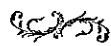


דְּרִישָׁה
DRISHA INSTITUTE
FOR JEWISH EDUCATION

THE RENEE AND ALEXANDER BOHM MEMORIAL LECTURE

Sponsored by their grandchildren, Elissa Shay Ordan and Daniel J. Ordan



ASSIMILATIONISTS OR MACCABEES?

**HISTORICAL CONFRONTATIONS BETWEEN
JEWISH LAW AND INDIVIDUAL RIGHTS IN
POST-REVOLUTIONARY AMERICA**

—

JONATHAN D. SARNA



Sunday December 2, 2012 – 18 Kislev 5773

BETH SHALOME

Richmond, Va.

Constitution, 1789

New moon of Ellul, 5549, August 24, 1789

We, the subscribers of the Israelite religion resident in this place, desirous of promoting the divine worship which, by the blessing of God, has been transmitted by our ancestors, have this day agreed to form ourselves into a society for the better effecting the said laudable purpose, to be known and distinguished in Israel by the name of B'eth Shalom, *beth shalom*.

It is necessary that in all societies that certain rules and regulations be made for the government for the same as tend well to the proper decorum in a place dedicated to the worship of the Almighty God, peace and friendship among the same. We do, therefore, agree that the following rules be adopted and be continued in force until a majority of the congregation propose to alter or amend the same.

1. Every free man residing in this city for the term of three months, of the age of 21 years and who congregates with us, shall be a *yahid* ["member"] of the ke-hilla ["congregation"] and entitled to every right and privilege of the same.

2. The first Sunday before Rosh Hashana ["New Year"] in every year, a general meeting of the *yehidim* be made, and by a plurality of votes a *parnas* and 2 assistants and 2 *hathanim* [honorary officers] be chosen to serve the ensuing year. The *parnas* and assistants shall not be connected in family or in partnership in trade, in order to preserve an equal and an independent representation.

3. The duty of the *parnas* shall be to preserve decorum and good order in the synagogue, distribute the *mitzvoth* [religious honors], and to provide everything necessary for our religious worship. When [Then?], with the advice of his assistants, [he] shall from time to time propose such regulations as may be necessary for the good government of the society.

He shall be obliged to call his junta ["board"] the first Sunday in every month and keep a book of their proceedings, wrote in a legible hand and good manner, which book shall be laid before the members at large whenever he is requested to do it by a majority.

No rules or regulations shall be considered as binding on the congregation until it is read 2 Shabbath or holidays separately in the synagogue. Should any member object to the same, it must be by a letter to the *parnas* within 24 hours after the last publication, who shall be obliged to call a meeting of all the members in toto. When [there is] a majority present at such meeting, which must be 2/3 of the members in town, [it] shall deterim [determine] the same, and the [de]termination shall be binding on the objecting member and all the rest.

He [the *parnas*] shall give four copies of the laws now made, with the proceedings of the juntas, [which] shall be delivered to his successor with all books and papers belonging to the congregation.

He shall, when a *yahid* has a son born, give him the distribution of all the *mitzvoth* on the following Shabbath, and [the father] must be called to the *sefer* [reading of the "Scroll"]. And when his wife comes to shul ["synagogue"] after lying-in of a son or a daughter, [the husband] must be called to the *sefer*.

4. The duty of the assistants shall be to assist the *parnas* in the execution of his office. They shall be obliged to attend him on the fourth Sunday of every month and report to the congregation *any improper conduct that they may observe by him*, and such complaint to be laid before the *yehidim* for their determination.

5. In the absence of the *parnas* the senior assistant shall officiate, and so in rotation, [including]...the *hathan torah*, and in his absence the *hathan bereshith*. [*Hatan torah* and *hatan bereshit*: "bridegroom of the Law and bridegroom of the beginning." These men were given the honor of closing and beginning the annual cycle of the Pentateuchal readings in the synagogue.]

Source: J.R. Marcus, *American Jewry Documents* (1959)

At a meeting of the junta, 15th Elul, 5542 [August 25, 1782]. . .

The parnas presented a letter from the hazan, which he read, and moved that Mr. M. Mordecai and Mr. Israel Myer be sent for. Agreed to. . .

