Regulating relations: controlling sex and marriage in the early modern Dutch empire

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Chapter 3. Non-Christian marriage

Introduction

The Dutch chartered companies claimed jurisdiction over a network of cities and territories that were inhabited by religiously and ethnically diverse populations, and this posed a conundrum when it came to the regulation of marriage: how could a 'Dutch' legal order, whose regulation of marriage and divorce was based on a distinctly Christian conception of marriage, be applied to non-Christian communities that had their own norms and regulatory practices with regards to the formation and dissolution of families? Because the Dutch empire, by and large, did not engage in a sweeping proselytization campaign and because colonial authorities recognized that eradicating local communities' traditional normative practices was not possible without causing considerable disorder, Dutch colonial societies were self-consciously 'plural' in multiple ways: ethnically, religiously, legally, and thus, broadly speaking, normatively. This was not a radical departure from legal practice in the Netherlands or elsewhere: what is frequently referred to as 'legal pluralism' in scholarship was not unique to the Dutch world or to the colonial situation, but arguably pervasive feature of the pre- and early modern world.[1] Diverse communities with their own normative practices had lived side by side in the Indian Ocean world for centuries, for example, while in Europe, on top of a range of non-sovereign corporate entities that governed medieval and early modern life, Jewish communities had long operated within Christian-dominated legal systems under varying degrees of communal self-rule, and even this larger legal system did not have a concept of universal equality, applying rules differently to different people depending on their status and position in society.[2]

Colonial expansion, however, did bring with it new modes of inequality as well as tenuous and shifting balances of power, new opportunities in conflict-resolution for colonial subjects, and new conflicts. As a result, where family law was concerned, new questions arose over what constituted a legal marriage and who decided this. In the previous chapters we saw how race, enslavement, denomination (Catholic or Protestant) and other factors of inequality came into play in these questions *within* the subsection of the population that was Christian and thus (strong internal differences notwithstanding) had a more or less shared normative schema for

[1] Michael Barry Hooker, *A Concise Legal History of South-East Asia* (Oxford: Clarendon Press, 1978), 194; John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (January 1, 1986): 1–55; Benton and Ross, *Legal Pluralism and Empires, 1500-1850*; Griet Vermeesch, Manon van der Heijden, and Jaco Zuijderduijn, *The Uses of Justice in Global Perspective, 1600–1900* (London: Routledge, 2019). The strategic use of preserving local or indigenous customs, which in the Dutch East Indies would persist in the concept of 'adat', was not unique to the Dutch empire. See, for an example of Spanish America, Nicolás Ceballos-Bedoya, "Usos Indígenas Del Derecho En El Nuevo Reino de Granada: Resistencia y Pluralismo Jurídico En El Derecho Colonial. 1750-1810," *Estudios Socio-Jurídicos* 13, no. 2 (December 2011): 221–48; Catharina Madeira-Santos, "O império português face às instituições indígenas (Estado da Índia, Brasil e Angola, séculos XVI-XVIII)," in *Monarquias ibéricas em perspectiva comparada (sécs. XVI-XVIII): dinâmicas imperiais e circulação de modelos administrativos*, ed. Ângela Barreto Xavier, Federico Palomo, and Roberta Stumpf (Lisbon: Imprensa de Ciências Sociais, 2018), 271–302.

[2] Benton, *Law and Colonial Cultures*; Corinne Lefèvre and Ines G. Zupanov, *Cosmopolitismes En Asie Du Sud. Sources, Itinéraires, Langues (Xvie-Xviiie Siècle). Introduction* (Paris: Éditions EHESS, 2015); William A. Pettigrew, "Corporate Constitutionalism and the Dialogue between the Global and Local in Seventeenth-Century English History," *Itinerario* 39, no. 3 (December 2015): 487–501; Yosef Kaplan, ed., *Religious Changes and Cultural Transformations in the Early Modern Western Sephardic Communities* (Leiden: Brill, 2019).

marriage. This chapter examines how specific, non-Christian ethno-religious communities within the empire, their communal authorities, and Dutch colonial governments under the VOC and WIC approached these same questions, focusing on the (loosely defined and frequently overlapping) Muslim, Chinese, and 'Hindu' communities in the VOC world and the Jewish communities in the Dutch Caribbean, with a particular focus on the unique position of the Sephardim in Suriname.

Legal pluralism, marriage, and power under the VOC

The terminology used in the records of the Dutch East India company suggests that company authorities did not quite view the marriages of Muslim, Hindu, and Chinese men and women as being of equal status to a Christian marriage, at least socially speaking. This becomes particularly clear from descriptors used for married women: VOC judicial records consistently refer to the wives of Muslims, Hindus, and lower-class Chinese men as *wijf,* a term that was also used for wives in enslaved families across the Dutch empire (women in more casual relationships with enslaved men would be called someone's *meijd*), whereas the more honorific term *huijsvrouw* ('house-wife') was reserved for legally married Christian women, Asian aristocracy and, occasionally, wives of wealthy Chinese men, although here it depended on who was writing: Lietjouw Siea, wife of Tan Pinseeng, who was a member of the Board of Trustees for Chinese Deceased Estates *(College van Boedelmeesters*) was referred to as his *huijsvrouw* in a request for legal separation she herself submitted to the *Schepenbank*, but in the court's discussion of the case, she is referred to as his *wijf*.[3] The social hierarchy Dutch authorities envisioned was thus inscribed in the valuation of the legitimacy of marriages, particularly through the honor accorded to married women. At the same time, however, the fact that non-Christian men and women successfully used the Dutch court system to arbitrate divorce, alimony, inheritances, and other marriage-based rights and entitlements demonstrates that, legally, the company did recognize the validity of these marriages. Which standards for a valid marriage, and which rules for dissolving one could be applied, however, varied from community to community and was not set in stone.

Islamic family law and the VOC

The histories of the Dutch East India company and that of Islam are deeply intertwined, and not just because the company regularly came into contact with Muslim merchants and rulers as business partners, rivals, and allies. Throughout the seventeenth and particularly the eighteenth century, as the Company expanded its territorial control, while simultaneously Islam was consolidating its influence in South East Asia, the VOC found itself ruling over a population that was increasingly comprised of Muslims. What this meant for the Muslim men and women living in VOC-occupied territories, however, varied considerably between places and periods. In Cochin, where the Company shared jurisdiction with the Muslim Raja in Mattanchery, Muslim residents might have daily social and commercial contact with Christians but administered their private lives – including the registration of marriage and adjudication in marital conflict and divorce – independently of the company and its institutions. In Ceylon, the company's treatment

[3] ANRI Schepenbank inv.no. 258, #163, 12 April 1790.

of the island's Muslim minority, which was largely comprised of merchants, shifted from largely hostile and exclusionary in the seventeenth century to a more accepting but nonetheless increasingly regulatory approach in the late eighteenth century.[4] Batavia similarly started out with VOC administrators treating Muslims as hostile outsiders, but as the Company's territorial control in Java spread while men and women from across the archipelago moved to the city – both voluntarily and by force – the presence of large numbers of Muslims of a variety of ethnic and social backgrounds under VOC jurisdiction became a fact of life. This meant a change in policy: whereas virtually all seventeenth-century legislation involving Muslims revolved around either promoting conversion to Christianity or banning and restricting the practice of Islam,[5] eighteenth-century legislation focused on institutionalizing (and thus, to a certain extent, homogenizing) existing Islamic practices within the company's legal framework. This began with a recognition of practical necessities, such as the employment of an imam for Muslim witnesses in the *Schepenbank* to take their oaths with, and later expanded to the legalisation of Mosques (more than half a century before Catholic worship was permitted). By the mid-eighteenth century, the Company began to codify Islamic law, to be applied uniformly among the VOC's Muslim subjects.[6]

The most influential of these, with regards to marriage and divorce law, was the Freijer Compendium, published in Dutch and *Jawi* (Malay in Arabic script) in 1760.[7] It was commissioned by Governor-General Mossel and his government in 1754, as part of a series of reforms intended to "improve the upper Jacatran and Preanger lands" – the rural regions surrounding Batavia, predominantly inhabited by Javanese Muslims, alongside other (Islamic) South East Asians and (Peranakan) Chinese. These groups had traditionally handled their own affairs internally, with men and women turning to their respective local headmen to resolve domestic or marital conflicts, disputes regarding inheritance, and other legal matters, although formally these matters had come under the authority of the VOC's [*Gecommitteerde tot den zaken van den Inlander* (Commissioner for Native Affairs). Now, reportedly to prevent "extortions and vexations" by the Javanese officers, the Batavia government decided that "the administration of justice among the natives ought to be regulated more closely and made easier for them."[8] Rather than subject the residents to Dutch law, however – a practice which was expected to elicit resistance from Muslim communities – the Commissioner, D.W. Freijer, was ordered to compile

[4] Karel A. Steenbrink, *Dutch Colonialism and Indonesian Islam: Contacts and Conflicts, 1596-1950* (Rodopi, 2006), 21–22.
[5] J. A. van der Chijs, *Nederlandsch-Indisch plakaatboek, 1602-1811* [Hereafter: NIP] (The Hague: Landsdrukkerij ; Nijhoff, 1885). Vol I, 371, 3 March 1635: Decision to award 2 crowns (80 stuyvers) for each "Indian person" who converted to Christianity; NIP Vol II, 169, 7 March 1651: Ban on Muslims holding "public or secret gatherings to practice their erroneous and Mahomedan worship"; NIP vol II, 572, 24 April 1674: Mandate to "restrict the liberty of gatherings of the priests of the Moorish and Chinese temples" as much as possible.
[6] NIP Vol III, 68, 20 January 1681: the "Mahomedan priest" taking oaths for the *Schepenbank* is awarded a salary; On 28 February 1744, permission was given for the construction of a Mosque for Batavian residents originating from the Coromandel coast in India. NIP Vol V, 548.
[7] Mahmood Kooria, "The Dutch Mogharaer, Arabic Muḥarrar, and Javanese Law Books: A VOC Experiment with Muslim Law in Java, 1747–1767," *Itinerario* 42, no. 2 (August 2018): 206. Other Compenia included that produced by Sulawesi Governor Clookwijck between 1752 and 1755 and the *Mogharraer* produced for the court in Semarang. Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam University Press, 2010), 44-45.
[8] NIP vol VI, 739.

