

The Evolution of the Melbourne Beth Din

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Abstract

This article commences with a historical overview of the Melbourne Beth Din (MBD), Australia's longest standing Rabbinical court. Of particular focus is the cause of its inception, its relationship with Melbourne's various Hebrew Congregations, the key personalities who led and participated in its operations, and the communal context within which it operated.

The second part of the article explores elements within the Melbourne Jewish community who, dissatisfied with the MBD, challenged its centrality within the community by forming alternate institutions. In addition, the shift over time in its relationship with its founder, the Chief Rabbinate of the British Empire, is analysed. Last, while the MBD primarily concerned itself with matters of personal status and ritual matters, its dealings in civil arbitration are discussed, which pave the way towards a greater understanding of the context for recent rulings in the Victorian and New South Wales Supreme Courts in relation to civil arbitration awards issued by ad hoc Batei Din.

Introduction

Batei Din (Jewish religious courts, sing. Beth Din) in Melbourne and Sydney have in recent times come to the attention of the public, in the context of their awards and procedure in civil arbitration being challenged in the Australian courts. In addressing the issues which have presented themselves in these cases, it is important to "see where the feet grow from"¹ in order to gain a more holistic understanding of the issues which have presented themselves of late. Understanding the broader culture and historical underpinnings of present-day institutions enables one to detect relevant trends and synthesise proposed changes more seamlessly and respectfully into the fabric of the current Beth Din structure in Australia.

Several resources shed light on the history of the Melbourne Jewish Community and its major synagogues, many of which touch upon the Melbourne Beth Din and its significant personalities. I am especially indebted to Yossi Aron and Judy Arndt's *The Eternal Remnant* which traces the history of the Melbourne Hebrew Congregation, whose ministers formed the chairmen of the Beth Din in its first century of operation, as well as to Malcolm John Turnbull's *Judaism in Melbourne 1870-1970: The Breakdown of Anglo-Orthodoxy and the Growth of Religious Pluralism* which provides fascinating insight into the historical shifts within the Melbourne Jewish Community and its leadership. While these texts provide important research which has assisted this study, neither aim to provide a full account of the Melbourne Beth Din's history, nor do they attempt to make sense of its evolution over the past 150 years. The role of this article is to build upon these (and other relevant) studies, to provide the reader with a brief study of the

Beth Din in terms of its history and the themes extracted therefrom. The process of uncovering this fascinating history has included a number of interviews with leading historians and academics of the Melbourne Jewish Community, the study of primary documents pertaining to the later Rappaport years (1970-1980) and consultation with the archives of the community's newspapers. The minute books of the Melbourne Beth Din, which are referenced in several secondary sources quoted herein, were not consulted by the author in this study and could provide material for further research.

In tackling the formidable task of putting to paper a rich and complex history, the first step is to clearly lay out the chronology of significant developments of Australia's first Beth Din to be sanctioned by the British Chief Rabbinate, the Melbourne Beth Din. Following this, the article analyses several over-arching trends and themes which assist in understanding the meta-story of the Melbourne Beth Din. These include the evolving relationship between the Melbourne Beth Din and the Chief Rabbinate of the British Empire, reflecting broader trends within the Melbourne Jewish Community; the presence of alternate Batei Din and their relationship with the 'establishment' Beth Din; and the arbitration of civil disputes at the Beth Din.

Origins of the 'Local Beth Din'

The Melbourne Beth Din, which was born as the 'local Beth Din', a name which made clear its subordination to the Beth Din of the Chief Rabbi in London, has a history of over 150 years. The subheadings below demarcate 'epochs' in Beth Din's evolution and aid in understanding what can be quite a dense history, comprised of many events and fascinating personalities each of which could be the subject of its own independent study.

The catalyst which brought the local Beth Din into existence was the conversion crisis which engulfed the fledgling Jewish community in Australia in the nineteenth and early-twentieth centuries. The Jewish and general community suffered from a severe gender imbalance because of the fact that it was primarily single men who had journeyed to the goldfields seeking their fortune. The relative number of Jewish women to men resulted in many Jewish men entering partnerships with Christian women. Some of these couples wished to regularise their situation from a *halakhic* (Jewish law, n. *halakha*) standpoint by converting their partner to Judaism (Aron and Arndt 1992: 331-32). As Jewish law mandates that a Beth Din oversees that the requirements of conversion are adhered to, one of the earliest needs of the Australian Jewish community was for the establishment of a Beth Din in the colonies.

In establishing a Beth Din, permission from the Chief Rabbi of the British Empire was sought. This position of authority had emerged in early 18th Century London and grew to be recognised by the Ashkenazi Orthodox communities of the British Empire as the Jewish equivalent to the Archbishop

of Canterbury. A letter sent in 1848 by the President of the Melbourne Hebrew Congregation, a Synagogue that had been formalised in 1841, to Chief Rabbi Nathan Marcus Adler raised, among other questions, “whether, under favourable circumstances, you would authorise the making of female proselytes, there being one or two cases that have very frequently been brought under our notice, but which we have invariably refused to entertain, not thinking it a matter for laymen (most of whom are young and inexperienced in such affairs) to legislate upon?” (Goldman 1954: 59)

While the response to this question is not known, the resistance of the Chief Rabbinate towards permitting conversion is well documented. In 1833 the London Beth Din had stated that “it is not permissible in this country to convert any person” in response to what they perceived to be ban on Jewish conversion by Oliver Cromwell in 1656 as a proviso for the Jews’ return to England (Turnbull 1993: 243). In addition, under Chief Rabbi Nathan Marcus Adler and later under his son Chief Rabbi Herman Adler, a strict policy of centralised religious authority was in place, which frowned upon attempts locally and abroad to assert rabbinic leadership (Apple 1994: 348). This was exacerbated by the dearth of qualified rabbis in Australia, the flagship synagogues being led by ‘reverends’.² As such, several attempts at forming a Beth Din under the aegis of the Chief Rabbinate were summarily declined.³

Aside from *geirut* (conversion to Judaism), a validly constituted Beth Din is also a requirement in facilitating a *gett* (divorce in accordance with Jewish law, pl. *gittin*). Overall, this was not a pressing communal issue insofar as divorce was something of a rarity in the nineteenth and early-twentieth century. However, it was in the context of obtaining a *gett* for a Jewish woman who remained in England while her husband was sent off to Australia as a convict that the first known ad-hoc Beth Din in Australia was arranged. Rabbi Aaron Levy, a delegate of the London Beth Din, was sent to Australia in 1830 to procure the *get*. He remained in New South Wales for six months, during which time he assisted in organising the religious affairs of the Jewish community in Sydney and performed a conversion (Pfeffer 2008: 287-98).

Chief Rabbi Adler later recognised the unique challenges of the Australian Jewish community and did grant Reverend Herman Hoelzel⁴ permission to oversee the performing of conversions in the 1850s (Turnbull 1993: 241). However, it was only upon the arrival of the learned Reverend Samuel Herman, who was inducted as minister of the Ballarat Congregation in 1864, that the Chief Rabbi granted permission for a Beth Din of limited jurisdiction to come into being, with Herman as the *Av Beth Din* and East Melbourne Hebrew Congregation’s minister, and their *shoḥet* (ritual slaughterer), and Reverends Moses Rintel and Isaac Pulver as *dayanim* (judges, sing. *dayan*) (Goldman 1954: 172). It was the first such entity authorised by the Chief Rabbi outside of London and the Beth Din was permitted ‘only to act in cases of emergency’ with all other cases to be brought to the Chief Rabbi for his ‘special sanction’ (Aron and Arndt 1992:

334). Herman was 70 years old and his English was limited, and thus while he was formally the *Av Beth Din*, it was Rintel who would have appeared the senior member given his proficiency with the language and his greater experience with the Australian community.⁵