Mr. Mordecai and Mr. Myer attended, and the parnas informed them of the point in question: Can Mr. Jacob Cohen marry the Widow Mordecai according to our law? After they had debated some time, Mr. DaCosta was requested to attend, which he did accordingly; and after a full hearing [of] the *dinim* [rabbinic "laws"] relating thereto, agreed to adjourn till four o'clock, requesting the same gentlemen's attendance, and also desired Mr. Jacob Cohen to attend. . .

The gentlemen attended that were desired to attend this morning, and a great while was spent in debating and hearing of the *din*. Messrs. DaCosta and Mordecai proved by the *din* that it is contrary to our law to suffer such [a] marriage. The parnas then requested to know the determination of the junta and what answer should be given the hazan.

Mr. B. Gratz moved, seconded by S. Nathan, that a letter be wrote to the hazan, in answer to the one received, to forbid him to marry Mr. Cohen to Mrs. Mordecai, and not to mention his name in synagogue. After some time spent in debating thereon, the following letter was agreed on:

Sir:

In answer to your letter of 24th August, we now inform you that you are not to marry Mr. Jacob Cohen to Mrs. Mordecai, neither are you to be present at the wedding. And you are hereby strictly forbid to mention the said Cohen or his wife's name in any respect whatsoever in the synagogue.

We are, sir,

Your very humble servants,

Signed by I. Moses	B. Seixas
B. Gratz	S. Nathan
J. Phillips	

Reverend Gershom Seixas

Mr. B. Seixas moved, seconded by Mr. Jonas Phillips, that the congregation be informed on Tuesday next that the parnas and junta have forbid the hazan to mention the name of Jacob Cohen and wife in shull, and that they be acquainted likewise that his wedding is contrary to the *din*, and all who are present at the same are liable to the same punishment.

A debate arising thereon, the question was put and the motion was lost.

For the motion:

Jonas Phillips	
Benjamin Seixas	

Against it:

Barnard Gratz	
Simon Nathan	
Isaac Moses	

The parnas then moved that as a full and decided opinion was this day given respecting the *din* on the marriage now in question, that it is the duty of the junta to enter into a pointed [point of] law respecting the said marriage, setting forth what punishment will be incurred by those that marry the parties or attend the same, and that the said law be published on Tuesday next.

A debate arising thereon, the question was put, and carried in the manner following:

For the motion:

Jonas Phillips	
Benjamin Seixas	
Isaac Moses	

Against the motion:

Barnard Gratz	
Simon Nathan	

Adjourned till tomorrow evening. . .

and other members of the family were desirous to restore peace between the father and his daughter and her gentile husband. As their efforts proved futile, they addressed a letter to Reb Mordecai [Moses Mordecai] of Philadelphia, a learned man and an uncle of the young woman — his wife and the girl's mother were sisters. Reb Mordecai immediately journeyed to the town of Easton and it is common knowledge that from the day of Reb Mordecai's arrival in Easton, the young woman and her gentile husband have returned to her father's house and lived there in affection and harmony.

Some time later the father moved to Philadelphia, but the daughter and her gentile husband live to this day in Easton. The husband often comes here on business, sometime alone and sometime with his wife, and they always lodge in her father's house where they are most welcome. The son the woman has given birth to has not been circumcised to this day, because the father wants to raise him until he is mature enough to decide whether to accept the Jewish faith or not — as he pleases.

To resume our original subject. Since Reb Mordecai's visit to the town of Easton, reports have persisted to this day throughout the province that Reb Mordecai has secretly performed a Jewish marriage (granted *Kiddushin*) between the young woman and her gentile husband, to her father's satisfaction. The same night the father served a family wedding meal at which Reb Mordecai as well as the young couple were present. Such is the information, although Reb Mordecai and the other family members completely deny the account of his having performed the marriage ceremony. But they can never deny his role as the peace maker between the father and the young couple, nor his presence at the wedding meal.

