Kalām Theology as a Meta-Halakhic Basis for the *Adab al-Qāḍi* Jurisprudential Genre of the Late Babylonian Geonim

The Geonim were prominent Jewish leaders in the Babylonian diaspora from the seventh to the eleventh centuries CE. A sharp shift in the epistemology of the Halakha distinguishes the late Geonim of Babylonia (tenth–eleventh centuries) from their predecessors. The successors of Se’adyah Gaon[[1]](#footnote-2) (882–942) specialized in the composition of individual legal halakhic codices. Known as late monographic works, they stand in contrast to the collective oral traditions of which the earlier geonic corpus was composed. Therefore, the subgenre relating to the duties of judges stands at the legal and jurisprudential climax of this highly conceptualized, instructive monographic genre, of which all other works in the juridical field should be seen as derivative legal aspects.

As widely accepted spiritual leaders in Babylonian academies and, therefore, for early medieval Jewry at large, the Geonim wielded secular authority over the Jews in Islamic lands. Se’adya and his successors, Rav Hai ben Sherira Gaon and Rav Samuel ibn Ḥofni, specialized in writing professional monographs on a variety of topics, mostly in civil law—the genre of concern in my long-term research project.[[2]](#footnote-3) This genre of manuals on judges’ duties has not yet been the subject of focused scholarship, mainly due to the lack of research tools available to the scholarly community. With this study, I wish to fill this research lacuna by identifying and contextualizing individual Geniza fragments relevant to this literacy genre. The books in this genre show a close affinity with the world of Muslim jurisprudence, rely meta-halakhically on Kalam theology, and, as will be seen, are well integrated into the general Arabic genre *Adab al-Qāḍī*.[[3]](#footnote-4)

1. *Kitāb lawāzim al-ḥukkām (“Book of the judges’ duties”*), Rav Samuel ibn Ḥofni Geon Sura (d. 1013)

Not only did this book nearly vanish into oblivion, leaving few hints of its existence, but even its title is ambiguous.[[4]](#footnote-5) Some transcriptions of the title are rendered *al-aḥkam*, not a*l-hukkām*, and Geniza and *Rishonim* literature offer different transcriptions as well.[[5]](#footnote-6) Plausibly, the book was written for judges or about judges, jurisdiction, or judges in their sitting in judgment. It deals with judges’ *theological, ethical, and jurisprudential* duties and lays down a fundamental theological basis for civil procedures.

Unfortunately, even the introduction in the Geniza is incomplete.[[6]](#footnote-7) Several fragments from the body of the book have been identified on the basis of matches with the title that appears in the fragment (T-S Ar. 48.61) of the table of contents in this introduction. The introduction suggests that this jurisprudential work has a theological background because most geonic monographs have a theological introduction, following the custom of Muslim contemporaries who preceded meta-legal materials with introductory sections (*muqaddimah)*. The theological evidence serves to justify the law, the legal authority granted to judges, and ethical-juridical principles that emerged later.[[7]](#footnote-8) The author offers a lengthy divine justification for the earthly legal authority of the judges (*dayyanim*)and the halakhic court (*beit din*), based on the belief in the one God (*tawḥīd*) who, invoking his unlimited power and authority, gives judges the authority to dispense justice even though they are limited and fallible human beings.

As is customary in this type of literature, the introduction mentions no sources and quotes only anonymous sources (biblical verses and passages of Mishna and Talmud: *wa-qālu* = “and they said”). Many books in this genre were written and preserved in Islam, in contrast to the tangled history of the Judaeo-Arabic genre, which disappeared not long afterward due to the destruction of the yeshivot of Babylonia and internal transformations of the Jewish center. Comparing the main themes and topics of interest that appear in Samuel ben Ḥofni’s introduction with introductions to other books by his Muslim contemporaries, one sees quite clearly that the surrounding culture transmitted and mediated the *Adab* genre and its legal language among both Muslim and Jewish savants, demonstrating the reciprocal sharing of a philosophical world that preceded common legal thought.[[8]](#footnote-9)

1. *Kitāb Adab al-qaḍā* (“*Book of good manner for legal procedure*”), Rav Hai Gaon Pumbedita (939–1038)

The scientific destiny of the *Book of good manner for legal procedure* is somewhat different from that of the first work discussed. This book was also completely lost; from some point in the Middle Ages later than the tenth century—rather shortly after its probable appearance—to modern scholarship, we find no clear evidence of its existence. There is also ambiguity about its actual title. The word *Adab* may be translated in many ways because it has a broad field of meanings in history, culture, and literature. The term *Adab al-Qāḍī*, however, serves a narrower purpose in a subgenre. Here again, it is not completely clear if the subject of the text is the judge, his halakhic duties, or his jurisdiction in formal institutions. The qadi’s requirement of obedience pertains to both earthly and religious/theological authorities, so in the contextof the *Adab al-Qāḍī* his personal characteristics must reflect this dual subordination.