1864-1882: A rocky start

The first two decades of the local Beth Din of the Colonies⁶ were turbulent, primarily as a result of the tensions between its members, reflecting the schism in the Melbourne Jewish community at the time. Rintel had served as the first minister of the Melbourne Hebrew Congregation from 1849 but as a result of a dispute with the Board of the Synagogue, he left in 1857 to form the 'Mickveh Yisrael Hebrew Congregation' which was later to become known as the East Melbourne Hebrew Congregation (*Jewish Herald* 1880). Disputes emerged between Rintel and the new minister at Melbourne Hebrew Congregation, thirty-year-old Reverend Abraham Frederick Ornstein, who had assumed the role in 1866 (Aron and Arndt 1992: 39). Despite Rintel's departure from the 'oldest and principal Congregation of Melbourne',⁷ he still saw himself as the 'Senior Jewish Minister' of Melbourne, and the dispute between the two engulfed the community.⁸

In late 1865, the Chief Rabbi attempted to grant the Beth Din communal acceptance by recommending the establishment of a Joint Committee, comprising of lay members of both congregations, to recommend eligible converts to the Beth Din. The 'Joint Committee of Gerim and Guerros of the Melbourne and East Melbourne Hebrew Congregations' was duly established but was embroiled in dispute a few years later, when the members of the Melbourne Hebrew Congregation resigned from the committee due to Rintel and Pulver's intransigence (both were from East Melbourne Hebrew Congregation) towards reducing the fees for conversion. The committee was reconstituted by the Chief Rabbi in 1869, and later in 1871 it became the 'Conjoint General Purposes Committee', denoting its ambit in dealing with all matters affecting the Jewish community – not just conversion. A short while later, Rintel organised an ad-hoc Beth Din to perform a conversion without informing his colleagues at the local Beth Din. When this action was protested at the Conjoint Committee, the delegates of East Melbourne Hebrew Congregation resigned, rendering the committee defunct (Goldman 1954: 191-95).

The friction between Rintel and Ornstein played itself out in the Beth Din. Upon Pulver leaving Melbourne in 1871, Rintel proceeded to replace him on the Beth Din with the soon-to-be President of the East Melbourne Hebrew Congregation, Wolf Davis, instead of Ornstein. Infuriated at having been overlooked, Ornstein wrote to the Chief Rabbi, triggering Wolf Davis' resignation and his appointment to the Beth Din in 1872 on the Chief Rabbi's orders (Goldman 1954: 194). Their acrimonious relationship continued, with Rintel refusing to allow any converts, even when they had been sanctioned

by the Chief Rabbi, which resulted in his removal from the Beth Din. Later in the decade, it appears that Rintel was restored to the Beth Din⁹ and was active as a *dayan* until the time of his death (*Jewish Herald* 1880).

With Herman's and Rintel's deaths in 1879 and 1880 respectively, Reverend Israel Goldreich, minister of the Ballarat East Jewish Synagogue, assumed the position of Av Beth Din (Havin 2007: 46). His colleagues on the Beth Din were Reverend Elias Blaubaum, the first minister of St Kilda Hebrew Congregation, who had been appointed as a *dayan* at the time that the Chief Rabbi had expelled Rintel from the Beth Din (Goldman 1954: 213), and Reverend Dattner Jacobson, the minister of Melbourne Hebrew Congregation from 1877 who was also appointed as a *dayan* at that time.¹⁰ Jacobson's tenure at the Beth Din was mired in controversy, fuelled by his public statements, both in *The Argus* and at the pulpit, in favour of making converts (Goldman 1954: 307). In addition, Jacobson proceeded to admit converts, appropriating their fees for personal financial gain, without consultation with the local Beth Din or the Chief Rabbi. Goldreich and Blaubaum informed the Chief Rabbi of this in 1882 and Jacobson was subsequently expelled from the Beth Din (Turnbull 1993: 244-47).¹¹

1883-1936: Abrahams and Brodie

Shortly after Jacobson was reprimanded for his unauthorised activities, he shocked the community by announcing his resignation as minister of Melbourne Hebrew Congregation in a sermon, following which he ventured into the pews to sit with the congregants as a regular member (Goldman 1954: 311). While Jacobson evidently regretted having resigned (*Jewish Herald* 1882), the community was ready to move on, and began the process of recruiting a new minister. In 1883, Rabbi Dr Joseph Abrahams was appointed minister of Melbourne Hebrew Congregation. He had the appropriate qualifications for his role as Av Beth Din¹² and served in this capacity for almost forty years, after which he remained on the Beth Din as a *dayan* until his passing.

In 1888, with the appointment of Reverend Jacob Lenzer as minister of East Melbourne Hebrew Congregation, a new era of cooperation between the major synagogues was reflected by his admittance onto the Beth Din alongside Abrahams and Blaubaum, who represented Melbourne and St Kilda Hebrew Congregations respectively (Aron and Arndt 1992: 185). However, this newfound calm was to be unsettled by the emergence of a new community of immigrants from Eastern Europe, which was coalescing in Carlton. This group did not naturally align itself with the establishment Beth Din and its Anglo-Orthodox heritage and membership. While one can trace the 'split' between the Anglo and Eastern European worldviews as underlying the tensions that triggered the breakaway divide between the Melbourne and East Melbourne Hebrew Congregations back in 1857 (Rosenbaum 1994: 519), its first act of autonomy came in the form of a butcher that opened in

Fitzroy in 1891 which advertised itself as ‘Kosher’ without reference to the Beth Din or any of the establishment synagogues (*Jewish Herald* 1891). This butcher was subsequently ‘reigned in’ and put under the auspices of the Beth Din (*Jewish Herald* 1892). While this initial ‘rebellion’ was quashed, the sentiment it represented gathered momentum over time, evidenced in the proliferation of ad-hoc, and eventually more established, alternate Batei Din in Carlton in the decades that followed.

Reverend Jacob Danglow joined the Beth Din during Abrahams’ era. Danglow had assumed the position of minister of St Kilda Hebrew Congregation in 1905, and despite his lack of formal rabbinic ordination,¹³ represented both St Kilda and the wider community with distinction for 52 years, earning himself the appellation in his eulogy of being ‘the uncrowned monarch of Australian Jews’ (Levi 1995: 298). Danglow replaced Blaubaum on the Beth Din but, due to his lack of practical experience was initially given the role of secretary of the Beth Din, and, as is noted in the minutes of his first sitting, ‘took no part in the discussion’ (Levi 1995: 35). Notwithstanding the fact that Danglow became a full member of the Beth Din in 1911 (Danglow 1921: 15), it appears that he maintained his fastidious record keeping. At the time of his passing in 1962, Rabbi Dr Izaak Rappaport of the Melbourne Hebrew Congregation, the Av Beth Din at the time, extolled Danglow’s ‘impartial and meticulous’ minute taking of the Beth Din’s meetings for close to thirty years (Levi 1995: 299).

In 1919, Abrahams resigned from the Melbourne Hebrew Congregation, but chose to remain on the Beth Din until his death in 1938. In late 1920, he communicated to Danglow his intention to retire immediately from the post of Av Beth Din. However, it appears that he maintained this role until the arrival of his successor, Rabbi Israel Brodie, three years later.

Brodie attracted negative communal attention in his first year as Av Beth Din, when the Melbourne Beth Din authorised no fewer than seven converts and was rumoured to have a backlog of 40 applicants (Levi 1995: 143). This was likely a result of the Beth Din’s limited functionality in its previous years under the aging Abrahams and Lenzer and the young and inexperienced Danglow,¹⁴ and its rejuvenation upon Brodie’s arrival, alongside the appointment of Rabbi Solomon Mestel as minister of the East Melbourne Hebrew Congregation in 1923, who also took his place on the Beth Din. The communal uproar at the spike in conversions led to the East Melbourne congregation disallowing the newly-appointed Mestel from sitting on any *geirut* cases (Turnbull 1993: 366-67). Six years later, Mestel resigned from the Beth Din over a disagreement with Brodie about the permissibility of playing sport on Shabbat (Aron and Arndt 1992: 85).