the laws regarding inheritance and marriage practiced among the '*inlanders*', in consultation with local leaders and religious scholars.[9] On 7 November 1754, the officers of the various 'nations' living in the *Ommelanden* and the Preanger were ordered to write down the civil laws and customs of their respective nation regarding these aspects of family law, and submit them to Freijer.[10] Almost six years later, after lengthy consultations with "several Mahometan priests and officers of the *kampungs*" and alterations made by both the Commissioner and the Batavian government, the Compendium was approved and published in Dutch and Malay.[11] Presented as a codification of an existing Islamic-Javanese legal reality, the Compendium fits what Mahmood Kooria has termed the "political economy of legalistic discovery": the proclaimed culturally authentic origins of the text allowed the colonial government to considerably expand its regulatory and juridical control over the Javanese population in a way that could be construed as a legitimate 'stream-lining' of self-rule rather than an external imposition.[12] In reality, however, the stipulations of the Compendium often diverged considerably from communities' local legal practice, as it presented one uniform set of rules – largely informed by Islamic scholars of the Shāfiʿī school which was dominant in South East Asia but heavily mediated by colonial authorities – as applicable to all Muslims in the region, regardless of their specific cultural background.[13] This disparity must have been even greater in 1770, when the Compendium was exported to Ceylon, to be applied there to all Muslims on that island.[14]

The first part of the Compendium dealt with inheritance, the second with marriage and divorce. This second section consisted of five pages of laws and regulations that were roughly consistent with the Shafi'i school's stipulations, although in a concise, simplified form that elided some of the complexities and debates in Islamic family law, and incorporating features that facilitated a greater involvement of Dutch authorities. The Compendium recognized the primary importance of the *maskawin,* the Malay version of the *mahr* (مهر) or dower, the price paid by the groom to the bride for her to keep, agreed upon between him and the bride's family. New in the compendium was the requirement for the Governor General, by mouth of the Commissioner, to approve arrangements in which the groom did not pay the dower upon marriage but instead would be held accountable to her.[15] Beside this rule, likely put in place to create a paper trail in case of future lawsuits, the *maskawin* stipulations were in line with the contractual conceptualization of marriage in Islam: unlike in the Catholic notion of marriage as a sacrament in which God forever joined a couple, or the Calvinist marriage as a covenant between two consenting parties, the Islamic legal tradition conceives of marriage as primarily a civil, transactional contract between a groom and his bride and her family, which does not entail

[9] Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam University Press, 2010), 45.
[10] NIP vol VI, 753.
[11] NIP vol VII, 392.
[12] Kooria, "The Dutch *Mogharaer,* Arabic *Muḥarrar,* and Javanese Law Books," 210.
[13] R. Supomo, *Sejarah Politik Hukum Adat*, 2nd ed., vol. I, 1609–1848 (Jakarta: Pradnya Paramita, 1982), 29-30.
[14] Kooria, "The Dutch *Mogharaer,* Arabic *Muḥarrar,* and Javanese Law Books," 213.
[15] NIP Vol VII, 25 March 1760, "Compendium der voornaamste Mahomedaansche wetten en gewoonten nopens erfenissen, huwelijken en echtscheidingen, Tweede Titul: Observatien bij of omtrent den huwelijken staat," 405. The *maskawin* would this function as a lien on the husband's property, similarly to the *mohar* in the Jewish *ketubah* (see p. 97).

community property.[16] Through the *mahr* or *maskawin* the groom symbolically 'purchases' the bride's fidelity, while also taking on the duties of a husband: consummation of the marriage and maintenance of his wife through food, clothing, and private quarters, at a standard of living equal to or greater than that of her father's household. In pre-Islamic Arabian law, the *mahr* was paid to the father of the bride. Following the innovations of Muhammad and the Islamic legal scholars in the centuries following his death, the bride became the recipient instead, which was of considerable consequence for married women's position. The *mahr* functioned as an insurance fund in case of a husband's death or his repudiation of his wife, and gave the wife the financial leverage to exit a marriage. These functions were not unimportant, as it was considerably more difficult for a woman to initiate divorce than for her husband.[17]

It is possible to distinguish between three common types of divorce in pre-modern Islamic law. The most straightforward is *talaq* (طلاق) or repudiation, and this was a husband's unilateral prerogative. If a man wished to divorce his wife, he could do so by informing her she was divorced, and after three months the divorce would be final and both were free to remarry.[18] The Freijer Compendium included the 'tallak' but made a number of modifications: it required husbands to notify their wives in writing with a *scheidbrief* (letter of divorce) rather than a performative utterance, and demanded a registration of the divorce with both parties' communal authorities. It also diverged from the Shafi'i school of law in demanding that husbands continue to pay for the upkeep of their soon-to-be ex-wife during the three-month waiting period.[19]

The second type is *khul* (خلع), or divorce through compensation, which is likewise irrevocable and permits remarrying, but requires both parties' consent. It usually applied when the wife wanted out of the marriage and would be final after she had returned the dower, without needing to give a reason. Because *khul* was not possible without the husband's willing participation, a wife could offer more to incentivize him to agree to the separation.[20] In the Compendium, this extra payment was institutionalized: if a wife wished to divorce her husband who was unwilling to do so, she could obtain a divorce through the courts but only if she paid the man double the *maskawin* he had paid for her. If the divorce was consensual, however, the Compendium required husbands to give their wives a *mutah* or parting gift that functioned as alimony, in line with Shafi'i jurisprudence.[21]

A third avenue of divorce, which could overlap with the second, was judicial divorce. *Fasakh* (فسخ, annulment) could be granted by a judge if a husband somehow failed to perform his

[16] Witte, *From Sacrament to Contract*, 43; Murad H. Elsaidi, "Human Rights and Islamic Law: A Legal Analysis Challenging the Husband's Authority to Punish 'Rebellious' Wives"," *Muslim World Journal of Human Rights* 7, no. 2 (February 21, 2011): 5; Judith Romney Wegner, "The Status of Women in Jewish and Islamic Marriage and Divorce Law," *Harvard Women's Law Journal* 5 (1982): 12; Stijn Cornelis van Huis, "Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba" (Unpublished PhD Dissertation, Leiden, Leiden University, 2015), 66.
[17] Wegner, "The Status of Women in Jewish and Islamic Marriage and Divorce Law," 20–21.
[18] If the marriage had not been consummated, the divorce would be final immediately. The man was also free to remarry before the end of the three-month-period, as men were free to take up to four wives provided they could afford their upkeep. Kecia Ali, *Marriage and Slavery in Early Islam* (Cambridge, MA: Harvard University Press, 2010), 142.
[19] This obligation was a source of disagreement between different legal schools: the Hanafis held that the woman could claim financial support during the waiting period; the Shafi'i and Maliki did not. Ali, 89.
[20] Ali, 142–43.
[21] NIP Vol VII, "Compendium," 404; Shagufta Omar, "Dissolution of Marriage: Practices, Laws and Islamic Teachings," *Policy Perspectives* 4, no. 1 (2007): 111.

conjugal duties. Although a multitude of valid grounds for *fasakh* have been recognized in various Islamic jurisdictions throughout the ages, ranging from cruelty to adultery to disreputable behavior,[22] the Freijer Compendium discussed only two. The first was impotence, whether caused by a physical or mental ailment or any other reason. A wife who required an annulment on these grounds was to first consult an imam, who was to report the matter to the couple's communal officers and approve the separation in front of the Commissioner of Native Affairs. If the marriage had already been consummated in the past, the wife would receive her *maskawin.* The second ground was the husband's fall into poverty and subsequent inability to adequately support his wife, in which case the wife could demand a divorce on condition she return the dower. In both cases, either party could turn to the court (in the case of Batavia, this was the *Schepenbank,* which sent a delegation to the *Ommelanden* outside the city once a week) if they felt they had been aggrieved. This was also an option for women who wished to divorce their husbands unilaterally due to marital discord, but who could not come to a consensual separation agreement with their husband or through mediation by local religious or secular authorities.[23]

The Compendium came as part of a greater set of administrative regulations, such as the requirement placed on communal authorities to register marriages and divorces.[24] These measures can at least in part be ascribed to an increased reliance on taxation by the colonial government over an increasing (non-Christian) population, which included a tax on Muslim marriages instituted just two months before the Freijer Compendium was commissioned in 1754.[25] In this case, however, the VOC's emphasis on ruling according to each ethnic group's 'own' laws backfired. In 1766, after the Government had issued a new law putting Muslims on equal foot to Chinese taxpayers with regards to the fee for getting married, the leaders of the Muslim *kampungs* objected that paying a tax to get married went against their "teachings, morals, and customs" and that even the tax issued in 1754 had been impossible to enforce. The Government acquiesced, arguing that it was best "to leave Muhammadans and Moors to their own custom in case of marriage" and both the new law and the 1754 tax requirement were retracted.[26] For Muslims living under Company rule who turned to the courts, however, the Compendium did mean the promotion of marriage regulations disproportionately informed by the perspective of elites: local secular leadership and especially Islamic scholars trained in the Shafi'i school, irrespective of residents' particular cultural background. Thus, while the code was presented as a means of safeguarding Muslim subjects' 'own' legal practices, it did impose a degree of homogenization and increased administrative and juridical involvement by the VOC government.

That said, the contractual nature of Islamic marriage law, combined with the hybrid, pluralistic legal position Muslims in VOC-lands held between the colonial court, Company-sanctioned Islamic law, and communal practice, meant that many Muslim residents arguably had

[22] Huis, "Islamic Courts and Women's Divorce Rights in Indonesia," 66; Omar, "Dissolution of Marriage," 102–3.
[23] NIP vol VII,
[24] NIP vol VI, 753, 7 November 1754.
[25] NIP Vol VI, 702, 27 August 1754. The tax was intended to cover the cost of the Chinese hospital which served Chinese, Muslim, and other non-Christian patients.
[26] NIP Vol VIII, 24 October 1766, 166-168.

more leeway and flexibility in their marriage and divorce arrangements than Christians. In drawing up a marriage contract, brides (or their family) could stipulate their right to divorce in a way that Christian brides beholden to Dutch law and Christian conceptualizations of marriage could not, as well as any other marital conditions they managed to negotiate. An example of such legal creativity is a marriage contract drawn up before a VOC notary in 1764 – just four years after the Compendium was published – between the family of Nadjima, a young bride, and her groom Abdul Rejak. Nadjima, just twelve years old, was the daughter of a widowed *moorinne* (i.e. Muslim woman) and was betrothed to the twenty-three-year-old Abdul, the son of a free woman, also widowed, from Macassar. Because tradition demanded the bride and groom not see each other before the wedding, Abdul and Nadjima, each assisted by their mother, appeared separately before the notary with two witnesses, neighbors of Nadjima. The two families had come to an agreement on the conditions of the marriage and came to affirm and record it before the Dutch notary – likely at the bride's family's behest, because the contract primarily specified rights and protections for Nadjima. The pair would be wed in six months' time, or as soon as "the appropriate time shall arrive" (a crossed-out reference to "the workings of nature" suggests the girl's menarche was a decisive factor) and Abdul would award Nadjima a *maskawin* of two hundred rixdollars. Notably, although the Freijer Compendium explicitly permitted husbands to physically "correct" disobedient wives as long as they did not leave permanent damage, the contract denied the groom the right to hit Nadjima "or abuse her in any other way". In addition, he would not be permitted to leave town without her (the Compendium allowed this as long as husbands left financial support in place for their wives). Finally, although the Compendium permitted men to marry four women at once as long as they could afford to maintain them, the contract stated that Abdul would not be allowed to keep *bijwijwen* (concubines) "much less marry someone else, even though their religion permits this".[27]

Although registrations of the *maskawin* and marriage contracts before the European notary offered an extra insurance to grooms and especially brides, most Muslims continued to handle their marital affairs, including getting divorced, independently of the Company and its affiliated legal institutions. Muslim divorce cases before the *Schepenbank* were rare compared to those between Chinese and Christian couples, which is unsurprising considering Muslims – and especially Muslim husbands – had a considerable range of options to legally dissolve a marriage available that did not involve any costly court proceedings. If it did come to a court case, this often did not center on the dissolution of the marriage itself, but on conflicts around financial arrangements made in the split. Such cases could even move from the Schepenbank to the Court of Justice (serving as a court of appeal), as in the case of Bibie Merbie, who sued her ex-busband Sleman Ismael for the Schepenbank in July 1770 and then appealed before the high VOC court four months later.[28] For most women, however, such a trial would have been prohibitively expensive, and they would have had better chances coming to an amicable divorce agreement with their husband.

