external courts, combined with the concrete interactions between the majority and minority that occurred on a daily basis, led to a contamination between the marriage cultures of the two social spheres in early modern Italy. An exemplification of this is provided by the oeuvre of Rabbi Tranquillo Vita Corcos (Hazekiah Manoah Hayym ben Isaac, 1660-1730), who, in 1720, composed and dispatched three letters to the Cardinal Vicar of Rome, requesting his intervention in a case of adultery committed by a Jewish couple, Leone di Cori and Savia Pallarella, who were both married to other individuals. The rabbi's objective was to annul their marriage, which had been invalidly contracted in a remarkable manner. On a day in August, in front of the entire ghetto, Leone had given Savia a ring and pronounced in Hebrew the traditional formula by which he took her as his wife («You are married to me by this ring according to

the law of Moses and Israel»). The couple were thus united in matrimony by means of the traditional betrothal ring, in accordance with the legal principles established by the legal traditions. The «scandalous practice» of the two «reckless and brazen» individuals, as Corcos described them, had long been the subject of discussion within the Roman Jewish community, until the Vicariate, acceding to the rabbi's request, had them imprisoned in the court jails. The man was released on the condition that he «not converse» with the woman, under penalty of five years' imprisonment; Savia refused to leave prison until she was united in marriage with Leone, finally having to accept the order under penalty of flogging. As far as the «street wedding» ceremony, the vicariate court was inclined to deem it valid[24].

Within the framework of this judicial overlap between the Jewish and Christian spheres, even in matters of marriage, the reduction of the symbolic and legal significance of engagement – which was already a fait accompli in the Catholic sphere by the eighteenth century – may also have taken place in the Jewish world. The position expressed by Tranquillo Vita Corcos himself in relation to a case that occurred in the early eighteenth century in the city of Urbino can perhaps be interpreted in this light. After Salamon Castelli had promised to marry Consola Castri, the man – we read in the legal opinion drawn up on that occasion by the authoritative Roman rabbi – «became furious and impetuous, to the point that he threw himself into a well, nearly drowning himself». Understandably, after this event, Consola decided to «divorce him and marry another, fearing to remain with Salamone», even though he considered himself «cured of his forgetfulness». The girl's family then negotiated a new union with Moisé Samuel di Leon Guglielmi, with whom negotiations on the dowry began and the exchange of rings took place.

In a dramatic turn of events, however, Salamone and Consola fled to Pesaro and began to live, as Corcos wrote in his opinion, «in contempt of their own rite and religion» in what most considered «adulterous copulation». The rabbi reports that the «Rabbinical Academies of the State» of the Church «and of other sovereign places», including Rome, Ancona, Ferrara, Reggio, Mantua, and Modena, promptly mobilized «to remove this scandal repugnant to Divine Law and Nature»[25]. From the jurist's point of view,

[24] We do not know how the story ended: see M. Caffiero, *Il rabbino Tranquillo Vita Corcos, in tribunale del cardinale Vicario e il matrimonio degli ebrei adulteri*, in «Zakhor. Rivista di storia degli ebrei d'Italia», 1, 2017, pp. 9-34.

[25] This handwritten *responsum* (archival date 1728) is preserved in Jerusalem, Central Archives for the History of Jewish People, IT/An 389.5.

there was between the two an «adulterous union and sacrilegiously contracted marriage, from which all children born would be spurious, illegitimate, and reprobate by Divine Law». In this case, there is a clear tendency on the part of such a prestigious exponent – also in terms of lineage – of the peninsular rabbinical and legal tradition, to anticipate the effectiveness of the marital commitment already at the time of the promise of marriage, thus establishing for Jews, as was already the case for Christians, a single moment of formalization of the marital union. In fact, Corcos identifies in the engagement defined as «*kidduschim*, that is, the tradition of the ring» the moment that «forms and binds the marriage bond, prohibiting the woman from marrying or betrothing herself to others, and doing so she must be condemned for adultery, as should be the man who marries her … Nor [can a woman] ever free herself from the man with whom she has contracted the *sponsali* with the tradition of the Ring, except by means of the *Libello del Ripudio*», that is the *get*. The wedding ceremony, concludes Corcos, was only the «third act» of the marriage ritual, after the promise of marriage and the exchange of rings. «More binding for the husband in favor of the wife», the act «called *Chupà* by the Hebrews» was «no different from the second act *Kudduscin* [*sic*] concerning the bond and marriage knot that makes it absolutely forbidden for the woman to bind herself to another»[26].

3. Conclusions

A contract between families in a world where family membership was the fundamental core of human and power relations; a form of control over sexuality, mainly female, which ensured the legitimacy of children and guaranteed the transmission of wealth, social identity, and religious faith; a set of rules established by secular and spiritual authorities and a range of customs jealously guarded over time. Many institutions and individuals, both Jewish and Christian, had an interest in maintaining firm control over marriage, so it is highly significant that the two social spheres converged to some extent around this issue in Italy throughout the early modern and modern periods.

The history of Italy uniquely shows strong affinities between traditional Jewish and Christian marriage rituals, a phenomenon not found elsewhere in Europe or the Mediterranean region. During the sixteenth and seventeenth

[26] *Ibid*.

centuries, the Catholic Church progressively diminished the legal significance of the matrimonial promise, whereas for the Jewish community it remained a substantial legal and moral milestone. However, further research is needed to confirm whether, despite the initial differences and the preservation of the significance of Jewish betrothal, a single pivotal moment of union gradually emerged as the cultural archetype of marriage for the Jewish population of Italy, mirroring the Christian trend. This occurred within a context of a general push for the standardization and consolidation of marriage procedures in both the Christian and Jewish worlds, involving financial considerations, kinship systems and dowry arrangements. However, the interaction between the Jewish and non-Jewish spheres also worked in the other direction. Jewish marriage customs, particularly the dowry system involving contributions from both families, offered greater asset protection for women and could even shield struggling commercial enterprises, a practice later adopted by some Christian merchant families.