Later in Brodie’s tenure as Av Beth Din, a challenge engulfed the community related to the fledgling Beth Israel reform movement, which faltered under ill-suited leadership until the arrival of Rabbi Dr Herman Sanger in 1936. In 1931, the Beth Din proposed a statement that the Liberal

Jewish Synagogue is a 'separate Jewish sect' and as such requires 'a special burial ground to be set apart for those who choose to belong to [it]'. This statement was not made public at the time due to disagreement among the lay leadership (Levi 1995: 174). However, it was eventually implemented by order of Brodie himself, when he later visited Australia in his capacity as Chief Rabbi of the Commonwealth in 1952 (Levi 2009: 117). Further rifts between the Beth Din and the Liberal community followed Sanger's acceptance of a convert previously refused by the Beth Din. The *Australian Jewish Herald* decried this 'unwise' and 'unwarranted' act, to which the Board of Management of Synagogue Beth Israel responded that they are 'in no way under the jurisdiction of the local Beth Din' (*Australian Jewish Herald* 1936). Despite these public flare-ups, Temple Beth Israel, as it came to be known, would at times refer cases to the Melbourne Beth Din (Levi, interview) and the Orthodox rabbinate came to recognise the futility of attempting to assert its authority over the Liberal institutions (Porush 1977: 190).

1937: Communal schism

From 1932, the Beth Din was comprised of Brodie, Abrahams, Danglow and the recently arrived Rabbi Joseph Lippman Gurewicz, who had commenced his tenure as rabbi of the Carlton United Hebrew Congregation. Gurewicz was of Eastern European origin and was embraced warmly by the Carlton Jewish community on his visit in 1930 to collect funds. Two years later, the various communities of Carlton combined resources to bring Gurewicz back to Melbourne following which they appointed him as their rabbi (*Australian Jewish Herald* 1932). Notwithstanding the differences in approach and worldview between the 'establishment' Anglo-Orthodox rabbinate and the new Eastern European rabbi, Brodie and Danglow accorded Gurewicz great respect. Danglow spoke warmly at Gurewicz's induction (*Australian Jewish Herald* 1936) and Brodie would travel weekly to his home in Carlton to study Talmud with him (Turnbull 1993: 125). This cordial relationship was reciprocated by Gurewicz, who chose to act as a *dayan* on the Melbourne Beth Din rather than on the North Carlton Beth Din which had recently come into operation (Turnbull 1993: 600).

The year 1937 heralded change for the Melbourne Jewish community, much of it centring around the goings-on of the Melbourne Beth Din. In November of 1936, Brodie shocked the community when he announced his resignation from the Melbourne Hebrew Congregation, due to take effect in September of the following year, so that he could travel to England in time to commence a doctor of letters at Oxford University (*Australian Jewish Herald* 1936). Both Danglow and Gurewicz were intent on acting as interim Av Beth Din until Brodie's replacement at the Melbourne Hebrew Congregation could be found. Upon Brodie's arrival, Danglow was viewed by many as the 'Spiritual Head in Australia' (Levi 1995: 134) and now with thirteen more

years of experience and an honorary Rabbinic title bestowed by the Chief Rabbi, Danglow – and the members of both St Kilda and Melbourne Hebrew Congregations (*Australian Jewish Herald* 1937) – felt it appropriate that he hold the interim chairmanship. Gurewicz, however, given his rabbinic credentials and his undisputed erudition in matters of Jewish Law, was a natural fit for the role, and was of the strong view that Danglow's honorary title insufficiently qualified him for the role of Av Beth Din, as had indeed been stipulated by Chief Rabbi Joseph Hertz when bestowing the title upon Danglow (Lipski 2002: 37).

At the last Beth Din meeting before Brodie left to England, he informed his colleagues that after consulting with Chief Rabbi Hertz, he had decided that Danglow was to fill the role of interim Av Beth Din, a decision that was ratified in writing by the Chief Rabbi a short while later (Havin 2007: 48). Within a few weeks, the 'Beth Din of the United Congregations' had been established with Gurewicz at its head, supported by East Melbourne Hebrew Congregation, the Wolf Davis Congregation (also known as Stone's Shul) and the Carlton United Hebrew Congregation (*Australian Jewish Herald* 1937). The tensions between the two Batei Din were exacerbated by a controversy on the Beth Din regarding the exporting of kosher meat by the Smorgon brothers to Palestine. This saga has been explored by a number of scholars (Turnbull 1993: 586-87, Levi 1995: 209, Lipski 2002: 36, Havin 2007: 48), and suffice it to say that posters in Tel Aviv signed by Gurewicz that denounced Danglow's reliability in matters of *kashrut* (Jewish dietary law, n. *kosher*) created a schism between the two that would take many years to mend.¹⁵ Over the ensuing nineteen years until Gurewicz's passing in 1956, his Beth Din came to be recognised by many rabbinic scholars in pre-war Poland, Russia, and Lithuania, as well as British-mandate Palestine, and he formed an archive of hundreds of files of their correspondence (Lipski 2002: 34).

1938-1958: The divided years

Danglow's interim chairmanship concluded upon the arrival in 1938 of the scholarly Rabbi Dr Harry Freedman, who replaced Brodie as both minister at Melbourne Hebrew Congregation and Av Beth Din. His tenure lasted until 1946, at which time he resigned over a difference with the Board of the Congregation. Interestingly, the next minister appointed in 1947, Rabbi Hugo Stransky, was not vested with the position of Av Beth Din, being that Freedman, who had now become minister at Elwood Talmud Torah Hebrew Congregation, maintained that position and refused to resign (Aron and Arndt 1992: 117). Although the Beth Din was eventually reorganised so that Freedman, Stransky and Danglow rotated its chairmanship, this shift from the practice that the Melbourne Hebrew Congregation minister automatically assumed chairmanship of the Beth Din was perhaps an early sign of a weakening of the nexus between the two entities.

The formation of a Kashrut Commission in 1949, to address criticism from the press regarding perceived cruelty to animals in the process of ritual slaughter, resulted in a temporary unification of the Melbourne Beth Din with its Carlton counterpart. The commission contained representatives from both Batei Din as well as lay delegates from all of Melbourne's Jewish congregations. However, the Commission was disbanded after five years amid accusations from the lay leaders that the Beth Din representatives were being deliberately uncooperative (Turnbull 1993: 589).

By and large, over the course of the Melbourne Beth Din's history, *kashrut* certification has had a nexus with the Beth Din, often administered by one of its *dayanim*. However, the Beth Din's exclusive authority in this domain was challenged as early as 1891 by an independent kosher butcher in Fitzroy, and appeared to persist through the 1930s, evident in a number of statements issued by Brodie pointing to the existence of 'unauthorised' kosher products and establishments (*Australian Jewish Herald* 1932). Professor Louis Waller recalls that by the 1950s the majority of kosher butchers were not under the aegis of the Beth Din and Yossi Aron remembers that in the 1970s the Beth Din's *kashrut* imprimatur was not trusted by the strictly Orthodox¹⁶.

In 1952 the Beth Din again underwent change with the incoming minister of the Melbourne Hebrew Congregation, Rabbi Dr Izaak Rappaport assuming the role of Av Beth Din. Rappaport's tenure was marked by controversy, a product of his uncompromising personality (Turnbull 1993: 135-36). An attempt at uniting the two Batei Din failed, although with the passing of Gurewicz in 1956 and the waning of the Carlton Jewish community, the Melbourne Beth Din lost its primary competition. The relationship between the Orthodox and Liberal communities degenerated under Rappaport, as did internal relations among the Orthodox, with Danglow, the veteran secretary of the Beth Din, writing to the Chief Rabbi in 1958 regarding the disunity on the Beth Din which he claimed to be a product of Rappaport's attitude of 'injustice, intolerance and narrow prejudice' (Turnbull 1993: 467-70).