Only remnants of a medieval translated version of this work have survived indirectly. Assaf published two fragments of this remnant, which is stored at the British Library and was translated into Hebrew by Rabbi Judah ben Barzillai Al-Barceloni (author of *Sefer ha-‘ittim*). Without clear evidence of Rav Hai’s original work, lacking other evidence, and deficient in both classical and Judaeo-Arabic, Assaf made a plausible assumption without further support. It goes without saying that the databases available in Assaf's time were quite primitive and that his achievements, preceding the emergence of the digitized humanities, are noteworthy. My thesis reinforces the identification of many fragments on the basis of careful deliberation and reconsideration of scholarly achievements.[[9]](#footnote-10) Drawing on thoroughgoing work that utilizes digital technology, I confidently venture that about sixty related fragments in Judaeo-Arabic are verified as portions of this incomplete reconstruction and that an approximate skeleton of this lost work by Hai Gaon is coming into being. Today’s discoveries are possible because of the online availability of the Cairo Geniza,[[10]](#footnote-11) additional genizot and digitalized manuscript collections, search tools,[[11]](#footnote-12) helpful modern dictionaries,[[12]](#footnote-13) grammars,[[13]](#footnote-14) and flourishing scholarship by researchers at the Izhak Ben-Zvi Institute and theSociety for Judaeo-Arabic Studies (SJAS).

# Faṣl fī ādāb al-dayyanin *(“Chapter on the judges’ good manners”)*, Rav Yosef, son of Yehuda Ibn Aknin al-Barceloni

# Here is a third text that has almost escaped scholarly attention. On the advice of Professor Paul Fenton of the Université Sorbonne, I found this relevant chapter in a codex from the Bodleian Library collection titled “Hygiene of the Souls” (*Tib al-Nufūs*).The chapter title is inscribed at the top of a leaf from the Geniza (JTS ENA 2715.35r), but the provenance of the chapter was unknown. The texts in the codex and the Geniza fragments are identical.[[14]](#footnote-15)

# This treatise, of course, is not Geonic per se, but I include it in my research because it preserves developments in Geonic traditions as well as additional unknown and possibly authentic sources. (It also contains known writings, such as the *Halakhot* of Isaac al-Fasi.) It has survived intact in a Spanish codex preserved by the Bodleian Library in Oxford (Ox. Hunt. 518).

# The chapter in question is not a freely standing work; it is firmly set within the broader framework of Ibn Aknin’s *Tib al-Nufūs*, a jurisprudential section of *The Worldly Soul*. Ibn Aknin’s methodology for his work on his book remains unknown because various materials within it are edited in different ways. Thus, the discussion in this chapter proceeds very differently from that in the didactical and philosophical chapters.[[15]](#footnote-16) These circumstances evoke serious questions about the compilation of the work and the editing of such characteristically different materials together.

# In my research, I clearly identify five unknown Geniza fragments, all of which are parts of this jurisprudential treatise. This work probably has no direct connection to Kalam theology or the other works discussed but it has confused scholars, who have mistakenly identified these fragments as integral parts of one of these geonic works[[16]](#footnote-17) or as an ancient work containing an unknown midrash.[[17]](#footnote-18) Therefore, the vestiges of this work in the Geniza enrich our textual knowledge of the work at large, of which no version exists save the unicum at Oxford. These Geniza occurrences prevent some confusion about the geonic jurisprudential works and help to distinguish between original materials in the geonic genre and later developments of the genre in works that also reflect the genre as a whole.

In sum, this research explores a previously unknown and unstudied genre extracted from Geniza documents: geonic legal monographs, comprehensive professional manuals for judges on jurisprudential themes (e.g., legal principles, court procedures, the judge’s character, and injunctions against bribery). No study has yet focused on this genre, mainly because today’s scientific research tools were not previously available to the scholarly community. The next stage of the research will be built on these achievements and will aim to contribute to the field of comparative, interdisciplinary, and interreligious jurisprudence. Still in its early stages, interdisciplinary research that compares Jewish and Muslim legal systems has been pursued by very few scholars. In the field of substantive law, previous works deal with topics such as partnership, guardianship, and divorce as well as the role of custom as a source of law in both the Muslim and Jewish systems. My research proposes to contribute an analysis of legal-jurisprudential literature to the comparative work carried out thus far.[[18]](#footnote-19)

