EARLY MODERN WORKSHOP: Jewish History Resources

Volume 5: Law: Continuity and Change in the Early Modern Period, 2008, Yeshiva University, New York, NY

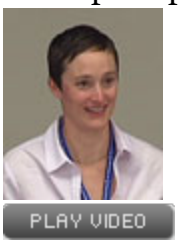
The Herem as the Source of Authority of the Lay Governing Council

Anne Oravetz Albert, University of Pennsylvania, USA

ABSTRACT: A treatise on the herem composed by Isaac Aboab da Fonseca, the head rabbi of the Spanish and Portuguese Jewish community of Amsterdam. Specifically, this pamphlet defends the authority of the lay leadership council to do so, arguing against unnamed members of the community who are causing scandal by denying that authority.

This presentation is for the following text(s):

- Exhortation to those who fear the Lord, not to fall into sin due to lack of understanding of the precepts of his Holy Law.



Anne Oravetz Albert

University of Pennsylvania, USA
Duration: 56:25

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Anne Oravetz Albert, University of Pennsylvania, USA

At a time when English, French, Spanish, and Dutch pamphleteers and philosophers were hotly contesting the legitimacy of their governments and the role of religious authority in the state, Amsterdam Jews were also engaged in internal debates about the authority of their leaders and the relative preeminence of rabbinic and lay leadership. No lesser figure than Isaac Aboab da Fonseca (1605-1693), the head rabbi of the city's Spanish and Portuguese Jews, published a treatise in 1680 defending the status quo of the community's practices regarding the *herem* (excommunication or ban). Strikingly, Aboab argued that the *herem* was not his own prerogative as a rabbi, but rather represented the political rule of the community, and thus was rightly wielded by the lay leadership as its government. Aboab's treatise opens a window onto political differences among the Amsterdam Sephardim at the time of its composition, including sharp disagreement over the validity of the lay government and the role of the rabbi in communal affairs. It thus reveals an ideological dimension of disputes that are already known to have taken place in the community around this time. In addition, Aboab's formulation of the Mahamad's authority is unusually authoritarian, as he suggests that the members of the community irrevocably transferred their political authority over to the Mahamad. The arguments Aboab presents seem to mirror contemporary non-Jewish debates about the social contract and the rights of subjects to rebel against illegitimate or ineffective rulers.

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Exhortation to those who fear the Lord, not to fall into sin due to lack of understanding of the precepts of his Holy Law.

Exortaçaõ, Paraque os tementes do Senhor na observança dos preceitos de sua Sancta Ley, naõ cayaõ em peccado por falta da conviniente inteligencia.

5440 (1679/80)

Translated by Anne Oravetz Albert, University of Pennsylvania, USA

Greetings to those who love Torah, may they not stumble.

EXHORTATION
To those who fear the Lord, not to fall into sin due to lack of understanding of the precepts of his Holy Law.

Composed by the learned Senhor Hakham, *Morenu ha-Rav* Isaac Aboab, *Av Bet Din* and *Rosh Yeshivah* of the holy congregation Talmud Torah.

Printed in Amsterdam, in the house of David Tartas, 5440 [1680]

Prologue to the Reader:

I announce and truly affirm that I do not intend to cause a scandal with this treatise, and I was moved to publish it neither by passion, nor by anything other than love for the individuals and generality of this holy community, and zeal for the sanctity of the Holy Law. I write so that they will not listen to the sycophants who wrap themselves in the mantle of the law in order to exploit it, abusing many with their doctrine. They ought to

follow the example of those in other congregations, who are afraid to hear the name *herem* spoken, and who would rather be insulted with the greatest and most ignominious name than be called 'banned' or 'son of an banned one'.[1] May the Lord protect us from such a punishment and bless His people with peace.

H[akham] I[saac] Aboab

[3]
Greetings to those who love Torah, may they not stumble.
Exhortation to those who fear the Lord, not to fall into sin due to lack of understanding of the precepts of his Holy Law.

Composed by the learned Senhor Hakham, *Morenu ha-Rav* Isaac Aboab, *Av Bet Din* and *Rosh Yeshivah* of the holy congregation Talmud Torah.

"What ends in deed begins in thought"[2]: a truly rational statement of the sages, in accordance with which the beginning of this tract must contain its end, which is to disillusion the illusioned, and disabuse the abused. It will show that no power can annul or invalidate the herem that the holy Kahal took upon itself when everyone signed in the presence of the four Hakhamim.[3] There is no way to lift the ban on a violator of this herem, aside from the Kahal itself absolving him, which requires at least as many people as the original **[4]** signers. Even this, though possible, ought not to be done in my opinion, since it goes against the unity and conservation of the Kahal and feeding of the poor.[4] We find an example of this in the holy scripture: when six hundred Benjaminites escaped in flight, whereas all the rest perished in the war caused by the concubine of the Levite, Israel repented and tearfully lamented their total extermination of a tribe of Israel (as they thought they had done),[5] because they understood the mystery of the number twelve, and feared that the Lord's divinity would desert them. And they said in Judges 21:7, *What will we do for those who remain to give them wives*, and to try to rebuild this broken stalwart of the fortress of Israel? *Because we swore by the Lord not to give them wives from among our daughters*. It then continues, explaining how they condemned the inhabitants of Jabesh-gilead because they violated the herem by not agreeing to enter into that war with the rest.[6] Thus they determined to pass all of them through with a sword, without sparing anyone except **[5]** the young women who were still in a marriageable state. Once they had these four hundred women to give as wives to the surviving Benjaminites, they asked, "what will we do for the other two hundred?" It is difficult to understand how, in such an urgent case, the very people who created the herem could not dissolve it, freeing themselves up to help these two hundred, but this proves our claim: they could have dissolved it, but to do so would have been wrong without first seeing if the problem could be solved another way, without touching the sacred herem. In the end, they managed to find another solution, giving the rest of the Benjaminites permission to go into the fields and hide in the vineyards on the day when

the virgins of Israel danced and celebrated as part of a festival (the day we call day of the maidens), and take maidens for their wives. They judged that this considerable violence was a lesser evil than violating their herem, even by dissolving it. If that is the case, then good judgment shows there can be no excuse for failing to uphold the herem of our holy Kahal, or for considering trying to dissolve it. Those who would argue it should not be done in ordinary cases of the herem, or in a case of *nidui*,[7] should avoid it that much more when it is a matter of a *mitzvah*, imposed for the better observance of the holy law.[8] This can be seen in R. Moshe Gerundense's **[6]** Treatise on the Herem, 288.[9] As I already declared this to be the end of this treatise, it seems appropriate at the beginning to define the herem, how far it extends, if it can be revoked, and how. First, we reprove, as R. Gerundense did, that which some congregations do in order to absolve the herem, that the cantor stands on the *tevah* and says, "Let the herem be dissolved," by which they understand this to be accomplished. This is incorrect because only the Hakham can dissolve it, or three people in his place, except if the revocation is made with the consent and in the presence of the whole Kahal. Equally incorrect are those who bind themselves together with a herem that they themselves can dissolve. This is proved by our sages, who say that when the tribes sold Joseph they agreed among themselves with a herem that none of them would reveal it to their father. Judah said it was not possible because without Reuben there were only nine of them, an insufficient number, and so they bound themselves together with the Lord. The Blessed God respects the honor of men, and particularly that of those who fear Him, so much that he agreed to be counted among them to create a herem. Eventually Reuben subjected himself to the same obligation, and it is reasonable to think **[7]** that this would have freed the Lord, as the royal Psalmist says, *reveal his words to Jacob* (Psalms 1:47). But he did reveal them out of respect for the herem and the honor of the tribes, and this is why they themselves dissolved the herem when they found Joseph alive. Then the holy text says, *and the spirit of Jacob his father was resuscitated* (Genesis 46:27). Does this mean that it was somehow dead? Yes, the holy scripture does indeed mean to say that he "resuscitated the spirit of Jacob" since the Lord did not speak to him because of the herem, but restored his prophetic power when it was dissolved. When he was named Israel, the Lord suspended his prophecy, to prevent him from asking about Joseph. This is also the meaning of Genesis 37:35, *and his father wept for him*: Joseph's father, Jacob, wept for Joseph in the presence of his father, showing that they presume that it not had been revealed to him that Joseph was alive. The Lord could have told him, but to do so he would have had to dissolve the herem that the Tribes had made among themselves.
The word "herem" can also mean a **[8]** curse, since saying "these items are a herem" is the same as consecrating them, and they are treated like gifts for absolution, going to support the activities of the holy temple, or being given to the priests.
Thus tradition teaches that when a *bet-din* decrees that whoever does something will be placed in the herem, it is inviolable, as will be seen below.
The herem is different from an oath, because if a man swears in another, it means

nothing unless the party responds by saying 'amen.' But if a *bet-din* or *kahal* makes an ordinance under punishment of herem, it is valid whether he responds 'amen' or not. The same will also be true if he does not accept said herem, or if he is not present, as will be stated below, since the Senate had authority to impose[10] a herem as it says in Nehemiah 13:25, *And I cursed them…and made them swear by God.* Therefore said herem is incumbent on him and it is the same as if he swore it himself.

The same holds true for a city in which all of the inhabitants, or the majority of them, **[9]** has made an agreement in the presence of the seven deputies:[11] if they impose a herem, it obligates the minority to their observance, and such a herem is firm and incontrovertible. Therefore someone from such a city who transgresses it is banned as if he transgressed his own oath, which will penetrate all of his limbs and, as the Prophet Zechariah says in 5:4, *it shall consume them to the last timber and stone.*[12]

Everyone has an obligation to separate himself from this person, and give him only what is necessary for him to live. Whoever does not observe this becomes included in the same herem, and must behave like the banned one, going barefoot like a mourner and all the rest, and no one may profit from the property of the condemned. The least objection to this is cause for ruin, and constitutes a transgression of the letter of the law.