1959-2002: the decline in communal confidence

In the 1950s, *Habad* affiliate Rabbi Sholem Gutnick was admitted onto the Beth Din, after he had assumed the mantle of rabbinic leadership at Caulfield Hebrew Congregation in 1952. He was to remain on the Beth Din for nearly five decades.¹⁷ With Danglow's passing and the resignation of his successor, Rabbi Dr Simon Herman, both occurring in 1962, St Kilda Hebrew Congregation's representation on the Melbourne Beth Din ceased. This marked a watershed moment in the Beth Din's composition, whose majority was now of Eastern European extraction, with the permanent appointment of the learned Rabbi Yehudah (Lewis) Kaplinski and the occasional involvement of Rabbis Shlomo Rudzki (South Caulfield Hebrew

Congregation), Jacob Schreiber (Kew Hebrew Congregation) and Chaim Gutnick (Elwood Talmud Torah Hebrew Congregation) (Turnbull 1993: 661-63).

With the rise of Eastern European representation on the Beth Din, its relationship with Melbourne Hebrew Congregation, which had always been a bastion of Anglo-Orthodoxy, appeared to be on the decline. This sentiment is evident in the request from the Melbourne Hebrew Congregation in 1970 that Rappaport personally contribute to the costs of their provision of chambers for the Beth Din, indicating that the Beth Din was no longer seen as an affiliate of their congregation, but had become Rappaport's enterprise. The following year, Rappaport refused to discuss the Beth Din's arrangements with Chief Rabbi Jakobovits, again evidencing its waning identity as an Anglo-Orthodox establishment responsible to the British Chief Rabbi (Aron and Arndt 1992: 144). While this 'independence' could either be attributed to a gradual shift in identity of the Beth Din or the style of its leadership at the time, it is most likely a combination of these factors; an inevitable shift in communal allegiance brought to a head by a confrontational Av Beth Din.

The opacity of the Beth Din's operations, coupled by its members' lack of diplomacy, was a concern for the lay leadership of the Melbourne Jewish community in the late 1960s. Chief Rabbi Jakobovits was consulted, and he presented plans for a 'Proposed Scheme for the Reorganisation of Rabbinical and Supervisory Services in Melbourne' to the chairman of the Council of Orthodox Synagogues, Dr Saul Weiner, in 1970. Attempts to implement changes were rebuffed by Rappaport. Thus, when Rappaport announced his retirement in 1977 (which was to take effect two years later), Weiner called a meeting of communal leaders to vote to put the Beth Din under the administrative and financial oversight of a governing board (*Australian Jewish News* 1979). Notably, the congregations whose leaders sat as *dayanim* on the Beth Din either abstained from indicating their view or dissented to the proposed changes, and the hoped-for restructure did not manage to generate the momentum required for its actualisation. In February 1980, Gutnick assumed the mantle of Av Beth Din in what was decried by Chief Rabbi Jakobovits as a 'self-proclaimed claim to automatic succession' (*Australian Jewish News* 1980). A few months later, the Rabbinical Council of Victoria consulted with the Chief Rabbi in ratifying Gutnick's appointment for a two-year term, after which there was to be a review. The proposed review failed to materialise, and he remained in that role for the ensuing two decades (Aron 2019: 130).

Under Gutnick's leadership, the Beth Din shifted its physical address from Melbourne Hebrew Congregation to the premises of Caulfield Hebrew Congregation, where he was the rabbi. *Dayanim* who had previously served on the Beth Din under Rappaport continued to serve under Gutnick, and ministers at Melbourne Hebrew Congregation were appointed as members of

the Beth Din, including Rabbi Michael Newman in 1980¹⁸ and Rabbi Michael Mandel in 1985 (Aron and Arndt 1992: 166). In 1994, Gutnick retired from Caulfield Hebrew Congregation, but elected to remain on as the Av Beth Din. His successor, Rabbi Yonason Abraham, joined as a *dayan* (*Australian Jewish News* 1994). Two years later, Gutnick appointed his son, Rabbi Yossi Gutnick, as secretary of the Beth Din and as a *dayan* on the court when required. Shortly thereafter, the Beth Din became the subject of complaints of improper behaviour, leading to an investigation conducted by a number of lay professionals in the Jewish community at the behest of the Council of Orthodox Synagogues Victoria¹⁹. Amid mounting communal pressure to reign in what many viewed as a 'one-man operation' Gutnick resigned in 2002 (*Australian Jewish News* 2002). This moment marked a watershed for the Beth Din, whose reputation had declined dramatically over the Rappaport and Gutnick years. An opportunity to restructure the Beth Din had materialised at last.

2003-Present: the restructured Beth Din

Following the demise of the Beth Din in 2002, the Rabbinical Council and Council of Orthodox Synagogues joined forces to install an interim Beth Din while a committee worked on designing the new Beth Din structure. The interim *dayanim* included Rabbis Ya'acov Barber (South Caulfield Hebrew Congregation), Feitel Levin (Brighton Hebrew Congregation), Mordechai Gutnick (Elwood Talmud Torah Hebrew Congregation) as well as Shlomo Rudzki, who had acted under the two previous chairmen of the Beth Din (*Australian Jewish News* 2002).

A board of governance was installed, a constitution drafted, and on 24 September 2004, Melbourne Beth Din Nominees Limited was registered as an Australian public company under the Australian Securities and Investment Commission. According to its constitution, *dayanim* are to be nominated by the Rabbinical Council of Victoria and ratified by the Council of Orthodox Synagogues of Victoria (MBD Constitution s20.1). The term of a *dayan* is limited to two years, after which further ratification is required to secure any further two-year terms (MBD Constitution s20.4).

Rabbi Mordechai Gutnick, nephew of Rabbi Sholem Gutnick, was appointed Senior Rabbi of the Beth Din, and later became known as the Av Beth Din²⁰. *Dayanim* serving on the Beth Din at present include Rabbis Avrohom Kievman, Yisroel Greenwald, Mordechai Berman and Menachem Sabbach. The Beth Din rents its premises from the Mizrachi Organisation, but has no formal links to any particular synagogue or congregation. An era of greater transparency and corporate governance has commenced.

Melbourne Beth Din in Perspective

The history of the Melbourne Beth Din provides an important basis for understanding its present-day identity and culture. Themes that are explored

below include the presence of alternate Batei Din and their relationship with the establishment Beth Din, the evolution of the Beth Din's relationship with the Chief Rabbi in the context of the broader shifts within the Melbourne Jewish Community, as well as the role the Beth Din has played in the arbitration of financial disputes.

Alternate Batei Din

Batei Din set up independently, without the formal sanction of the Chief Rabbinate of the British Empire, were not uncommon throughout the history of the Melbourne Jewish community. Most of these alternate Batei Din were set up on an ad-hoc basis to deal with a particular case that presented itself. Only on several occasions did alternate Batei Din maintain an ongoing presence for a period of time and serve a component of the community who preferred it over the establishment Beth Din.

Unsanctioned Batei Din existed prior to the establishment of the local Beth Din in 1864; however, they were not 'alternate' insofar as there was no authorised Beth Din at the time, and the Chief Rabbi needed to provide specific permission for a conversion to take place.²¹ The first accounts of the formation of ad-hoc Batei Din involved disgruntled members of the local Beth Din. In one case, Moses Rintel, a founding member of the local Beth Din, co-opted fellow congregant Wolf Davis and Revered Isaac Friedman of the Sandhurst Synagogue to perform the conversion of a young boy. His peers on the local Beth Din protested the matter, taking it to the Chief Rabbi who determined that another conversion ceremony was to be held for the boy at the authorised Beth Din (Goldman 1954: 194-95). A short while later, Revered Dattner Jacobson, also a member of the local Beth Din, was found to be independently 'proselytising for a profit' and was expelled from the Beth Din as a consequence (Turnbull 1993: 246). In both cases, the Chief Rabbi was called in to address these illegitimate Batei Din and their actions were repudiated.