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A Matter of Choices

Jewish Women and Jewish Marriages in the Ghetto of Rome (Seventeenth-Eighteenth Centuries)

by *Serena Di Nepi*

ABSTRACT

In early modern Jewish society, marriage was an essential and expected life event for both men and women, particularly within the constrained context of the Roman ghetto. This article explores how, for Jewish women, marriage functioned not only as a personal milestone but also as a conscious affirmation of religious identity in contrast to the alternatives of conversion or monastic life. Amidst limited sources – shaped by male voices and communal structures – the study examines how Jewish communities, especially through dowry confraternities, strategically supported marriages to preserve religious continuity. Drawing from censored educational texts, communal financial practices, and dedications by women, the essay argues for a reinterpretation of ghetto life as shaped by deliberate, aware decisions. It emphasizes the agency of women who chose to remain Jewish, proposing a methodology rooted in multilingual, multicultural documents to better understand their experiences and the collective efforts to sustain Jewish life under marginalization.

Keywords: Jewish history – women – ghettos – conversion – Rome

In early modern Jewish society, marriage was a pivotal moment in the lives of both men and women. Within a system that offered no institutional path for celibacy – neither for men nor for women – marriage was not merely a choice but a necessary and expected life step. Yet in the precarious position of Jews as a tolerated and marginalized minority within the ghettos of premodern Italy, even this universal rite of passage was far from neutral.

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Choosing to marry within the Jewish community and to live a Jewish life represented a conscious alternative to religious conversion, which might lead to Christian marriage or entry into a monastery or convent[1].

This article explores the life choices of Jewish women in the Roman ghetto from this perspective, despite the well-known challenges in accessing conventional sources on the topic. The entangled voices in the historical documentation – marked by the predominance of male testimony and shaped by the ongoing negotiation between individual agency and communal structures – must be traced across a variety of contexts. Among these, as will be shown, the role of dowry confraternities stands out as particularly revealing. Against this backdrop, the decision to allocate communal funds to matrimonial arrangements represented a deliberate strategic measure designed to fortify Jewish life within the ghettos.

One such example comes from the Roman ghetto: on 20 September 1683, the local *Compagnia a maritar le zitelle povere* [*Chevrà Betulot*; Brotherhood for supporting the dowries of the poor unwed girls] recorded its internal document concerning the dowry of Speranza, daughter of Abram Bonaventura, on the occasion of her marriage to Laudadio Modigliani:

«*Tenor superioris ordinis* Magistrate signor Abram Marino, Depositor General for the marriage of maidens is pleased to provide for the nuptials of Speranza, daughter of Abram Bonaventura in matrimony to Laudadio Modigliani from the fruits of the money bequeathed for this purpose by the late *Isach da Sora* and other money bequeathed by other Jews for this purpose, which will be paid with receipts from the bridegroom, that is for the month of Elul passed of 14 October 1683 – Abram Lazaro Viterbo, *Fattore* [Governor of the Jewish Community]; Isach Sonnino *Fattore*; then *Signor* Abram Tedesco *Fattore*, replacing Salvatore Sonatore replaced»[2].

[1] S. Di Nepi, *The Jews of the Italian Peninsula*, in D. Graizbord (ed.), *Early Modern Jewish Civilization. Unity and Diversity in a Diasporic Society. An introduction*, London - New York, 2024, pp. 224-244. For a general overview on the history of Jews in Early Modern Italy, see G. Maifreda, *Italya. Storie di ebrei, storia italiana*, Roma - Bari, Laterza, 2021 and M. Caffiero, *The History of the Jews in Early Modern Italy. From the Renaissance to the Restoration*, London - New York, Routledge, 2022.

[2] «Tenor super adiuvit ut Magnifico signor Abram Marino Depositario generale a maritar zitelle cui piaceva provvedere per le nozze di Speranza figlia di Abram Bonaventura sposa di Laudadio Modigliani delli frutti delli denari lasciati a tal effetto dal quondam Isach da Sora da Sarzana ed anche delli frutti delli denari lasciati da altri hebrei a tal effetto, che con sicurtà dello sposo saranno ben pagati, cioè per il mese di ecus questo cristo di 14 dicembre 1683. Abram Lazzaro Viterbo Fattore; Isach di Sonnino Fattore; il signor Abram Todesco Fattore; Salvatore Sonatore sostituto»; Archivio Storico della Comunità Ebraica di Roma «Giancarlo Spizzichino» (hereafter cited as ASCER), Archivio Medievale e moderno, 1017/2SUP4, c. 1r.

This entry is the first in a long series of similar records compiled by the same *Compagnia* between that date and 17 December 1698, all of which have come down to us in the historical archive of the Jewish Community of Rome. The document – which served as a model for the 175 subsequent entries – is divided into two parts. The first transcribes in full an earlier deed in Latin, drawn up by one of the *Trenta Notai Capitolini*, the notaries of Rome. The second consists of a concise summary, in Italian, of the key aspects of the donation, with occasional Hebrew terms rendered mostly in Roman transliteration and, more rarely, in Hebrew characters. This second section bears a later chronological date than the first and differs in other formal respects: as shown above, the dating follows the Hebrew calendar rather than the Christian one, and the bride's name precedes the groom's, reversing the original order of the Latin document[3].

While the functions of this confraternity – and analogous institutions within early modern Jewish communal cohesive structures of the time[4] – may be readily inferred, it remains notable that the endorsement of endogamous marriage and the life trajectories of young Jewish women assumed heightened significance and entailed considerable risk within the confines of the ghettos of Catholic Reformation Italy. This essay reconstructs that strategic choice by analyzing the specific mechanisms devised by and for women in the early modern period to protect Jewish identity and cultural continuity. The central hypothesis advanced herein is that the Jewish societies intentionally sought to reinforce the individual and collective awareness of its female minority, fully cognizant of the compelling alternatives – especially to its youngest members – presented by organized proselytizing campaigns.