This herem is what they claim to be invalid, except in company of ten, which they call a congregation.[13] They say that, being fewer, the deputies have no authority to impose a herem, but only to swear, each one for himself. **[10]** If this herem was decreed by the King or Great Senate of Israel in presence of the majority of Israel, then the King or Senate would be able to impose the death penalty on transgressors if they so desired, since they can impose this penalty as they see fit. Scripture shows this in Joshua 7:13, *And the Lord said to Joshua, there is a herem among you Israel*, as the famous Captain, Joshua, had the right to condemn the rebel Akhan to death for committing a sacrilege.[14] King Saul is another example, as he condemned his son Jonathan for transgressing the herem that he decreed, even though he had achieved such a great and glorious victory when he and his servant alone destroyed the furious Philistine army, as described in the sacred history in I Samuel 14:26.[15] The High Priest Eleazar did no less when the inhabitants of Jabesh-gilead were killed in the events related to the Levite's concubine mentioned above, as it is said in Judges 20:5, *For they had made a great oath concerning him who did not come up to the Lord to Mizpah, saying "he shall be put to death."* Thus it is asked in the name of Rabbi **[11]** Akiva, why does it say "oath"? Precisely so that you will know that the herem is an oath, and an oath is a herem: the inhabitants of Jabesh-gilead were condemned to death because they did not join the rest of the tribes.

In addition, the herem does apply to future generations, just like Joshua's decree that is mentioned in the text of the herem.[16] It says in Joshua 6:26, *At that time Joshua pronounced this oath: "Cursed of the Lord be the man who shall undertake to fortify this city of Jericho"*, and this decree continued to be implemented for many years, even until the time of Ahab, as it says in 1 Kings 17:1.[17]

Now, the main aim of this treatise is exhortation, by which I hope to prevent a great absurdity and reprove a harmful doctrine that has been introduced by malicious souls, and disturbers of the peace. Some subjects who desire liberty follow this man who makes them captive to sin, and brings them to ruin. They do not consider how much they offend God **[12]** by dividing the Congregation, the glory and happiness of which consists in unity, with the help of His sovereign grace. Since we are directly protected by Him, He may be called our king, and we his beloved vassals, as Moses the prophetic luminary expressed in Deuteronomy 33:5, *And he was King in Israel* ('King' referring to the Lord God, of course) *when the heads of the people assembled, the tribes of Israel were together [unified].* What more evidence is required, since experience has also proven the same truth? And yet more is found in the comments of our Sages on the words of the prophet Hosea that are so poorly understood, *unified idols Ephraim abandon*[18] (4:17). They explain in Midrash Rabot (Tractate 41 verse 3) that peace and concord are so beloved by the Lord in His republic that Ephraim should be left alone even though he was full of idolatry, since he was a part of it, and no force or judgment can oppose its unity. Conversely, the same prophet says in 10:2, **[13]** *Now that their heart has been divided, they will be condemned*[19]: now, justice will be carried out and they will be condemned and punished.

This, then, is the crime: some who do not fear God and who presume to know more than they do, argue that when ten individuals separate themselves from the holy congregation, they free themselves from the herem by forming their own congregation. They are blinded by passion, or rather sin, which prevents them from seeing that if this were true (which it isn't), then the herem would have no value. This does not apply in our case anyway, since our herem stipulates that there cannot be any other synagogue in the city of Amsterdam or its environs, and that no one may assemble a quorum for prayer, except in certain conditions.

Others make another bad argument based on similarly false grounds, preying on the weakness of those who ignore the truth or are ignorant of it. They say that this herem has no value because it was not made with the authority of a Hakham. I deny this, because four Hakhamim were **[14]** involved in the agreement in question, and also signed. If this argument were true, it would mean that the Kahal does not have enough authority to create a herem on its own, which would invest the Hakham with unchecked authority. King Saul commanded, under pain of herem, that no one eat until the Lord conceded a clear victory to the people of Israel. Jonathan violated the herem without eating, only sucking on a sugar cane and being invigorated by its juice, but his father cast lots over him, and gave the sentence according to the Law, saying in I Samuel 14:45, *Shall Jonathan die?* But the same Prophet says in verse 26, *And the people redeemed Jonathan, and he did not die.* Was he by any chance redeemed with money? No. Then with what? With the authority that the Lord granted to the congregation. And the reason it says this is because it is not the king who makes the people, but the people who make the king. Thus Solomon says in his Proverbs (14:28), *The larger the people, the*

greater the glory of its King.[20] Thus the authority of the people can do more than the royal decree, when it contradicts the holy Law **[15]** as a great absurdity and an insupportable error. The greater error would be to not recognize this, since the Lord punishes both sins and errors, and if errors are great, they indicate great sins, and deserve great punishments.

Those who desire to obscure the truth out of passion or convenience will never lack the means; these go around saying that when one Agreement[21] is broken, the rest lose their force. For example, they say that one of the constitutional articles of the holy Kahal is that an additional council of six people should be elected for the affairs of the Kahal, and since this was one of the founding articles, and it is no longer observed, the rest of them are invalid.[22] They use this to try to remove authority from the Mahamad, but it is the same as the Kahal, and cannot be made or unmade according to the needs of the time. When the rule was instituted, it was to subdue and unify the three congregations, because the Lord must conserve us against the wild winds; but when the cause ends, that which is caused has its end, so it has already been lost from memory, and there are no longer two from each Synagogue. Furthermore, **[16]** I demonstrate that this agreement is in itself null. It says: '...and if at any time the Mahamad sees fit to remove an article from the Agreements, they cannot do it without the six Deputies who are now in place, or those who would then be living, having been called to replace the original six, as those who remain will name replacements for those who have passed away. The Mahamad must obey whatever these six resolve.' However, they all died and others were not named in their place, so this agreement was undone by its own self. Even if they had continued it, and affairs had not been governed as they should have been (which is not true), bad government cannot remove the value from the herem. Nothing would please the disturbers more than if the breaking of one agreement voided the rest.

Let's move on to break down another absurdity: they all say what they understand, but not everyone understands what they say. They say that they were not present for, did not sign, and did not approve this herem, and thus it seems to them that it does not obligate them; this is a false doctrine. We say to them, 'do you not see **[17]** that the herem of Moses extends throughout the generations?' and then they justify their argument by pointing out that the Sages say that all souls, embodied or to be embodied in the future, were present for Moses' herem. I do not deny this because it would be to deny the truth, but I perceive that they claim things that they do not believe, and which do not aid their argument anyway. There are four modes of commentary, literal, allegorical or moral, anagogical, and tropological, but no one denies that the literal comes first. The document that Moses left us, entrusted to the future generations, was a herem that includes those present and absent, and those born and those who are yet to be born. Furthermore, the sages said that Jonathan's life was in danger without a higher power to save him, even though he was not present for the herem and didn't know about it. As for those of Jabesh-gilead, I will grant that they knew of the decree given by the high Priest Eleazar in the presence of all the people, but they certainly did not approve

it, because then they clearly would have come. They did not **[18]** come, which must have been due to ignorance or malice; if malice, they deserved it. But they also could not use ignorance as an excuse, because the force that the Lord granted to the herem is so great that no excuse has power against it. This is why Jonathan did not excuse himself: he knew the herem to be a great good; and Lord, could not tolerate Jonathan's ignorance, and ordered lots to be cast.

In sum, I was moved to publish this exhortation in order to disabuse those who let themselves be abused for some accursed reason of state; and in order to help the zealous and God-fearing, and keep them from believing such a harmful doctrine. They must not be deluded in their hopes of divine grace, because He laughs at those who are too confident and ungrateful.

Hopefully everyone can agree on this at least, and we ought not to pay too much heed to the disputes that pass between us, because they are not new. The same has happened in other congregations, even if we differ in that they were easy to subdue, whereas we are hard, and stubborn in obedience. It would be a very long affair, and not very intelligible, if we tried to **[19]** explain everything the sources say about this subject; we will give only a basic summary of their words, and state what we claim will be verified with their authority.

The famous Rabbenu Moses Gerundense told of a congregation that made some decrees with a herem, and some individuals swore in presence of witnesses that they did not accept it, and thus did not submit to these ordinances or herems. It was asked whether such an oath had the power to counter said herems, and he responds: it is known that all congregations have full authority over their *yehidim*, to order them in their city as did the Great Senate of Israel, as the Prophet Malachi said in 10:11, *He said thus, with the curse, the whole nation is cursed.*[23] He says that the majority is the same as the whole, so violators certainly incur the curse, as it says in the Gemara of Avodah Zarah. Rabbenu Moses concludes by saying that those who swore shouldn't have done it and lacked the authority to do it. Anyone who does not follow the congregation violates **[20]** the herem that the Kahal places. This source does not even mention the Hakham here, proving what I said above, that the authority of the Kahal is greater than all. An even clearer proof is that the same author says that the herem would be stronger if it were done with the approval of the Hakham: we may infer from this that the herem of the Kahal is valid even if it lacks the authority of the Hakham. From the Rishbah[24] it seems that the Mahamad needs the company of the Hakham, because at the end of that which is recounted above, it says in his name: "as long as it is done with the agreement of a respected man."[25] But this does not contradict the above, because it only deals with the Mahamad, and not the generality. Furthermore, it cannot even be concluded that the Mahamad requires the assistance of the Hakham, because that is based on the interpretation of "respected man" as a Hakham, but this has no basis because he knew very well how to say Hakham, but didn't. In his wisdom he didn't want to depart from the term of the Gemara, *adam hashuv*, "respected man." As I will prove, this term

