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In the Board We Trust: Jewish Communal Arbitration Cases in Antebellum Charleston, South Carolina

by

Barry L. Stiefel*

Jews have resided in the American South for much of its history. Wherever Jewish communities reached a critical size, institutions for supporting the practice of Judaism and life cycle events were established. Most commonly first came a cemetery, possibly with a Hebrew benevolent society, then a minyan, followed by a synagogue and school. Another was a Board of Trustees, often called the *adjunta* in the colonial congregations, all of which followed Sephardic tradition. The board occasionally functioned as an informal Jewish court of arbitration managed by lay leaders to resolve internal problems and disputes, in contrast to a *beth din*, a formal court conducted by ordained rabbis. In antebellum southern Jewish communities, board tribunals were usually temporary and formed as needed. The members were often the community's most knowledgeable individuals in matters pertaining to Judaism, who rendered decisions in disputes—not a jury of peers, but a panel of experts.

It is within these boards in the American South that religious legal practices, specifically during the antebellum period, will be examined. Ample reasons exist for concentrating on the South and this era. From about 1800 to 1830, more Jews resided in South Carolina than in New York, the state today with the largest Jewish population.[1] The first permanent resident rabbi to hold a pulpit on the continent did not do so until 1840, when Abraham Rice became the spiritual leader of the Balti-

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more Hebrew Congregation in Maryland.[2] American Reform began when the Reformed Society of Israelites broke away from Kahal Kadosh Beth Elohim (KKBE) in Charleston during the 1820s. The second Reform congregation in the United States to split from the parent body, Har Sinai Verein, was organized in Baltimore in reaction to Rice's strict adherence to tradition. Thus, we are examining a transitional period during which individuals and congregations wrestled with adherence to tradition with little rabbinical oversight, and lay leaders, not ordained rabbis, rendered judgments concerning halacha and communal matters. During this time the nascent Reform movement was still paying some attention to religious law, although adherence to tradition incrementally waned. The early decades of the nineteenth century were pivotal ones for Jews in the American South as elsewhere and were characterized as an era of metamorphosis and conflict over Jewish communal governance and regulation, the changing role of the synagogue community and acculturation, and redefining Jewish identity in respect to modernity and American citizenship.[3]

Before Rice and for decades after his arrival, most Jewish spiritual leaders in the United States were hazanim, who were trained in Jewish ritual and law but lacked ordination. Typically, in British colonial North America and then the United States, hazanim went by the titles of "Reverend" or "Minister." They lacked legitimate halachic ruling authority since they were not trained at the level of ordination. To clarify, what will largely be studied are congregational rulings, not the formal religious jurisprudence of *battei din* that came later.[4] To date little research has been undertaken on congregational boards in the American South, let alone South Carolina in particular. Indeed, scholarship has focused primarily on the Northeast.

Historical Context

To better understand the congregation boards of the antebellum American South, it is essential to understand the history of Jewish settlement within the region and how these bodies functioned as tribunals. When eight English lords led by Anthony Ashley Cooper received a charter as lord proprietors for Carolina colony in 1670, they recruited the eminent Enlightenment philosopher John Locke to draft "The Fundamental Constitutions of Carolina." Although the document was never

ratified, elements of it reflected the philosophical underpinning of the colony. Article 97 indicated that although the Church of England was the state-sanctioned faith, "Jews, heathens, and other dissenters from the purity of Christian religion" were permitted to settle and form congregations. Carolina was a private colony under the British government, and the investors sought settlers who could produce a profit, including nonconformists such as Huguenots, Jews, and Quakers. By the 1690s, Jews were found in Charleston's public records, establishing their first congregation, KKBE, in 1749. Charleston, known by the nineteenth-century nickname "Holy City," served as a haven for freedom of conscience.[5]

The Jewish community in South Carolina developed alongside that of the neighboring colony of Georgia. Jewish settlement in Georgia dates from 1733, shortly after James Oglethorpe established the colony. During the formative planning years for the colony, Bevis Marks, the Sephardic congregation in London, had made unsuccessful overtures to the colony's Trustees and the Board of Trade for the settlement of Jewish paupers in the vicinity of the Carolinas. The ship *William and Sarah* arrived in Savannah carrying forty-two Jewish colonists while the infant colony was in the midst of a disease epidemic. Among the Jewish newcomers was the physician Samuel Nunes Ribiero, who immediately began work to stop the spread of the malady that was killing the colonists. At the time of their arrival, the colony's trustees barred Jews from settlement. However, Governor Oglethorpe never enforced this restriction and instead permitted the Jews to settle because of the assistance Ribiero provided, among other reasons. The trustees eventually accepted Oglethorpe's decision, and the Jews were allowed to remain. In 1733 they established congregation Kahal Kadosh Mickve Israel.[6]

With the onset of the War of Jenkins' Ear between Great Britain and Spain in 1740, the Sephardic Jews of Georgia fled to South Carolina out of fear that the Spanish might invade from Florida and bring the Inquisition. Only two Ashkenazic families, Sheftall and Minis, remained. Although many of the Sephardim eventually returned and others joined them, for the duration of the colonial period Georgia's Jewish population remained small.[7] Nonetheless it grew following the American Revolution, eventually leading to the construction of its first synagogue in 1820.[8] Charleston and Savannah were very closely knit socially, economically, and in terms of Jewish practice.

From the Fundamental Constitutions of Carolina, July 21, 1669. Undated edition. (Courtesy of Special Collections, College of Charleston.)

Both cities were heavily dependent upon the cash crops of rice, cotton, and indigo produced by slave labor. The elites of Charleston and Savannah also developed an interconnected aristocracy that worked together to protect their common interest in national and international affairs. Although a relatively small number of Jews in Charleston and Savannah were directly involved with plantation ownership, or intermarriage with the upper echelons of gentile society, as merchants and shopkeepers they were tied to the economic fortunes of the region and benefited from their own economic and familial networks. Since both South Carolina and Georgia were open to Jewish settlement during the eighteenth and nineteenth centuries, the Jews became very acculturated within the first or second generation.[9]

As in many other Atlantic World Jewish communities, most notably documented by Aviva Ben-Ur in eighteenth- and nineteenth-century Suriname, conflicts arose in Charleston involving breaks from tradition and power struggles within the congregation. Within Suriname's communal records, Ben-Ur found an abundance of evidence that congregants frequently resented their leaders. Some congregants regularly challenged the authority of their board, at times causing turmoil within the community. Moreover, the synagogue officers, called the *parnasim,* would often take affronts to rule with extreme seriousness, even when the issue at times could be considered petty.[10] Examples of congregant challenges to board authority will also be discussed in this article.