The archives, the synagogues and museums of the Italian Jewish communities preserve countless traces of this collective commitment to protecting their religious difference. Reading events from this perspective allows us to write a new history of the ghetto phenomenon, focused on those who chose to live there and their awareness of that choice, rather than on those who ordered the ghettoization and the cultural interactions between Jews and Christians that were provoked by discrimination.

I propose to do just that: given that the people who lived in the ghetto accepted living there and were aware of the costs of their decisions, these

[3] D. Soggiu, *Assegnare un sussidio dotale alle fanciulle del ghetto. La Compagnia 'Betulot' a Roma*, forthcoming.

[4] D.B. Ruderman, *Early Modern Jewry. A New Cultural History*, Princeton, Princeton University Press 2010, pp. 60-65.

decisions deserve to be considered as the result of deliberate responses that took place in the context of other possible options. Along these lines, the first part of the essay suggests a methodology of investigation focused precisely on the predominance of the choice to remain Jewish, and proposes an investigation that starts from official documentary procedures executed in multilingual and (partially) multicultural contexts. We will look at how this central issue was addressed by examining three different sources: a famous booklet dedicated to the education of young women (which was ultimately censored) offers valuable insights into the topics that were dear to the group; the activity of this Roman confraternity demonstrates the kinds of resources that were mobilized around the sensitive issue of dowries; and finally, we will look at a small sample of dedications on ritual objects donated by women to the *Scole* of the ghetto itself, which reveal what these women wanted to tell us about themselves.

1. Shifting the perspective

Once we orient the history of the ghetto around an internal perspective that is centered on the choice to hold on to a minority group in a hostile context, the very same relationship with the sources is perforce subjected to a necessary adjustment. The logic according to which Jewish institutions produced and preserved documents, and the polysemous context in which the actions of record-keeping and documentary validation were conceived become essential questions. On the one hand, the construction of the institutional memory of the *Universitates Iudaeroum* [Jewish Communities, in the legal terminology of the time] obviously had to respond first to the functional needs of the institution with respect to the internal rules the group had set up for itself, as well as to the requests of external administrations. On the other, the men who physically compiled the registries and papers had to make choices: which language to employ, which forms, and what dating system to use, all constituted fundamental elements of producing documentation. Depending on the uses chosen, these elements evoked different worlds. Jewish or Christian dating or the use of both calendars imparted specific meanings to the texts being drafted, regardless of whichever language was dominant, and whatever its relationship was with the other languages used for communicating within the community.

Jewish groups simultaneously communicated in several languages and notaries could (and needed to) choose which of these to use for each

document they produced, a choice that was governed by the rules required for the specific type of transaction they were documenting.

The choice of a language used in documents was a conscious action, never random. It was only at the beginning of the 1700s, and for reasons yet to be clarified, that the Roman Jewish Community began to compile its internal records mainly in the Italian language and alphabet, at least for matters of current administration. However, there remained individual words in Hebrew that could not be translated into other languages, words that were linked to the religious aspects of the group's life and, more generally, to matters considered so sensitive in terms of Jewish identity that there was no need for them to be changed. In the meantime, entire pages of these narrow registers were drafted only in Hebrew. The coexistence of the two languages confirms that recourse to one or the other was conscious and intentional; at the same time, it demonstrates the extent to which Hebrew continued to be regularly read, written, studied and used[5].

We also find similar processes in other Italian ghettos, and though we still lack a systematic mining of the archives and libraries, there are several aspects that deserve attention. The first point is that the survival of Hebrew, despite censorship, was not accidental, but the result of deliberate actions: the widespread ability to draft official documents in Hebrew, along with the regular composition of literary, exegetical or normative texts in that language confirms a very diffuse knowledge and use of it. This fact, in turn, attests to the care and skill with which that language continued to be taught. The use of Hebrew, recorded everywhere, constituted a central element of the asymmetrical struggle around religious membership that the Jews who lived in the ghettos faced daily, for a very long time. On the one hand, the pervasive force of the majority/minority system pushed for conversion and opposed Jewish culture per se, recognizing its dignity and value only in the context of Christian interpretation; on the other, there was the difficult option of remaining Jewish, which meant living in the ghetto, with all the consequences that implied. Preserving the language of Jewish culture and diversity obviously carried considerable weight in the ghetto. The ability to understand Hebrew, to move within the Jewish tradition, and the ability to communicate in the local Judeo-Italian dialect were tools functional for the affirmation of that choice and its continued implementation: there was a need to dispel the

[5] Initial findings for this research were made in the registries of the Scole that are kept in the ASCER, among which see, Scola Tempio: 4m4; Scola Castigliana: 1L13; Scola Catalana: 3U7.

shadow of doubt that accompanied daily life, and to make this possible it was essential that Jews learn how to ask difficult questions, and how to answer them appropriately.

The community documents recorded the political practices of the group and the affairs of governing, which at that time were the province of men. Women could exert some influence, and so penetrate the circles of power, but it was a mediated and indirect participation. In the surrounding society, beyond the protected and separate spaces of the convents and a few exceptional experiences in aristocratic circles, women remained systematically excluded from public governing tasks. This clearly also applied to Jewish communities, as the registries of the *Universitates* confirm: they documented the actions and decisions of men, even when the subject was women, in whatever language they were written. However, this does not mean that it is not possible to find women's voices and ideas in this type of documentation. In fact, the dialectic of author/subject/object conceals and transforms them according to shared models that were commonly accepted by the people involved. This means that those who knew how to listen were able to consider the contributions of individuals, whoever they may have been, within the framework of regulatory, bureaucratic and social practices set up this way.