should be understood as a man who is well esteemed by the inhabitants of the city, serving as Parnas or Deputy. Rabbenu Nissim says the same about the Gemara. **[21]** Thus there can be a respected man deputized over the Kahal without having to be a Sage, and for even more proof it also says "if such a Parnas did not have license," so that we understand that the Parnas is the "respected man." Hakham Caro in his *Bet Joseph* says the same in the name of the cited Rabbenu Nissim: "respected" must be understood as deputized as a Parnas over the congregation. The Tur[26] should also be understood as supporting this interpretation, when he refers to the "great and wise man" and then repeats it, using the phrase "Hakham and governor" to mean the same thing. I agree with this, corroborating it with the following argument: the Gemara only discusses the "respected man" when it gives him the authority to increase the law, saying "man, Hakham or governor"; if this respected man was a Sage[27], they would say Sage, and if he was a governor, they would say governor. Others would interpret this to mean that it is necessary for him to have both qualities: that he be a sage, and that this sage also be a governor. We must not fall into this error, because it says "sage, or governor," so that the name of "respected man" can be applied to either one of them. The Rosh **[22]** affirms this, as does the Hakham Ribi Levi Ibn Habib at length in his 99th responsum, where he says that the sources all generally agree that everything the Mahamad decrees with the participation of the Hakham is most valid and firm. Note that the Rosh is referring to the Mahamad rather than the Kahal, proving our assertion that the Kahal has full authority to impose and revoke a herem without the participation of a Hakham. The only thing that can be brought against this is the authority of Hakham Ribi Joseph Caro, whom we follow in everything. He says, in his *Shulkhan Arukh* volume 4 chapter 231 verse 28, that the inhabitants of a city have authority in all matters as they see fit, to arrest and punish whoever transgresses their order, and that by virtue of their office the officials can agree among them, that no one work in the day that belongs to his colleague. This is meant to apply in a city where there is no Hakham, but if there is one, the agreement will be null unless it is made with his approval. This seems to contradict what we maintain, suggesting that even the Kahal **[23]** requires the authority of a Hakham. With all due respect, he is mistaken, as is anyone who thinks that the name "respected man" can only mean Hakham. Rather, as I have said and proven, it means a man, Hakham or not, who is particularly well respected by the inhabitants of the city, so that he is elected by them and charged with the affairs of his city and Kahal. As for the previous question of whether the Kahal in itself has enough authority, they would necessarily argue that it does, since it says that the decree is valid when there is no Hakham, but not when there is one. In other words, the Hakham brings to them the authority that belongs to him by reason and by right, increasing the authority of the Kahal, but its own authority is not lost on account of his absence. This argument proves our point that the authority of the Kahal is greater when accompanied by that of the Hakham, and also the same author in his famous *Bet Joseph* cites Rabbenu Nissim's argument that if no one is harmed they may arrange everything among them as they see

fit, meaning without the **[24]** authority of a Hakham.
Hakham Ribi Moshe Alascar, in responsum 49, treats the entire Tosefta that deals with officials, and explains that when it says that a decree is valid with a "respected man" and void without him, it only refers to officials in particular, and not to the inhabitants of the city, because they can order everything as they see fit, with or without a Hakham. He continues, saying that both Rabbenu Moshe and Bar Cessat agree, and concludes saying that the inhabitants of a city can make their ordinances without requiring a "respected man," although if they are approved by a *bet din* it is stronger, empowering them to confiscate the property of transgressors, as the Gemara states, based on Ezra 10:7, *and they issued a proclamation in Judah and Jerusalem, to all the sons of the captivity to come together in Jerusalem, and all who did not come in three days according to the decision of the Princes and elders would have* **[25]** *his property confiscated and would be removed from the congregation of the captivity*, Similarly, the Gemara of Gittim fol. 36, repeated in the Gemara of Yebamoth fol. 89, and more extensively in the Gemara of Mo'ed Katan fol. 16, says, *Rabbi Isaac said, that the confiscation of the Senate is a (valid) confiscation: because it says, and he who did not come in three days etc.*
Anyone who wants to know more can check the cited author. I offer a distinction to resolve all this, namely that if the Hakham is elected by the Kahal, than the Mahamad requires his company. This resolution has two advantages: first, it could be the intention of those who say "Hakham and governor," meaning one man who is both Hakham and governor, which is the same as saying the Hakham of the Kahal. Second, it will close the mouths of those who want to obscure the truth, and ground those who desire to observe it with airy and false reasons, since this distinction can also be understood as applying to the Kahal, as was proven.
Now we will address the principal matter, which is most important for the conservation of the holy congregation, augmentation of the holy law, and feeding of the poor, and **[26]** to be favored by the Lord God with the harmony and unity that He so loves (since it is an occult quality of Israel that He can make them immortal individually, and also as a group, as the Prophet Malachi says in 3:8, *Because I am the LORD, I have not changed, nor have you ceased to be the sons of Jacob*[28]). Some things that seem insolent are actually grounded in some reason of state, but others, like the case we are dealing with here, lack it completely.
From the beginning of this kahal, it was instituted with the punishment of the herem, which everyone accepted and signed, that there could be no other synagogue in this city or its environs, and men could not assemble to pray in a separate minyan except in the house of a mourner or newlyweds, or by accident. Some, not considering the evil of their actions and the disruption caused by their example, but obstinately persisting in their bad choice because of personal feelings, separate themselves from the community. They should clearly see their error, with the authority of the most famous sources, **[27]** like a ray of the shining sun of truth breaking apart the fog.
The wise Medina sums it up in the 37th of his oft-consulted responsa, beginning with

some words from the questioner, and perhaps his manner of speaking will work to subdue some hearts. The Lord God says that we are durable because we are so constant, and likewise this questioner seems tearful without showing any tears, as he says: "I am a disgraced and unhappy man, seeing the affliction of an illustrious congregation, that enjoys glory among the rest of the congregations, a congregation with great charity and authorities of incorruptible justice, eminent sages, who feed the hungry and quench the thirst of the thirsty, as the prophet Amos said in 8:1[1], *Not hungry for bread, nor thirsty for water, but rather for hearing the word of the Lord.* Nor does the congregation lack noble subjects from illustrious families, perfect in virtue, and crowned with the crown of the law as well as science, fame, and glory. Now my eyes are seeing a thing **[28]** that they never wanted to see: some subjects are raising themselves up, profaning the sacred temple, and forming a group, saying, 'let us make an altar' (which is a great sin, and thus appropriate for those who separate themselves from the generality). They do this without regard for the pious subjects, who try to persuade them not to, nor for the herem and curses, et cetera. Some change their minds, as it is not dishonorable to recognize one's error; others, more sinful, persist in their impertinence. Some of those who have returned regret their own to maintain the accord, seeing that it was nothing but discord."

The author responds by first proving that their oath to separate themselves from the congregation was not valid. It is stated in the Gemara of Shevu'ot that a man who swore not to observe a certain mitzvah[29], and then broke his vow in observing it, is free (deserves no punishment), because his oath cannot replace the first one made on Mount Sinai. On that basis, the author says that in this case there can be no greater mitzvah than to maintain the first oath, which obligated subjects to observe the original agreement made with the herem, which is the same as an oath. Therefore the second **[29]** oath is equivalent to swearing not to do a mitzvah, and thus it is not valid. The author gives other effective proofs, but they do not fit with our case and only in the preceding does he deal with what could happen when someone tries to make oaths like this.

In his conclusion, our author says that the same thing happened in the Kahal of Geruz, and the Kahal of Lisbon, and congregations in the city of Constantinople. In all of these cases the illustrious Hakhamim agreed with him and his answer, that the separatists must return to congregate in their Kahal. Like those who give up bad behavior out of fear of punishment, they were obligated to return to congregate with their brothers, even though they had sworn not to, because such an oath is not valid. The author says that if they persisted in their rebellion and would not return, they would be banned (for more reasons than they try to give, which are all false), and with their return they would be cured.

They[30] tell me that the herem only includes praying outside of the synagogue with a **[30]** minyan, and that they obey, but they want to do it at home (alone). They may well do this, but they should know that it will be to their detriment, since prayer in the

congregation has great strength and valor, and prayer alone poses great risk, as they say in the Gemara of Berachot on Psalms 102:18, *He turned toward the prayer of the solitary, and did not disapprove of their prayer*, noting that this word פנה *turned* is the same as *speculated on*: when the Lord God hears a single voice he says, 'who is this impertinent person who separates himself from my congregation, who runs to cheekiness? Let us see on what his boldness is founded.' But the Lord never disapproves of the prayer of the general congregation, as the Gemara of Berachot says, every one who has a synagogue in his city, and does not go to pray in it, is considered a bad neighbor. They prove this by the Prophet Jeremiah,[31] who says it in the following manner: *Thus saith the Lord, as for all my evil neighbors, who touch the inheritance which I have caused my people Israel to inherit…* It is inferred from the words of the author that those who are bad neighbors, to the detriment of the house of the Lord, not paying it due regard and not honoring it, they **[31]** and their sons suffer the captivity. The same prophet continues and corroborates what the Gemara of Berachot says, that the prayer of a man is not heard except in synagogue, understanding *nog'im* as causing a defect.

Hakham Adraby writes in responsum 39 that they sent a question to him from Salonika, when they suffered various disturbances. The same thing happened among them as among us: they told of some who separated themselves from the kahal, and their great Hakhamim ordered, among other things, that no one might separate from his kahal, nor make a new synagogue beyond those that they already had in that city of Salonika, and they enforced their decree with all the curses and herems. When they consulted the aforementioned author, he responded (in summary) that if they had sworn with greater curses that they had to separate, and if (though it is not the case) this oath were valid, he would differentiate between the oath and the herem, because they would be obligated to observe the oath, but this would not free them from the herem mentioned in the agreement, because it was still in existence. Thus they were still condemned, banned and disgraced before the Lord God, and therefore the **[32]** congregants in question had to revoke the oath they had made, and return to their congregation, which they did without any scruple.

In responsum 254 he affirms the same, and also in responsum 113, where he draws from Hakham Ribi Moshe Tranyma's responsum 84. Thus, we enlighten those who do not know the force of the herem, which, as we have said, is so great that in the time of our happiness, and when we possess the kingdom, he who has transgressed it will deserve death—whether it was imposed by the King, or the great Senate of Israel. The arrival of the events we desire is in the hands of the Lord God, even though it may tarry and not come yet. And thus we leave our assertions resolved and proven, with the following conclusions:

First, we have shown the force of the herem, and its stipulations, and that only the Hakham, or three men in his place, can revoke it when imposed on an individual.

Second, the authority of the Kahal is so great that it needs no other addition.

Third, the Mahamad has the same authority whether it was elected juridically, that is, elected by the Kahal or by the majority **[33]** of it according to the custom; or when the Kahal has given the authority it possesses to the first elected officials, who then pass it on to their successors, electing those they find worthy and irreproachable.
Fourth, when there is a Hakham salaried or elected by the Kahal, whether elected by the Kahal or the Mahamad, his participation is required.
Fifth, the herem has the same value as all those since that of Moshe Rabbenu, which applies to all the generations present and future, without being able to claim absence or ignorance, because a quality of the subjects does not affect a herem or the virtue that the Lord God gave it.
Sixth, that all who deal with violators of a herem are in the same category, and the same stipulations apply to them.
Seventh, the overall point is to prove our assertion, with cases and examples of similar events, that since the unity of our Holy Kahal was constituted with the approval of all and signed by all in the presence of its Hakhamim under pain of herem, those who want to **[34]** violate this agreement by separating themselves cannot do it, and no one in the world can free them from the punishment they incur through this violation.
Eighth, as an aside, those who fear the Lord should stop praying at home because they are doing themselves harm even if they are not violating the herem. I hope to close this weak exhortation by saying we must keep our eyes on the prize and protect the common good, for the conservation of the holy kahal, the honor of the Lord God, and the glory of His holy law, by which we may be saved and thereby deserve and attain the promised era, as the Prophet Isaiah says in 59:20, *He shall come as redeemer, to those who repent says the Lord,*[32] may it be in our days, Amen.