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1. The term “Gaon” stands for the Terminus Technicus Rosh Yeshivat Geon Yaacov, the head of the Babylonian academy. It is relevant because the individual so titled was a spiritual-theological guide for the Diaspora and, for this reason, a halakhic authority as well. Robert Brody, *Sa’adyah Gaon* (Oxford and Portland, OR: The Littman Library of Jewish Civilization, 2013), 118–139; idem, *Hibburim hilkhati’im shel Rav Se’adya Gaon* (Jerusalem: Yad HaRav Nissim, 2015); idem, “Mif’alo ha-hilkhati shel Rav Se’adya Gaon,” *Peamim* 54 (1993): 82–92; Henry Malter, *Saadia Gaon—His Life and Works* (Philadelphia: Jewish Publication Society, 1921), 157–167, 341–351. [↑](#footnote-ref-2)
2. See Neri Y. Ariel, “Manuals for Judges ادب القضاة)): A Study of Genizah Fragments of a Judeo-Arabic Monographic Legal Genre” (Ph.D. Diss., Hebrew University of Jerusalem, 2019). For preliminary remarks, see idem, “Discovery of a Lost Jurisprudential Genre in the Genizah Treasures,” *Judaica* 7 (2017): 299–309. In my post-doctoral studies, I now concentrate on the comparative legal aspects of this genre and the pursuit of my Habilitationsschrift in the field: *The Dawn of Judaeo-Islamic Jurisprudence: Adab al-Qāḍī as a Reconstruction of Comparative Legal History* (Bar-Ilan University and the Freie Universität Berlin, forthcoming). [↑](#footnote-ref-3)
3. For a preliminary discussion, see Muhammad Khalid Masud, “Adab al-Qāḍī,” in *Encyclopaedia of Islam, 3rd* ed., ed. Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, and Everett Rowson. Accessed July 10, 2018, <http://dx.doi.org/10.1163/1573-3912_ei3_COM_0106>; Irene Schneider, *Das Bild des Richters in der Adab al-Qāḍī Literatur* (Frankfurt am Main, Bern, New York, Paris: Peter Lang, 1990); Muhammed Khalid Masud, Rudolph Peters, and David S. Powers, “Qāḍīs and Their Courts: An Historical Survey,” in: *Dispensing Justice in Islam—Qāḍīs and Their Judgments*, eds. Muhammad Khalid Masud, Rudolph Peters, and David S. Powers (Leiden: Brill, 2006), 1–44. The translation of the name of the genre is Powers’ (see p. 16) and also, recently, Raha Rafii, “The Judgeship and the Twelver Shīʿī Adab Al-Qāḍī Genre, 11–14th Centuries C.E.”(PhD Diss., University of Pennsylvania, 2019). [↑](#footnote-ref-4)
4. Ariel, “Discovery,” 300–302; see Neri Y. Ariel, “Ein Relikt aus der Einführung zum *Kittāb Lawazim al-Ḥukkām* von Rav Schmuel Ben Ḥofni Gaon,” *Frankfurter Judaistische Beiträge* (forthcoming). [↑](#footnote-ref-5)
5. On complications with this name, see Gideon Libson, “Terumat ha-geniza le-heqer ha-monografiot ha-hilkhatiot shel Rav Shemuel b. Ḥofni Gaon—mivnan heqefan ve-hitpat’hutan,” *Te’uda* 15 (1999): 189–239. For further research, see Ariel, “Ein Relikt” (forthcoming). [↑](#footnote-ref-6)
6. Simḥah Assaf, “Mi-shayare sifrutam shel ha-geonim,” *Tarbiz* 15 (1944): 27–35, here 35; idem, “Shelosha sefarim niftahim la-Rav Shemuel b. Ḥofni Gaon—Kittāb Lawazim al-Ḥukkām,” *Sinai* 17 (1945): 113–118. [↑](#footnote-ref-7)
7. In my forthcoming book, pursuant to my PhD dissertation, and in my aforementioned forthcoming article, I provide the basis for the literary background of this identification. Although it is uncertain whether this fragment is part of Rav Samuel ibn Ḥofni’s book, it is quite evident this kind of literature was available to both professional and lay theologians. In this regard, see David Sklare, “The Reception of Mu’tazilism among Jews Who Were Not Professional Theologians,” *Intellectual History of the Islamicate World* 2 (2014), 18–36. [↑](#footnote-ref-8)
8. Several bear mentioning here: a) *Kittab Adab al-Qada* of Ibn Abi al-Dam (1187–1244); see Heidi R. Krauss-Sánchez, “Ibn Abī al-Dam,” in *Encyclopedia of the Medieval Chronicle*, ed. Graeme Dunphy, Cristian Bratu. Accessed July 16, 2018, <http://dx.doi.org/10.1163/2213-2139_emc_SIM_01369>; b.) *Kitāb adab al-qaḍī* of al-Khassaf. c.) Regarding al-Mawardi’s contribution to the understanding the theme of Judges’ characteristics, see Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarafi* (Leiden, New York, and Köln: Brill, 1996), 154–160. Further discussion appears in my forthcoming article (n. 4 above). There are also remnants of this genre in the Karaite literature; they will be discussed in an additional paper: “*Adab al-Qāḍī* – Jurisprudential Genre—Beginnings of a Comparative Case Study,” *Festschrift for the Prof. Joshua Blau Centenary— Proceedings of the 19th SJAS Conference, 1–4 July,* Antwerp 2019(Leiden: Brill, forthcoming 2020). [↑](#footnote-ref-9)