Subsequently, a Jewish man, named Barnet Levy, a resident of Easton, came on a visit to Philadelphia. He chanced to come to a house where three members of our community were present. One is the *Parnas* (president) of the Easton community and the other two are respectable members [of our council]. This afforded an opportunity for discussing the matter of the marriage, allegedly performed by Reb Mordecai. In brief, Barnet Levy testified before the three gentlemen that he was present in the same room with Reb Mordecai, the Jewish woman and her gentile bridegroom. No one else was in the room at that time except these four people. Reb Mordecai read the *Ketubah* (marriage contract) made out in the name of the young woman and her gentile bridegroom. Reb Mordecai explained the content of the *Ketubah* to the bridegroom in English and asked him "Do you believe [affirm] in what is stated therein?" to which the gentile responded "Yes." Reb Mordecai then performed the *Kiddushin* (marriage rite) and persuaded Barnet Levy — a man of scant learning — to sign the *Ketubah* as witness; and he signed. This is the substance of Barnet Levy's testimony.

Philadelphia, Sunday, 9 Nissan, 5545 [March 20, 1785].

To his Exalted Excellency, celebrated throughout distant lands and seas, the Light of Israel, Rabbi and Master, Saul, Presiding Judge and Head of the Yeshiva of the Ashkenazic Community of Amsterdam. This inquiry relates to an event which took place some two years ago. Since most Jews in the overseas provinces are not knowledgeable in Torah lore, nor understand our sacred tongue; and because we want the *Parnas*' (president) and officers of the *Kahal* (community) to read this document, we present this matter to your Excellency in Judeo-German (Yiddish).

The account of the event is as follows:

The daughter of a Jewish resident of Easton, a town in our province [Pennsylvania] was seduced by a gentile man. After she became pregnant out of wedlock she was married to this man by a minister according to their ritual; that is to say, she did not convert, but was married according to their custom. All this took place secretly without her father's knowledge. Soon after her father had found out about this affair he expelled his daughter from his house — as is proper and right. But the mother

This testimony was taken on a Saturday evening. There was no opportunity for a formal hearing by the *Kahal*, and in the presence of [the accused] Reb Mordecai. On the next day, Sunday morning, Barnett Levy had to continue his journey. The above three gentlemen recorded in English Barnett Levy's complete statement relating to the *Kiddushin*. Barnett Levy signed the statement in his own hand, and promised to repeat the same testimony again before the *Kahal* in the presence of Reb Mordecai on his next visit to Philadelphia. Whereupon the *Kahal* was convened. Reb Mordecai was summoned

and he was asked:

"—Do you know Barnet Levy of Easton?"
— "Yes, I know him well," Reb Mordecai replied.

— "Is he a good Jew?"

"Yes, he is a good Jew and a pretty decent fellow."

The *Kahal* continued the interrogation with similar questions relating to Barnet Levy, to all of which Reb Mordccai replied favorably. Finally the *Kahal* mentioned the allegations concerning the *Kiddushin*, together with the testimony given by Barnet Levy. Reb Mordccai responded vehemently with solemn vows that the alleged *Kiddushin* story is pure fabrication. Moreover, Barnet Levy is disqualified [under Jewish law] as a witness because of his abhorrent character. He defiles the Sabbath and eats *treifa* food, aside from many other character shortcomings. In brief, *Kahal* agreed to delegate two members of the Synagogue Board, Messrs. Asher Myers and Benjamin Nonce, to request us on behalf of the *Kahal* to offer our opinion concerning this affair, whether Reb Mordccai is guilty or innocent; and if guilty, what the penalty should be.

We submitted our opinion to the *Kahal* in English. We take the liberty of enclosing herewith a copy of our judgment with a Yiddish translation, with the legal arguments for our finding. (It is most difficult to render the dicta of our saintly sages into a foreign tongue. However, we are constrained to do so because our local community leadership keep

their books in English). Our *Kahal* has complied with our decision, but Reb Mordecai is vehemently protesting against our finding, claiming that it is in violation

The story of his alleged granting of Kiddushin is completely false. He bases his claim on the following arguments:

The testimony was taken from only one witness, whereas the law requires two witnesses.

The witness is further disqualifed because of close family relationship — the wife of Reb Mordccai and the wife of Barnet Levy were sisters. (It should be noted that at the time of Barnet Levy's testifying, his wife had already died).
The witness is disqualifed by reason of his character.

The testimony was taken in his [Reb Mordchai's] absence.