The earliest mention of a board in the American South dates from 1749, corresponding to the formation of Charleston's KKBE. According to Nathaniel Levin's 1843 article, "The Jewish Congregation of Charleston," Moses Cohen was elected by the founding members to be the "מכח באו תיב ויד" (*hacham v'av beth din*), or the rabbi and head of the *beth din*, but what cases he presided over, if any, have been forgotten.[11] James W. Hagy observes that Cohen was not an ordained rabbi but did acquire some instruction in Jewish law while in London earlier in his life. This may have been the qualification the congregants used to select him as religious head of the congregation.[12] During this period, service on the board was by elders of the community who had honor, prestige, and influence. However, board service could also be cumbersome, which is why on occasion some congregants refused to serve and were fined for not doing their duty. The founders of Charleston's KKBE were primarily

Sephardim, Jews whose ancestors fled antisemitic edicts and policies in the Iberian Peninsula. This is in contrast to the other demographic, the Ashkenazim, who traced their origins to central and eastern Europe. During the mid-eighteenth century, South Carolina's Sephardic Jews identified with their coreligionists in London and Amsterdam, the colonial "mother communities," where *battei din* dated from the seventeenth century.[13] In Europe, *battei din* settled internal communal disputes ranging from breaches of contract to matters of divorce, as well as oversight of ritual observance.

Traditional Judaism makes no philosophical separation between religious and secular matters; all are addressed within the codifications of the *Tanakh* and Talmud. Throughout the Middle Ages, Christian and Muslim monarchs often delegated judicial matters to Jewish communal leaders—appointed by the government, elected by the Jewish constituency, or both—to preside over their Jewish subjects. Usually the only constraints were cases that entailed capital punishment or legal matters that involved non-Jewish parties. Throughout much of Europe and the Mediterranean, Jews also tended to avoid secular courts due to perceptions that these courts were either corrupt or antisemitic. Judges were selected among Jewish leaders who were often, but not always, knowledgeable in Jewish law and thus were usually ordained rabbis. Jews who appealed for outside, non-Jewish intervention on legal matters were often considered traitors to their people, known as *malshinim*. Thus medieval Jews often resolved disputes among themselves. If a matter was exceptionally complicated, the judges might seek guidance from esteemed colleagues in another Jewish community. For instance, colonial Jews often sought the input of their coreligionists in London and Amsterdam, as well as the more established colonial communities in the Caribbean, such as Curaçao.[14]

However, in the smaller colonial Jewish communities—which comprised all of those in North America during the colonial and early national periods—seeking consistent judicial input from Jewish courts, especially concerning minor disputes from far-off places, was impractical. Thus Jewish colonists frequently sought arbitration from secular courts and, when religious issues arose outside of secular court jurisdiction, from local synagogue boards.[15] Common Jewish religious issues that necessitated adjudication by a board included aspects of marriage

and divorce, establishing the Jewish identity (or the lack thereof) of an individual, burial rights, and infractions of ritual observance in the synagogue and public realm.

Therefore, those who went before a synagogue board did so of their own accord for arbitration or for a religious matter that was beyond the jurisdiction of an American court of law, however limited the latter were by the principle of separation of church and state. Nonetheless, gray areas between Jewish religious law and American secular law could result in complicated situations regarding arbitration.

Early Synagogue Board Cases

In 1788 KKBE's board in Charleston addressed one of the earliest recorded cases brought to a congregational board in the American South. This case had significant legal implications for the relationship between Jewish religious law and American secular law, and it involved an instance of divorce, likely the first divorce in South Carolina since the practice was not legalized in the state until 1868. Moreover, although South Carolina law is based on precedents and customs in English common law, the state government did not simply echo English law. In order to obtain a divorce in England between 1670 and 1857, under the Matrimonial Causes Act, one had to appeal to either an Anglican ecclesiastical court—something beyond the pale for a Jew—or petition for an act of Parliament, an incredibly expensive endeavor. Thus, only 317 wealthy non-Jewish individuals divorced in the British Isles prior to 1857.[16] This is in contrast to the 347 Jews who were granted divorces by London's *beth din* between 1700 and 1857, which is significant when we consider what a small percentage of the population Jews constituted in England during this period.[17]

In colonial South Carolina, as throughout most of British North America, Anglican ecclesiastical courts existed, but none granted divorces due to what they perceived as the inherent spiritual deficiency of the colonial courts compared to the courts of Great Britain—a similar dynamic to the perceived shortcomings of colonial congregational boards as opposed to the *battei din* of London and Amsterdam. However, not until 1852 did London's *beth din* actually authenticate a divorce case—from New York—demonstrating the independence of North American congregational boards.[18] In contrast to Parliament, the colonial assem-

blies also did not delve into issues of divorce. However, in Puritan and Congregationalist New England, where marriage was codified as a civil contract, a form of divorce was available and granted on rare occasions. After the American Revolution, with legal and religious ties severed from Great Britain, the states began to enact divorce laws, beginning with New York and Pennsylvania in the 1780s. Of the original thirteen states, South Carolina was the last to legislate the permissibility of divorce in 1868.[19]

The divorce case in Charleston involved a Jewish couple, Elizabeth Chapman (her maiden name), and her husband, Mordecai Lyon. The congregational board found the couple to be incompatible—indeed, both desired the marriage to end—and granted Chapman a divorce as well as the written get that comes with it. Local civil authorities permitted this act by the board, even recording it with the Secretary of State the following year. The divorce was considered a "peculiar" practice of an unusual but harmless religious minority group, protected by the free practice of religion. After the divorce, Chapman and Lyon both remarried, and it was, in fact, these second marriages, permitted by the state and not deemed bigamous, that, ex post facto, validated the Jewish divorce as permissible within secular law.[20] In 1840 another Jewish couple in Charleston, Sarah and George Prince, also divorced, illustrating a continuation of the custom. In 1799 Savannah's congregation Mickve Israel granted a divorce between Hannah Minis and David Leion prior to its legalization by the state of Georgia in 1802.[21]