[27] ANRI Notarissen inv.no. 6244, Andries Jan Zalle, April 1765, Act 17312; NIP Vol. VII, 406.
[28] NL-HaNA VOC 1.04.02 inv.no. 9277 CivR 1770, 21 November 1770, folio 40.

Chinese marriage and divorce

Besides South East Asian and South Asian Muslims, the numerically and especially economically most influential group living in places under VOC control consisted of Chinese emigrants and their descendants. While the Chinese propertied classes were among the most active users of the VOC legal system – especially in the larger port towns such as Batavia and Malacca, where they formed an important part of the socio-economic urban fabric – the Chinese, like the predominantly Muslim group classified as '*inlanders*', were not subject to European marriage law, but to their own customary law, managed by Chinese officers and, starting in the eighteenth century, in a more institutionalized form by the *Kong Koan* or Chinese council.[29] Chinese family law, under the Qing dynasty, can be seen as strictly patriarchal, with unmarried women, regardless of their age, under the full authority of their father or eldest male relative, and married women entirely subordinate to their husbands. Marriage was contracted not between two individuals, but between two patrilineal families; a bride left her birth family and joined her husband's, meaning her in-laws were now responsible for her maintenance while she owed them dutiful obedience. Like in Islam, a husband could initiate divorce without the mediation of a court: he could "terminate his marriage to her" (休, *xiu*) or "expel" her (出, *chu*) for a variety of reasons, but unlike in Islam Qing law did not set in place financial protections for the wife in such a case; rather than survive off a dower or alimony, she was expected to return to her birth family. Women, by contrast, had essentially no way to terminate a marriage except in extreme cases, and then not by their agency but through dissolution of the marriage by a judge: in case of abandonment that lasted more than three years, or if the husband had caused serious physical injury.[30]

Batavia, however, was not Imperial China. While Chinese authorities in VOC-controlled territories did refer to Imperial law as a foundation for communal rule, both the reality of the social condition of the Chinese diaspora and the community's interaction with Dutch institutions had considerable effects on everyday legal practice. For one, the state-enforced near complete absence of Chinese-born women outside of Chinese soil meant that overseas Chinese communities, by default, were heterogeneous, with male Chinese migrants in South East Asian ports marrying local women or, increasingly, enslaved brides from overseas, purchased and manumitted for the purpose of marriage.[31] Although Hindu women from Bali, due to their tolerance of pork consumption, have been said to have been brides of choice for Chinese men in Batavia, many also married Javanese and other Muslim women, resulting in a so-called Peranakan Chinese community marked by Hindu as well as Islamic Malay influences. Although local Chinese elites expected native women to assimilate into the Chinese community, while never quite attaining 'pure' Chinese status, the direction of this assimilation was not always a

[29] Leonard Blussé and Menghong Chen, *The Archives of the Kong Koan of Batavia*, Sinica Leidensia ; 59. 821604503 (Leiden: Brill, 2003), 1.
[30] Philip C. C. Huang, "Women's Choices under the Law: Marriage, Divorce, and Illicit Sex in the Qing and the Republic," *Modern China* 27, no. 1 (2001): 10–13.
[31] Barbara Watson Andaya, "From Temporary Wife to Prostitute: Sexuality and Economic Change in Early Modern Southeast Asia," *Journal of Women's History* 9, no. 4 (1998): 11–34.

given.[32] Particularly the conversion of Chinese men to Islam in order to marry a local Muslim woman – a sign of cultural assimilation in the opposite direction – was a cause of concern for the Batavian Chinese elites, to the point where in 1766 they complained about it to the VOC government, citing a Chinese law that, on the mainland, punished such conversions with death.[33] Although the colonial government, in response, issued a law that Chinese and Muslim men and women were not to marry "outside their nation," it was not particularly concerned with the practice as long as no Christians were involved, and the Company did not adopt a policy of active prosecution of such cases. A commentary from the Mossel government in 1754 suggests that Chinese-to-Islamic-Malay cultural assimilation was primarily a lower-class phenomenon: because Chinese conversions to Islam primarily occurred among "the vilest sort of folk, that is not esteemed in the slightest among either the Chinese or the Muhammadans," it was "not worth the trouble, nor politically expedient to undertake any action in that regard."[34] It is likely that couples like this, where the husband fully converted to Islam, turned to local imams and Islamic headmen for mediation in their marital affairs, and thus slipped from the institutional control of the Chinese authorities. At the same time, however, a large number of couples involving a Chinese groom and non-Chinese bride continued to be registered in the marital records of the Chinese Council, suggesting they remained at least formally under its jurisdiction.[35]

Because Chinese bridal couples in Batavia were often migrants far from their family and only partly of Chinese ancestry, the traditional Chinese model of marriage as a contract between two patrilineal families could often not apply. Unencumbered by the demands of extended families but also not (yet) beholden to clearly defined marriage regulations from anything resembling a state, Chinese grooms in Batavia were relatively free to set the terms for their unions as they saw fit, especially in the seventeenth and early eighteenth century. For their brides this was not necessarily the case, especially for Southeast Asian wives who had been purchased as slaves and therefore had little more choice in contracting the marriage than did girls in China, while additionally lacking a family to negotiate on their behalf.[36]

For Chinese married couples seeking divorce, however, things could be fairly straightforward. The relative lack of institutional control, up until the first quarter of the eighteenth century, meant that couples who agreed to part ways could simply draw up a contract in which they each released each other of their marital vows and granted the other permission to remarry. Because Chinese marriage knew no community of property in the way Christian marriages did, there was no need for mediation or arbitration in dividing up the marital assets: the wife simply took back whatever goods and funds she had brought into the marriage; the rest was kept by the husband. The divorce contracts drawn up by Chinese couples seem to have been common enough to take on a standardized form: notary Johannes Berghuijsen used the exact same phrasing for multiple couples dissolving their marriage through his services in 1710: after naming the couple and specifying where they lived, the contract stated that

[32] Li Minghuan, "From 'Sons of the Yellow Emperor' to 'Children of Indonesian Soil': Studying Peranakan Chinese Based on the Batavia Kong Koan Archives," *Journal of Southeast Asian Studies* 34, no. 2 (2003): 224–29.
[33] NIP Vol VIII, 25 July 1766, 142.
[34] NIP vol VI, 7 November 1754, 753-754.
[35] Minghuan, "From 'Sons of the Yellow Emperor' to 'Children of Indonesian Soil,'" 223.
[36] Andaya, "From Temporary Wife to Prostitute," 1998.

> some time ago the principals married each other and, having lived as man and wife together, they have since then been unable to get along and agree with one other. Therefore the principals declare to desist of all mutual marital vows and unions they have contracted with each other, having each taken back that which they had brought to the other, such that he principal can take another wife and she principal can take another husband, and neither party will be able to make the slightest claim on the other, whether directly or indirectly, of any nature.[37]

The permission to remarry was crucial: while Christians could also draw up separation agreements and were also free to make their own arrangements regarding the allocation of property as long as they could agree, such an act would not formally dissolve their marriage, and they would be unable to wed until the other party died, meaning women often remained in some relation of financial dependence to their former husband. In the Chinese case, however, divorce posed both a financial risk to married women and an opportunity, as long as they could secure either an independent source of income or a new husband.

Naturally, conflicts could arise over the precise content and value of the dowry the wife had brought in to the marriage, in which case either party could take further legal steps, often through a notary. Thio Soeijnio, a free woman born in Batavia, brought two witnesses, Eva van Batavia and Tsokinjatse van Batavia, to the Dutch notary in 1690 to confirm the list of goods she had brought with as her dowry when she married her Chinese husband Khou Tongko five years prior: a pair of golden arm rings, four silver cups, a silver pipe, three golden rings, and a silver betel set.[38] Chinese husband Lim Poenko, conversely, brought surgeon's widow Magdalena Sitton (an acquaintance of his wife) to the notary in 1730, after his wife, Ang Sieunio, had left him in 1728. Sieunio had temporarily stayed with Magdalena after the marriage had fallen apart, and Tongko claimed (in addition to accusations of immodest behavior) that Sieunio had taken goods with her that belonged to him. Magdalena proved to be an unsatisfactory witness for Tongko, however: she declined to confirm any dishonest behavior on Sieunio's part, and reported that the latter had only brought goods with her that she'd affirmed were part of her dowry.[39]

By the early eighteenth century, the freedom Chinese Batavians had in contracting and dissolving their marriages began to be seen as a problem by Chinese authorities. In 1717, the Chinese officers complained to the VOC government that Chinese men and women were not only getting married without their permission, but also dissolving marriages frivolously without their consent, often as a ploy to avoid creditors or embezzle goods and funds. In response, the Government issued an ordinance stating that any Chinese who wanted to marry had to get permission not only from the Chamber of Curators (*Boedelmeesters*) which had already been the case, but first and foremost from the Chinese officers. Any marriages contracted without a permission slip would be null and void, and subject to arbitrary punishment. In addition, those seeking a divorce needed to either get permission from the officers or secure dissolution of the marriage through the court, and notaries were henceforth prohibited from issuing divorce acts without written consent.[40]

[37] ANRI Notarissen inv.no. 2438, 1710, April 26, Goeij Djimko and Thitsiotse van Batavia; June 16, Lim Tsjoeijko and Lihonio van Batavia.
[38] ANRI Notarissen inv.no. 1838, 11 October 1690, Thio Soeijnio.
[39] ANRI Notarissen inv.no. 3783, 19 March 1730.
[40] NIP vol IV, 31 March 1717, 93-95.