The three gentlemen who took the testimony are not sufficiently qualified scholars. Moreover, two of these three gentlemen are also disqualified because of family relationships. So much for Reb Mordecai's arguments? In view of the above, the *Kahal* turned to us the undersigned. Whereupon the council of *Katav* further resolved that we place the entire matter before Your Excellency as well as before your brother-in-law, the celebrated Presiding Judge of the Holy Congregation of The Hague, to ascertain whether we have acted in accordance with the laws of our sacred Torah relating to emergency measures (*Hora'ah Sitzahk*).

We therefore take the liberty of submitting hereby a full description of this case, with the relevant details, certified by the Parnas and two elders of the Congregation Mikveh Israel. We pray and trust that this will not be too burdensome for Your Excellency, and that you will favor us by the illuminating light of your wisdom at the earliest possible moment. Our eyes and the eyes of our entire community are turned to you for your decision concerning Reb Mordecai. If guilty, what shall his penalty be, because our judgment was rendered on a temporary basis only, until Barnett Levy's next visit to our town when he can testify again in the presence of Reb Mordecai. We are anxiously awaiting your authoritative reply because this matter touches the very essence of our faith, especially in this country where everyone does as he pleases. Most deplorably, many of our people — including some *Kohanim* — marry genteile women. They consult so-called "scholars," thoroughly corrupt individuals, who flagrantly profane the name of Heaven and who contrive erroneous legalistic loopholes. The heart aches even at the mere mention of such goings on, let alone to witness them with our own eyes. Yet, the *Kahal* has no authority to restrain or punish anyone, except for the nominal penalty of denying them synagogue honors, or of withholding

⁷ These and some additional arguments advanced by Mordecai Moses Mordecai in his defense against the charges against him are stated more fully in a Hebrew-Yiddish letter, dated 25 Iyyar, 1784, addressed to Bernard Gratz who was then serving as *Sagan*, Vice President, of Mikveh Israel. In appealing for B. Gratz's personal intervention on

The letter is replete with Biblical and rabbinic phrases, indicating a wide familiarity with rabbinic legal sources. His scholarly family background is further evidenced by his Hebrew signature *הַבָּשָׂר וְהַדָּם*, which indicates that he was the son of a Lithuanian rabbi. In 1782 he was asked to address a Hebrew letter to the *Sinanim Conference*.¹

from them sacred rites. However, these vicious people completely disregard such measures and continue to attend our synagogue, because under the laws of the country it is impossible to enjoin them from so doing. The responsibility and the need for giving this matter the widest publicity is therefore all the greater; to the extent of the power of the community to breach the gap.

Another incident relating to Reb Mordecai, in addition to the above: Last Tuesday, the 5th of Nisan, a man named Benjamin Clava died here. He left a gentle wife whom he had married by a judge in a civil marriage, and two daughters. Some time after his marriage, Benjamin Clava — who was regarded as a knowledgeable Jew — lost his sight and was confined to his house, and his wife provided him with food and other necessities. Occasionally some Jew would send him kosher food. (About a year before his death, Benjamin Clava summoned a few Jews and he recited before them the ritual confession, but he continued to live with his gentle wife until his death). Last Tuesday, the sudden news of his demise became known; and there was no Jew with him at his expiration. The question of his burial precipitated a turmoil in our community.

The Parnas with the Council and most members of the community convened to decide on a ruling on this matter. It was then agreed to leave the decision to a local *Bet Din*, a rabbinic tribunal, in accordance with Torah law. Moses Nathan and we the undersigned were selected to serve as this court, with instructions to forward to Your Excellency an English copy of our ruling, with a brief summary of the case, in order to give our decision greater force.

We ordered that the deceased be interred in a corner of our *Beth Hakenzim*, without ritual ablution, without shrouds and without funeral rites. Only four boys shall carry him to the burial ground and handle the interment. The shrouds, which had been prepared before, shall be placed in the box, without dressing the corpse. Whosoever will fail to heed our order and will attend the deceased in any way shall be debarred and excluded from all sacred rites until he submits to the penalty imposed on him by the *Kahal*. This rule shall apply to every scofflaw who marries a gentile woman and shall remain in effect for future generations.

This, very briefly, is the substance of our ruling.