KKBE's records disclose exceptionally bizarre divorce proceedings that link the issue of Jewish and secular law together with international jurisprudence. On June 12, 1839, the board received a letter from Amsterdam's Jewish community, stating that one of KKBE's congregants, "Mr. [Isaac] Garretson had a wife in Amsterdam, whom he had left many years ago, & who was now in very distressed circumstances," thus leaving her an *agunah*.[22] This was different from the contemporary case of a recalcitrant husband because a man who willingly left his wife an *agunah* could be punished with excommunication.[23]

Furthermore, while Jews in Christian lands no longer practiced polygamy, as had the biblical patriarchs, it is permitted in a technical legal sense because the prohibition is rabbinic rather than biblical, originating from Rabbi Gershom ben Judah during the eleventh century.

Therefore a married Jewish man can be "remarried" without a divorce—although an abandoned Jewish wife cannot because of the biblical prohibition against polyandry. Garretson was summarily notified to report to the board, which he did on June 15. The charges as described in the letter from Amsterdam were read to Garretson, who was asked to respond in his defense. According to the minutes, Garretson claimed:

> [In] the year 1821 he left Amsterdam for this Country, his wife refusing to accompany him. That about a Year after his arrival in America he wrote for her, but received a Letter informing him that she had committed Adultery, that he had endeavored to get a divorce, but could not succeed [because] subsequently she had become a Christian & he [lost] by that every chance of a Divorce agreeable to our [Jewish] Law. He, Mr. [Garretson] then Applied to the authorities of the State of Pennsylvania where he then resided, & received a [civil] Divorce from the Court of Common Pleas in the City of Philadelphia, in the year 1835, all of which Mr. Garretson proved by authentic Letters & Documents.[24]

Considering that within Jewish legal practice the position of attorney-at-law does not exist, Isaac Garretson did well defending himself. Since his wife not only committed adultery but also apostasy to Christianity, which he was able to prove through the letters he had from her as evidence, he was not obligated to deliver a divorce with a Jewish get to her.[25] The certificate is relatively meaningless for those outside of Jewish law. However, there is still the question of whether Garretson needed a *heter me'ah rabbanim*, a letter signed by a hundred ordained rabbis nullifying the prohibition against polygamy due to the special circumstances, so that he would not be an "*agun*," the male equivalent of an *agunah*.[26] However, in 1839 when Garretson's board hearing took place, not a single rabbi resided in the United States; not until the following year did Abraham Rice arrive in Baltimore. One would have to have traveled to either Europe or the Mediterranean to obtain the required signatures for a *heter me'ah rabbanim*, a most impractical undertaking. Nonetheless, by obtaining a secular divorce through Pennsylvania's Court of Common Pleas, where divorce had been legal since 1785, Garretson removed any civil impediment to remarriage even in South Carolina.[27] In the Netherlands, divorce had been legal since the seventeenth century, so he could have returned to his native land without any issue there either, as long as

he provided documentation.[28] However, Garretson did not end his testimony there—and this is where matters get interesting.

> Mr. Garretson further stated that the Wife he now lived with [another woman] was born a Christian, that from her 7th or 8th year of age she had lived in his father's house, & lived with them as a Jewess, that she accompanied him to this Country in the capacity as a Servant, that he subsequently married her privately by giving her *kidushim* [*kiddushin*] in the presence of Three Witnesses, but he admitted that she was never made a Jewess, but in contrary was still a Christian as she was born.
>
> Finally, Mr. Garretson added that some Months ago he waited on the Rev. Mr. Poznanski [the spiritual leader of KKBE], to whom he stated the above circumstances, but had denied to the Rev. gentleman that he was married to his second wife, Altho' he now states that such was the case.[29]

The page from the Minute Book of KKBE's Board of Trustees regarding the hearing of Isaac Garretson, June 15, 1839. (Photograph by Barry Stiefel, courtesy of Special Collections, College of Charleston.)

Dr. B. A. Rodrigues at about age twenty-four.
(Courtesy of Special Collections, College of Charleston.)

In this second portion of the testimony, Garretson incriminated himself on the prohibition of intermarriage in Jewish law. Furthermore KKBE's bylaws permitted only those designated by the congregation to officiate at weddings, so that the congregation could control this aspect of Jewish life. The congregation designated Gustavus Poznanski, a trained hazan, for the task. Indeed, only a month prior, the same board punished Dr. B. A. Rodrigues, another congregant, for officiating at an unsanctioned Jewish wedding. Rodrigues was fined fifty dollars, and his congregational privileges were revoked until the penalty was paid.[30] Clandestine marriage was a significant issue in many nineteenth-century Jewish communities because it undermined congregational authority. Jonathan D. Sarna records several instances of unauthorized Jewish weddings in Philadelphia during this period, testifying that these issues were not exclusive to Charleston.[31]

However, what made matters worse for Garretson was that his bride was not Jewish; at least in Rodrigues's transgression, all parties

involved were Jews. Jewish law forbids intermarriage, although one may marry a convert. The secretary for the testimony underlined the words "privately" and "*kidushim*" (or "*kiddushin*") for emphasis. *Kiddushin* is traditionally conducted underneath a wedding canopy and is one of the requirements for a Jewish wedding. Under this chuppah, the groom gives the bride a wedding ring with the recitation of seven benedictions, followed by cohabitation. A minimum of two witnesses is required to validate these actions in Jewish law, and Garretson utilized three for his private ceremony. However, any one of the actions just described can cause one to be married even if the others are not fulfilled. The outstanding issue here is that the bride was not Jewish.[32]

In South Carolina, common-law marriage was legal, and Isaac Garretson's second wife, whose name is never mentioned in the congregational minutes, had already become his common-law wife through the length of their cohabitation. According to Garretson's testimony, she had been a servant in a Jewish home and had lived as a "Jewess," and thus she would have been familiar with Jewish domestic ritual including kashrut, Sabbath and holiday observance, and possibly even the family ritual purity practices called *taharat ha-mishpachah*. As shall be demonstrated, Garretson's gentile second wife also attended synagogue regularly, even having an assigned seat. That this woman immigrated with Isaac Garretson as a "Servant" suggests that they may have had a preexisting personal relationship of some form, and possibly his first wife was aware of this, at least to some degree. Assessing Isaac Garretson's relationship with his first wife based on the extant documentation is impossible. Across much of Europe during this period, arranged marriages were still widely practiced within Jewish communities.