The famous definition which Jacques Presser (1958) applied to the word «ego-documents» and the most recent research on the history of emotions offer a useful approach in this direction[6]. On the one hand, the careful search for individual feelings, even in texts that were written by third parties and at least appear to have been subject to strict and uniform rules, proves to be fruitful if carried out from the perspective of gender within the ghettos. On the other, Barbara Rosenwein's notion of 'emotional communities' convincingly proposes tracing a group's boundaries by identifying its rhetorical devices, sentimental tools and strategies for representing its members' experiences: experiencing emotions, narrating them and behaving according to codified standards constituted a shared means of communication in the community, itself built precisely around performative

[6] «The word 'egodocument' refers to autobiographical writing, such as memoirs, diaries, letters and travel accounts. The term was coined around 1955 by the historian Jacques Presser, who defined egodocuments as writings in which the 'I', the writer, is continuously present in the text as the writing and describing subject»; see: http://www.egodocument.net/egodocument/ and R. Dekker (ed.), *Egodocuments and History. Autobiographical Writing in its Social Context since the Middle Ages*, Verloren, Hilversum, 2002.

and identifying gestures, words and actions[7]. This was valid for Christians, valid for Jews and valid for every community that identified itself as such.

It goes without saying that from the perspective of gender, the pressures to convert that were specifically directed at Jewish women further complicated the picture[8]. Precisely because the invitation to cross the boundary was openly aimed at female sensibilities, and played upon the emotional bonds of motherhood with particular fervor, women's voices were charged with even stronger meanings of their own[9]. At the same time – and this is the point I am interested in highlighting – the community around her knew how to decipher every line of that message, not only because its members recognized the latter's codes, but also because over time it had introduced a series of tools designed specifically to respond to this very same question: namely, how to manage and protect diversity in a hostile environment. This is what a famous handbook for Jewish women published in 1616 set out to do.

2. Educating for difference

In 1616 the Sarzana printing house in Venice published a booklet with the evocative title *Precetti d'esser imparati dalle donne hebree* [Precepts to be Learned by Jewish Women]. The book presented an Italian translation, with numerous Hebrew inserts, of the 'how-to' book for women written by Polish Rabbi Benjamin Slonik (c. 1550-c. 1619) in Yiddish and first published in 1577. The original book enjoyed wide circulation in the following decades[10]. Slonik's guide was simple, up-to-date, and written in plain and circulation language, and it immediately achieved a degree of success, even

[7] B. Rosenwein, *Generations of Feeling. A History of Emotions, 600-1700*, Cambridge, Cambridge University Press, 2015.

[8] M. Caffiero, *Le doti della conversione. Ebree e neofite a Roma in età moderna*, in «Geschichte und Region/Storia e regione», 19, 2010, 1, pp. 72-91. More recently, T. Herzig, *«For the Salvation of This Girl's Soul». Nuns as Converters of Jews in Early Modern Italy*, in «Religions», 8, 2017, pp. 252-265 and, by the same author, *The Future of Studying Jewish Conversion in Renaissance Italy*, in «I Tatti Studies in the Italian Renaissance», 22, 2019, pp. 311-318.

[9] M. Caffiero, *Forced Baptisms. Histories of Jews, Christians, and Converts in Papal Rome*, Berkeley, University of California Press, 2012.

[10] For the Italian translation, its context and its author, see the indispensable work by P. Settimi, *La donna e le sue regole. Ebraismo e condizione femminile tra XVI e XVII secolo*, Manziana, Vecchiarelli, 2009, to which I refer for the detailed indications given here. The original edition was studied in E. Fram - A. Romer Segal, *My Dear Daughter.*

internationally. For example, around 1595 in Mantua one could count thirty copies of the work among the book collections of Ashkenazic families, who were able to read and understand Yiddish. The women to whom it was addressed finally had at their disposal a reference of thoughtful instructions, designed to help them to manage everyday doubts and problems concerning sensitive matters, such as those related to domestic intimacy, on their own and without having to turn to a rabbi. The book's success among Jewish women was the reason that Alpron, who was in close contact with that world and therefore had direct experience of the use of such a product, launched the cultural operation of translating the work into Italian.

The Italian translation went through three successive editions: in 1625, from the Paduan press of «Stamperia di Gaspero Crivellari»; in 1657, by Giovanni Imberti in Venice; and then from the «Stamperia Bragadina» in 1710, with important corrections. Faithful to the original, the Italian manual was divided into three parts: the first part is a detailed presentation of the precepts of sexual purity (*niddah*), the second part discusses the rules for the preparation of *challah* (the bread for *Shabbat*), and the third part presents the laws concerning the kindling of lights on *Shabbat* and holidays (*nerot*). *Niddah*, *challah* and *nerot* constituted (and still constitute) the key religious obligations for women, all closely linked to the feminine and to the Jewish conduct of domestic life. They were (and are in orthodox groups) tasks to be performed by women only; to this day, it is not permissible for them to be delegated to men. These characteristics defined the central position of the woman in traditional Jewish society: a woman's body, her rhythms, her intimate needs and her material and spiritual actions created Jewish time in the home and the family, and in this way explicitly guaranteed the Jewishness of the new generations. The text of the manual is simple, understandable, practical, and for the most part almost bilingual: numerous terms in the Hebrew alphabet appear on every page, once again proving the widespread ability to read that language in ghetto society, even among women.

In a surprise ruling on 31 January 1732, more than a century after the first Italian edition, the Congregation for the Index condemned the volume on the basis on an opinion by Antonio Teoli, a censor and preacher to

Rabbi Benjamin Slonik and the Education of Jewish Women in Sixteenth-Century Poland, Cincinnati, Hebrew Union College Press 2007.

the Jews in Rome[11]. The friar, who also taught Hebrew, considered the volume dangerous due to the great deal of explicit information about the menstrual cycle and sexual relations included on its pages, which he considered inappropriate. Curiously, Teoli made no mention of the criticisms leveled against the same work by Giulio da Morosini in his *Le vie della Fede spiegate agli ebrei* of 1683. The famous convert, well known for the violence of his anti-Jewish positions, had dedicated several pages to the 'extract' of 'Rabi Beniamino d'Ardeno Tedesco' and to Alpron's translations, which he considered to be a vehicle for insidious superstitions[12].