Today, 4 Elul 5480 [sic][33]

Kaplan, Yosef. "Bans in the Sephardi Community of Amsterdam in the Late Seventeenth Century." In *Galut ahar golah: mehkarim be-toldot 'Am Yisrael mugashim lel-Professor Haim Beinart li-melot lo shiv'im shanah*, edited by Aaron Mirsky, Avraham Grossman and Yosef Kaplan, 517-40. Jerusalem: Mekhon Ben-Tsvi, 1988.
Kasher, Asa, and Shlomo Biderman. "Why Was Baruch de Spinoza Excommunicated?" In *Sceptics, Millenarians and Jews*, edited by David S. Katz and Jonathan I. Israel. Leiden: Brill, 1990.
Lorberbaum, Menachem. *Politics and the Limits of Law: Secularizing the Political in Medieval Jewish Thought*. Stanford, California: Stanford University Press, 2001.

Endnotes

[1] Aboab adapts the Hebrew word 'herem' into Portuguese as 'enhermado' and 'filho de hum enhermado'. This could be translated as 'enheremed' in English but it will be rendered as 'banned' here and below.

[2] From *Lekhah Dodi*, a sixteenth-century poem by Rabbi Shlomo Halevi Alkabetz, commonly sung on Shabbat.

[3] Aboab is referring to the founding document of the community, the Ascamot, which established that the governing council, or Mahamad, would have the power to impose the herem. This document was signed by all qualifying members of the community when three congregations became one in 1638-9.

[4] The "feeding of the poor" is often used as shorthand for the common good of the community.

[5] See Judges 19-21 for the whole story, in which "all the children of Israel" find revenge on members of the tribe of Benjamin for a gruesome rape and murder. They vow to shun the Benjaminites, refusing to intermarry with them, and attack the city where the abuse took place. The Benjaminites are routed, losing all of their population except six hundred men who manage to flee. After the battle, the rest of the Israelites panic when they realize that they've nearly destroyed an entire tribe: there are only men left, and the other eleven tribes have sworn not to give any of their daughters to Benjaminites as wives. Instead of annulling the oath they themselves had taken, the Israelites resort to extreme and violent measures: they realize that one town, Jabesh-gilead, had not sent any representatives to the gathering where the oath was taken, and therefore was

exempt from it. They send a force to murder all of the inhabitants except for the women in a marriageable state (virgins), who turned out to number 400. These they offer as wives to the Benjaminites, but there still remain 200 men without wives to rebuild the tribe. Finally, they hatch an elaborate scheme to kidnap 200 more maidens from Shiloh at the time of a spring festival, getting around the oath by neither offering their own daughters, nor having the maidens' fathers offer their daughters willingly.

[6] This is in Judges 21:8, but the verse does not contain reference to a herem. It only says that no man from Jabesh-gilead had come up to Mizpah when everyone else had come. But, see 21:1, "Now the men of Israel had sworn in Mizpah, saying: 'There shall not any of us give his daughter unto Benjamin to wife.'" Below, Aboab makes the connection between a herem and an oath explicit.

[7] Apparently he is referring to the rabbinic *nidui*, which is a sort of lower-level temporary *herem*, the practice of which had gone out of favor by his time.

[8] Aboab seems to be referring to whatever communal dispute led to the writing of the treatise. The 1670s and early 1680s were an extremely contentious time in the Amsterdam Sephardi community, with a number of open conflicts where the herem was imposed, including some where the herem itself was the focus of the disagreement. The evidence from Aboab's treatise is not enough to identify which particular dispute he was responding to.

[9] Nahmanides, *Mishpat ha-Herem*

[10] *deitar*—literally translated as throw, give, or extend, in the sense of 'lay down.' I will translate it as 'impose' to match normal English usage.

[11] The city Aboab refers to is his own, as the Mahamad that was empowered by the Ascamot consisted of seven officers. Aboab may be intentionally ambiguous in the next sentence as to whether "they" means the inhabitants or the deputies. Later in the treatise, he contradicts other rabbinic sources to suggest that the people lose this authority when they transfer it to a government.

[12] Paraphrased from Nahmanides, *Mishpat ha-Herem*. This passage is quoted in translation in Menachem Lorberbaum, *Politics and the Limits of Law: Secularizing the Political in Medieval Jewish Thought* (Stanford, California: Stanford University Press, 2001), p. 107.

[13] "They" are apparently congregants who are trying to create their own community by forming a quorum of their own. The rule they cite is given by Nahmanides (in *Mishpat ha-Herem*, quoted in Lorberbaum p. 108), and Aboab's contradiction of it is striking considering his explicit reliance on Nahmanides elsewhere in the passage. Some such incidents actually took place around the time of the treatise's composition, and records survive of the Mahamad's attempts to force them back into the community by means of the herem and the external support of the Dutch authorities. See the incidents involving Abraham Barboza and especially Isaac Coutinho described in Yosef Kaplan, "Bans in the Sephardi Community of Amsterdam in the Late Seventeenth Century," in *Galut ahar golah: mehkarim be-toldot 'Am Yisrael mugashim lel-Professor Haim Beinart li-melot*

lo shiv'im shanah, ed. Aaron Mirsky, Avraham Grossman, and Yosef Kaplan (Jerusalem: Mekhon Ben-Tsvi, 1988)

[14] Again, following Nahmanides in *Mishpat ha-Herem*, quoted in Lorberbaum p. 108.

[15] *When the troops came to the beehives and found the flow of honey there, no one put his hand to his mouth, for the troops feared the oath.* The passage does not use the word "herem." The actual condemnation is in I Samuel 14:44.

[16] See the text of Spinoza's herem, "...cursing him with the herem with which Joshua banned Jericho....," recorded in Portuguese in the Mahamad's minutebook. A translation has been published in Asa Kasher and Shlomo Biderman, "Why Was Baruch de Spinoza Excommunicated?," in *Sceptics, Millenarians and Jews*, ed. David S. Katz and Jonathan I. Israel (Leiden: Brill, 1990), pp. 98-9.

[17] This is in the end of 1 Kings 16, at verse 34, not in chapter 17. *During his reign, Hiel the Bethelite fortified Jericho. He laid its foundations at the cost of Abiram his first-born, and set its gates in place at the cost of Segub his youngest, in accordance with the words that the Lord had spoken through Joshua son of Nun.*

[18] This is a direct translation of the difficult Hebrew. JPS interprets it as *Ephraim is addicted to images—let him be.*

[19] JPS:*Now that his boughs are broken up, he feels his guilt.*

[20] JPS: *A numerous people is the glory of a king: Without a nation a ruler is ruined.*

[21] Referring to the Ascamot

[22] This refers to Article 42 of the Ascamot, which establishes a board of six representatives that must be consulted when major changes are made to the Ascamot. It was to consist of two deputies from each of the former congregations, to ensure that all three receive fair treatment going forward.

[23] This is actually Malachi 3:9, which JPS has as *You are suffering under a curse, yet you go on defrauding Me—the whole nation of you.*

[24] I assume he means the Rashba, Rabbi Shlomo ben Aderet, a disciple of Nahmanides.

[25] *Homem estimado*—Aboab's direct Portuguese translation of the Hebrew term *adam hashuv*, which is mentioned in BT Bava Batra 9a (and elsewhere) as a figure whose approval is necessary to validate a communal enactment.

[26] Rabbi Jacob ben Asher (1270-1340), the author of the *Arba'ah Turim*.

[27] Aboab shifts from "Hakham" to "Sabio" here, and in the next sentence, to "sage." I have preserved the distinctions, in case he means to distinguish between the office of Hakham, the status of a Rabbi, and the quality of being wise or learned.

[28] Actually Malachi 3:6

[29] Or, "commandment."

[30] Now apparently referring again to the rebels of Amsterdam

[31] Jeremiah 12:14

[32] JPS: *He shall come as redeemer to Zion, to those in Jacob who turn back from sin—declares the Lord.*

[33] It should be 5440, the date given at the beginning of the treatise, which must be the

correct one Aboab died in 5453. Perhaps the error crept in because the Gregorian date was 1680.
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EARLY MODERN WORKSHOP: Jewish History Resources

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Exortaçaõ, Paraque os tementes do Senhor na observança dos preceitos de sua Sancta Ley, naõ cayaõ em peccado por falta da conviniente inteligencia.

Exhortation to those who fear the Lord, not to fall into sin due to lack of understanding of the precepts of his Holy Law.

5440 (1679/80)

Prepared by Anne Oravetz Albert, University of Pennsylvania, USA

שלום רב לאוהבי תורתיך ואין למו מכשול

EXORTACAO,

Paraque os tementes do Senhor
na observança dos preceitos de sua Sancta Ley,
naõ cayaõ em peccado por falta da conviniente inteligencia.

Feito pello docto Senhor Haham Moreno A-Rab R. Yshac Aboab Ab-Bet-Din, &
Ros-Yesibá do Kahal Kados de Talmud Torah.

Estampado
Em Amsterdam.
Em Caza de
DAVID TARTAS
ANNO 5440.

Prologo a o Lector.

A os que lerem este Tratado advirto, & afirmo com verdade, que nem paxaõ nem

nemh˜ua outra cauza me moveu á tirallo á luz, nem menos escandalisar a ninguem, senaõ o zelo do Sagrado da Ley Sancta, & o affecto amoroso que devo em particular, & em geral á todo Sancto Kahal, possa ser naõ deym ouvidos a Aduladores, que com capa da Ley vendem á mesma Ley; y com sua doutrina tem abuzado a muytos, com que naõ fazem caso do que tanto deviaõ fazer, tomando exemplo das demais Congregas que temem de ouvir nomear o nome de Herem, & antes quizeraõ ser afrontados com o mayor, & mais ignominoso nomem, que chamarle enhermado, ou filho de hum enhermado de que o Señor nos livre de encorrer em semelhante pena: & .A. bendiga a seu povo com paz.
H. Y. ABUAB.