The Parnas then visited the home of the deceased to check whether there were any heedless people attending him. He found there some impudent, light minded people, with Reb Mordecai among them. The Parnas warned them in the presence of Reb Mordecai not to attend the corpse. But Reb Mordecai disregarded the warnings of the Parnas. On the contrary, he contrived erroneous rules and they proceeded to wash the body and to dress it in the shrouds — just what the Parnas had suspected — and doing as they pleased. The *Kehat* will shortly decide

on the measures to be taken against these people. We have related the above incident as further evidence bearing on the conduct of Reb Mordecai who is forever ready to vitiate valid and useful ordinances, enacted under the pressing need to cope with contingencies arising from the widespread lawlessness of our generation.

As for the impudent people who attended the deceased in violation of our law, they claim that our ruling was improperly arrived at. We therefore beg of Your Honor to respond also on the validity of this ruling, whether it conforms with the contingency laws, so that the mouths of those who speak falsehood may be shut. May you be fully rewarded by the Lord, and may we speedily [behold] the coming of our Messiah, with the power and authority of Israel restored as of yore to punish transgressors who defy the Lord and His Torah. May the Lord be One and His name One, that we may worship him in perfect unity. Amen. may this be His will, as is the prayerful hope of those who labor for the glory of the Lord and His Torah, and who look forward to the response of our esteemed teacher and master; and who are ready to comply with his command as servants obey their masters and disciples their teachers, and who conclude with greetings of enduring peace,

Manuel Josephson

Joseph W. Carpelos.

We the undersigned, Parnas and *Zomir Yunta* [Unta] of Congregation Mikveh Israel of Philadelphia have read this letter at a congregational board meeting, in the presence of Reb Mordecai, and we find its content from beginning to end truthful and correct, and we endorse it with our signatures. We likewise beg of Your Honor the kindness of an earliest possible reply to the above inquiries. May He who rewards His faithful repay you bountifully, as is the prayer of your servants who are ready to obey your command.*

* * * *

Most regrettably, this writer has been unable to locate the response to this inquiry although the records indicate that such a reply was received in the early part of 1786.⁹

⁹ M. I. Archives, Folder #21. M. M. Mordecai was often referred to as "Rabbi Mordecai" and also as "Reverend Mordecai." In 1782 he applied for the position of Shamer at Mikveh Israel. For some years he served as "Rebi," Hebrew teacher.

See S. M. Fish, "Early Jewish Religious Functionaries in Philadelphia," Paper presented at the annual meeting of the American Jewish Historical Society, February, 1951. Also Rosenblum, *op. cit.*, p. 118; Henry S. Moris *The Jews of Philadelphia*, pp. 29, 290.

* An entry in the M. I. Account Book shows that on March 15, 1786, Solomon Calmer was paid £1:2:6 for translating a letter "from the Haham of Amsterdam." The sizable amount Mr. Calmer was paid would indicate that the responsum must have been rather extensive.

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ג' W. Carpels
ג' Manuel Josephson

To the Honorable the Mayor Aldermen and Commonalty of the
City of New York in Common Council convened,

The Respectful Memorial of the subscribers members of the con-
gregation of Shearith Israel in the City of New York, showeth
That We have learned with the deepest regret, that an ordinance

has passed your Honorable Body, entitled "An Ordinance to
prevent impositions in the sale of Jew's Meat in the public Markets"
Which we humbly conceive to be an encroachment on our
religious rites and a restriction of those general privileges to
which we are entitled.

Your Memorialists are sensible that your Honorable Body did
not intend to impair the civil rights, or wound the religious feel-
ings of our sect. We therefore in full confidence that you will
grant us relief respectfully pray that the said ordinance may be
immediately abolished and if consistent with the regulations of
your honorable Body may be expunged from the Minutes of your
proceedings.

New York February 2d 1813.

SAMP^N SIMSON
HARMON HENDRICKS
M. L. MOSES
JACOB LEVY JR.
BERN^D HART
AARON LEVY
GOMPERT, S. GOMPERTS
SEIXAS NATHAN.

Source: PAJHS v.25

whereas the fact alleged and said to have happened in the year 1744 (5504)
depended altogether on report and hearsay evidence, the weakest and most
dangerous, and utterly uncongenial to the liberal spirit of the constitutions and
laws of this enlightened age and country... this board [is] not satisfied of the
existence of any sufficiently legal disqualifications which should debar the said
Jacob Aarons and his descendants from enjoyment of their religious rites and
ceremonies...²⁰

Source: Mikveh Israel Minute Book, Sept. 10, 1826