For both Morosini and for Teoli, the motives for condemning the *Precetti* went beyond the specific objections that were raised, directly touching the very matters about which the Jewish community was systematically working to alleviate doubt. As the two censors well knew, it was the choices of women that guaranteed the resilience of the family, and therefore of the community, and the *Precetti* had been designed to guide those women in their daily lives as Jews, answering their questions in light of the most up-to-date rules. Attacks on the book, in whatever form they took, were specifically aimed at undermining this system, with the goal of weakening the backbone of Jewish society, that chain of transmission of belonging and faith in which every couple – and thus every woman – was considered a link In this contest of sides, the two Christians (who wanted the Jews to stop being Jews) expended every effort to sow doubts, precisely because the Jews were committed to providing certainty.

The Index's ban must have been successful to a degree, because despite the four editions just cited, today there are only five copies of the *Precetti* in the book collections of Italian Jewish communities, two of which are in manuscript form in Livorno[13]. The disappearance of the never catalogued library of the Jewish community of Rome in the wake of the Nazi raid in October 1943 prevents us from advancing hypotheses on the book's diffusion in this city after 1732, though it is legitimate to wonder whether anyone might also have taken inspiration from the Tuscan example and

[11] Regarding him, now see E. Michelson, *Catholic Spectacle and Rome's Jews. Early Modern Conversion and Resistance*, Princeton, Princeton University Press, pp. 135-137 and p. 189.

[12] The entire story is reconstructed in detail in P. Settimi, *La donna e le sue regole*. Morosini places this passage in his *Vie della fede spiegate agli ebrei* (Roma, 1683) on pp. 963-964.

[13] See the ICCU catalog, *ad vocem*: https://opac.sbn.it/web/opacsbn/risultati-ricerca-avanzata#1655987483444.

produced copies by hand[14]. Pia Settimi, the only person to have thoroughly studied the story of this text, has advanced the hypothesis that it was actually a Roman copy, perhaps owned by a convert, that attracted the attention of the censor; maybe even precisely the one which is today kept in the Vatican Library. In general, however, it is worth recalling that – according to Isaiah Sonne, the only person to have made a general survey of the Roman library between 1934 and 1936 – the heart of Italian communities' libraries everywhere was formed by the Hebrew Bible, the Talmudic commentaries and the basic legal texts, these often in turn coming from confraternities dedicated to education[15]. The *Precetti* performed the same function, filling a communication void regarding questions of *halakhah* (Jewish law) by addressing a defined public that was interested in the subject and aware of its importance. Not surprisingly, even in recent times many Italian communities gave young women who were performing their first ritual bath in the days immediately preceding their wedding a pamphlet by Rabbi David Prato entitled *Alle spose d'Israele* (Rome, 1950), which essentially summarizes the rules found in the *Precetti* in a few pages. Centuries after Slonik's publication and Alpron's translation, the problem of offering certainty to religious belonging and the ways in which to protect it remained central, even in a society that was now profoundly different.

3. Supporting marital choices

So, young women needed to wed, and this too could represent a major challenge for the Jews of Catholic Reformation Italy. As is well known, the shadow of baptism insinuated itself around the ghettos, whose forced inhabitants were well acquainted with the benefits that conversion offered. Indeed, those benefits were repeated at every possible opportunity: female neophytes would receive large dowries, regardless of whether they intended to form a Catholic family or were instead contemplating joining a convent. While there is no way to ascertain the sincerity of conversions, or their deep personal motivations, the Christian strategy of persuasion should be evaluated for what it was, starting from its stated

[14] S. Di Nepi, *La biblioteca della Comunità ebraica di Roma*, in L. Gallo - R. Morselli (eds.), *Arte liberate. Capolavori salvati dalla Guerra*, Torino, Electa, 2022, pp. 366-373.

[15] For more about Sonne's report and on the unexplored research paths it opens, now see https://www.cdec.it/wp-content/uploads/2020/05/ISAIA_SONNE_NOTE_A_MARGINE_DEF.pdf.

intentions[16]. Encouraging conversion was also conceived of in economic and social terms: the salvation of souls was the priority, an objective to be accomplished by any legitimate means, and financial support was explicitly considered to be among these means, both in Rome and elsewhere.

Families therefore found themselves faced with two problems: on the one hand, the Christian financial incentives had to be countered – lest the more uncertain youth be led into temptation! – and on the other similar tools had to be created to support Jewish marriage in the ghetto. The parallel appearance of Christian and Jewish brotherhoods dedicated to fund-raising for the marriage of young women was an important phenomenon in a variety of cities, and was mentioned by Giulio Morosini in a famous passage about Venice[17]. Attilio Milano highlighted the importance of this subject in his classic work on the ghetto of Rome, where he reported the elevated sums of dowries for the daughters of bankers, and examined the work of the two Jewish confraternities established for this purpose in the seventeenth century; the *Confraternita a dotar le zitelle povere* (*Chevrah Betulot*) – just mentioned above – and that of the 'women' (*Chevrah Nashim*, attested to from 1617). Thanks to a comparison of the sums distributed by the two brotherhoods and the dowries for bankers' daughters recorded in the documents preserved in the Archivio Storico della Comunità Ebraica of Rome, Milano was able to evaluate the sizes of dowries for the period 1625-1673 and fix them at between 250 and 3500 *scudi*, with an average of around 1080 *scudi*[18].

Kenneth Stow and Sandra Debenedetti Stow carried out a wide-ranging investigation on the stories of women they found in the registries of the Jewish notaries in Rome, reconstructing the mechanisms of matrimony, familial relations between generations, and the tools for protecting domestic

[16] M.C. Pitassi - D. Solfaroli Camillocci (eds.), *Les modes de la conversion confessionnelle à l'époque moderne. Autobiographie, altérité et construction des identités religieuses*, Florence, Olschki, 2010. For a concrete case, see S. Villani, *Unintentional Dissent. Eating Meat and Religious Identity among British Residents in Early Modern Livorno*, in K. Aron Beller - C. Black (eds.), *The Roman Inquisition. Centre Versus Peripheries*, Boston - Leiden, Brill, 2018, pp. 373-394.