The ordinance can be seen as the first step in the institutionalization of what would become known as the *Kong Koan*, the Chinese Council, with regards to marriage administration. The next major step came in 1742, in the aftermath of the Chinese Massacre. After a revolt had broken out among the impoverished Chinese migrant workers in the countryside outside Batavia, over whom the city's Chinese leadership had very little control, the Dutch had responded by killing thousands of Chinese Batavians, including those who, as established city-dwelling merchants, had very little in common with the revolting workers.[41] After the bloodbath, the Company adopted the stance that the best way to prevent future unrest was to ensure that Chinese authorities held a greater, more expansive grip over their population. Local officers were put in place to administer the Chinese *kampungs* outside the city walls, increased administrative demands were placed on Chinese leadership, and the Kong Koan was given an office, where it was, among other tasks, to administer marriage registrations.[42] This administrative apparatus grew in conjunction with increasing avenues of taxation, including a tax to be paid to the *Boedelmeesters* upon marriage, set in 1747 at three rixdollars for "common" Chinese and eight for the propertied class.[43] In practice, however, it seems that many people continued to contract and dissolve marriages at will without the consent or mediation of Chinese authorities. In 1786, the Chinese captain Swa Thoenko complained to the VOC government that Chinese residents were frequently getting married without his permission and divorcing each other and remarrying as they saw fit, thus costing the *Boedelmeesters* and the Chinese poor the benefits of the taxes and fines to be levied from marriage and divorce. In response, the government issued a renewed ban on weddings or divorces without a permission slip, and instated a fine of fifty rixdollars to those who ignored these requirements.[44]

By this time, the marriage practices of Chinese Batavians had become considerably intertwined with those of the South East Asians they intermarried with, as well as with the Dutch legal system. In a discussion of whether Chinese wives should be liable for the debts of their husbands, the Chinese council acknowledged the complications arising from the Chinese community's embeddedness in South East Asian culture: while in Imperial China the rules were clear-cut (wives had no independent property rights, could not contract debts, and were free to take the property they had brought into the marriage upon their husband's death, without being liable for any of his debt) the Chinese community in Batavia often *did* allow married women to command their own property. Nevertheless, the Chinese Council argued against making them liable for a husband's debts, since many Chinese widows, many of whom had been enslaved prior to marriage, would be left destitute in such a situation. Propertied Chinese wives, however, could volunteer to co-sign on their husbands' debts, thus making themselves liable.[45] In case of divorce, however, this could pose problems. Lie Tjousia [also spelled Lietjouw Siea] wife of the Chinese

[41] Blussé, *Strange Company*, 94–95.
[42] Minghuan, "From 'Sons of the Yellow Emperor' to 'Children of Indonesian Soil,'" 216; Blussé and Chen, *The Archives of the Kong Koan of Batavia*. This promotion of indirect control was accompanied, in the months and years immediately following the massacre, with draconian measures of direct control by the government. In December 1742, for example, the Council of the Indies voted to only allow Chinese people inside the city walls during daylight hours: any Chinese caught in the city after 6 would be flogged, branded, and sentenced to forced labor for 25 years. NIP vol. IV, 586-7.
[43] NIP vol V., 17 November 1747, 497-498.
[44] NIP vol X, May 12 1786, 843-4.
[45] NIP vol XIII, 23 May 1766, 130-1.

member of the Chamber of Curators Tan Piseeng, learned this the hard way when she wished to divorce her husband in 1790. In a request to the *Schepenbank,* she claimed that her husband beat and abused her, failed to adequately provide for her and her children, and abused his marital power to force her to use her wealth to pay off his debts.[46]

As it later turned out, Tjousia had co-signed on several of Piseeng's debts, running in the thousands of rixdollars. In fact, likely not by coincidence, Tjousia issued her request on the same day that the couple was jointly sued by the widow of one of Piseeng's creditors, Petronella Harting. The Schepenbank afforded Tjousia a forum to argue on her own behalf and strengthen her bargaining position for getting out of the marriage and especially the financial liabilities, but it did mean that she now subjected herself to Dutch-colonial legal practices regarding divorce. Just like all Christian couples involved in a separation case before the court, she and her husband were ordered to appear before a subcommittee of the Schepenbank to attempt a reconciliation before being able to proceed with the split. When the case was resolved, moreover, it was not through a revocation of marital vows and a granting of mutual permission to remarry, but through the 'Christian' construct of the separation of table and bed, although under their own stipulated conditions. The pair would live apart and Tjousia would take up residence where she saw fit, but would remain under her husband's marital power, and was obliged to live a "honorable and irreproachable life." If she followed these conditions, Tan Piseeng would pay her a monthly alimony payment of twenty-five rixdollars. The pair's two young sons, aged three and five, would live in the house of Lie Tjousia's mother for the time being, but once they were old enough, they would be sent to China "to get a civilized education." Tjousia would forfeit the thousand rixdollars she had already paid to Petronella Harting – her husband would pay the rest – but she would be off the hook for another debt she had co-signed, worth eleven thousand rixdollars: Piseeng would either pay it off or find another co-signer to take her place.[47]

As was the case with the Muslim population, the second half of the eighteenth century was marked by an increased entanglement of Chinese marriage and divorce with the Dutch legal institutions and increasing efforts on the part of the colonial government to regulate, facilitate, and mandate standardized forms of communal autonomy. This meant that, as in the case of Islamic law, the Company took up an interest in Chinese law, and in in 1754 P. Haksteen, the secretary of the Schepenbbank, was commissioned to produce a compilation of laws practiced in China, in collaboration with the former Chinese Captain Oei Tsi-Lauw. The document was finished in 1761 and distributed to the Schepenbank, the Court of Justice, and the Chamber of Curators.[48] As in the case of the Freijer Compendium, the compilation offered a homogenizing legal standard that privileged an elite perspective and was to some extent external to, or at least inconsistent with, local communal legal practice. Again, as in the case of Muslim Batavians, however, Chinese men and women using the Dutch legal institutions had a considerable amount of space for juridical creativity, especially in voluntary contracts.

A 1770 Chinese prenuptial agreement gives an impression of what this could look like. Louw Samko, a Chinese man, and the Chinese widow Tan Sieunio signed a contract on July 20, three

[46] Arsip Nasional Republik Indonesia, Archief van de Schepenbank van Batavia [hereafter: ANRI Schepenbank], inv.no. 256, April 12 1790, 163.
[47] ANRI Schepenbank inv.no. 256, August 9 1790, 516..
[48] NIP Vol VII, Mau 22 1761, "Chinaas recht," 476.

days before their wedding. In it, Samko promised that he would not take a second wife or any concubines, inside their house or out, even though Chinese law, according to Haksteen's compilation, explicitly permitted a married man to "purchase as many concubines as he can afford to maintain."[49] He would also never gamble. If he broke either of these conditions, he would be obliged to pay Sieunio one hundred rixdollars, and she would be free to marry someone else. Conversely, if Sieunio were to commit adultery (or rather, the more broadly interpretable term *hoererije* was employed) she would have to pay her husband forty rixdollars, and he would be free to remarry – an arrangement more in line with the Islamic construct of *maskawin* than Qing law. In all other aspects, they stated, their marriage would be regulated according to Chinese "laws and maxims."[50]

The above suggests that, with regards to marriage and divorce among the Chinese population of Batavia, a combination of factors and interests converged to create a landscape of possibilities that was quite different from that of mainland China. The Dutch colonial government was primarily concerned with maintaining order among a population that it considered both a threat and a vital economic force and source of taxation income, while the Chinese authorities aimed to secure their legitimacy, the prestige and socio-economic well-being of the Chinese community, and tax revenue. (Peranakan) Chinese men and women, however, developed their own practices and customs to suit their marital needs, drawing as much on the practices of the Malay communities they intermarried with as Chinese law. It appears to have primarily been members of the Chinese elite, meanwhile, who were more likely to resort to the Dutch court system and adopt "European" legal constructs in resolving marital conflicts, while simultaneously deferring to (mainland) Chinese practices and values (such as an emphasis on children getting an education in China), thus creating a legal culture around marriage that was not only unique to Chinese communities in the South East Asian port city, but also internally diverse.

Hindus in Batavia

In addition to the compilations of Chinese and Islamic family law in the mid-eighteenth century, the Batavian government also issued a set of regulations regarding Hindu (*Jentief* or Gentile) marriage. Here, the colonial government made no explicit claims to legal discovery of an existing body of laws, instead simply stating the practical necessity of offering judges a legal guideline for the validity of Hindu marriages in order to prevent them being misled by "false testimony regarding the validity of marriages among those people" and of preventing frivolous dissolutions of marriage. The regulations prescribed the conditions for a wedding ceremony that would be deemed legal (including the tying of a thaali around the bride's neck) and ordered marriages to be recorded with a notary within two weeks after the wedding (although this was not an absolute requirement for validity). Divorce was only permitted in case of adultery committed by the woman, but separations of table and bed could be granted in case of serious abuse, in which case the woman would leave the house with her personal possessions and be awarded alimony payments stipulated by the court. Children, except infants, would remain with the father.

[49] ANRI Notarissen inv.no. 7189, July 1770, #75; NIP Vol VI, 481.
[50] ANRI Notarissen inv.no. 7189, July 1770, #75.