[3]
שלום רב לאוהבי תורתיך ואין למו מכשול
Exortaçaõ, paraque os tementes do Senhor na observança dos preceitos de sua Sancta Ley naõ cayaõ em peccado, por falta da conviniente inteligencia.

Feito pello doctissimo Senhor Haham Moreno A-Rab R. Yshac Aboab, Ab-Bet-Din, & Ros-Yesibá do Kahal Kados de Talmud Torah.

Sentença de nossos Sabios realmente racional סוף המעשה במחשבה תחילה *O fim de qualquer acçaõ primeiro precedeu no pensamento*. Assi deste papel o branco a que se derige, he o fim seu mesmo fim, & assi deve preceder no principio, qeu he, desenganar a os enganados, & desabuzar a os abuzados; que o Herem que o Sancto Kahal tomou sobre si em companhia dos quatro Hahamim, por todos firmado, naõ pode haver poder que o possa desfazer nem anullar, & todo o que o transgirir, nemhum remedio tem para deixar de ficar enhermado, eseito quando o Kahal pello menos com otro tanto nu- **[4]** mero dos que firmaraõ, o quizerem absolver, & na minha opiniaõ bem podem, mas naõ o devem fazer, a hua por ser contra a Uniaõ, conservaçaõ do Kahal, & alimento dos pobres, quanto pello exemplar que acho na Sagrada Escritura. Livraose fogindo de Binyamin, seis centos homems, por onde parece, qeu tudo o demais pereceu, quando na guerra causada por a Concobina do Levita, arependese Ysrael, & com lagrimas lamenta o haver extreminado de todo (segundo julgaraõ) hum tribu de Ysrael; como aquelles que bem entendiaõ o misterio de quanto montava o numero de doze, paraque a Divindade do Senhor jamais os desamparase: & dizem assi em Iuezes capit. 21. vers. 7. מה נעשה להם לנותרים לנשים ואנחנו נשבענו בה' לבלתי תת להם מבנותינו לנשים *Que faremos a os que ficaraõ para lhes dar mulheres*, & tornar a edeficar este cahido baluarte da fortaleza de Ysrael; *porque nos juramos por .A. de naõ lhes dar mulheres das nossas filhas*. Segue entonces dizendo, como cõdenaraõ a os moradores de Yabez Gilhad, porque transgiriraõ o herem,

& naõ acudiraõ como os demais a aquella guerra; & assi mandaõ sejaõ todos passados a fio de espada, sem reservar seso de pessoa, eseito as donzel- **[5]** las ya en estado de cazar, & foraõ estas quatro sentas, bem, & os demais duzentos que lhes faremos, que dificultade he esta em hum cazo taõ apertado & taõ urgente, os mesmos que consistiraõ no herem naõ o podiaõ absolver, qeu libres delle naõ podiaõ reparar a os duzentos? bem podiaõ, mas se prova o que pretendemos, que podendo, o naõ deviaõ fazer sem ver se por outro caminho se podia remediar, sem tocar no sagrado herem, qeu acharaõ dandolhes licença fossem a o campo & se emboscassem nas vinhas no dia em qeu as dozellas de Ysrael festejavaõ com suas danças & bayles (dia que dizemos das mossas) & que cada qual tomasse hua daquellas moças, de maneira que ainda que violencia & naõ piquena, julgavaõ que era menor mal que violar, ainda que com absolvisaõ a o herem, ora note agora todo o bom juyzo, que disculpa pode ter para deixar de encurrir no herem do sancto kahal, nem por pensamento tratar de sua absolvisaõ, & todos os qeu desta verdade naõ fizerem o cazo devido ainda que o herem for por cauzas ordinarias, poraõ a o tal em niduy נידוי quanto mais se for por cousa de misvá, ou feito para melhor observancia da sancta Ley, como se pode ver em R. Moseh Gerundense no **[6]** Tratado do herem 288. supost como deixo dito ser este o fim deste nosso Tratado, me pareceu em primeiro lugar conviniente dar noticia do herem para que se saiba a quanto se estende, & se pode absolver, & o como, reprovando primeiro como faz R. Moseh Gerundense Tratado 288. o que uzaõ alguas comgregas quando absolvem o herem, que sobe o hazan a Tebah & com dizer está absolto o herem, entendem tem cumprido, porque somente o Haham o pode absolver, o tres pessoas em seu lugar, salvo quando dita absolvisaõ for feita com consentimento, & em presença de todo o Kahal & o mesmo dos que entre si se ligaraõ com herem que elles mesmos se podem absolver, comprovado com o que dizem nossos Sabios, quando os Tribos venderaõ a Iosseph acordaraõ entre si que enemhum delles o descubriria a seu pay com herem, disse Iedudah [sic] naõ pode ser porque falta Reuben & naõ somos mais de nove, numero naõ competente, & para o remediar ajuntaraõ consigo a o Senhor, & tanto estima Deos Bendito a honra dos homems, & particularmente, a de seus tementes, que consintiu & se comprendeu com elles, veo Reuben & ficou sogeito a mesma obrigaçaõ, & com ser assi qeu pa- **[7]** recia de rezaõ ficava libre o Senhor, & diz o verso do Real Psalmista *Psalmo I [4]7. ver. 19.* מגיד דבריו ליעקוב *descubre suas palabras á Iahacob,* naõ lho quis descubrir por respeito do herem & honra dos Tribos & assi que acharaõ vivo a Iosseph elles mesmos entre si absolveraõ o herem & he o que dis o Sagrado texto *Genesis 46. verso 27.* ותחי רוח יעקוב אביהם *& resositou o espirito de Iahacob seu pay*, por vintura eestava morto? si, & assi quer dizer o Sagrado texsto resositou o espirito de Iahacob, sim resositou, por que, por causa do herem naõ se comonicava com elle o Senhor, porem tanto que se absolveu, logo lhe foy restituyda a Prophecia, & assi se deve notar que logo o vay nomeando com o nome de Ysrael, & entendo lhe negou o Senhor a Prophecia opr naõ lhe dar lugar a preguntarlhe por Iosseph & he o que dizem em *Genesis 37. verso 35.* זיבך אותו אביו *& chorou a elle seu pay*, a saber seu pay de Iahacob chorava Iosseph em companhia de

seu pay, porque naõ presumissem que lhe era revelado qeu estava vivo, porque a elle o podia descubrir o Senhor, de sorte, que o herem que entre si deitaraõ os Tribus elles mesmos o absolveraõ.
Dilatasse este nome de herem, que he os mesmo **[8]** que maldiçaõ, que dizendo hum homem estas fazendas seigaõ herem he o mesmo que se as consagrara, & assi se julga como os demais votos pera sua absolusaõ, & a tal fazenda servia para os consertos do Sagrado Templo, ou se dava a os sacerdotes. Porem quando Bet-Din manda, dizendo quem fizer tal cousa, está posto em herem, que seiga este herem emviolavel, a tradiçaõ no lo ensina como a diante se verá.
Differe o herem dos juramentos, porque hum homem que aconjurar a outro, sera o mesmo que nada, em quanto a parte naõ responder amen, porem o herem de Bet-Din, ou Kahal, se ordenarem qualquer ordenança com pena de herem, que responda o naõ responda amen, logo fica encorendo, & o mesmo será se o tal naõ aseitasse o dito herem, ou senaõ se achasse presente, como se dirá adiante, visto ter o Senado autoridade para deitar herem, como diz em *Nechemia Capitulo 13. verso 25.* ואקללם וגו' ואשביעם באלהים *& maldixeos & os ajuramentey pello Senhor*, logo cay sobre elle dito herem & he o mesmo qeu se elle por si jurara.
Assi mesmo hua cidade cujos moradores acor- **[9]** daraõ todos, ò a mayor parte delles, em prezencia dos sete Diputados, se deitasse herem, seu herem he valido para obrigar a menor parte a sua observancia, & ò tal herem he firme, & incontravel, assi qualquer da tal cidade, qeu transgerir, fica enhermado como se transgerira seu proprio juramento, o qual penetrará seus membros, & como diz o Propheta *Zechariah cap. 5. vers. 4.* וכלתו ואת עציו ואת אבניו *E acabará à elle a sua madeira, & a suas pedras.*
Todos tem obrigaçaõ de se apartar delle, nem darlhe algum proveito mais que o forçoso para poder viver, & quem assi naõ o observar, fica encorrendo no mesmo herem, & deve observar o mesmo que observa o enhermado, que saõ as circunstancias do lutoso descalsar o çapato, & todo o demais, & naõ se podrá aproveitar da fazenda dos q o condenaraõ, & o que fizer poco cazo do referido he propria causa de sua ruina, & transgire as palabras da ley.
E este herem he que dizem naõ he valido, senaõ em companhia dez, & he o que se chama congrega, & sendo menos naõ tem autoridade para pór em herem, porem jurar si, cada hum por si. **[10]** E se este herem fosse posto por el Rey ò Senado grande de Ysrael em presencia da mayor parte de Ysrael, o que o transsgerir merece morte, & esta será à eleiçaõ do Rey ó Senado, que lha podem dar qual a elles parecer, como consta, & foy o direito que teve o famoso Capitaõ Ieosua contra o preturbador Achan, que o condenou a morte, porque cometeu sacrilegio, *Ieosuah capitulo 7. verso 13.* כי כה אמר ה' אלהי ישראל חרם בקרבך ישראל *E disse o Señor a Ieosuah herem entre ti Ysrael &tc.* & o mesmo sucedeu a o Rey Saul com seu filho Ieonatan, que havendo conseguido hua taõ grande como gloriosa vitoria, pois só elle com seu moço foraõ cauza do destroço do furioso exercito Philisteo, por aver encurrido no herem que havia deitado seu pay, o condenou como consta pella Sagrada Historia em *Semuel I. cap. 14. vers. 26.* & naõ menos o Summo Sacerdote