Garretson mentioned that he had approached "Rev. Mr. Poznanski" about the issue "some Months ago." This may have been in early April 1839. Recorded in the *Southern Patriot* on April 17 is the wedding a week before of Levy Hynaman to Sarah Garretson, Isaac's daughter, with Poznanski officiating.[33] At this event Garretson would have observed the procedures to conduct a Jewish wedding with his paramour. Additionally, not mentioned in the wedding announcement or other documentation is the identity of the mother of the bride, which would assist further with this investigation. If the second, non-Jewish wife was Sarah's mother, the daughter would not have been Jewish since

Announcement of the wedding of Levy Hynaman and Sarah Garretson, Southern Patriot*, April 17, 1839. (Courtesy of Karen Franklin.)*

traditionally religious affiliation is passed through the maternal line. This possibility would have created another problematic marriage from the perspective of Jewish law. The board does not appear to have discussed the matter of Sarah's maternity since it is not mentioned in any of the later recorded minutes.[34]

It is for these reasons that congregations like KKBE wanted to control who officiated at Jewish weddings, besides the fees normally collected for the wedding service. During the early nineteenth century, the synagogue community, as a socioreligious structure that had guided American Jewish life since the early colonial period, was unraveling.[35] Garretson had to be made an example as a consequence of his disobedience in order to deter other congregants from committing the same transgressions, acts that would further erode board authority. Thus the board unanimously decided that Garretson and his second wife would be stripped of congregational membership and would "vacate their Seats in Synagogue." The justification given was that "he [Garretson] admitted that his present Wife, whom he had privately married was born a Christian, & had never been made a Jewess, which is contrary to Mosaical Law."[36]

The Garretson case of 1839 also contrasts strikingly with the Ann Sarah Irby case of a generation earlier, as cited by Dana E. Kaplan. In 1784, Irby met and later married Abraham Alexander, then hazan of the congregation during the Revolutionary War Siege of Charleston. Irby was a Huguenot by birth and underwent a conversion process to Judaism prior to her marriage to Alexander, and the couple remained

together through the rest of their natural lives. The congregation accepted Ann Sarah Alexander as Abraham's lawful wife since they wedded with the permission of the congregation. However, Abraham was forced to step down from the position of hazan because it was felt by many that the conversion was incomplete due to the lack of ordained rabbis to conduct the conversion, thus disqualifying Abraham from office. This same shortcoming also denied Ann Sarah Alexander burial in the Jewish cemetery despite the testimony that she lived a religiously observant life. It is intriguing to see how, by working within the parameters set by KKBE as the Alexanders did, there was some flexibility in the manner religious law pertaining to marriage was instituted.[37]

The board addressed other religious issues, but these discussions were relatively brief in comparison to matters of marriage and divorce. The following is a sampling of issues from the late 1830s and early 1840s. On November 26, 1838, the board approved Sally Lopez's idea for a Jewish Sunday school and its curriculum, which had been proposed the previous month. This became the second Jewish Sunday school founded in the United States, following the first in Philadelphia.[38] A month later, on December 29, Mr. Levy from New York was approved to be the new *shochet*. Also on December 29, a letter was received from the Baltimore Hebrew Congregation requesting that the belongings of L. Fischer, who died in Charleston from yellow fever, be returned to his widow.[39] On August 15, 1841, Rachel Lambert requested that her son be buried in Charleston's Jewish cemetery. Lambert was married to a non-Jew, the boy's father. The request was granted since the boy's mother was Jewish.[40] Sarna's review of other early American congregational records from the late eighteenth and early nineteenth centuries provides similar proceedings conducted by their boards.[41] As can be observed from the litany of events, the various congregations of the United States were often in communication with one another and aware of each other's actions. Between 1838 and 1841, Charleston's KKBE interacted with the Jewish congregations in Philadelphia, Baltimore, and New York.

The Division of Community and a Call for Unity

Thus far only cases involving South Carolina's first Jewish congregation, KKBE, have been discussed. In the nineteenth century additional congregations were established in Charleston and other cities. The Re-

formed Society of Israelites, the first Reform congregation in the United States, separated from KKBE in 1824. The issues of contention were proposed modifications to "modernize" the mode of worship, as well as changes to ritual practices such as abbreviating worship and using more English instead of the customary Hebrew and Spanish. KKBE's traditionalists, who controlled the board, rejected these proposals. Unfortunately, few records of the Reformed Society of Israelites survive, so what took place concerning religious issues within that congregation is difficult to ascertain. By the late 1830s the Reformed Society of Israelites stopped functioning following internal discord, outside criticism, and the withdrawal of some central leaders. Many individuals reconciled their differences with KKBE and rejoined, but the concept of reformation did not disappear.[42]

In 1838 a fire devastated much of Charleston, including the synagogue built in 1794. Work soon began on rebuilding, and the second synagogue was completed in 1841. For many, the new building offered an opportunity to revisit reform. Reforms included innovations as already described, as well as the installation and use of a pipe organ in the sanctuary for use during religious services. Nonvocal musical accompaniment on the Sabbath, such as by a pipe organ, is forbidden in traditional Judaism because of its historical interpretation as work and its association with Christian church practices. Abstinence from musical accompaniment was also an ancient Jewish mourning practice in memory of the Jerusalem Temple destroyed by the Romans in 70 CE. This time, the reformers constituted a slight majority, resulting in the traditionalists leaving to form an Orthodox congregation, Shearit Israel. However, a contentious issue lingered concerning the ownership of KKBE's building, since members on both sides had contributed to its construction.[43]