With the formation of the immigrant Eastern European Jewish community in Carlton, alternate Batei Din became a more persistent theme, and were significantly harder to reign in given the lack of allegiance between the immigrant population of Carlton and the British Chief Rabbinate. In late 1891, Rabbi Avraham Eber Hirschowitz arrived in Melbourne after a short stint in Sydney, and shortly thereafter established a Beth Din for his community Chevra Torah in Carlton, much to the displeasure of the local Beth Din (Havin 2007: 24). While his tenure lasted only three years, the defiance of the Anglo-Orthodox mainstream that his Beth Din represented was replicated in generations to come. In 1928, Revered Leopold Goran, a later minister of the Carlton community, accepted a convert who had been refused by both the Melbourne and Sydney Beth Din. His actions made headlines in the Jewish newspaper (*Australian Jewish Herald* 1928) and he was summoned to a conference with the establishment Beth Din, the outcome

of which saw him pledging to bring any future converts to them (Turnbull 1993: 574-75).

Four years later, a letter was sent from the Carlton-based Machzikei Hadath Hebrew Congregation to the Melbourne Hebrew Congregation, informing them of the newly established North Carlton Beth Din (Aron and Arndt 1992: 191). This Beth Din was to become the first long-standing alternative to the Melbourne Beth Din, operating with Revered Yoir Adler as Av Beth Din (Havin 2007: 46-7). In 1937, after Danglow assumed the role as interim Av Beth Din, a disgruntled Gurewicz left the Melbourne Beth Din and reconvened the North Carlton Beth Din, rebranding it as the Beth Din of the United Congregations. This Beth Din attained international standing under his chairmanship and operated until his passing in 1956. It is noteworthy that the establishment Beth Din, as well as Newman Rosenthal's editorials in the *Australian Jewish Herald*, protested the developments in Carlton. While the North Carlton Beth Din was described by Brodie and Danglow as "insignificant" (Havin 2007: 47), Gurewicz's Beth Din of the United Congregation was seen as a greater threat to the establishment and was thus received the strong disapproval of Chief Rabbi Hertz, who urged cooperation with the Melbourne Beth Din (Turnbull 1993: 585). Notwithstanding the protests from the Anglo-Orthodox mainstream, the Carlton Batei Din remained resolute, and formed durable alternatives to the Melbourne Beth Din.

The precedent set by the Carlton Batei Din appears to have weakened the monopoly of the establishment Beth Din. During Rappaport's tenure as chair of the Melbourne Beth Din, there was widespread dissatisfaction among the rabbinate and lay leadership regarding its operation. In 1978, a meeting with the communal rabbis was called by the Council of Orthodox Synagogues Victoria, and the notion of installing a second Beth Din was advocated by a number of the rabbis present, including Rabbis Ronald Lubofsky (St Kilda Hebrew Congregation) and Ellis Sultanik (North Eastern Jewish Centre). In this context, Gurewicz's alternate Beth Din was brought as a case-study. In addition, reference was made at that meeting to the Adass Israel and Lubavitch communities of Melbourne, which did not strongly identify with the Melbourne Beth Din and appeared to have had their own alternative arrangements (COSV 1978).

In more recent times, Rabbi Shneur Reti-Waks of the Ark Centre was censured by the Melbourne Beth Din for arranging conversions via an overseas Beth Din. The Sydney and Melbourne Beth Din issued a joint statement that 'any conversion performed by individual rabbis or by private Batei Din are not and will not be accepted' and an agreement was struck with Reti-Waks whereby he pledged to cease accepting candidates for his conversion program (*Australian Jewish News* 2017).

While the establishment Beth Din has historically frowned upon attempts by other Batei Din to form converts, this sentiment does not appear

to be the case regarding civil matters. Ad-hoc Batei Din which arbitrate financial disputes have received no public sanction from the establishment Batei Din, who evidently do not see this as a usurpation of their role. To the contrary, Rabbi Yehoram Ulman, who is a current member of the Sydney Beth Din, has acted as a *dayan* arbitrating commercial matters on ad-hoc Batei Din in a number of high-profile cases,²² without any apparent criticism from any of the established Batei Din.

It would thus appear that the establishment Batei Din are more vigilant with regards to alternate Batei Din performing ritual matters, such as conversion and divorce, perhaps due to the fact that matters of personal status and identity impact upon the halakhic legitimacy of subsequent marriages and children. Commercial matters, on the other hand, invite a more relaxed response from the establishment Batei Din, who prefer not to interfere with the litigants' choice of dispute resolution forum. This mirrors the secular law courts' exclusive jurisdiction over criminal matters and its acquiescence to alternate dispute resolution forums in the commercial arena. Just as in secular society criminal matters cannot be dealt with 'in house' insofar as they are a matter of public interest, so it is with matters affecting personal status and identity within the Jewish community. Commercial disputes between parties, however, have a more limited impact on the wider community, and thus the presence of alternate Batei Din in commercial matters is of less concern to the establishment Beth Din.

Recently, it has become apparent that the actions of Batei Din dealing in the arbitration of civil matters also has a bearing on the wider community. Misconduct by Batei Din in cases of financial arbitration has damaged the reputation of Batei Din generally and has discouraged Orthodox Jews from resolving their commercial disputes in line with their halakhic obligations. In addition, the desecration of G-d's name, which is meant to be averted by taking one's disputes to a Beth Din (*Shulḥan Arukh HM 26:1*) has instead been exacerbated by the negative public exposure triggered by the misconduct of these Batei Din. As such, there are grounds to warrant regulation over alternate Batei Din which operate in the commercial, and not just the ritual, sphere.

The Chief Rabbinate and the Melbourne Beth Din

A further trend evident in the history of the Melbourne Beth Din is the evolution in its relationship with the Chief Rabbinate of the British Empire and later, the Commonwealth. In its initial period, the Chief Rabbinate was an overwhelming authority to whom the Beth Din owed its existence and thus its allegiance. During this time, discontent with the Beth Din was managed by the Chief Rabbi, on whose authority Rintel and Jacobson were expelled from its ranks (Aron and Arndt 1992: 337). As late as 1924, it is apparent that the Chief Rabbi's sanction was still being sought for every conversion performed by the Beth Din (Turnbull 1993: 368).

From the 1930s, although the Chief Rabbinate's influence remained strong, its authority over the Beth Din began to wane. The strengthening of the Carlton community, which quickly became a 'vibrant, dynamic and functionally independent Jewish centre' (Rosenbaum 1994: 522) and their lack of allegiance to the Chief Rabbinate, coupled by the strengthening of the Liberal Beth Israel community which did not see itself as being under the dominion of the Chief Rabbinate (*Australian Jewish Herald* 1936), are likely contributing factors for its diminution in authority. Gurewicz reflected the sentiment of the Carlton community in ignoring Chief Rabbi Hertz's urging to desist from forming his own Beth Din in 1937 (Turnbull 1993: 585), and aligned himself with the Chief Rabbinate of Palestine, among others, with whom he corresponded on matters of Jewish law, rather than with the British Chief Rabbinate (Lipski 2002: 38-9).

Notwithstanding the waning power evident under Hertz, Chief Rabbi Brodie seemed to reassert London's authority over Melbourne affairs. In 1957, the question of whether the Liberal community could share a cemetery with the Orthodox was referred to Brodie, who ruled that it be divided (*Australian Jewish Herald* 1958). Again in 1958, Brodie intervened to prevent Danglow from issuing a *kashrut* license independent of the Beth Din (Levi 1995: 294). These interventions into the affairs of the Melbourne Jewish Community may have been an expression of the respect Brodie commanded due to his earlier stint as minister of the Melbourne Hebrew Congregation, rather than evidence of an increase in the authority of the British Chief Rabbinate generally.