Elazar, quando no successo da concobina do Levita, foraõ mortos os moradores de Yabes Guilhad, pella causa que diz em *Iuezes cap. 20. vers. 5.* כי השבועה הגדולה היתה לאשר לא עלה אל ה' המצפה לאמר מות ימות *Que o juramento grande foy contra aquelle que naõ subisse pello Senhor na Mispá, que morrendo morreria*, & assi se melda de nome de Riby **[11]** Aquiba, pois como! ahi ouve juramento? senaõ paraque saibas, que o herem he juramento, & o juramento he o herem; & assi os moradores de Yabes Guilhad, porque naõ subiraõ em companhia dos demais Tribus, foraõ condenados a morte.
Outro, si, o herem se dilata athe as futuras geraçoems; & he o mesmo Decreto de Ieosuah, de que se faz mençaõ nos heremot; como assi diz em *Yeosuah cap. 6. ver. 26.* וישבע יהושע לאמר ארור האיש אשר יקום ובנה את העיר הזאת את יריח *E conjurou Ieosuah dizendo, naquella hora, maldito seja o homem que alevantar, & fabricar esta Cidade, a Ierihó*; & seguiu & se cumpriu o seu Decreto dahi a tantos annos, em tempo de Achab, como consta pella Sagrad Historia, *Rey. 1. cap. 17. vers. 1.*
Ora, suposto que o principal branco de nosso assumpto, he, hua exortaçaõ, que espero com ella evitar hum grande absurdo, reprovar hua perjudicial doctrina, introdusida de animos maliciocos, preturbadores da dezejada paz, trazendo en[?]xonados algums sogetos dezejosos da liberdade, anhelando o mesmo que os faz cautivos do pecca[d]o, sem considerar o quanto offendem a Deos, **[12]** pois saõ causa de desunir a sua Congrega, cuja gloria, & felicidade consiste no contrario, pois entonces somos assistidos da sua Soberano graça; pois entonces somos immediatamente delle protegidos; entonces se dgna de ser Rey nosso, & nos seus amados vassallos como assi o manifesta o corifeo dos Prophetas Mosseh *Deute. cap. 33. vers. 5.* ויהי בישורון מלך בהתאסף ראשי עם יחד שבטי ישראל *E foy Rey em Ysrael*, Rey, que he o Senhor Deos, bem entendido quando *estaõ juntas do povo as Cabeças, unidos os Tribus de Ysrael*; & que mayor encarecimento, naõ o sendo senaõ a mesma verdade, como nos tem mostrado a expiriencia, sentença de nossos Sabios sobre as palavras do Propheta, *Ossea cap. 4. vers. 17.* חבור עצבים אפרים הנח לו *Unido idolos Ephraym deyxaõ;* que por estar falto de inteligencia, explicaõ nossos Sabios no *Medras Rabot, Trat. 41. vers. 3.* notay quam grata he a o Senhor a paz, & concordia na sua Republica, que estando entre si Ephraym, (inda que está cheo de idolatria) unido, deyxallo; porque naõ ha força que o possa contrastar, nem justiça que o possa condenar; & sendo pello contrario, diz o mesmo Propheta *Ossea cap. 10. ver. 2.* חלק לבם עתה יאשמו **[13]** *Dividiuse o seu coraçaõ, agora seraõ condenados;* agora si, que tera lugar a justiça contra elles, he assi agora sendo condenados, seraõ castigados.
He este pois o abuso, que algums presumindo mais do que sabem, & naõ de tementes de Deos, publicaõ, que quando da Sancta Congrega se apartaõ algums individuos della, sendo em numero de des, formando Congrega a parte, se libraõ do herem. Contra estes digo, que a paixaõ, ò por melhor dizer, o peccado os sega, naõ os deixando considerar, que dado cazo naõ concedido, que assi fosse, logo donde está o valor do herem? & no nosso cazo naõ melita, porque o herem comprende que naõ possa haver nesta Cidade de Amsterdam, nem nos seus contornos outra Esnoga nem se podráõ ajuntar para rezar

com minyan, senaõ com as condiçoems nelle referidas.
Daõ outros outra cór, que sendo o fundo falço a cór que lhe daõ, he da mesma calidade, dizem por desuadir a fraqueza dos que ignoraõ a verdade, ou que della se fazem ignorantes, qeu o tal herem naõ tem valor, respeito de naõ ser feito com authoridade de Haham, couza que eu nego, porque no tal acordo se acharaõ 4. Hahamim, que tam- **[14]** bem estaõ firmados mas dado cazo que assi fora, naõ tem o Kahal bastante authoridade, & mais para o poder fazer digaõ que naõ; logo lhe darey em cara com hua authoridade que naõ tem replica. Manda o Rey Saul pena de herem, qeu ninguem coma naquelle dia, the que o Senhor lhes conceda hua assinalada vitoria ao povo de ysrael; transgire Ieonathan o herem sem comer, porque naõ foy mais, (que chupar hua cana de açucar cujo licor o estava convidando) caya sorte sobre Ieonathan, dá a sentença seu pay conforme a Ley, *Semu. I. cap. 14. ver. 45.* dizendo מות תמות יהונתן*Morrendo morrerás Ieonathan*, porem diz no mesmo Propheta *ver. 26.* [sic: 46] ויפדו העם את יהונתן ולא מת *E dredemiraõ o povo a Ieonathan, & naõ morreu*; por vintura o redemiraõ com dinheyro? naõ; pois com que? com authoridade que o Senhor lhe concedeu a Congrega; & a rezaõ o está dectando: porque o Rey naõ faz a o povo; o povo si, que faz a o Rey. Assi diz Selomoh nos seus *Prover. cap. 14. ver. 28.* ברוב עם הדרת מלך *E quanto mayor for o povo, mayor será a gloria de seu Rey.* Assi que pode mais a authoridade do povo, que o Real Decreto, inda que ajustado com a Sagrada Ley, **[15]** grande absurdo, insoportavel erro; mas mayor erro he, naõ conhecer o erro, considerando, que o Senhor quer castigar peccados com erros, & sendo os erros grandes, indicios saõ de grandes peccados, & naõ menos vaticinios de grandes castigos.
Os que querem por suas paxoems, ou por suas commodidades, escurecer a verdade, nunca lhes faltaõ saidas mais ou menos arriscadas, sayem dizendo, que quando se quebra hua Escamá, as demais perderaõ sua força, & valor. Por comparaçaõ, hua das constituiçoems do Sancto Kahal he, se eligaõ mais seis sogeitos, para todas as ocurrencias do Sancto Kahal, & sendo esta hua das constituiçoems primeiras, & já naõ se observa, logo estamos libres das demais, demaneira, que querem tirar a authoridade a o Mahamad, que he o mesmo, q o Kaal, que naõ possa fazer, o desfazer, segundo pedir o tempo, & quando isso se instituhiu, foi por dar satisfasaõ as tres Congregas, & entaõ unidas, se reduziraõ nesta, que o Senhor nos ade conservar contra os dezenfreados ventos: seçou a cauza, seçou o cauzado, pois ya seperderaõ da memoria, & ya naõ averá dous, que poder dizer de cada Esnoga, mais **[16]** provo, que ditto acordo por si mesmo está nullo diz assi, & se em algum tempo parecer tirar algo delles (dos acordos) o Mahamad naõ o podrá fazer senaõ os seis Diputados qeu agora os fizemso uniformemente ou daquelles que no tal tempo fossem vivos chamando em praça dos que faltarem outros, que os que se acharem prezentes, nomearaõ das pessoas, qeu ouveraõ sido da Congregaçaõ ou Congregaçoems dos que faltarem, o que os dittos seis resolverem de acordo, seguirá: (pois todos morreraõ sem deixar nomeados outros em seu lugar, o ditto acordo por si mesmo está desfeito) & dado cazo que os ouvera, & que naõ se governa (o que naõ he) como se deve: o mau governo, naõ pode tirar o valor a o

herem, & que mais queriaõ os preturbadores? senaõ que com a quebra de hua Escamá, se quebraraõ todas; & somente se deve entender em cazos iguais.
Vamos a o desengano, de outro absurdo; & he: que todos dizem o q entendem, mas naõ todos entendem o que dizem: q elles naõ se acharaõ prezentes, nem firmaraõ o tal herem, & assi o naõ aprovaõ, com o que lhes parece estaõ desobrigados; falça doctrina: & lhe dizemos, naõ vedes, **[17]** que o herem de Moseh se dilatou athe as ultimas geraçoems entonces se valem do que dizem os Sabios que todas as almas se acharaõ prezentes encorporadas & por encorporar, eu o naõ nego porque seria negar a verdade, mas entendo que alegaõ o que naõ creem, nem tem rezaõ de o alegar, suposto seiga a mesma verdade, porque quatro saõ os modos de comentar, Literal, Alegorico, ou Moral; Anagogico, & Tropologico, porem ningem nega que a todos precede o Literal, & este he o documento que na verdade nos deixò Moseh entrudusido pera as futuras geraçoems, a saber, que o herem comprende, a os presentes, & auzentes, a os nacidos, & os que estaõ por nacer, mas demoslho de barato que diraõ de Ieonathan que naõ estando prezente, nem sabendo de nada, esteve sua vida arriscada se o naõ librara mayor poder.
Agora vamos a os de Yabes Guilad, quero comfesar, & assi o diraõ q tiveraõ noticia do decreto dado do summo Pontifice Elazar em companhia, & prezensa de todo o povo, he luogo serto que o naõ aprovaraõ, porque si fora por elles aprovado, claro está que viriaõ, naõ **[18]** vieriaõ, o foy ignorancia o foy maldade, se foy ignorancia ignorantemente moreraõ; & se malicia, bem o mereceraõ; & mais naõ lhe havia de valer a ignorancia por disculpa, porque tal he a força que o Senhor concedeu a o herem, que naõ val contra elle nemhua disculpa, nem vemos que Ieonathan se desculpasse, sendo que a tinha bem grande, & quando elle a ignorasse a o Senor lhe era manifesta, & a naõ quis aseitar pois manda deitar sortes.
Assi que esta he a causa que me moveo a tirar a luz esta exortaçaõ, para desengano dos que por algua maldita rezaõ de estado se deixaõ abuzar, & para reparo dos zelozos & tementes do Senhor, que naõ os insisione taõ prejudicial doctrina, quizera que os naõ enganasse a esperança da mizericordia devina, porque muitas vezes se zomba daquelles que com sua confiança forem desagradecidos.
Proposto o antecedente, que espero seiga de todos aprobado, naõ nos deve admirar as desordems que passaõ entre nos, porque naõ he novo, o mesmo tem suscedido em outras Congregas, se bem diferimos em que elles eraõ faciles a reduzirse, & nòs duros, & tercos em obedecer. Seria couza dilatada, & naõ menos inteligible se ouveramos de **[19]** referir o que escrevem os authores, sobre o nosso mesmo sugeito, somente diremos por mayor o rezumo de suas palabras & se vereficará con sua authoridade o que pretendemos.
Prepugeraõ a o famozo Rabenu Moseh Gerundense, hua congrega que ordena algums decretos, em pró da Congrega com herem, & algums particulares juraraõ em prezença de testigos, que elles naõ o aceitavaõ, & assi naõ entravano debaixo das tais ordenanças ou heremoth, preguntasse se tem algum valor o tal juramento, para encontrar dittos heremoth, a o que responde seiga notorio que todas as Congregas tem plena