Recognizing the bias of the board, the reformers immediately brought the case before the secular court system. Judge Andrew Butler presided over *State v. Ancker* in South Carolina's Court of Common Pleas. In a decision that became precedent for limiting government interference in matters of religion, Butler ruled that the government could not intervene in religious or theological problems and that each faith must resolve such issues internally according to the provisions of the First Amendment. However, Butler found against KKBE's traditionalist board

for violating the congregation's constitution under contract law, since the pipe organ—the physical matter of contention—had been installed after a majority congregational vote. Details of the internal controversy regarding KKBE's pipe organ are well covered in Allan Tarshish's article, "The Charleston Organ Case," but a key element to highlight here is that in 1843, due to the contract law violation by the traditionalists who were following Jewish law and its prohibition of instrumental music on the Sabbath, Butler awarded the synagogue building to the reform faction.[44] KKBE thus became the first permanent Reform congregation in the United States. Others followed, notably in Baltimore and New York, in the mid 1840s.

Orthodox Shearit Israel's records are lost, so further analysis concerning its board's religious legal rulings is impossible. After significant losses in membership during the Civil War, in 1866 the remaining members of Shearit Israel negotiated a merger with KKBE. Also in Charleston, in 1854, a third minyan was established, which became Berith Shalome (now Brith Sholom), a congregation that followed the Ashkenazic rite; Shearit Israel and KKBE both followed Sephardic traditions. Rabbi Hirsch Levine, who came to the United States around 1850 and founded this congregation, was the first ordained rabbi to serve in Charleston. Among his personal belongings survives his record book, within which he documented procedures for conducting *halitzah* and for slaughtering kosher meat. Unfortunately, the earliest surviving descriptive documents

Rabbi Hirsch Levine, the first ordained rabbi in Charleston. (Courtesy of Special Collections, College of Charleston.)

of the congregation date from the early twentieth century.[45] Additional communities emerged elsewhere in South Carolina, including another Sephardic congregation, also called Shearit Israel, in Columbia, founded in 1846. Thus, in theory, four boards could have been acting with judicial functions side-by-side in the state during this period—none recognizing the legitimacy of the others.

The resolution of disputes involving religious law by congregational boards is not common in Reform temples, especially after the Pittsburgh Platform of 1885, which rejected ritual Jewish laws that lacked moral basis. However, prior to 1885, such bodies did decide issues of ritual. In 1843, shortly after KKBE's synagogue was awarded to the reformers, for example, the congregation's board ordered the cessation of the use of the pipe organ the moment the Sabbath technically began:

> Resolved—That the first Hebrew Hymn known as Mizmor Ledavid and Lecha Dody, which, on & after the consecration of the Synagogue were sung with the Organ, may again be sung with the same, but that, of the Mizmor Shir Leyom Hashabat, which is the proper beginning of the Sabbath, the Organ must cease playing & must not again be used until the following Friday Evening; that these regulations be considered as the proper regulations of the Synagogue, & that the services of Mr. [C. A.] Dacosta will not be required after the two above named Hymns on Friday Evening, nor on the Sabbath day. . . . Unanimously adopted.[46]

American Reform Judaism remained in its infancy even where it was most advanced. Its character-defining abandonment of such traditions as kosher dietary restrictions and segregated gender seating did not come until 1851 with Anshe Emeth of Albany, New York.[47] Abbreviated worship, prayers in the vernacular, shortened holidays (from two days to one), as well as instrumental accompaniment were very contentious for the time. This can be seen from KKBE's stepping back from the use of the pipe organ on the Sabbath. The congregation still employed a *shochet* to provide congregants kosher meat, and women remained separated in the balcony during worship, a place normally reserved for slaves in antebellum southern churches. As Gary P. Zola argues, southern Jews were very aware that through reforming traditional Jewish rituals and customs, they could claim to their gentile neighbors that they were not foreigners, something quite important to them.[48] However, the transition

from Old World–style traditional Judaism to a Reform approach evolved gradually over several decades.

KKBE's policy on conversion also changed. Prior to the split between KKBE and Shearit Israel, the board refused to convert proselytes, claiming that it lacked sufficient expertise in this matter of Jewish law. This was a custom that originated with influential founding members including early hazanim Isaac DaCosta and Moses Cohen.[49] They required those who sought to become Jews to do so elsewhere, such as in London, and then to provide proper documentation upon returning to the congregation for membership. However, in 1847, KKBE was reapproached about conversion following its change to Reform, this time by Ann Buckheister. The board had Poznanski interview Buckheister regarding her motives and interests for converting to Judaism and to inquire about her knowledge of the religion. Following the interview the board accepted her as a new congregant—a complete departure from normative Orthodox conversion procedure considering that neither Poznanski nor anyone on the board was an ordained rabbi.[50] The conversion entailed few demands (a promise to remain faithful to Judaism), as well as very little ritual or ceremony. There is no mention of a *mikvah* as required in Orthodox conversions. Indeed, Buckheister may have been the first, or at least one of the first, to convert directly from Christianity to Reform Judaism in America, if not the world. Poznanski's successors, such as hazan Maurice Mayer, were also liberal and admired Poznanski's opinions, which perpetuated the innovation that Reform conversions would be different than Orthodox.[51]

However, this was by no means the first instance in which conversions to Judaism were attempted in early North American history. An intriguing case took place in late-eighteenth-century Philadelphia involving Elizabeth Whitlock, who changed her name to Esther Mordecai following her conversion and subsequent first marriage to Moses Mordecai. According to Sarna, the person who converted Elizabeth/Esther and the location are unknown, especially if a trip to Europe, the Mediterranean, or the Caribbean was made, where Jewish religious authorities competent in conversion could be found. A South Carolina connection was then established following the widowhood of Esther Mordecai, who remarried Jacob I. Cohen, originally from Charleston. Since Cohen was a descendant of biblical priests—the *kohanim*—Jewish law forbade that he

marry a convert. The unsanctioned marriage occurred anyway in Philadelphia, conducted as a private ceremony without the hazan and without permission of the city's congregation, Mikveh Israel. As far as is known, the married couple and all those involved had no agenda of religious reformation, in contrast to Poznanski and others in 1840s Charleston. Jacob I. Cohen did not leave the fold of traditional Judaism. Subsequently, he helped found Richmond, Virginia's congregation Beth Shalome and later returned to Philadelphia, where he served as president of the congregation that had once barred his marriage.[52]