Notably, the regulations specified that legal Hindu marriages could take place between not just two *Jentiven*, but also between Hindu men and "Chinese, Parnakan Chinese, or other non-Christian women," suggesting such mixed marriages were not uncommon, and that the colonial government counted multi-faith pairs under the regulatory category of the husband, not the bride.[51]

Jewish marriage and divorce: Suriname and Curaçao

It is impossible to understand the religious, social, and political dynamics of marriage and divorce under the Dutch West India Company without discussing the Jewish communities of the Dutch Atlantic: while some colonies, such as Berbice, banned settlement by people of the Jewish faith, Suriname and Curaçao (as well as St. Eustacius) both housed Sephardic (i.e. of Iberian origin) and to a lesser extent Ashkenazi (Central and Eastern European) communities that left a significant mark on these colonies' social, cultural, and economic life. Surinamese Jews in particular formed a remarkably entrenched part of the colony, in contrast to other parts of the (Dutch) Atlantic where the Jewish diaspora was more transient. The community retained a separate identity from Christians while simultaneously comprising a substantial (one third to two thirds) portion of Suriname's white settler population.[52] In fact, a Sephardic Jewish community had already been established in Suriname under English rule before the colony came under Dutch control in 1667. Many of the early settlers had been born in Portugal as New Christians and had made it to Suriname by way of Amsterdam and London (where they had returned to their ancestral faith) and in some cases (prior to the 1650s) Brazil. The English and subsequently Dutch colonial administrations, eager to safeguard control over an increasing enslaved population, both recognized their dependence on Jewish settlers for maintaining demographic strength among white colonists, which put Jewish community leaders in a uniquely strong bargaining position with regards to the conditions under which they would be ruled and rule themselves. What resulted was a system of 'privileges', first ratified by the English authorities in 1665, confirmed by the Dutch in 1669, and consistently re-negotiated until 1825, when the principle of formal equality before the law replaced the prior system of communal autonomy.[53]

Generally speaking, 'privileges' were agreements made between Jewish authorities and the secular government, which exempted Jews from specific laws and regulations that applied to other subjects – such as the rule against working on Sundays – and authorized Jewish leaders to exert circumscribed legal and regulatory control over local Jews. The *Mahamad* (i.e. the council of Jewish regents) could, for instance, request the expulsion of disorderly community members from the colony and had its own civil court whose jurisdiction extended over all legal conflicts between Jews concerning sums below 600 Surinamese guilders.[54] The privileges should thus not be seen as rights extended to Jewish individuals, but rather as applying to the community as a whole, and specifically as empowering Jewish elites vis-à-vis the broader Jewish population. The

[51] NIP vol VI, 164.
[52] Aviva Ben-Ur, *Jewish Autonomy in a Slave Society: Suriname in the Atlantic World, 1651-1825* (Philadelphia, PA: University of Pennsylvania Press, 2020), 6, 260.
[53] Ben-Ur, 82–83.
[54] Wieke Vink, *Creole Jews: Negotiating Community in Colonial Suriname* (Leiden: Brill, 2010), 71.

system of privileges was not unique to Suriname, but, as Aviva Ben-Ur has argued, the Surinamese Jewish community's status as a separate, partially self-governed entity did differ significantly from places such as Amsterdam, because its membership was automatic and mandatory, giving it a distinctly 'corporate' rather than voluntary legal status.[55] Surinamese Jews, therefore – whether they belonged to the Sephardic community or to the Ashkenazi ('High German') group whose numbers grew in the eighteenth century, leading to the establishment of a separate congregation in 1734 – had to adhere both to secular Dutch colonial law and to Jewish law and local Jewish by-laws (*askamoth*) in forming and dissolving marriages.

In the Jewish legal tradition, both marriage and divorce come about through a unilateral act – on the part of the husband. Jewish marriage has traditionally been conceived as coming about through the trifecta of a (written) statement by the groom, a financial transaction, and finally by consummation.[56] Essential for the first two of these three elements is the *ketuba* (sometimes spelled as *quetuboth, ketubah,* or variations thereof) or marriage contract. Dating back at least to the start of the first millennium CE, the ketuba consists of the marriage clause – the performative utterance by the husband, stating he takes the bride for his wife – as well as the documentation of the financial arrangements made upon marriage, including the dowry and *mohar* or dower, and any other agreements made between the groom and the bride and her family.[57] This declaration, as it has been uttered for the past two thousand years, translates to "be thou my wife according to the law of Moses and Israel," a formulation that was also used among Surinamese Jews.[58] The financial settlements, in turn, formed such an important part of the contract that the word *ketuba* is often used synonymously with the bride wealth specified in the agreement.[59] Characteristic of the Jewish bride wealth is the fact that is does not just consist of either a dowry (i.e. goods or funds transferred from the bride's father to the bridal pair) or a dower (a bride price paid by the groom to the bride or her family) but a combination of both. Traditionally, a groom was expected to pay a set amount of 200 silver zuz for a virgin bride (or 100 if she was no longer a virgin) to make the marriage official. By the eighteenth century, among Jews in Suriname, this seems to have been included in ketubas only in a symbolic sense, leaving the original ancient currency in the phrase and reserving a separate clause for the actual Surinamese guilders negotiated for the bride in the agreement. This latter amount started from the bride's dowry, originating either from her own funds, her family, or, if she was an orphan,

[55] Ben-Ur, *Jewish Autonomy*, 6. 'Corporate' here refers to a community practicing self-rule and performing state-like functions while remaining subordinate to state authorities. In cities like Amsterdam and London, conversely, Jews were *allowed* to practice their faith but not required to adhere to Jewish law, and *parnassim* had very little control over people who did not willingly take part in the community.

[56] As the Kiddushin (the part of the Talmud that deals with marriage law) puts it: "a woman is acquired by three means, [...] by money and by a writ and by intercourse." Cited in Louis M. Epstein, *The Jewish Marriage Contract: A Study in the Status of the Woman in Jewish Law* (Clark, NJ: The Lawbook Exchange, Ltd., 2004), 11.

[57] Deborah Greniman, "The Origins of the Ketubah: Deferred Payment or Cash up Front?," *Nashim: A Journal of Jewish Women's Studies & Gender Issues*, no. 4 (2001): 84–89.

[58] Epstein, *The Jewish Marriage Contract*, 57. A Portuguese example from an 1800 ketuba in Suriname: "Sé a mi por molher, comforme leij de Moseh & Israel," in Nationaal Archief, Den Haag, Digitaal Duplicaat Suriname: Nederlands-Portugees Israëlitische Gemeente in Suriname, access number 1.05.11.18, inv.no. 411.

[59] Epstein, *The Jewish Marriage Contract*, 4.

from the synagogue's orphan chamber.[60] This dowry could consist of cash, but often brides brought in other forms of wealth, from gold and silver jewelry to land or enslaved servants, in which case the dowry would be inventoried and appraised in guilders. The groom was then expected to increase these funds by 50 percent, so that a bride who brought a total dowry worth 1000 guilders into the marriage, for example, would have a total ketuba of 1500 guilders.[61] This amount was not freely available for the bride to use, however, but functioned as a lien on the husband's property, to be payable to her if the husband died or divorced her.

The ketuba offered a financial opportunity to husbands and provided security to wives. Following the wedding, a husband took full control of his wife's dowry and took on both the risks and all the profits from investing it. For the bride, conversely, the ketuba functioned as a type of 'insurance', providing her with funds to support herself or enter an advantageous new marriage should she lose the support of her husband through death or divorce, and safeguarding her property in case of her husband's bankruptcy. In antiquity, the obligation to pay out the full ketuba was also seen as an important deterrent to husbands who wished to expel their wife without her consent, since there were few legal barriers to men dissolving their marriage unilaterally. By the early modern period, this function of the ketuba appears to have become mostly theoretical, but Jewish divorce nonetheless remained marked by a strongly gendered asymmetry.[62]

Just like its formation, the dissolution of a Jewish marriage comes about through a unilateral act by the husband: without needing to turn to a court, a husband can divorce his wife by presenting her with a *get*, a formal written document releasing her from the marriage bond.[63] Because divorce requires the husband's active participation, obtaining a divorce could be challenging for some Jewish women should their husband be unwilling to cooperate, incapacitated, or absent. The resulting phenomenon of 'chained' wives, or *Agunot,* became more prevalent in the early modern period, as Jessica Roitman has argued, due to increased mobility among Jewish communities – caused in no small part by colonial migration.[64] The requirement

[60] For example, the Portuguese Jewish bride Rahel Abendalak, who wed Selomoh Rodrigues Nunes in September 1800, received two hundred guilders from the orphan chamber of the Beracha Ve Shalom synagogue in Jodensavanne. NL-HaNA, Nederlands-Portugees Israëlitische Gemeente Suriname [digitaal duplicaat], 1.05.11.18, inv.no. 411, Ketuba #68.

[61] The 50% rule seems to have been accepted as "the custom among the people of Israel" by both the Sephardic and the Ashkenazi communities in Suriname by the mid-eighteenth century, and persisted through the end of the century. NL-HaNA, Notarissen Suriname tot 1828 [digitaal duplicaat], 1.05.11.14, inv.no. 116 (1754); NL-HaNA, Nederlands-Portugees Israëlitische Gemeente Suriname [digitaal duplicaat], 1.05.11.18, inv.no. 411 (1793-1800).

[62] The risk of involuntary divorce for faultless wives decreased after the Middle Ages, especially for the Ashkenazi diaspora, for whom forced divorce of a faultless wife was banned in the eleventh century along with poygyny. Judith Romney Wegner, "The Status of Women in Jewish and Islamic Marriage and Divorce Law," *Harvard Women's Law Journal* 5 (1982): 21, 29; Greniman, "The Origins of the Ketubah: Deferred Payment or Cash up Front?," 1.

[63] Wegner, "The Status of Women in Jewish and Islamic Marriage and Divorce Law," 16; Samuel Daiches, "Divorce in Jewish Law," *Journal of Comparative Legislation and International Law* 8 (1926): 215–17.

[64] Jessica Vance Roitman, "Feckless Fathers, Fraught Families: Abandonment and Cultural Change in the Early Modern Jewish World," in *Religious Changes and Cultural Transformations in the Early Modern Western Sephardic Communities* (Leiden: Brill, 2019), 554–59; It should be noted that 'anchored' wives who found themselves unable to remarry despite the fact that their husbands had not returned from their voyages with the VOC or WIC, and even being accused of adultery or bigamy if they found a new partner, was not limited to Jewish communities in the Dutch Republic or elsewhere: Herman Roodenburg has shown that a quarter of adultery suspects who faced censure by the Dutch Reformed Consistory in Amsterdam were women in such a situation. Christian women did, however, have better

of the husband's consent also put wives in a relatively weak position when it came to negotiating the terms of the divorce, meaning they might have to make concessions such as renouncing their *ketubah* in order to get their husband to agree to a divorce. To see how this power struggle at the micro level played out in practice in early modern Suriname, we need to first examine the larger process of negotiation taking place in Suriname: that between the Jewish community and the colonial state.

Jewish marriage and the colonial state

David Nassy (1747-1806), scion of the influential Judeo-Surinamese Nassy family, in his 1788 *Essai Historique sur la Colonie de Surinam* (published in Dutch in 1791) sketched an idyllic picture of Suriname's Jewish community in what he termed its 'Golden Age': the 1680s through the early eighteenth century. In this early period, Nassy wrote, Surinamese Jews were prosperous, widely respected, and enjoying considerable communal autonomy, especially with regards to marital affairs: "their marriages, back then, were consecrated among them with the right of complete legality and the marriage agreements [*ketubas*] contracted before their Rabbis with customary ceremony, had preference over all debts, to the advantage of their wives."[65] By the late eighteenth century, in Nassy's narrative, the picture was less rosy: the Jewish community in Suriname had declined both in wealth and in status, and was not treated with the same respect as in its heyday. Notably, however, Nassy was not particularly concerned about government infringement on Jewish privileges, with the exception of one key area: marriage. The watershed, for Nassy, came in 1704, when the Political Ordinance of Holland became applicable to all marriages in Suriname, including Jewish marriages. Prior to this, Nassy wrote, "Jews married among each other according to their own laws with regards to the degrees of kinship."[66] The Ordinance posed a problem to the Jewish practice of Levirate marriage, because it banned marriages between widows and their late husband's brother, demanded by the Jewish custom. As a result, Jewish men intending to wed their brother's widow had to obtain special dispensation by either paying a "voluntary gift" to the *Fiscaal* or, if the latter refused, by turning to the States General in the Netherlands.[67]

The decision – made by the States General in 1703 after the *Mahamad* of Suriname had petitioned them to allow Surinamese Jews to continue to handle marriage and inheritance according to their own laws and customs – was certainly a blow to the Jewish community's autonomy in marital affairs. It also considerably expanded the colonial government's administrative control over Jewish marriages: in addition to specifying forbidden degrees of kinship, the Political Ordinance also mandated registration of marriages with the magistrates.