authoridade sobre os seos Yehidim, para ordenarem na sua cidade como se fora o Senado Grande de Ysrael, & o Propheta *Malachi cap. 10. ver. 11.* במארה אתם נארים ואותי אתם קובעים הגוי כלו*Diz assi, com a maldiçaõ vos sois amaldiçoadas a gente toda*, dizendo que a mayor parte he o mesmo que o todo, assi os que transgerirem tenhaõ por serto a maldiçaõ, como consta da Guemará de *Abodá-zará*, & concluye dizendo, que os tais que juraraõ naõ fizeraõ o que deviaõ, nem tinhaõ authoridade para o poder fazer, & todos os que naõ seguem o que a Congrega, tropesaõ **[20]** & encorrem no herem, que pós o Kahal; naõ vemos que dito author fasa mensaõ de Haham, & deve ser como fica ditto, q a authoridade do Kahal he de todas a mayor, & prova mais clara he, o que dis o mesmo author, que serâ mais valiozo, se se fez com aprovaçaõ do Haham, donde se emfire ser valiozo o herem do Kahal ainda que lhe falte a authoridade de Haham, y suposto que por *Arisbá* parece necessita o Mahamad da companhia do Haham porque no fim do asima referido, de seu nome diz assi com tal que seiga com acordo de homem estimado, naõ contradis a o referido, porque elle naõ trata senaõ do Mahamad, mas naõ do geral, & naõ menos o dizer que seiga com acordo de homem estimado, que querem entender ser o mesmo que Haham, & apurado nem a o Mahamad obriga, a asistencia de Haham, porque elle bem sabia dizer Haham, mas como sabio naõ quis sahir do termo da Guemará a qual diz אדם חשוב *Homem estimado*, entendo como se verificará adiante, que he homem de quem os cidadoems fazem estimaçaõ, & assi declaraõ homem estimado, por Parnás ou Deputado, *Rabenu Nissim* sobre a mesma Guemará diz desta sorte. **[21]** Porem havendo homem estimado deputado sobre o Kahal sem falar em Sabio, & pera mayor verificaçaõ diz adiante senaõ tomou licença do tal Parnas de maneira que entende que o nome de homem estimado se dá a o Parnas, & assi mesmo o *Haham Caro no Bet-Iosseph*, de nome do citado *Rabenu Nissim*, estimado, se deve entender deputado por Parnas sobre a Congrega, & entendo que o *Otur* sedeu do mesmo, porque havendo dito homem grande y sabio, repite dizendo porem si ouver Haham & governador. Eu o aprovo coroborandoo com o seguinte argumento, se na Guemará naõ trata mais que de אדם חשוב *Homem estimado* donde lhe vejo a autoridade pera acrecentarem dizendo hom˜e, Haham, ou governador, porque segundo a Guemarâ se o estimado q diz fora Sabio, disseraõ Sabio, se governador, governador, & elles daõ a entender que he necessario comcurraõ nele duas calidades, sabio, & q este sabio, seiga governador; a desculpa que podé dar por naõ lhe aplicarmos semelhante descuydo, he que querem dizer sabio, ou governador, pois a qualquer delles se pode aplicar o nome de אדם חשוב*Homem estimado*, & tornando a nosso pronto, **[22]** *Arros* assi tambem o afirma, como dilatadamente o *Haham Ribi Levy Aben Habib na consulta 99.* donde diz semelhantes palabras geralmente acordaõ todos os authores, que tudo o que o Mahamad ordenar em companhia do Haham, he de todo valiozo, & firme, donde se deve notar tembem que o citado *Arros* naõ trata do Kahal, mas si, do Mahamad, com que fica probada nossa pretençaõ, que o Kahal tem plena authoridade pera poder pòr & dispor sem ser necessaria a entercedencia de Haham, somente se pode opòr contra o referido, a authoridade do *Haham Ribi Iosseph Caro*, a quem em todo segimos, diz assi, *No seu*

Sulhan Aruch tomo 4. cap. 231. ver. 28. Tem authoridade os moradores de hua Cidade pera por preso em todas as cousas como lhes parecer, & pòrem pena contra o q transgerir a ordem, & assi mesmo os officiaes podem em quanto a seu officio acordar entre si, que ningem trabalhe no dia que tocar a seu companheiro (& fecha dizendo) o referido se entende em hua Cidade donde naõ hay Haham, porem se o ouver, o acordo serâ nulo, naõ sendo com sua aprovaçaõ, que parece da entender o contrario, do que sustentamos, a saber, que tambem o Kahal **[23]** necessita da authoridade de Haham (& Falando com o devido respeito) elle se enganou como se enganaraõ todos os que entenderaõ que o nome de אדם חשוב *Homem estimado* se entende somente, Haham, naõ sendo senaõ como fica dito, & provado, homem de quem os moradores de sua Cidade fazem particular estimaçaõ delle, seiga ou naõ seiga Haham a quem elegem, pera que se emcarregue das ocurrencias de sua Cidade & Kahal, fora do antecendente, pergunto, tem o Kahal por si bastante authoridade? forçozamente me confeçaráõ que si, pois diz que seguirá o seu acordo, quando naõ ouver Haham, mas naõ quando o ouver, logo como o Haham lhe pode tirar a authoridade que goza de rezaõ & de direyto, com que he forçozo dizer, qeu com a companhia de Haham se lhe acresenta, mas naõ que por sua causa, a haya de perder, donde por força de este argumento, infirimos o mesmo que pretendemos, que he a authoridade do Kahal, mayor quando for acompanhada com a do Haham, & assi o mesmo author, no seu famozo *Beth Iosseph* cita a destinçaõ de *Rabenu Nissim*, diz assi, porem naõ sendo em dano alheho, podem ordenar entre si tudo o que bem lhes parecer, se entende sem autho- **[24]** ridade de Haham.
E o Haham Ribi Moseh Alascar, na consulta 49. traz por inteiro *a Tosaftá*, que trata de todos os officiais, & explica que o que diz, que havendo homem estimado, será valiozo o tal acordo, & quando naõ, será nulo, só se refere a os officios ditos, porque he couza particular, porem naõ a o que antecede dos moradores da Cidade, que esses, que haya Haham ou naõ haya, podem ordenar tudo o que lhes parecer, & sigue dizendo, que assi o entendem hum & outro, *Rabenu Moseh*, & o mesmo afirma *Bar Cessat*, & concluye dizendo, que os moradores de hua Cidade podem ordenar, suas ordenanças, sem necessitarem de homem estimado, que sendo em companhia de seu *Beth-Din*, entaõ, he tanto mais valiozo, a tanto que podem confiscar a fazenda, do transgressor, como consta da Guemará, probado por *Esrah capitulo 10. verso 7.* ויעבירו קול ביהודה ובירושלם לכל בני הגולה להקבץ ירושלם וכל אשר לא יבא לשלשת הימים כעצת השרים והזקנים יחרם כל רכושו והוא יבדל מקהל הגולה *& passaraõ boz em Ieudah, & Ierusalaym, a todos os filhos do cautiverio para se juntarem a Ierusalaym, & todo o que naõ viesse a os tres dias (segundo) o conselho dos Principes & velhos, seiga confiscada* **[25]** *sua fazenda, & elle seiga apartado da Congrega do cautiverio*, & tanto que na Guemará de *Guitim fol. 36.* repetido na Guemará de *Yebamoth fol. 89.* & mais dilatdado, na Guemará de *Mohet Katan fol. 16.* & diz assi, אמר רבי יצחק מנין שהפקר בית דין הפקר שנאמר וכל אשר לא יבא לשלשת ימים וגו' *Diz Ribi Yshac, dondenos consta, que a confiscaçaõ do Senado he conficaçaõ: que assi diz & aquelle que naõ vier a os tres dias &ct.* E quem quizer mayor clarez, o pode ver no citado author, & em rezoluçaõ do referido, se me premita dar hua dinstinçaõ & he que sendo o