A ketubbah *prepared in Philadelphia for the 1782 wedding of Jacob I. Cohen, previously of Charleston, and Esther Mordecai, who had been born Elizabeth Whitlock and had converted to Judaism before marrying her first husband. The witnesses, who signed on the lower right, include Mordecai Sheftall and Haym Salomon, both prominent Jewish figures in the colonies and supporters of the American Revolution. (Courtesy of the Jacob Rader Marcus Center of the American Jewish Archives.)*

With the divisions within American Jewish communities in Charleston as well as Baltimore, New Orleans, New York, and other cities among Sephardim and Ashkenazim, as well as between Orthodox and Reformers, a demand grew for a national *beth din*—a "Supreme

Court" for all American Jews that would set standards for fundamental religious issues as well as serve as a unifying force. This already existed in other countries, especially where church and state were not separated. The most famous was Poland-Lithuania's Council of the Four Lands, which functioned as a semi-Sanhedrin, or judicial congress, between 1580 and 1764, with seventy members on the tribunal instead of the usual three. Besides judicial matters, the council's functions were also legislative and administrative on spiritual and cultural matters. It functioned further as the liaison between the collective Jewish community and the Polish-Lithuanian government. Non-Jews experimented with the idea as well, such as when in 1806 Napoleon Bonaparte convened a Grand Sanhedrin of Jewish leaders from Paris to provide legal sanction to the principles expressed by the French government in its relationship with Jewish citizens.[53]

The Grand Sanhedrin, between 1800 and 1827. Engraving by Michel François Damane-Démartrais. (Wikimedia Commons.)

In 1847, only two years after his arrival in the country, Rabbi Max Lilienthal organized what he hoped would be a national *beth din* for the United States, but it met only once before dissolving. At the time, Lilienthal was the chief Ashkenazic rabbi of New York, where he presided over three Orthodox congregations: Anshe Chessed, Shaarai Shamayim, and Rodef Shalom. Lilienthal chaired the tribunal as the *av beth din*, inviting Isaac Mayer Wise, then at Beth El of Albany, New York, and the leader of American moderate Reform Judaism, and Herman Kohlmeyer, rabbi of Shaarai Chessed in New Orleans, to join him on the tribunal. Kohlmeyer's Shaarai Chessed was the leading congregation of that city, which was quickly becoming the largest Jewish community in the South.[54] Unfortunately, Kohlmeyer was unable to attend the one meeting in New York, which took place on April 18, 1847. Herman Felsenheld, a knowledgeable teacher of Hebrew and religion from Anshe Chessed, filled his place. Those at this meeting discussed issues pertaining to conformity in mode of worship, Jewish educational instruction, and questions of policy concerning *agunah* raised in a letter by European rabbis. The issues were similar to those that came before KKBE's board in Charleston, those that were, and continue to be, among the legal questions that plague Orthodox Jewish life in America even today.[55]

Rabbi Max Lilienthal.
(Wikimedia Commons.)

According to Lilienthal's biographer, Bruce L. Ruben, the failure of the national *beth din* was likely due to disagreement among the tribunal members. According to Ruben, Wise was in the midst of developing his new liturgy, *Minhag America*, and that what he was proposing was too progressively different from what Lilienthal and Felsenheld could accept, especially since the highly controversial *Hamburg Temple Prayer Book* (1819, 1841) exerted significant influence on Wise's proposed new prayer book for the United States. Since discussion of Wise's liturgy was on the agenda for the next meeting, and Lilienthal desired to avoid dissension and conflict because the national *beth din* was designed to be a unifying force, Lilienthal skirted the issue by simply not convening another meeting.[56]

Unification of all American Jewish congregations, as many religious leaders had hoped for, would not come about. Congregations—and their boards—had grown to treasure their autonomy and wanted to retain independence over religious issues, even with the growing presence of ordained rabbis from Europe. The Jewish communities of American cities and towns remained divided on issues of doctrine and custom, and by 1854, in Charleston this included Sephardic and Ashkenazic orthodoxy, as well as Reform. As witnesssed in Charleston, as well as elsewhere in North America, many laypeople preferred a more relaxed observance of religious law. Ordained rabbis from Europe who ventured to the United States to fill pulpits during this era could and did lose their positions or fail to have their contracts renewed because they did not fall into line with the views held by their boards.[57]

Conclusion

For Charleston's antebellum board, incidents related to marriage were the most lengthily discussed cases. This is perhaps due to the gray area that marriage falls into between secular and Jewish religious law, whereby any authorized "minister" is permitted by the government to officiate at the wedding ceremony. This is in contrast to notary public–officiated and common-law marriage, where matrimony can take place in a secular manner without religious involvement. Popular demand for religious weddings, regardless of faith or denomination, is now a cultural practice and not a legal requirement. Since many people volunteer to have an ordained minister officiate at their respective weddings because

they find rituals and traditions meaningful, monitoring who solemnizes nuptials is the enduring influence religious authorities have. In the era of nineteenth-century religious reform, the disobedient actions of Dr. B. A. Rodrigues and Isaac Garretson were problematic for ecclesiastical leaders who sought to stem the tides of defiance, intermarriage, and acculturation.