Following Brodie, the Chief Rabbinate's influence appeared to wane further. The Beth Din under Rappaport asserted its authority on the basis that it had been 'appointed as such by the late and revered Chief Rabbi Sir Israel Brodie' (Melbourne Beth Din 1979) yet at the same time it rebuffed the Council of Orthodox Synagogues of Victoria's attempts to implement the then incumbent Chief Rabbi Jakobovits' proposed restructure of the Melbourne Beth Din (Jakobovits 1970, Jakobovits 1971, Weiner 1971, Jakobovits 1979, Melbourne Beth Din 1979). Rappaport's refusal to comply with the Chief Rabbinate signified a watershed in the declining relationship between the Melbourne Beth Din and its founding head office.

In correspondence to Dr Saul Weiner, Chief Rabbi Jakobovits acknowledged the changing relationship with Australia, writing that he had 'no personal interest in maintaining the traditional formal link with [his] Office' but nonetheless felt that the Chief Rabbinate should maintain its role in approving and authorising the Av Beth Din of Melbourne as a 'safeguard against arbitrary nominations or machinations by local vested interests' (Jakobovits 1979). In a similar vein, in his letter congratulating Rabbi Sholem Gutnick on securing support from the Rabbinical Council on his appointment as Av Beth Din in 1980, Jakobovits suggested that prospective members of the Beth Din under Gutnick 'submit their rabbinical credentials to me as well

as to you' leading to 'consultation with each other [to] eliminate aspirants who are not properly qualified' (Jakobovits 1980) Likewise, Jakobovits informed the Rabbinical Council that during Gutnick's tenure 'any rabbi who seeks arbitration on any aspect of the Beth Din, its headship, composition or procedure, may take his case before the Chief Rabbi and the London Beth Din whose decision will be final and binding on all concerned'(Jakobovits 1980). Jakobovits' recognition that the traditional links were no longer binding coupled by his conciliatory style, rendered his subsequent suggestions to the Beth Din toothless and it would appear that they were largely, if not completely, ignored (Baker 1999: 12, *Australian Jewish News* 2002).

In the subsequent restructure of the Beth Din in 2004, the Constitution made no reference to the Chief Rabbinate of the United Kingdom, nor to the London Beth Din, with all appointments and oversight being relegated to local councils. In January 2005, the Melbourne Beth Din did away with its traditional stamp that had included the words 'founded by the Chief Rabbi of the British Empire 5626', in acknowledgement of the fact that there is 'no longer any trace, formally or informally, of any [o]f the old allegiance or authority of the [C]hief Rabbi' (Gutnick 2020). At present, the Melbourne Beth Din formally communicates with the Israeli Rabbinate, and features on their register of approved Batei Din. A mutual sentiment was expressed by former Chief Rabbi Lord Jonathan Sacks when asked in the early 2000s at a rabbinic conference in Melbourne about the relationship between the Australian and London rabbinate. He responded with the verse: 'the law will go out from Zion, and the word of the Lord from Jerusalem' (Isaiah 2:3), indicating his agreement that the Australia's rabbinic alliance should be with Israel rather than with the United Kingdom (Aron, interview).

In his analysis of the Chief Rabbi's Australian jurisdiction, Rabbi Israel Porush argues that 'the dependence on the Chief Rabbi was broadly in inverse proportion to the qualifications of the local rabbinate' (Porush 1977: 258). This correlates with the fact that the early Reverends who comprised the local Beth Din were subjected to a far more authoritarian approach from the father and son Chief Rabbis, Nathan Marcus and Herman Adler, while more recent history has witnessed greater qualification among *dayanim*²³ and a reciprocal 'softer touch' from the Chief Rabbinate. In addition, the decline in the Chief Rabbinate's influence mirrors the decreasing authority of the United Kingdom generally and the rise of Australian national independence, as reflected in such milestones as the act of Federation in 1901, the first native-born Governor-General in 1931 and the *Australia Act (Cth)* 1986 which formally removed constitutional ties between the two countries. Much like the present-day relationship between Australia and the queen, it can be argued that the Chief Rabbi remains a symbolic figurehead of Australian Jewry, whose practical authority is a thing of the past.

As such, presently the Melbourne Beth Din seeks its legitimacy from the Chief Rabbinate of Israel, which maintains a central register of

internationally recognised Batei Din. However, the Israeli Chief Rabbinate are concerned primarily with matters of personal status, such as *geirut* and *gittin* which require a global Orthodox consensus as to an individual's Jewish identity as well as the halakhic legitimacy of marriages and the status of children born of these unions. Commercial matters are less of a concern for the Israeli Chief Rabbinate, insofar as the outcome of Beth Din rulings in this regard have little impact upon the global Orthodox community. As such, there are no formal international authorities that regulate the way in which civil arbitration is to be performed by Batei Din in Australia. Rather, responsibility in this regard²⁴ sits with the Board of the Melbourne Beth Din which, in consultation with the Rabbinical Council of Victoria and the Council of Orthodox Synagogues Victoria, is charged with developing operation rules which govern, inter alia, 'procedural matters that need to be attended to, prior to bringing a matter before the Melbourne Beth Din' (MBD Constitution s3.5.1). Further influences over the manner in which commercial arbitration is performed by Australian Batei Din include best practice international Batei Din such as the Beth Din of America, which has built a reputation for providing fair outcomes via processes which have been upheld by the legal system of its host country (Broyde 2016: 138).

Civil arbitration in Australian Batei Din

While undoubtedly the initial impetus for forming Batei Din was to provide an avenue for the performance of halakhically valid *geirut* and *gittin* in the Colonies, there is evidence that it soon took on a broader array of functions, including, on occasion, the settling of financial disputes among co-religionists. Shortly after the Beth Din of the Great Synagogue, Sydney was reconvened by Rabbi Francis Lyon Cohen, its minute book referred to a financial dispute that came before the Beth Din for arbitration on 29 October 1905 (Apple 1994: 353). However, with regards to the Melbourne Beth Din, commercial arbitration was not one of its known functions²⁵, and in describing the main work of the Beth Din in 1912, Abrahams, the Av Beth Din, mentioned 'the settlement of questions affecting Shechita, Divorce, Chalitza, Matsoth, and so on' (*Jewish Herald* 1912) failing to make any reference to financial disputes. That being said, evidence for its dealings in commercial matters did appear in a 1937 edition of the *Australian Jewish Herald* whereby the editor commented that a friend of his 'was interested in a civil dispute that would most certainly have been ventilated in the courts had not the Melbourne Beth Din succeeded in settling the point at issue' (*Australian Jewish Herald* 1937). In addition, in *Generation Magazine*, editor Mark Baker refers to citing in the minute-books of the Melbourne Beth Din between 1905-1950, which record 'a great deal of mediation on business disputes' (Baker 1999: 90). As such, whilst not the predominant work of the establishment Batei Din in Australia, it appears that civil arbitration did take place under its auspices.

In contrast, the alternate Beth Din of the United Congregations formed in 1937 by Gurewicz was known to regularly deal in commercial arbitration as part of its array of services (Lipski 2002: 45). It is plausible that the relative dearth of commercial arbitration in the establishment Melbourne Beth Din as opposed to Gurewicz's Beth Din, reflected the communities that they serviced. The Anglo-Orthodox community was far more acculturated than its Carlton counterparts, and as such would generally approach the Beth Din for matters the state courts could not provide them, namely its ritual functions such as *gittin*, *geirut* and *kashrut*. The halakhic prohibition of taking one's litigation before a gentile court (*Shulḥan Arukh HM 26:1*) was perhaps less well-known in Anglo-Orthodox circles. This is evident from the scarcity with which such a case came before the establishment Beth Din in Melbourne and also in the language of the editor's friend quoted in the *Australian Jewish Herald*, who by stating that their civil dispute 'most certainly [could] have been ventilated in the courts' appeared not have been aware of, or concerned for, any religious prohibitions relating to taking their disputes to be settled in a secular court. On the other hand, Gurewicz's Beth Din operated within the Eastern European immigrant community in Carlton, which may have been far more reluctant to utilise the secular courts for financial arbitration, both as a product of their experience with anti-Semitic governmental authorities in their countries of origin and as a result of their greater knowledge and observance of *halakha* as compared to their Anglo-Orthodox contemporaries.²⁶

Following the Second World War, a significant influx of European refugees altered the dynamics of the Melbourne Jewish community and heralded the decline of Anglo-Orthodoxy. The Melbourne Beth Din underwent commensurate change and its Anglo-Orthodox predominance ceased with the passing of Danglow and the resignation of his successor, Herman, in 1962, following which the ministers of St Kilda Hebrew Congregation no longer acted as *dayanim*. In its place the ascendant *Habad* community gained representation on the Beth Din, and its adherents – Rabbis Sholem and Modechai Gutnick – have chaired the Beth Din cumulatively for the past forty years (Turnbull 1993: 661-63).