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chances of dissolving their marriage unilaterally, by filing for divorce on the ground of 'malicious desertion' – the best Jewish women could hope for was for their community to put pressure on the missing husband to either return or divorce. Herman Roodenburg, *Onder censuur: de kerkelijke tucht in de gereformeerde gemeente van Amsterdam, 1578-1700* (Hilversum: Verloren, 1990), 283; Helmers, *Gescheurde Bedden*, 244–46.

[65] David Nassy, *Geschiedenis der kolonie van Suriname Behelzende derzelver opkomst, voortgang, burgerlyke en staatkundige gesteldheid, tegenwoordigen staat van koophandel, en eene volledige en naauwkeurige beschryving van het land, de zeden en gebruiken der ingezetenen.*., vol. II (Amsterdam: 1791), 103, available via https://www.dbnl.org/tekst/nass008gesc01_01/nass008gesc01_01_0001.php.

[66] Nassy, II:105.

[67] Ibid., 105-106.

Although the policy was implemented in early 1704, shortly after the arrival of the news in Suriname, and Jews were given two weeks to register and confirm their marriage with the Governing Council, by January 1705 it became clear almost no one had followed the mandate. As a result, the Council passed a resolution that required Jewish bridal couples to obtain a marriage license for ten guilders, and banned Rabbis from marrying couples who did not have a license from the Council, under penalty of a 200 guilder fine. [68] It should be noted that in principle, as per the 1629 Order of Government, the Political Ordinance had applied to all marriages in Suriname since the moment it became a Dutch colony in 1667 just as it did in other colonies in the WIC charter zone, but Nassy's account suggests that deviation from this principle for Jewish settlers had been tacitly allowed in the early decades following the Dutch takeover. A similar process happened in Curaçao, where the requirement on non-Protestant couples to formalize their union with the magistrate, accompanied by three consecutive proclamations, was rarely followed in practice, and where it was only in the eighteenth century that secular authorities began making attempts to enforce and further regulate this procedure – for Jews as well as Catholics.[69]

One should be cautious, however, in viewing the eighteenth century as one of increasing unilateral encroachment by the Christian government on Jewish communal autonomy. While new regulations would continue to appear in Curaçao and especially in Suriname throughout the eighteenth century that further entangled Jewish marital affairs with the colonial administration, the *Mahamad* and the colonial government were far from always in conflict with each other in this process. Some regulations appear to have come about in anticipation of or in response to legal battles within the community, such as the 1686 mandate, in Suriname, to register ketubas with the colonial secretary or a *jurator* (notary), or the 1735 requirement that Jewish widows and widowers who wished to remarry first needed to make financial arrangements for their prior children.[70] A 1750 ordinance concerning Curaçao, meanwhile, from Stadholder William IV, styling himself as "Governor-General" of the WIC, seems to have been issued on the request of the Willemstad *Mahamad* and can be read as a sign of the Parnassim's reliance on secular powers to assert their authority: following a dispute between the *Mahamad* and the local rabbis on the one hand and "several members of the [Jewish] community" on Curaçao on the other, the ordinance proclaimed that "all dissenting members of the Portuguese Jewish Nation on this island must […] once again join the congregation, in order to be governed by the Parnassims according to the Askamoths of the Portuguese Synagogue, as before."[71] The colonial *Mahamads* also lobbied with the States General to entrench Jewish privileges: in the 1740 the latter passed a resolution which established that ketubas precluded any and all community of goods, thus

[68] NL-HaNA, Nederlands-Portugees Israëlitische Gemeente Suriname [digitaal duplicaat], 1.05.11.18, inv.no. 94, Privileges granted to the Portuguese-Jewish Nation in Suriname, 1754, Tit. V, folio 39-42.
[69] CP vol I #176 (1743); CP vol II #376 (1787); V. van der Velden-Heutger and B. D. van der Velden, "Rechtspluralisme Op Curaçao: Joodse En Rooms-Katholieke Huwelijken," in *Ius Romanum-Ius Commune-Ius Hodiernum: Studies in Honour of Eltjo JH Schrage on the Occasion of His 65th Birthday*, ed. Harry Dondorp et al. (Aalen: Scientia Verlag, 2010), 188.
[70] NL-HaNA, Raad van Politie Suriname, 1.05.10.02, inv.no. 212, Resolution 6 March 1686, folio 6-7; WIP-S-I, 164, 430.
[71] Stadsarchief Amsterdam - Archief van de Portugees-Israëlietische Gemeente, access number 334, inv.no. 1029, Publicatie Curaçao, scan 667-673.

protecting wives entitled to funds from their husbands' estates from their husbands' creditors.[72] This decision had come after the *parnassim* of Amsterdam had petitioned with the Court of Holland on behalf of the Jewish communities in Suriname and Curaçao.[73] While this rule was incorporated in the mid-eighteenth-century compendium of privileges compiled by the Portuguese Jewish community in Suriname, so were rules that effectively brought Jewish marriage more closely into the fold of the non-Jewish Surinamese colonial government. As of 1742, all bridal pairs of non-conformist religious groups, which included Jews, were required to pre-register their marriage in front of two members of the Council of Policy and the colonial secretary, in accordance with the Political Ordinance. This seems to have actually been enacted in practice, because a year later special arrangements were made to accommodate the large number of non-conformists who were using the Council of Policy's chamber for both pre-registrations (*ondertrouw*) and wedding ceremonies (*trouwen*).[74]

The line between affirmations of Jewish privileges and increasing degrees of government control over Jewish marriage arrangements was thus rather blurry. This is perhaps not surprising considering the *Mahamad* in the Caribbean colonies was never sovereign, but ultimately depended on the colonial government's bottom-line enforcement of its communal control: by relying on the secular authorities in the Netherlands and in the colony to safeguard the legality of its marriage practices, the Jewish community ironically saw an increasing mode of control by those same authorities over its members' lives. Moreover, while this process can be seen as a net loss for the *Mahamad*, individual Jewish men and women could potentially benefit from it in practice. The limitations placed on levirate marriage by the Politcal Ordinance, for example, were a blow to the autonomy of the ancient Jewish custom, but only an encroachment to individuals insofar as recently bereaved widows and their brothers-in-law were eager to wed each other. In practice, it seems that many were not, and the Surinamese *askamoth* even made arrangements for this reality: a husband who wished to divorce his wife on his deathbed in order to relieve her from the duty of marrying his brother was allowed to do so, and rabbis were even obligated to provide the *get* for free in this case. The same applied for a *halitsa*, or act through which the brother-in-law could avoid the custom.[75]

Secondly, the pluralistic legal space that Caribbean Jews inhabited, moving between Jewish and gentile legal institutions, arguably gave them a considerable range of choices in making marriage and divorce arrangements. While there were rules in place that restricted so-called "forum shopping" – such as the prohibition on using the colonial civil court for legal conflicts between Jews concerning less than 600 guilders – there were plenty of opportunities for Jewish pairs to use the Dutch colonial legal institutions to their advantage.[76] A key institution was that of the notary – an essential tool for legal creativity and adaptation among Christians and Jews alike. Although as of 1684 the Sephardic community in Suriname had its own *jurator*, those who

[72] The resolution was enacted in Suriname on January 2 1741. WIP-S vol I, 469.
[73] NL-HaNA, Nederlands-Portugees Israëlitische Gemeente Suriname [digitaal duplicaat], 1.05.11.18, inv.no. 94, Privileges 1754, Tit IV, folio 38-39.
[74] Ibid., Tit V, folio 44-46.
[75] Ibid., inv.no. 113, Concept-translation of the Askamoth, 1787, folio 126.
[76] The Curaçao Askamoth did not set a specific financial limit, but stipulated that members were not allowed to sue one another before the island's council without first attempting mediation by the Mahamad, and even after that only with the latter's permission. Stadsarchief Amsterdam - Archief van de Portugees-Israëlietische Gemeente, 334, inv.no. 1029, Askamoth Curaçao, #11, folio 924.

wished to draw up a prenuptial agreement in addition to the ketuba generally did not do so with this Jewish civil notary, but with the secretary or sworn clerk employed by the colonial government.[77] The frequency with which they did so was not fixed: in the period of 1736-1742, nineteen out of twenty-four (79%) Sephardic couples who drew up a ketuba with their rabbi also signed a pre-nuptial agreement before the Dutch notary several weeks or months prior.[78] Half a century later, in 1790, only four out of twelve Sephardic couples did so, while Ashkenazi couples were disproportionately represented among those drawing up a contract.[79] Notably, for all four of these Sephardic couples, the bride brought significantly more wealth into the marriage than the groom, suggesting that by this point in time pre-nuptial agreements before the Dutch notary were primarily seen as an additional legal security for women's fortunes, whereas in other respects the religious ketubas were seen as legally sufficient. The prenuptials also acknowledged that the secular and religious contracts could be at odds with each other, but established the legal pre-eminence of the secular: "if and when a *quetuba* will be made according to Jewish law, the undersigned declare that they will hold this [ketuba] to be valid insofar as it corresponds to this [contract]."[80]

Although most stipulations corresponded to the standard elements of the ketuba (such as the specification of the bride's dowry and the groom's pledge to increase this amount by fifty percent, and inheritance arrangements), in some cases rights were negotiated for the bride that Jewish marriage law did not provide for. Sara Jurgemans, the widow of David Pereira Brandon who remarried with Isaac Capadoce in October 1790, stipulated that the house, land, and the enslaved men, women, and children that she brought into the new marriage would be seen as "paraphernalia" and not under her husband's authority, but under her full control.[81] Another option was to deviate from the ketuba-model in terms of inheritance rights: particularly in cases where grooms were considerably wealthier than their brides, who therefore had rather modest ketubas, a husband could provide his wife with an additional dower (*douarie*) to be paid out to her after his death – a practice that was also common among Christians in both Suriname and Europe.[82] Rachel Robles de Medina, who married Abraham de Mattos in 1736, was granted a