Synagogue boards in South Carolina had the additional complication of permitting divorce before the state's civil authorities had sanctioned it. Rather than prohibiting it, the government acted benevolently in permitting divorce within the state as a free exercise of religion. The Chapman-Lyon divorce of 1788 is a case in point. Simultaneously, the government refrained from intervening in interreligious disputes, such as the first significant rift between Reform and Orthodox Judaism in *State v. Ancker*. Nonetheless, the state government did arbitrate in matters that crossed into the secular realm, as it did, for example, in awarding the KKBE building to the Reform faction as a result of a contract violation. However, the only other instance of the state interacting with a non-Christian faith during this period was the Moors Sundry Act of 1790, which prohibited free subjects of the Sultanate of Morocco from being enslaved if they came to South Carolina, since they were black Africans. By extension, the act enabled visitors from Morocco to observe Islam in private.[58]

Lastly, officially ordained rabbis in antebellum America were few and far between. Hirsch Levine at Berith Shalome was the first in South Carolina, and, sadly, little is known about the congregation and how it functioned during this period. It is intriguing to think that so many complex cases were adjudicated by un-ordained lay leaders doing the best they could under the circumstances in what was one of North America's most prosperous Jewish congregations, especially in comparison to the Caribbean where larger, more established communities functioned. Nonetheless, the cases encountered were important, incremental steps in a development from the ways the legal aspects of Judaism were practiced formerly in the Old World to how their role would be negotiated and renegotiated for both Reform and Orthodox Jews in America and specifically in the South. The emphasis on marriage issues is also a reflection of the centrality of family life to Jewish heritage and observance.

NOTES

[1] In about 1800 there were approximately four hundred Jews in New York and five hundred in Charleston. In 1820 Charleston had six hundred Jews, and South Carolina as a whole had an estimated one thousand. See Ira Rosenwaike, *On the Edge of Greatness: A Portrait of American Jewry in the Early National Period* (Cincinnati, 1985), 14–16.

[2] Jacob Rader Marcus, *The Colonial American Jew, 1492–1776* (Detroit, 1970), 542, 927, 1333.

[3] See Jonathan D. Sarna, *American Judaism: A History* (New Haven, 2004), which delves into these issues from a national perspective.

[4] *Battei din*, where permitted, sometimes had legal standing beyond the country in which they occurred.

[5] Gerard L. Alexander, *Nicknames of American Cities, Towns, and Villages, Past and Present* (New York, 1951), 61. See also, "Notice of Books," *Dublin Review* 118 (1896): 194.

[6] Saul Jacob Rubin, *Third to None: The Saga of Savannah Jewry, 1733–1983* (Savannah, 1983); Mark I. Greenberg, "A 'Haven for Benignity': Conflict and Cooperation Between Eighteenth-Century Savannah Jews," in *Dixie Diaspora: An Anthology of Southern Jewish History*, ed. Mark K. Bauman (Tuscaloosa, 2006): 12–32; James W. Hagy, *This Happy Land: The Jews of Colonial and Antebellum Charleston* (Tuscaloosa, 1993); Marcus, *Colonial American Jew*, 469–74 and 349–67; William Pencak, *Jews and Gentiles in Early America, 1654–1800* (Ann Arbor, MI, 2005), 141–44.

[7] Marcus, *Colonial American Jew*, 533–34.

[8] Pencak, *Jews and Gentiles in Early America*, 162–65.

[9] Theodore Rosengarten and Dale Rosengarten, eds., *A Portion of the People: Three Hundred Years of Southern Jewish Life* (Columbia, SC, 2002), 7, 88.

[10] Aviva Ben-Ur, "Jerusalem on the Riverside: Jewish Political Autonomy in the Caribbean" (paper presented at the International Conference on Mapping the Western Sephardic Diaspora in the Caribbean, Hamburg, Germany, November 16–19, 2014). Such conflicts were typical with synagogues in the United States. See Sarna, *American Judaism*; Eli Faber, *A Time for Planting: The First Migration, 1654–1820* (Baltimore, 1992).

[11] N. L. [Nathaniel Levin], "The Jewish Congregation of Charleston," *Occident and American Jewish Advocate* 1 (October 1843): 337.

[12] Hagy, *This Happy Land*, 60.

[13] Barry Stiefel, *Jewish Sanctuary in the Atlantic World: A Social and Architectural History* (Columbia, SC, 2014), 14.

[14] For a summary explanation on the sociocultural and political reasons that Jews chose to use, see Jerold S. Auerbach, *Justice Without Law?: Resolving Disputes Without Lawyers* (New York, 1983), 76–94. For a detailed description of *battei din*, see Arnold J. Cohen, *An Introduction to Jewish Civil Law* (Jerusalem, 1991).

[15] Pencak, *Jews and Gentiles in Early America*, 169.

[16] A. J. Joyce, *Richard Hooker and Anglican Moral Theology* (Oxford, 2012), 218.

[17] Jeremy I. Pfeffer, "*From One End of the Earth to the Other*": *The London* Bet Din*, 1805–1855, and the Jewish Convicts Transported to Australia* (Brighton, UK, 2008), 113.

[18] Pfeffer, "*From One End of the Earth to the Other*," 113.

[19] Harry M. Ward, *The War for Independence and the Transformation of American Society* (London, 2003), 165–66.

[20] James W. Hagy, "Her 'Scandalous Behavior': A Jewish Divorce in Charleston, South Carolina, 1788," *American Jewish Archives Journal* 51 (Fall/Winter 1989): 185–95.

[21] Malcom H. Stern. "The Sheftall Diaries: Vital Records of Savannah Jewry, 1733–1808," *American Jewish Historical Quarterly* 54 (March 1965): 268; Kaye Kole, *The Minis Family of Georgia, 1733–1992* (Savannah, 1992), 33–34; Roderick Phillips, *Untying the Knot: A Short History of Divorce* (Cambridge, 1991), 142.

[22] Board of Trustee Minutes, June 12, 1839, Kahal Kadosh Beth Elohim Congregation Records, Mss. 1047, Special Collections, College of Charleston, Charleston, SC (hereafter cited as KKBE Minutes).

[23] This was the case even if the husband's absence was because he died without issue and a brother refused to give *halitzah*—the Jewish ritual that releases a childless widow, otherwise her brother-in-law must wed her in order to give her a child in his dead brother's name—or because the husband disappeared but it was not known if he was dead, or because, rare in those days, he refused to deliver a get, the legal document finalizing the divorce.

[24] KKBE Minutes, June 15, 1839.

[25] In the postexpulsion period, rabbinical responsa of North Africa disagreed about this issue. Some authorities argued that a husband of an apostate would still need to deliver a get.