The shift of the establishment Beth Din from Anglo-Orthodox to Eastern European, which reflected the changing community in Melbourne, should have brought with it a surge in the number of financial disputes brought to it for arbitration. This, however, does not appear to have been the case, perhaps as a result of the lack of communal confidence in the Melbourne Beth Din under the leadership of Rabbis Rappaport and Sholem Gutnick. At present, although the Constitution of the Melbourne Beth Din does provide for it to deal with disputes, it does not advertise this as one of its services.

As such, as recent high-profile cases of commercial arbitration between Orthodox Jews have demonstrated, where parties are seeking to fulfil their religious duty to litigate before a Beth Din, they are either doing so at the

Sydney Beth Din (Live Group v Ulman 2017) or are constituting ad-hoc *zabla* Batei Din²⁷ for these purposes. The lack of administrative oversight in both the Sydney Beth Din and the ad-hoc *zabla* Batei Din are a concern for many members of the religious community who do not wish to transgress their halakhic duties, but have little confidence in the transparency and due process provided by these bodies (*Australian Jewish News* 2019). Thus while the reconstituted Melbourne Beth Din provides in its governance structure the mechanism for instilling greater communal confidence in its processes, to date it has remained in the mould of its Anglo-Orthodox heritage, focussing on ritual, rather than civil, matters.

Conclusion

Studying the origins and subsequent history of the Melbourne Beth Din, founded by the Chief Rabbinate of the British Empire, provides one with a sense of the challenges and triumphs of this institution and the evolutionary path it has charted since its establishment. While the Melbourne Beth Din was the first British Commonwealth Beth Din established outside of London, it has gradually grown apart from its founders. Its foray into independence has seen its departure from its Anglo-Orthodox origins and an embracing of Eastern European Orthodoxy which has come to predominance in the community it has served, and along with this its allegiance has shifted from the British to the Israeli Chief Rabbinate.

In the course of its history, the establishment Melbourne Beth Din has faced a range of alternate Batei Din, some more tenacious than others, testing its institutional centrality and often forcing it to recognise the changes taking place within the Jewish community. Its *dayanim* have confronted a fair share of opposition; whether from the Carlton Jewish community and its rabbinic leadership who did not identify with the Beth Din's Anglo-Orthodoxy, or the Liberal community whose brand of Judaism did not put *halakha* at its centre, or the Council of Orthodox Synagogues of Victoria who attempted, and ultimately succeeded, in penetrating the Beth Din's opacity and bringing modern governance structures to bear. The Melbourne Beth Din outlived these challenges, but there is little doubt that each one left its mark.

The Beth Din as an avenue for arbitration has been a feature of the Sydney Beth Din and alternate Batei Din in Melbourne, and less present – although not entirely absent – from the practice of the Melbourne Beth Din. Considering the recent cases in which arbitration at the Sydney and ad-hoc *zabla* Batei Din have been found by Australian courts to have failed in ensuring fair processes, there is a need for greater oversight to restore the community's confidence in these important religious institutions. While the Melbourne Beth Din does not presently offer arbitration of financial matters, its present incarnation provides the corporate governance model that could inspire communal confidence were it to develop processes to offer such services.

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Notes

1 This phrase, originally from Yiddish, was used by Professor Louis Waller whom the author interviewed as part of researching the history of Batei Din in Australia. This article is intended to form part of a broader PhD thesis and was inspired by feedback from Professor Waller in his capacity as panellist at the author's Confirmation of Candidature.

2 The title 'Reverend' came into use in 19th century Anglo-Jewry to denote a religious functionary who lacked full rabbinic qualifications; "Reverends & rabbis" OzTorah, accessed 30 September 2020, <https://www.oztorah.com/2007/09/reverends-rabbis-ask-the-rabbi/>.

3 There were failed attempts to gain authorisation from the Chief Rabbi to form a Beth Din by Reverends Moses Rintel (minister of the Melbourne Hebrew Congregation and later to what subsequently became called the East Melbourne Hebrew Congregation) and Isaac Pulver (East Melbourne Hebrew Congregation's *shoḥet*) in 1853 and again in 1863 (Aron and Arndt 1992: 332-34).

4 Hoelzel, a minister in Hobart and Sydney, had the title 'Morenu' ('our teacher') bestowed upon him by various European Rabbis. This was not necessarily rabbinic ordination, though it indicates orthodoxy and learning (Apple 2017).

5 This may explain why the *Jewish Herald*, 21 May 1880, mistakenly referred to Rintel as 'chairman at the time of his death'.

6 The term 'local Beth Din' was used in the earlier days in reference to the limited powers of the Melbourne Beth Din vis-à-vis the London Beth Din, however it eventually became known as the Melbourne Beth Din.

7 Melbourne Hebrew Congregation was referred to as such in correspondence relating to this issue from the Chief Rabbi Nathan Marcus Adler (Goldman 1954:191).

8 Supporters of both Rintel and Ornstein aired their views in *The Argus* (Goldman 1954:186) and the *shoḥtim* of Melbourne Hebrew Congregation and East Melbourne Hebrew Congregation echoed their ministers' rivalry (Turnbull 1993: 42-3).

9 Evident from correspondence from the Melbourne Hebrew Congregation to the Chief Rabbi in 1878 stating '... the Board are in possession of the fact

that the law prohibiting the ministers of East Melbourne Congregation taking part in making Guerros has been rescinded' (Aron and Arndt 1992: 337).

10 See letter from the Chief Rabbi Nathan Marcus Adler regarding Jacobson's appointment to the Beth Din of which 'Rev. Herman... must still remain the president' (Aron and Arndt 1992: 48-9). Goldman refers to Jacobson as 'Chairman of the Beth Din' which is at odds with the instructions of the Chief Rabbi (Goldman 1954: 307). It could be that after Herman's death there was a rotating chair, or, like Rintel, Jacobson simply 'appeared' to be Chair insofar as the Beth Din was located in Melbourne and Goldreich had to travel in from Ballarat which might have been incorrectly perceived as deferential to Jacobson.

11 A letter from the Chief Rabbi confirming Jacobson's expulsion following his resignation from the Melbourne Hebrew Congregation was printed in the *Jewish Herald* on 29 December 1882.

12 He had received *yadin, yadin* certification which qualified him as a *dayan* (Aron and Arndt 1992: 58).

13 He was given the honorary title of *morenu* ('our teacher') in 1932 by Chief Rabbi Hertz who stipulated that as the title is honorary he was to act 'only after consultation with [his] colleagues on the Beth Din under the presidency of one who has full *semicha*' (Levi 1995: 198).

14 The Beth Din had last seen (and rejected) applicants in 1908 (Levi 1995: 134).

15 There is evidence of a mending of sorts in the relationship between the two Batei Din in 1948 in the form of a letter issued by the Melbourne Hebrew Congregation to Gurewicz welcoming him back after an overseas trip (Aron and Arndt 1992: 158).

16 Both Waller and Aron were interviewed personally in the research for this article.

17 Although it appears that he took a ten-year period of absence from the Beth Din (*Australian Jewish News* 1980).

18 Per the direction of the Chief Rabbi (Aron and Arndt 1995: 150). While he was formally appointed by the Chief Rabbi, the author has not found any reference to him acting in this capacity.