[77] In 1754, the office of the specifically Jewish Jurator was formally instituted. No prenuptial contracts can be found in the records of the Jewish *jurators*, contained in Suriname's old notarial archives: NL-HaNA, Notarissen Suriname tot 1828 [digitaal duplicaat], 1.05.11.14, inv.no. 780-801.
[78] For the ketuba data for the years 1702-1743, see: P.A. Hilfman, "Notes on the History of the Jews in Surinam," *Publications of the American Jewish Historical Society*, no. 18 (1909): 179–207. For the pre-nuptial agreements: NL-HaNA, Notarissen Suriname tot 1828 [digitaal duplicaat], 1.05.11.14, inv.no. 108-112. Prior to 1736, only fragments of the notarial records containing pre-nuptial agreements remain.
[79] In the two years prior, only two Sephardic couples appear in the prenuptial records of the civil notary. Ashkenazi couples, however, were frequent customers of the Dutch clerk by this point, registering more prenuptial agreements than any other group in Suriname. NL-HaNA, Notarissen Suriname tot 1828 [digitaal duplicaat], 1.05.11.14, inv.nos.135-137. A reason for this may be that, because the Ashkenazi community did not have its own juridical privileges to the degree that the Portuguese Jewish group did, Ashkenazi couples saw the colonial clerk as their only option for ensuring the validity of their ketubas in court.
[80] NL-HaNA, Notarissen Suriname tot 1828 [digitaal duplicaat], 1.05.11.14, inv.nos. 108-112.
[81] NL-HaNA, Notarissen Suriname tot 1828 [digitaal duplicaat], 1.05.11.14, inv.no. 137, 18 August 1790, folio 164.
[82] Ariadne Schmidt has shown this for Christian prenuptial contracts in the seventeenth-century Dutch Republic: Ariadne Schmidt, *Overleven na de dood: weduwen in Leiden in de Gouden Eeuw* (Amsterdam: Prometheus/Bakker, 2001), 113. Examples of Christian couples stipulating dowers for surviving partners can be found in NL-HaNA, Notarissen Suriname tot 1828 [digitaal duplicaat], 1.05.11.14, inv.no. 109 (1737) folios 23, 25, 59.

dower of 3000 guilders in addition to her ketuba of 450 guilders, should her husband die before her. Abraham even designated her as his sole heir in case he would die before the couple had children.[83] In rare cases, such as between the Ashkenazi bride and groom Braente Machielse and Benjamin Polak, a Jewish couple chose to apply the 'Christian' legal notion of community property to their marriage, meaning both would have equal ownership over the marital goods.[84] Even here, however, the ketuba was excluded from the jointly owned assets, as mandated by law since 1740.

Another area in which Surinamese Jews negotiated their own legal solutions in marital matters was divorce. Some husbands, no doubt, took the traditional route by requesting a *get* from their rabbi to present to their wife, but unfortunately no records of these divorces can be found in either the archive of the Portuguese Israelite Community or the Surinamese colonial archives. What does remain, however, are separation agreements drawn up before the colonial secretary or Jewish jurator and presented to the Council of Policy and Criminal Justice to be confirmed by the court.[85] Both in content and in form, these divorces differed from the traditional Jewish model on several important fronts. One was the role of the ketuba: although the bride-wealth (consisting of both the bride's dowry and the groom's addition) is generally understood in the literature on Jewish marriage law as not just a financial security in case of the husband's death, but also a 'divorce price' payable to the wife by the husband, this latter role was not a given among Surinamese Jews. When Moses Nahar and Rachel Jessurun ended their three-year marriage in 1795, for example, Rachel waived her right to her ketuba, including the fifty percent value her husband had promised to add to her dowry. Instead, the couple made their own division of the marital assets: Rachel would keep the house in Paramaribo and its contents, as well as the slaves she had brought into the marriage, while Moses would get to keep the cows that had been part of her dowry.[86] Lea Emanuels, who divorced in 1788, not only had to renounce her ketuba to come to a separation agreement with her husband of eighteen years, Moses Eleazer van Eemden, but make a further concession: her brother Ishak, who had assisted her in negotiating the split, was obliged to pay Moses Eleazer 400 guilders "to further his future enterprises".[87]

Another possible arrangement, slightly more beneficial to the wife, is demonstrated in the divorce agreement between Isak Abraham de Vries and Vroutje Machielsen. After a multi-year legal battle that had started when Vroutje filed a separation suit against Isak Abraham before the Dutch colonial court in 1795, the couple came to a separation agreement in 1798, confirmed by the court in 1799. In it, Vroutje agreed to drop the suit and pay for its judicial costs, while Isak Abraham renounced his marital power over his wife and her possessions. The document does not mention Isak Abraham paying Vroutje the *mohar* (the dower element of the ketuba) which

[83] NL-HaNA, Notarissen Suriname tot 1828 [digitaal duplicaat], 1.05.11.14, inv.no. 108, prenuptial contract, 23 January 1736, folio 145.
[84] Ibid., inv.no. 116, prenuptial contract, 29 April 1754, folio 12.
[85] These agreements can be found in the digital duplicates of Suriname's baptismal, marriage, and burial records, NL-HaNA, DTB Suriname [digitaal duplicaat], 1.05.11.16, inv.no. 43. Only contracts for the years 1795-1801 remain in this collection.
[86] NL-HaNA, DTB Suriname [digitaal duplicaat], 1.05.11.16, inv.no. 43. The Nahar-Jessurun ketuba (in Hebrew) can be found in NL-HaNA, Nederlands-Portugees Israëlitische Gemeente Suriname [digitaal duplicaat], 1.05.11.18, inv.no. 410, 29 January 1792, folio 25.
[87] NL-HaNA, Notarissen Suriname tot 1828 [digitaal duplicaat], 1.05.11.14, inv.no. 135, 18 July 1788, folio 141.

according to Jewish divorce law she should be entitled to. It does, however, state that the ketuba would remain fully valid, meaning that Vroutje would be entitled to take the amount she was promised in the ketuba from her husband's estate after his death – and no sooner.[88] Thus, while the marriage was 'terminated' by the agreement in the sense that Isak Abraham could no longer claim any husbandly authority over Vroutje, it would not be *dissolved* until either party's death, at least where the payment owed to Vroutje was concerned. Indeed, the separation effected by the court's confirmation of Vroutje and Isak's agreement, like all the others discussed here, was one of table and bed rather than a full and final divorce. While for Christians, this solution to a broken marriage was often the closest thing to a 'divorce' possible, for Jews a full divorce that would allow both parties to remarry was a relatively simple process. So why did some couples opt for this 'Christian' separation?

One explanation is that the separation agreements found in the Dutch colonial archives were supplementary, meant not to enact the divorce itself but rather make specific arrangements that the *get* process did not provide for. The deviations from the ketuba's function as a divorce price in the examples above underscores this idea, but there were other possible special agreements that couples might want to have affirmed by the court: Vroutje de Vries and Isak Abraham Machielse agreed, for example, that their children would be allowed to choose which parent they would want to live with. The fact that their separation kept the ketuba intact suggests that they did not fully divorce in the Jewish fashion, however, meaning they used the separation as an alternative, rather than compliment, to a *get* divorce. It is possible that Isak Abraham could not afford – or was unwilling – to pay Vroutje the full amount her ketuba entitled her to, and she used the pressure of the court case to come to a settlement with the separation agreement. This, along with the concessions women such as Rachel Jessurun and Lea Emanuels had to make, suggests that the disadvantage women faced as a result of the unilateral divorce process was not just theoretical, and that a separation of table and bed could serve as a compromise where husbands could not or would not finalize a divorce. There are more examples of Jewish women using the Dutch colonial court system to obtain a divorce from an unwilling husband. A particularly acrimonious one took place in Curaçao, between Ribca Lopes de Fonseca and Isaac Haim de Jacob Senior, with the former demanding a formal separation, alimony, and a safeguarding of her ketuba, and the latter asking the court to compel his wife to return to his home and place herself under his marital power again. Isaac had accused Ribca of adultery and in an earlier letter to her, had threatened to leave the island with her ketuba and only send her a letter of divorce, suggesting the court case was primarily about the financial obligations involved in the divorce rather than the end of their marriage itself.[89]

Another explanation for the use of legal separation rather than divorce is socio-cultural: just as many Christians were wary of opting for divorce even if they legally had this option and were encouraged by church authorities to reconcile, Surinamese Jews – and especially the Sephardim who shared many cultural norms with Iberian Catholics – faced considerable social pressure from their community and religious leaders to at least leave the option of reconciliation open. The abovementioned Moses Eliazar van Emden and Lea Emanuels, for example, were persuaded

[88] NL-HaNA, DTB Suriname [digitaal duplicaat], 1.05.11.16, inv.no 43, Separation #4, 16 April 1799, scan 32.
[89] NL-HaNA, Curaçao, Bonaire en Aruba tot 1828, 1.05.12.01 inv.no. 73, Court records Curaçao 1774, folio 232, 243.

by the regents of the German Synagogue "and other right-minded people" to reconcile after they had initially petitioned for separation with the court. Although the pair had acquiesced, they had clearly not been convinced of their marriage's resilience, because they drew up a contract stipulating the conditions under which they could separate "in case, against all hope and expectations – may the supreme being preserve – their respective moods prove unable to sympathize with one another."[90] This proved true within several months, and the separation was finalized after all. Similarly, Abraham Joseph Sarguy and Sara Jona had separated in 1787 but reconciled shortly thereafter, choosing to maintain the validity of their separation agreement, just in case they decided to separate again. In 1790, they did, adding a few extra stipulations to the 1787 agreement. In this separation, too, the ketuba was not returned in its entirety (meaning the wife's dowry plus the husband's dower of a fifty per cent addition). Instead, Sara took back the goods she had brought into the marriage, valued at 2544 guilders, which would be subtracted from the ketuba she would be owed at the moment of Abraham Joseph's death. In addition to this, she would receive alimony on a monthly basis, something that was by no means a given for divorcing wives, whether Jewish or Christian.[91]

The political economy of enslaved reproduction in slave owner marriage

It is clear that the entanglement of Jewish and non-Jewish institutions regulating marriage transformed the marriage and divorce arrangements of the Jewish Surinamese community, giving rise to a highly diverse legal practice with a wide range of options. This process was strongly gendered, affecting men and women in different ways. Theoretically, Jewish women had most to gain from government involvement in marital affairs and especially divorce, since they could use a court case as leverage in a divorce process over which they would otherwise have little control. There were considerable barriers to doing so, however: since these women could not legally represent themselves before the Dutch colonial court, they had to first petition the colonial government for a curator, meaning they were dependent on Governor and Council to be able to take any legal action against their husbands. The legal fees involved, moreover, would have been prohibitively expensive for many, so the 'emancipatory' role of the colonial government for women should not be overstated. The most decisive factor in Jewish women's bargaining position vis-à-vis their husbands, instead, lay in their personal wealth, registered from the start of their marriage in their ketuba, along with the role of family members helping to negotiate marriage contracts and divorce agreements. The vast majority of the Jewish brides and wives who show up in the records were neither penniless nor wealthy plantation owners. Instead, starting (and often ending) their marital lives with ketubas ranging from a few hundred to several thousand guilders, they comprised the closest thing Suriname had to a 'middle class'. Characteristic of Surinamese Jewish women's property, moreover, was that it largely consisted (aside from clothing and jewelry) of enslaved human beings, particularly women and children.