[17] For a general overview of Jewish marriage in early modern Italy, see R. Weinstein, *Marriage Rituals Italian Style. A Historical Anthropological Perspective on Early Modern Italian Jews*, Leiden, Brill, 2004, pp. 142-143, 236-239. Morosini refers to the Venetian Confraternity in *Vie della fede mostrata agli ebrei*, p. 242.

[18] A. Milano, *Il ghetto di Roma. Illustrazioni storiche*, Roma, Carucci, 1964, pp. 350-362.

tranquility in sixteenth-century society[19]. Piet van Boxel shifted his reflection outside the nucleus, offering a first look at the central role of the convent and *Confraternita della Ss.ma Annunziata* in the donation of dowries to converts. He goes on to open a reflection on competition between Jews and Christians over this specific matter, his hypothesis being that competition over dowries between Jewish and Christian institutions had an impact on the future of Jewish girls[20]. This line of comparative investigation was then taken up by Marina Caffiero, who highlights the unique set of economic privileges that converts could bring to the Roman marriage market, and considers the specific impact of the *get* (bill of divorce) in the history of conversion and the family. Caffiero presents the value of Jewish women as a key point in Jewish-Christian relations, centered precisely on the slippery subject of conversion and the possibility of rejecting it[21]. On this basis, then, Alessia Lirosi presented the first results of her research on the *Nunziatella* itself, highlighting the convent/confraternity relationship in the life of converts who became nuns after baptism, between suspicion and acceptance[22]. Yaakov Lattes' study of the *pinkas* [the register of the decisions] of the Roman community in the seventeenth century revealed the organizational model of the internal dowry system, reporting how the ghetto institutions fully participated in these initiatives when there was a need to add to the sums already set aside by the two brotherhoods dedicated to the purpose. Helping the young and supporting future families constituted an urgent priority, and as such was governed by the *Universitas*[23]. In recent years Michael Gasperoni has systematically worked on these issues as part of a comprehensive investigation of Roman notaries, presented in four different studies dedicated to the heritage and population of the ghetto of Rome. Gasperoni demonstrates the paucity of the Roman dowries compared to those in other communities (Ancona, Pesaro, Senigallia, Urbino), and in this context reflects on the

[19] K.R. Stow - S. Debenedetti Stow, *Donne ebree a Roma nell'età del ghetto: affetto, dipendenza, autonomia*, in «La Rassegna Mensile di Israel», 52, 1986, pp. 63-116.

[20] P. van Boxel, *Dowry and the Conversion of the Jews in Sixteenth-Century Rome. Competition Between the Church and the Jewish Community*, in D. Trevor - K.J.P. Lowe (eds.), *Marriage in Italy, 1300-1650*, Cambridge, Cambridge University Press, 1998, pp. 116-127.

[21] M. Caffiero, *Le doti della conversione*, and, by the same author, *Forced Baptisms*.

[22] A. Lirosi, *Monacare le ebree. Il monastero romano della Ss. Annunziata ai Pantani: una ricerca in corso*, in «Rivista di Storia del Cristianesimo», 10, 2013, pp. 147-180.

[23] A. Lattes, *Una società dentro le mura. La comunità ebraica di Roma nel Seicento*, Roma, Gangemi, 2021.

reduced family mobility registered in Rome, which was partially due to the policy of protecting and freezing capital pursued by the *Universitas*[24].

However, amidst this flourishing of research about the Roman dowry system, we still miss a specific study dedicated to the Jewish confraternities that helped to support it, the social dialectic that animated the works of charity, the weight of the ruling class, the ways in which it was represented, and the financial model designed to support this effort[25]. The analysis of Livorno by Nourit Mercer Paldon confirms the importance of this type of investigation, as it brings to light precisely those complex dynamics about which we still lack information for Rome[26]. For example, the very date of the foundation of the *Compagnia delle zitelle* remains unknown. The findings reported by Lattes lead us to presume that the confraternity was already in operation at the beginning of the 1600s, even though the only registry that has come down to us covers just sixteen years. As said above, this large volume of around 300 sheets deserves some specific considerations[27].

The first point is that the anomalous choice of writing documents in two languages that have very different structures from one another was not neutral, precisely from the perspective being emphasized here: the choices made by individuals matter, because they are the result of intimate questions that are expressed in a complex dialectic between the individual and the community, between majority and minority, and with specific implications for gender. This dual process was consciously managed by the group and documented accordingly, as this registry clearly indicates.

The Latin texts, which are copies produced for internal recordkeeping of formal documents drafted by Christian notaries, and kept in their offices,

[24] M. Gasperoni, *La misura della dote: alcune riflessioni sulla storia della famiglia ebraica nello Stato della Chiesa in età moderna*, in L. Graziani Secchieri (ed.), *Vicino al Focolare e oltre. Spazi pubblici e privati, fisici e virtuali della donna ebrea in Italia (secc. XV-XX)*, Firenze, Giuntina, 2015, pp. 175-216, and, by the same author: *Les ghettos juifs d'Italie à travers le 'jus chazakah'. Un espace contraint mais négocié*, in «Annales. Histoire, Sciences Sociales», 73, 2018, 3, pp. 559-590; *Inheritance and Wealth among Jewish Women in the Ghettos of North-Central Italy (17th-18th Centuries)*, in «Mélanges de l'École française de Rome - Moyen Âge», 130, 2018, 1, pp. 183-197.

[25] On this single surviving register of the *Compagnia a dotar le zitelle povere*, see D. Soggiu, *Assegnare un sussidio dotale*.

[26] N. Melcer Padon, *Charity Begins at Home. Reflections on the Dowry Society of Livorno*, in Y. Kaplan (ed.), *Religious Changes and Cultural Transformations in the Early Modern Western Sephardic Communities*, Boston - Leiden, Brill,2019, pp. 346-380.