Haham eleyto pello Kahal entonces necessita o Mahamad de sua companhia, tanto porque possa ser foy essa a intençaõ dos que dizem Haham, & governador, a saber, quando concurrem nelle ser Haham & governador, que he o mesmo que dizer Haham do Kahal, tanto por tapar a boca a os que querem escurecer a verdade, ou eficionar a os que dezeigaõ observalla com razoems aerias & falças, advertindo, que a destinçaõ asima tampoco se entende, com o Kahal, como fica provado.
Agora trataremos do principal, & mais importante, para conservaçaõ da sancta Congrega, & aumento da Sagrada Ley, alimento dos pobres & **[26]** ter propicio a o Senhor Deos, com a conformidade, & uniaõ que elle tanto ama, sendo hua calidade oculta em Ysrael, que os pode fazer immortais en individuo, assi como saõ em especie, como disse o Propheta *Malachy cap. 3 ver. 8* כי אני ה' לא שניתי ואתם בני יעקב לא כליתם *Que eu .A. naõ me alterey, nem vos filhos de Iahacob naõ vos acabastes.* E digo assi hay cousas ainda que parecen insolentes, se fundaõ em algua rezaõ de estado, porem hay outras que lhe falta tudo, como sucede no nosso cazo que agora temos entremaõs.
Hum Kahal que desde seus principios foy instituydo com pena de herem que receberaõ sobre si, & firmaraõ todos os que naquelle tempo se acharaõ, que naõ pudesse haver nesta Cidade nem em todos seus contornos outra Esnoga, nem se pudecem ajuntar a rezar com minham, senaõ na casa de lutozo ou de noivos, ou por accidente; & algums naõ conciderando o mal que para si fazem, & o desconserto que pode causar, com o seu exemplar sem que pertinazmente queiraõ presistir na sua má eleiçaõ, & por payxoems particulares, apartandosse do geral agora veraõ manifestamente seu erro, com a authoridade dos mais famozos authores, veraõ **[27]** que he o mesmo que hua nevoa facil de desfazer a vista dos contantes rayos do Sol da luzente verdade.
Nas consultas do sciente *Medina* taõ requestadas consulta 37. direy brevemente o compendio, & resumo com alguas palabras proprias do proponente, possa ser que o modo de falar obre, reduzindo algums coraçoms porque suposto que o Senhor Deos diz que somos duros de serviz, he por nossa constancia, mostra o proponiente com lagrimas ainda que as naõ vemos, o sentimento devido, dizendo assi, eu sou o homem desgraciado & infelice, vendo a afliçaõ de hua Congrega illustre, por estremo gloriosa, entre as demais Congregas, donde se acha toda a caridade, & cadeiras da incorubtivel justiça, eminentissimos Sabios, que fartaõ a os famintos, & mataõ a sede dos sedentos, *Amos ca. 8. v. 1.* לא רעב ללחם ולא צמא למים כי אם לשמוע דברי ה' *Naõ famintos de paõ, nem sedentos de aguas, mas sim por ouvir a palabra do Senhor*, que assi lhe chama o Propheta, nem faltavaõ nella sujeitos nobres, & de illustre geraçaõ, perfeitos nas virtudes, & naõ menos coroados com a coroa da ley, & da sciencia, fama, & gloria, agora estaõ vendo meus olhos, cousa **[28]** que naõ quizera ver, que se levantaraõ algums sugeitos profanando o Sagrado Templo, & se acomunaraõ dizendo fassamos altar (grande encarisimento pois assi chama a os que se apartaõ do geral) como fizeraõ sem fazer cazo dos sugeitos pios, que os quizeraõ presuadir, nem do herem & maldiçoems &ct. Algums tornaraõ sobre si, que naõ he deshonra conhecer o erro & mais sendo taõ prejudicial, ouros ainda persistem pretinaces, dos reduzidos hay algums, que escropulaõ

o haver jurado que haviaõ de sustentar o seu acordo, & naõ era senaõ desacordo.
A o que responde o author citado, provando primeiro que o juramento que fizeraõ, que continha ficarem apartados da Congrega naõ tem valor nenhum, consta pella Guemarâ de *Sebuoth* hum homem que jurou de naõ observar tal misvá, & a observou quebrantando seu juramento he libre, por que o seu juramento naõ pode prejudicar a o primeiro feito no monte de Sinay, & sendo assi diz o mesmo author naõ pode haver mayor misvá, que sustentar o primeiro juramento, com que se obrigou a observar a dita escamá feita com o herem, que he o mesmo que juramento com que vem a ser o jura-
[29] mento, segundo, jurar de naõ fazer a misvá, & assi naõ he juramento, outras provas tras o author bem eficaces mas como naõ melitaõ com o cazo que a nós nos sucede & somente alegey com o antecedente pello que possa suceder, que aja algum que precepitado se despenhasse à fazer semelhantes juramentos.
E vamos a conclusaõ de nosso author que rezolve dizendo o mesmo sucedeu *no Kahal de Geruz, & no Kahal de Lisboa, Congregas na Cidade de Constantina*, acordando consiguo os illustres Hahamim & com a sentença que se deu, tornaraõ a congregar a seu Kahal, como aquelles que temendo o castigo se retiraraõ do abuzo em que estavaõ, assi que os apartados da Congrega, ficaõ obrigados (ainda que ajaõ jurado o contario) tornraráõ a congregar con seus Yrmaõs, porque o tal juramento naõ he de valor, & se pertinaces insistirem em sua rebeldia (diz o author) & naõ quizerem reduzirse saibaõ que estaõ emhermados (por mais cores que procurem dar, porque todas saõ falsas) & com a reducçaõ seraõ curados.
Estou vendo que me dizem que o herem naõ comprende mais que o rezar fora da Esnoga com **[30]** minham que obedecem, porem querem ficar em suas casas, bem o podem fazer, mais vejaõ que serâ a sua custa, pois a oraçaõ em Congrega tem grande força & valor, & sendo só grande risco como dizem na Gemará de *Berahoth* sobre o verso *Psal. 102. ver. 18.* פנה אל תפילת הערער ולא בזה את תפילתם *Olhou para a oraçaõ do solitario, & naõ despresou delles a sua oraçaõ*, notando que este fraze de (פנה) *olhou* he o mesmo que dizer *especulou*, quando o Senhor Deos ouve hua só voz diz, quem he este atrevido que se aparta de minha Congrega, corraselhe a folha veigamos em que funda o seu atrevimento, mas a oraçaõ da Congrega geral, jamais a desprezou o Senhor, fora disto he sentença da Guemará de *Berahoth* todo aquelle que tem Esnoga em sua Cidade, & naõ vay a orar nella, se estima por vezinho mao, como provaõ pello Propheta *Yrmihau* que diz na maneira seguinte כה אמר ה' על שבני הרעים הנוגעים בנחלה אשר הנחלתי את עמי את ישראל *Assi diz o Senhor a todos meus vezinhos maos, os que tocaõ na eredade que fiz eredar a meu povo Ysrael &ct.* enfirece das palabras do author que foras de ser vezinho mao, pois poem defeito na caza do Senhor, naõ fazendo cazo della, naõ honrandosse della, padecer á cautiveiro, elle, **[31]** & seus filhos, como segue o mesmo Propheta & coroborasse com o que diz na mesma Guemará de *Berahoth* que naõ he ouvido do homem a oraçaõ senaõ na Esnoga, & entende (נוגיעם) ´q pom defeito.
O Haham Adraby consulta 39. escreve, que se lhe propòs de Selonique, donde se padeciaõ diferentes desconcertos ouve entre elles o mesmo que a nòs nos acontesse de

algums que se apartaraõ do Kahal, & os Hahamim delles, que nunca podem ser pocos, ordenaraõ entre outras cousas, que ninguem se possa apartar do seu kahal nem fazerem Esnoga de novo mais daquellas que de prezente haviaõ no dito Selonique com todas as maldiçoems & heremoth, & consultandosse com o dito author, respondeu, que direy em summa, que dado caso que os tays ouvessem jurado com mayores maldiçoems que se haviaõ de apartar & dado & naõ concedido, que este juramento seiga valiozo, dogo fazendo differença do juramento, a o herem, que teraõ obrigaçaõ observallo porem naõ por isso se livraõ do herem referido, na escamá, porque esse sempre fica no seu ser, com que sempre os tays estaõ condenados, & assi ficaõ emhermados, & desgraciados, diante do Senhor Deos, pello qeu resolve que os **[32]** ditos se ajaõ de absolver do juramento, que fizeraõ, & tornando a sua Congrega, ficaõ se nenhum escrupolo.
He na consulta 254. afirma o mesmo, & tambem na *consulta 113.* assi se enfire do *Haham Ribi Moseh Trany na consulta 84.* com que damos luz a os que naõ sabem a força do herem, que he tal como fica dito, que no tempo da nossa felissidade & quando posuyamos o reyno merecia morte, o que o trangerisse, sendo posto por el Rey, ou Senado grande de Ysrael, suposto que tudo nos falta fica a cargo do Senhor Deos, sua execuçaõ, a qual pode tardar, mais naõ faltar, com que deixamos resolvido, & provado, o que pretendemos com as seguintes concluzoems.
A primeira, he manifestar o valor do herem, & suas circunstancias, & que somente o Haham, ou tres homems em seu lugar o podem absolver, quando algum particular encurrir nelle.
Segunda, ser tam grande a authoridade de hum Kahal, que naõ necessita de outro favor.
Terceira, que a mesma authoridade tem o Mahamad quando for eleyto juridicamente, a saber, sendo eleyto pello Kahal, ou pella mayor parte **[33]** delle donde assi se uza, ou quando o Kahal sedeu da dita sua authoridade & a deu a os primeiros eleitos, paraque elles sucessivamente follsem ellegendo a os que lhes parecerem benemeritos, & naõ reprobada pello gera.
Quarta, que com tudo havendo Haham assalariado ou eleito pello Kahal, donde eleje o Kahal, ou donde eleje o Mahamad, necessita de ser acompanhado.
Quinto, que o herem tem o mesmo valor, que os demais desde o de *Moseh Rabenu*, em que obriga a todas as geraçoems presentes & futuras, sem se poder alegar auzencia nem ignorancia, porque a calidade do sugeitos naõ desfaz na do herem, nem na virtude que o Senhor Deos lhe deu.
Sexta, que todos os que tratarem com os transgreçores ficaõ da sua mesma calidade, & obrigados a huas mesmas circunstancias.
Septima, o fim de tudo mostrar o que pretendemos, com casos, & exemplos da mesma calidade sucedidos, que havendosse constituydo a uniaõ do nosso Sancto Kahal, com a aprovaçaõ de todos, & por todos firmado em companhia de seus Hahamim com pena de herem, que aquelles que se se- **[34]** pararem contra o acordo, que naõ se podem, nem nimgem no mundo os pode librar da tal pena.
Octava, de caminho advertir, a os que temem a o Senhor, & receaõ cayr em semelhante

rigor, & por naõ transgerir o herem se deixaõ ficar em suas cazas, o mal para si o fazem, & assi que espero seiga esta fraca exortaçaõ de se colher o fruto dezejado, & a todos de tanto proveito pera conservaçaõ do Sancto Kahal, honra do Senhor Deos, & gloria de sua Sancta ley, coma qual esperamos salvarnos & merecer & gozar do prometido Siglo, como diz o Propheta *Yesayahu cap. 59. ver. 20.* ובא לציון גואל ולשבי פשע ביעקב נאם ה' & virá redemidor, & pellos que de seus pecados, se reduzem diz o Senhor, que seiga em nossos dias Amen.
Oje 4. de Elul de 5480.

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