Enslaved people have thus far remained in the background of the discussion, in large part because marriage and divorce were the prerogative of the free and, disproportionately, of well-to-do whites. Both marriage and divorce had tremendous impact on the lives of enslaved men,

[90] NL-HaNA, Notarissen Suriname tot 1828 [digitaal duplicaat], 1.05.11.14, inv.no. 135, folio 141.
[91] NL-HaNA, Notarissen Suriname tot 1828 [digitaal duplicaat], 1.05.11.14, inv.no. 137, folio 195.

women and children, however. When young (Jewish) women married, they often brought one or more enslaved women, along with their children, with them from their parental home to their new household, as part of their dowry. Thus, the start of one – white – family meant the tearing apart of another – black – family: while mothers generally were able to take their (infant) children with them, other family bonds, such as those with fathers, grandparents, and siblings were not regarded in this process. Separation could happen again when the marriage ended, whether through divorce or death, and enslaved people were treated as interchangeable parts of estates. In the Sarguy-Jona divorce, for example, Sara Jona stipulated the right to take two enslaved women with her to replace the two women who had been awarded to her in the couple's prior separation agreement, who had since died. She chose a woman named Premiere and her daughter Quasseba.[92]

It is not surprising that the enslaved people listed in ketubas were almost always women and their children: they were to fill domestic functions in the newly formed household and may sometimes even have been the bride's nursemaid, thus providing continuity and familiarity for young brides. There is also an economic dimension imaginable, however, fostered by the particular political economy of Jewish marriage in Suriname: because all interests and profits from the financial assets a Jewish bride brought into her marriage fell to her husband, one of the few ways in which married Jewish women could actually grow their personal property, besides inheritance, was through the natural reproduction of their slaves. Since children automatically followed the status of their mother and became property of their mother's master – or mistress – upon birth, women of child-bearing age and infants whose value would grow as they aged formed the closest thing to 'investments' middle-class married Jewish women could hold. Thus, when Moses Nahar and Rachel Jessurun separated, Rachel took with her not only the enslaved woman Regina who had come with her when she married, but also the latter's son, "a mulatto boy named Friso" who was described as having been "gained" (*aangewonnen*) during the marriage – a euphemism that possibly belies the act of rape by Moses Nahar through which the child had been conceived. If Friso was indeed Moses' son, then keeping him in her property had another material benefit for Rachel, by preventing him from becoming manumitted and a potential beneficiary of her husband's will, at the expense of her own children's inheritance.

There are more examples of expectations of future enslaved offspring as potential capital: the 1789 prenuptial agreement of Hartog Abraham de Vries and Marianna Alexander Salomons specifies the property the bride brought into the marriage as part of her dowry. The greater part of its value, 2650 guilders out of a total of 4850, came from a group of "family slaves": the enslaved woman Medea who had been gifted to Marianna by her father in 1775 when she was a young girl, now appraised along with her children at a value of 1200 guilders, as well as a black woman named Mimie "and her mulatta daughter Antje", together appraised at 1450 guilders. Should Hartog Abraham die before his wife, the contract stipulated, Marianna would have the choice whether to keep "the slaves brought by her, with the children they may come to produce over time" or to keep a claim of equal value on her husband's estate.[93] Long before Marianna's marriage, Medea's reproductive potential had been used by the family as an investment, with her

[92] NL-HaNA, Notarissen Suriname tot 1828 [digitaal duplicaat], 1.05.11.14, inv.no. 137, folio 195.
[93] NL-HaNA, Notarissen Suriname tot 1828 [digitaal duplicaat], 1.05.11.14, inv.no. 136, folio 47.

offspring serving to grow Marianna's dowry and therefore her prospects as an eligible bride, just as the enslaved family's future generations held the promise of capital growth for Marianna as a married woman. Hilary Beckles has described this approach to enslaved women's reproductive capacities succinctly:

> The enslaved offspring of black women constituted first and foremost a capital addition to the inventory of assets. […] A common expectation was that the child's market value would increase significantly after the weaning exercise – usually between two and four years of age – to exceed the value of the mother by its mid-teens. In this way an enslaved woman could easily replace several times the capital outlay involved in her purchase.[94]

The majority of scholarship on this phenomenon focuses on the actions of male slave owners, exploiting enslaved women's sexuality in a dual sense, for pleasure and for profit.[95] The discussion, moreover, has primarily been centered on the plantation complex with its need for a constant supply of labor. Jennifer Morgan has observed that "whether laboring among sugar cane, coffee bushes, or rice swamps, the cost-benefit calculations of colonial slaveowners included the speculative value of a reproducing labor force."[96] The above examples show, however, that this speculative logic extended beyond the plantation economy to urban and domestic slavery, and centered not exclusively on productive labor power, but also – or perhaps especially – on increasing personal wealth through the natural reproduction of people seen as assets that could be liquidized. The exploitation of enslaved women's sexual and reproductive capacities is arguably endemic – or even foundational – to chattel slavery, and not confined to any one group of slaveholders or setting of enslavement.[97] It is worth noting, however, that there were particular socio-economic circumstances that made this approach to human sexuality particularly prominent.[98] For eighteenth century Suriname, whose plantation regime was not known for fostering natural reproduction, with little evidence to suggest planters took any effort to stimulate high birth rates as an alternative to a continuous supply of new captives from Africa, the commodification of enslaved women's reproductive capacities is not primarily to be found among plantation owners, but among middle-class urban housewives.[99] Jewish women were not alone in profiting off the children born to women enslaved in their households, but the specific legal and economic regime that governed their marital lives meant that this mode of profit-extraction was of particular economic importance to them. Marriage and divorce thus not only intimately tied men and women's private lives to larger political developments at the communal

[94] Beckles, "Perfect Property," 149.
[95] Some exceptions include Stephanie E. Jones-Rogers, *They Were Her Property: White Women as Slave Owners in the American South* (London/New Haven, CT: Yale University Press, 2019); Marisa J. Fuentes, "Power and Historical Figuring: Rachael Pringle Polgreen's Troubled Archive," *Gender & History* 22, no. 3 (2010): 564–84; Hilde Neus, *Susanna du Plessis: portret van een slavenmeesteres* (Amsterdam: KIT Publishers, 2003).
[96] Morgan, *Laboring Women : Reproduction and Gender in New World Slavery*, 3.
[97] See also Cecily Jones, *Engendering Whiteness: White Women and Colonialism in Barbados and North Carolina, 1627-1865* (Manchester: Manchester University Press, 2007), 159–61; Fuentes, *Dispossessed Lives*, 2016, 74–75, 86.
[98] Sasha Turner has shown this for Jamaica's sugar economy, where planters became concerned with enslaved women's fertility after the abolition of the slave trade threatened to cut off the constant supply of new enslaved labor from Africa. Sasha Turner, "Home-Grown Slaves: Women, Reproduction, and the Abolition of the Slave Trade, Jamaica 1788-1807," *Journal of Women's History* 23, no. 3 (September 3, 2011): 39–62.
[99] Stephanie E. Jones-Rogers has made a similar argument for the U.S. South in *They Were Her Property: White Women as Slave Owners in the American South* (London/New Haven, CT: Yale University Press, 2019).

and colony-wide level, but also linked the lives of free white and enslaved black families in violent and extractive ways.

Conclusion

The property-owning communities that populated Dutch overseas settlements, engaged in trade, labored, and held control over enslaved workers were not exclusively Christian – far from it. Chinese, Muslim, and Hindu populations in the East Indies and Jewish communities in the Dutch Caribbean were excluded from the Christian marriage circuit and elite formation that was part of it, but nonetheless formed influential parts of colonial societies with their own norms and practices.[100] Portions of the Chinese and Jewish groups in the VOC and WIC world, respectively, can be seen as parallel elites to their European Christian counterparts, whose concerns about marriage, property, and hierarchy mirrored those of company elites. For these groups, however, control over communal marriage and divorce practices was not as self-evident as it was for Christians. Jurisdictions over marriage, in these pluralist settings, were far from neatly separated, and were frequently interdependent: Dutch authorities relied on communal authorities to administer and regulate their respective communities, while for the latter – the *Mahamad¸* the Chinese Council, and local headmen and priests – the colonial government formed both a potential threat to and a guarantor of their communal control. Non-Christian individuals could turn this jurisdictional dance to their advantage, moving between institutions to give shape to their married and divorced life with considerably more flexibility than Christians could. A significant shift in this dynamic is noticeable over the course of the eighteenth century, however, with secular governments increasingly expanding their grip on 'corporate' authority structures. In the VOC world, where Dutch family law did not apply to non-Christian populations, this took the form of a mid-century surge in company-ordered codification of specific population groups' 'own' laws, meant to be familiar and 'authentic' enough to not spark widespread resistance but uniform enough to allow for more consistent regulation and judicial practice – accompanied by an intensification of registration requirements, in the face of an expanding taxation regime *and* a growing engagement with the legal system by a variety of colonial residents. In Suriname (and argbuably Curaçao as well), where Jewish colonists were always already (at least theoretically) governed by Dutch family law, the shift was more subtle, but nonetheless noticeable in increasing institutional and regulatory interventions into Jewish marriages, increasing use of secular institutions by Jewish men and women, and a growing reliance by rabbis and Parnassim on secular authorities to assert their communal control.

Marriage and divorce, for Christian as well as other ethno-religious groups, as we now have seen, regulated the formation of families and thus communal reproduction. Secular colonial authorities worked together (not always harmoniously and certainly not on equal terms) with Christian, Jewish, Muslim, Chinese and other, localized, communal authorities to ensure that only authorized pairings cold reproduce in legally sanctioned family units, under pre-determined conditions. But while we have seen that authorities were limited in their ability to control especially non-Christian marriage and divorce in practice, there was even less

[100] Jews, it should be noted, were not absent from the VOC world, but formed a considerably smaller minority than in the Atlantic. Jewish merchants occasionally show up in the civil court records of Cochin, but mainly in commercial, rather than marital, disputes.

institutional grip on the many kinds of *unauthorized* sexual and reproductive unions that formed under the trade companies' rule. In the following chapters, we will turn to these illegal but nonetheless ubiquitous relationships and their consequences, from judicial punishments to illegitimate children and violent uprisings, beginning with an exploration of 'illicit sex' as a problem confronted by colonial authorities.