[27] ASCER, Archivio Medievale e moderno, 1017/2SUP4.

present the classic structure of this type of documentation: the opening divine invocation, the actors in the legal transaction – that is the two spouses – the nature of the transaction and the sanctions specified in case of violation of the agreement. Particular attention was given to the clauses concerning the dowry and to the terms of the matrimony, as they had already been or would have been reported in the final marriage contract, which was obviously stipulated according to Jewish law. Delivery of the agreed sum, around 31 *scudi*, was clearly a central issue. The money was only nominally entrusted to the groom, and then deposited in the *Tesoreria* with the agreement that the interest would be available to the family and that the sum would be returned to the woman in case of divorce. The legacies of Zaccaria Di Porto and Isacco di Sora da Sarzana formed the financial basis of the operation and as such were always referred to in these documents, together with any other extraordinary contributions. The witnesses were always Christians, probably passers-by. Internal validation of the documents, however, took place in other forms: on the one hand through the actual marriage ceremony and the public signing of the *ketubbah* [Jewish legal act of the wedding], and on the other through the exercise of copying, and even more important, the Italian summary composed for the *Compagnia delle zitelle* and kept among its papers.

As said, this second text differed from the original in several important respects. Since the Di Porto and Sarzana legacies were administered by the *Universitas* and thus by the political leadership of the community, the *Fattori*, which was responsible for these funds and directly controlled their expenditure, witnessed the contract: the need to track the use of the group's public assets further motivated the use of bilingual bureaucratic procedures. The document repeated some elements of the *ketubbah*, and, precisely in its specificity, illustrated the Roman Jewish model of support for marriage and the public assumption of responsibility around the choices of the individuals it benefited.

Translation into a language that was understandable to all responded to these needs from every point of view, and each step was publicly documented. From the strictly economic perspective, based on Milano's calculations first and then those of Gasperoni, although the sum of around 30 *scudi* served as a supplement to the dowry, it certainly did not cover it in full. The minimum sum of 300 *scudi* was in fact made up of a combination of material assets (objects), *gazagot* (titles of ownership for rentals of apartments and/or market stalls or shops in the ghetto) and cash, among which, therefore, the donations from the *Compagnia* should also

be included[28]. The latter offered public support to add to the dowries already provided by families, and took responsibility both for those who received the money and for those who donated it: it was an investment in the future of the people of Israel and was presented as such. In the silent confrontation with the advantages offered by baptism, those few dozen *scudi* reinforced the collective and individual commitment to pursuing the choice to be Jewish. In keeping with the rules, the bride and her interests were at the center of that project. This was precisely because Jewish laws required women to exercise full control over their dowry and protected this prerogative in every way. As a response to the repeated outside efforts to persuade them to choose baptism, attention was placed on the woman in drafting these documents[29]. The presence of the *Fattori* confirmed this direction, dispelling any doubts about the appropriateness of a procedure designed to offer them support. While this certainly could not compete with a fortunate marriage to a wealthy Christian after conversion, nor could it resolve the problem of poverty, the effort offered a meaningful contribution that emphasized the extent to which it was shared by the entire group. It was then up to the new families to remain faithful to the promise implied by that help, and to create Jewish homes.

4. Dissipating doubts

While the surrounding society was engaged in a dedicated and disproportionate effort to persuade all Jews to convert, with particular energy devoted to women, in the end what really mattered were personal decisions: the choice to live inside or outside the walls, to favor one community and reject another, sometimes giving up children and possessions in the process, constituted an act of individual will that brought with it sacrifices, renunciations and opportunities, whichever option was embraced. Converts left traces of themselves and their motives in the baptism registries and in the documentation of the vocations of those who chose convent life. The Holy Office frequently recorded conflicts over the destiny of women that revolved around sensitive matters such as voluntary conversion, forced baptisms and bills of divorce (*get*): even in these cases it was predominantly a question of writing by proxy which merely reported female

[28] M. Gasperoni, *La misura della dote*.

[29] L. Allegra, *Identità in bilico. Il ghetto ebraico di Torino nel Settecento*, Torino, Zamorani, 1997.

points of view, mediating them through the framework of a legal conflict between institutions that were always and only represented by men[30].

Nevertheless, Jewish women who remained Jewish were able to carve out their own space for a personal narrative that conformed to the rules of Judaism and was capable of preserving and valuing their memories and their individual affirmations[31]. The inscriptions embroidered on precious textiles donated to the *Scole* [Syangogues, Congregations] constitute a diary of faith, emotions and concrete gestures by and for the Jewish community. Of the 193 bands for wrapping the Sefer Torah (called *mappah* in the singular, *mappot* in the plural) currently catalogued and kept in the Jewish Museum of Rome, 177 of them were offered to one of the old five *Scole* that were in operation during the era of the ghetto.

All of the synagogues had ancient roots and had long performed functions that were essential to Jewish life. Their centrality in Jewish life was not diminished by the enactment of the Statute in 1524, nor by the Sack of 1527, and even less so by the establishment of the ghetto in 1555. The sudden loss of population at the end of the 1520s, caused by the nine-month occupation of the city by the Landsknechts and the ensuing plague, forced a partial reorganization of the Roman *Scole*: the *Scola Catalana* merged with the *Francese*, and the *Castigliana* merged with the *Aragonese*. Five *Scole* remained active in the ghetto (*Tempio*, *Catalana*, *Castigliana*, *Siciliana* and *Nova*), all of which had to share one building of the same name (*Cinque Scole*), where daily prayers and meetings of the Jewish institutions were held. The *Scole* themselves owned considerable real estate assets in the form of *gazagot*, and received significant bequests which they then administered in the fulfillment of fundamental tasks such as the distribution of assistance among their members and the organization of shifts for the forced preaching. Individual Jews and their families considered belonging to a *Scola* to be a major part of their Jewish identities: it was there, among that specific group of coreligionists, that their Jewish life took place and their obligations as Jews were fulfilled through participation in public religious services, and it was the synagogue where that

[30] M. Caffiero (ed.), *L'Inquisizione e gli ebrei. Nuove fonti e nuove ricerche*, Roma, Edizioni di Storia e Letteratura, 2021.