19 According to Waller, in his interview.

20 According to Aron, in his interview.

21 Travelling Rabbi, Yaakov Saphir performed a conversion in 1862 and was criticised by the Chief Rabbi for doing so (Aron and Arndt 1995: 333-334)

22 Including the Beth Din cases that resulted in *Mond v Berger* [2004] VSC 150 and *Thaler v Amzalak* [2013] NSWSC 1155.

23 At present, all the dayanim on the Melbourne Beth Din have *yadin yadin* qualification; "Meet the Team," Melbourne Beth Din, accessed 17 February 2020, <http://www.mbd.net.au/about/meet-the-team/>.

24 Constitution of Melbourne Beth Din Nominees, s 3.1.1.4 states that 'determine disputes' is an object of the company. However at the time of

writing this is not listed on their website as a service they provide; “About the Beth Din,” Melbourne Beth Din, accessed 21 February 2020, <http://www.mbd.net.au/>.

25 According to Levi and Aron, in interviews.

26 Anglo-Orthodoxy is described as “the centre point on the religious continuum” with the Carlton community and its offshoots as “to its ‘right’ – to varying degrees” (Turnbull 1993: 647).

27 *Zabla* is an acronym for ‘*ze borer lo ehad*’ meaning ‘each chooses one for themselves’ describing a method of selecting arbitrators whereby each litigant selects an arbitrator, the two of which jointly select the third arbitrator (known as the *sholish*). This approach was used in the cases of *Mond v Berger* [2004] VSC 150 and *Thaler v Amzalak* [2013] NSWSC 1155.

References

Books, Journals and Magazines

- Apple R. 1994, “A Chapter in Rabbinic History: Origins of the Sydney Beth Din.” *Australian Jewish Historical Society Journal* 12 (2): 346.
- Apple, R. 2017, “Herman Hoelzel – Ambitions of a Presiding Rabbi.” *Australian Jewish Historical Society Journal* 23 (2): 233.
- Aron, J. & Arndt J. 1992, *The Enduring Remnant: The First 150 Years of the Melbourne Hebrew Congregation*. Melbourne: Melbourne University Press.
- Aron, Y. 2019, *Caulfield Hebrew Congregation: The First 75 Years*. Melbourne: Memoirs For You Publishing.
- Baker, M. 1999, “The War of the Rabbis: How Kosher are our Orthodox Rabbinic Courts?” *Generation Magazine*, December 1999, 12.
- Broyde, M. 2016, *Sharia Tribunals, Rabbinical Courts, and Christian Panels*. Oxford: Oxford University Press.
- Danglow, J. 1921, *The History of the St Kilda Hebrew Congregation*. Melbourne: St Kilda Hebrew Congregation.
- Goldman L. 1954, *The Jews in Victoria in the Nineteenth Century*. Melbourne: Published by the author.
- Havin, D. 2007, *Even Shetiya: Orthodox Jewry in Carlton and Surrounding Suburb*. Melbourne: Published by the Author.
- Isaiah 2:3.
- Levi, J. 1995, *Rabbi Jacob Danglow: the Uncrowned Monarch of Australian Jews*. Melbourne: Melbourne University Press.
- Levi, J. 2009, *My Dear Friends: The Life of Rabbi Dr Herman Sanger*. Melbourne: Hybrid Publishers.
- Lipski, S. 2002, “Chalk and cheese: Rav Gurewicz et Amicorum” in Strum, A. et al *Eshkolot: Essays in memory of Rabbi Ronald Lubofsky*. Melbourne: Hybrid Publishers: 32.

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- Pfeffer, J. 2008, *From One End of the Earth to the Other: The London Bet Din, 1805-1855, and the Jewish Convicts Transported to Australia*. Brighton, Portland: Sussex Academic Press.
- Porush, I. 1977, *The House of Israel*. Melbourne: The Hawthorn Press.
- Rosenbaum, Y. 1994, "Religiously Carlton: Jewish Religious Life in Carlton 1919-1939." *Australian Jewish Historical Society Journal* 12: 519.
- Turnbull M. 1993, *Judaism in Melbourne 1870-1970: The Breakdown of Anglo-Orthodoxy and the Growth of Religious Pluralism*. Melbourne: Unpublished PhD thesis, Deakin University

Other

- Chief Rabbi Jakobovits to Rabbi Sholem Gutnick, published in *Australian Jewish News*. 28 March, 1980.
- Melbourne Beth Din Nominees Constitution.
- Live Group v Ulman [2017] NSWSC 1759.
- Shulḥan Arukh, Hoshen Mishpat, Hilkhhot Dayanim* 26:1.
- Jewish Herald*. 21 May, 1880.
- Jewish Herald*. 21 May, 1880.
- Jewish Herald*. 13 September, 1882.
- Jewish Herald*, 29 December 1882.
- Jewish Herald*. 23 October, 1891.
- Jewish Herald*. 15 January, 1892.
- Jewish Herald*. 19 January, 1912.
- Australian Jewish Herald*. 19 April, 1928.
- Australian Jewish Herald*. 14 April, 1932
- Australian Jewish Herald*. 15 September, 1932,
- Australian Jewish Herald*. 27 October, 1932.
- Australian Jewish Herald*. 10 November, 1932.
- Australian Jewish Herald*. 24 November, 1932.
- Australian Jewish Herald*. 22 December, 1932.
- Australian Jewish Herald*. 26 November, 1936.
- Australian Jewish Herald*. 3 December, 1936.
- Australian Jewish Herald*. 10 December, 1936.
- Australian Jewish Herald*. 10 December, 1936.
- Australian Jewish Herald*. 5 August, 1937.
- Australian Jewish Herald*. 5 August, 1937.
- Australian Jewish Herald*. 5 August, 1937.
- Australian Jewish Herald*. 2 September, 1937.
- Australian Jewish Herald*. 14 October, 1937.
- Australian Jewish Herald*. 5 September, 1958.
- Chief Rabbi Jakobovits to Dr Saul Weiner, 24 December 1970, 7 April 1971 and 27 February 1979, private collection.
- Chief Rabbi Jakobovits to Dr Saul Weiner, 24 December 1970, private collection.

Dr Saul Weiner to Chief Rabbi Jakobovits, 16 March 1971, private collection.
Dr Saul Weiner to Chief Rabbi Jakobovits, 16 March 1971, private collection.
Chief Rabbi Jakobovits to Dr Saul Weiner, 7 April 1971, private collection.
Council of Orthodox Synagogues minutes, 5 April 1978, private collection.
Melbourne Beth Din to Dr Saul Weiner, 20 February 1979, private collection.
Melbourne Beth Din to Dr Saul Weiner, 20 February 1979, private collection.
Chief Rabbi Jakobovits to Dr Saul Weiner, 27 February 1979, private collection.
Australian Jewish News. 30 March, 1979.
Council of Orthodox Synagogues Victoria circular, May 1979, private collection.
Australian Jewish News. 28 March, 1980.
Chief Rabbi Jakobovits to Rabbi Michael Newman, 28 May 1980, private collection.
Chief Rabbi Jakobovits to Rabbi Michael Newman, 28 May 1980, private collection.
Chief Rabbi Jakobovits to Rabbi Sholem Gutnick, 28 May 1980, private collection.
Australian Jewish News. 19 August, 1994.
Australian Jewish News. 11 October, 2002
Australian Jewish News. 11 October, 2002.
Australian Jewish News. 18 October, 2002.
Australian Jewish News. 24 February, 2017.
Australian Jewish News. 10 August, 2017.
Australian Jewish News. 10 January, 2019.
Professor Louis Waller, interview by the author, September 2019.
Rabbi John Levi, interview by the author, September 2019.
Yossi Aron, interview by the author, September 2019.
Rabbi Mordechai Gutnick to the author, 7 February 2020, private collection.
“Meet the Team,” Melbourne Beth Din, accessed 17 February 2020, <http://www.mbd.net.au/about/meet-the-team/>.