[26] ChaeRan Y. Freeze, *Jewish Marriage and Divorce in Imperial Russia* (Hanover, NH, 2002), 185.

[27] This is because of the requirement in Article 4 of the U.S. Constitution that each state must extend "full faith and credit" to the public acts of the other states.

[28] Phillips, *Untying the Knot*, 122.

[29] KKBE Minutes, June 15, 1839.

[30] Ibid, May 22, 1839.

[31] Jonathan D. Sarna, "The Democratization of American Judaism," in *New Essays in American Jewish History*, ed. Pamela S. Nadell, Jonathan D. Sarna and Lance J. Sussman (Cincinnati, 2010), 95–108.

[32] Rachel Biale, *Women and Jewish Law: An Exploration of Women's Issues in Halakhic Sources* (New York, 1984): 44–69.

[33] Barnett A. Elzas, *Jewish Marriage Notices from the Newspaper Press of Charleston, S.C., 1775–1906* (New York, 1917), 18.

[34] If Sarah's mother was not Jewish, Poznanski should not have conducted her marriage, and the congregation should have rejected it. If this scenario was the case, one might speculate that the liberal Poznanski could have performed the ceremony for the innocent girl

who thought she was Jewish without making an issue of her mother's religion, but then the issue might have become public. Instead of challenging the validity of Sarah and Levy Hynaman's marriage based on halacha, the congregation questioned the status of the parents. Yet this remains speculation since the record fails to disclose additional information.

[35] Sarna, *American Judaism,* 12–45.

[36] KKBE Minutes, June 15, 1839. See also, Myron Berman, *Richmond's Jewry, 1769–1976* (Richmond, 1979), 6, 10–12, 46–47, 99–101, which includes related cases.

[37] Dana E. Kaplan, "The Determination of Jewish Identity below the Mason-Dixon Line: Crossing the Boundary From Gentile to Jew in the Nineteenth-Century American South," *Journal of Jewish Studies* 52 (Spring 2001): 98–121.

[38] KKBE Minutes, November 26, 1838; Solomon Breibart, *Explorations in Charleston's Jewish History* (Charleston, 2005), 82.

[39] KKBE Minutes, December 29, 1838.

[40] Ibid, August 15, 1841.

[41] Sarna, "The Democratization of American Judaism," 95–108.

[42] Gary Phillip Zola, *Isaac Harby of Charleston, 1788–1828* (Tuscaloosa, 1994), 146–48, 169–74; Michael A. Meyer, *Response to Modernity: A History of the Reform Movement in Judaism* (Detroit, 1988), 228–42; Sarna, *American Judaism,* 59.

[43] Deborah Dash Moore, "Freedom's Fruits: The Americanization of an Old-time Religion," in Rosengarten and Rosengarten, *A Portion of the People*, 10–21; Hagy, *This Happy Land*, 237–73. During the second decade of the nineteenth century, some early Reform congregations in the German states introduced organ music during services. Meyer, *Response to Modernity*, 43, 46, 54.

[44] Allan Tarshish, "The Charleston Organ Case," *American Jewish Historical Quarterly* 54 (June 1965): 411–49; Jonathan D. Sarna, "The Question of Music in American Judaism: Reflections at 350 Years," *American Jewish History* 91 (June 2003): 195–203.

[45] Jeffrey S. Gurock, *Orthodoxy in Charleston: Brith Sholom Beth Israel and American Jewish History* (Charleston, 2004), 2–3.

[46] KKBE Minutes, July 3, 1843. Unfortunately, the Friday evening order of the service at KKBE in 1843 cannot be provided since prayer books from the congregation are unavailable from this time period, and the minute book fails to offer identifiable information regarding which book was used.

[47] Jonathan D. Sarna, "The Debate over Mixed Seating in the American Synagogue," in *The American Synagogue: A Sanctuary Transformed*, ed. Jack Wertheimer (New York, 1987), 363–94.

[48] Gary P. Zola, "The Ascendancy of Reform Judaism in the American South During the Nineteenth Century," in *Jewish Roots in Southern Soil: A New History*, ed. Marcie Cohen Ferris and Mark I. Greenberg (Hanover, NH, 2006), 56–91.

[49] For DaCosta receiving his training from England and adhering to strict Sephardic Orthodox doctrine see Breibart, *Explorations in Charleston's Jewish History*, 114. DaCosta likely would have been against the procedure used to convert Ann Buckheister.

[50] Hagy, *This Happy Land*, 84, 183.

[51] Breibart, *Explorations in Charleston's Jewish History*, 122. See also, Anton Hieke, "Rabbi Maurice Mayer: German Revolutionary, Charleston Reformer, and Anti-Abolitionist," *Southern Jewish History* 17 (2014): 45–89.

[52] Sarna, "The Democratization of American Judaism," 95-108. See also, Emily Bingham, *Mordecai: An Early American Family* (New York, 2003), 13–16, 25, 31; Berman, *Richmond's Jewry*.

[53] Nigel Aston, *Religion and Revolution in France, 1780–1804* (Washington, DC, 2000), 341–42.

[54] Sefton D. Temkin, "A Beth Din for America," in *Perspective on Jews and Judaism: Essays in Honor of Wolfe Kelman*, ed. Arthur A. Chiel (New York, 1978), 409–20.

[55] Auerbach, *Justice Without Law?*, 76–94. Also see Hannah Dreyfus, "Leading Rabbi Deals Big Blow To Agunah Court: YU's Schachter dismisses *beit din* solution as battle continues in Centrist/Modern Orthodox community," *Jewish Week*, September 1, 2015, accessed March 2, 2016, http://www.thejewishweek.com/news/new-york/leading-rabbi-deals-big-blow-agunah-court.

[56] Bruce L. Ruben, *Max Lilienthal: The Making of the American Rabbinate* (Detroit, 2011), 89.

[57] Hasia R. Diner, *A Time for Gathering: The Second Migration, 1820–1880* (Baltimore, 1992), 201–30.

[58] Peter Freneau, *The South-Carolina Justice of Peace: Containing All the Duties, Powers, and Authorities of that Office, As Regulated by the Laws Now of Force in this State*, 3rd ed. (New York, 1810), 307.