[31] For an overview of Jewish women in Italy in this period, see F. Francesconi, *Jewish Women in Early Modern Italy*, in F. Francesconi - R.L. Winer (eds.), *Jewish Women's History. From the Antiquity to the Present*, Detroit, Wayne State University Press, 2021, pp. 143-168, which includes a broad and updated bibliography.

sense of belonging was confirmed day after day, week after week, generation after generation[32].

Of the thirty-three donations made by women, eleven were for the *Scola Nova*, four for *Tempio*, three for *Catalana*, five for *Siciliana*, three for *Castigliana* and two for the *Quattro Capi*. To these we must add a donation made to the *Oratorio Di Castro* between 1902 and 1910[33], and one given to the *Tempio Maggiore* immediately after the liberation of Rome in 1944-1945 by Sara Danòn, in thanks for the «life of her husband and her children Iosef and Clara»[34]. Much like in this recent case, the reasons behind the gift, the moment at which it happened and the donors themselves became an integral part of these donations of fine textiles. For the women themselves, such an undertaking was realized in several phases: first there was the significant expense of the fine fabric, selected from among the stocks of professional traders, followed by the physical work involved in its transformation and embellishment, which required time and energy and was usually entrusted to female hands. The next step was the composition of the text intended to illustrate the gift, which could involve consulting a scholar for assistance in selecting the most suitable verses. The final step was then the actual embroidering. Providing money was not enough – these gifts also required desire, will, commitment and a project.

The Hebrew dedications embroidered on the textiles and engraved on the silver recount the stories of individuals and families who, in the act of creating them, described the conscious memory of their own diversity, and the daily confirmation that it required. The inscriptions were made in large characters that were immediately visible to all. Writing them and reading them were part of an internal Jewish conversation, with shared rules and messages about the participants and their definition of themselves as Jews: understanding those texts required a thorough knowledge of the language, the biblical references, the people who had conceived and composed them, as well as the history of the families and of the group. As such these dedications would not have been intelligible to outsiders. They were

[32] A. Milano, *Il ghetto di Roma*; S. Di Nepi, *Others within Others. On Scole and Diversity in the Ghetto of Rome (Sixteenth to Nineteenth Centuries)*, in M. Borysek - D. Liberatoscioli (eds.), *The Many Faces of Early Modern Italian Jewry. Religious, Cultural, and Social Identities*, Berlin - Boston, De Gruyter, 2024, pp. 203-220.

[33] D. Davanzo Poli - O. Melasecchi - A. Spagnoletto (eds.), *Antique Roman Mappot. The Precious Textile Archives of the Jewish Museum of Rome*, Rome, Campisano, 2016, cat. 188, p. 306.

[34] *Ibid*., cat. 190, pp. 308-310.

a bold affirmation of identity, which functioned precisely because they intersected with the private and public sentiments of a minority that chose to hold on to that identity. These texts were embroidered by women, who very often claimed the credit in clear letters, in sentences meant to be read by the community in public; they were not the product of an intimate dialogue and never could have been. These words worked precisely because they were designed to be an active part of the group's life and because they were intended to emphasize the specific role of the female embroiderers within it: if the cantors were all men, the relationship with fabric was the business of women, who accordingly made sure to mark their personal contributions to its production.

So, for example, in 1729-1730, Benvenuta Calef proclaimed her place in the *Scola Siciliana* like so:

«May you be Blessed among the women of the Tent, the woman who in honor of the Torah of Moses embroidered this *mappah* with pure gold, which is offered by signora Benvenuta wife of signor Barukh son of Iehuda Chalef of venerable memory»[35].

The gift was her decision, she handled it personally and wanted this fact to be remembered. But she also wanted it to be clear to all that the author/donor was a woman of Israel, that she was part of a family and that she hoped that whoever had that *mappah* in their hands would be able to reconstruct and understand the bonds that the object carried with it, because it still bore part of that history.

Similar reasons animated Benvenuta Camerini's text for the *Scola Castigliana* between 1736 and 1737:

«Consecrated to the Scola Castigliana. Gift of signora Benvenuta, wife of signor Mosè Izkhaq da Camerino, in memory of her husband. And to carry out the vow of his daughter signora Sara of when she was alive, in her Memory for the life of her brothers and of all the people of their house»[36].

Once again, the threads of the generations are at the center of the narrative: Benvenuta made her donation to fulfill the vow of a daughter who died prematurely, and in doing so she paid homage to the lives of all the people of their house. A life that should be Jewish in the present and in the future: this is the wish voiced in the inscription.

[35] *Ibid*., cat. 82, pp. 172-173.

[36] *Ibid*., cat. 92, pp. 188-190.

Many years earlier, Laura Sestiere had been even more explicit with her gift to the *Scuola Nuova*. Thus, on 26 May 1621 she delivered a *mappah* which declared that:

«This is the Law that Moses placed before the Children of Israel. Consecrated to God, gift of Signora Laura, daughter of Signor Shem Tov Sestieri»[37].

The citation from the passage that is read for the elevation of the Torah during religious services was meant to indicate the author's intentions, and was certainly not random. Laura, the two Benvenutas, and the young girls who were negotiating their dowries, consciously participated in the same narrative: staying in the ghetto was a choice, other paths were and always would be available, and doubt accompanied every step. Their emphasis and affirmation of how that prospect was not of interest to them served to allay a concern for the present, and above all for the future. Read from this perspective, the history of the ghetto becomes the story of conscious choices made in hostile and discriminatory contexts, and not simply that of the marginalization of a minority and its relations with the intolerant majority.

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[37] *Ibid*., cat. 12, pp. 76-78.

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