9. Neri Y. Ariel, “Towards an Identification Methodology of Geniza Fragments,” *Trumah* 24 (2018): 185–200*.* [↑](#footnote-ref-10)
10. The term *geniza* is a common Hebrew gerund that denotes the phenomenon of burying torn writings and the noun that signifies the place of burial. As far as I know, there is no adequate English translation for this kind of "storage" of sacred scripts that were damaged due to repeated use. The plural term in this context, *genizot,* refers to additional storage sites that coexisted with the one in Cairo. See Haggai Ben-Shammai, “Is ‘the Cairo Genizah’ a Proper Name or a Generic Noun? On the Relationship between the *Genizot* of the Ben Ezra and the Dār Simḥa Synagogues,” in *From a Sacred Source—Genizah Studies in Honor of Professor Stefan C. Reif,* ed. Siam Bhayro, Ben M. Outhwaite, and Geoffrey Khan (Leiden: Brill, 2011), 43–52. It is common to differentiate between this geniza and the misleading term "geniza" that is used mistakenly for Hebrew fragments in Europe; see Martha Keil, “Zeugen von Gewalt. Mittelalterliche hebräische Fragmente in niederösterreichischen Bibliotheken,” in Quellen zur jüdischen Geschichte Niederösterreichs. Die Vorträge des 33, ed. Martha Keil and Elisabeth Loinig, Symposions des NÖ Instituts für Landeskunde gemeinsam mit dem Institut für jüdische Geschichte Österreichs, St. Pölten, November 19–20, 2013 (= Studien und Forschungen aus dem Niederösterreichischen Institut für Landeskunde, ed. Elisabeth Loinig and Reinelde Motz-Linhart, Band 58) (St. Pölten: NÖ Institut für Landeskunde, 2016), 13–36 (here: 15–18). Almost all the Geniza fragments that I studied may be viewed at [https://fjms.geniza.org/](https://fjms.genizah.org/), except for some fragments of the Mosseri Collection and St. Petersburg (scans are available upon personal request). The Bodleian Library collection—among other collections of Geniza sources at Princeton, Cambridge, and JTS—is now available at <http://bav.bodleian.ox.ac.uk/>. [↑](#footnote-ref-11)
11. Worth mentioning are the extensive *Ktiv—The International Collection of Digitized Hebrew Manuscripts* (<http://web.nli.org.il/sites/nlis/en/manuscript>); and *Ozar HaḤochma* (http://jewishhistory.huji.ac.il/Internetresources/databases\_for\_jewish\_studies.htm), among many other digital tools (e.g., <https://bibliothek.univie.ac.at/fb-judaistik/datenbanken.html>). [↑](#footnote-ref-12)
12. To mention the most central: Joshua Blau, *A Dictionary of Mediaeval Judaeo-Arabic Texts* (Jerusalem: Academy of the Hebrew Language, 2006); Mordechai Akiva Friedman, *A Dictionary of Medieval Judeo-Arabic: In* *the India Book Letters from the Geniza and in Other Texts* (Jerusalem: Izhak Ben-Zvi Institute: 2016) and also dialectal dictionaries: Moshe Piamenta, *Dictionary of Post-Classical Yemeni Arabic,* 2 vols. (Leiden: Brill, 1990–1991). [↑](#footnote-ref-13)
13. Joshua Blau, *A Grammar of Mediaeval Judaeo-Arabic* (Jerusalem: The Magnes Press, The Hebrew University of Jerusalem, 1980), 2nd edition. [↑](#footnote-ref-14)
14. For a critical edition that contains this chapter, further legal discussion, and a detailed bibliography, see Neri Y. Ariel, “An Annotated Edition with Commentary of *Faṣl fī ādāb al-dayyanin* from طب النفوس (“Hygiene of the Souls”) by Ibn Aknin,” *Sefunot* (forthcoming, 2020). [↑](#footnote-ref-15)
15. Abraham Shlomo Halkin, “Classical and Arabic Material in Ibn Aknin’s ‘Hygiene of the Soul,’” *Proceedings of American Academy of Jewish Research* 14 (1944): 25–147, published Greek aphorisms transmitted by Ibn Aknin into Judaeo-Arabic. Another chapter on education is provided by Moritz Güdemann, *Das jüdische Unterrichtswesen während der spanisch-arabischen Periode—Nebst handschriftlichen arabischen und hebräischen Beilagen* (Vienna: 1873). [↑](#footnote-ref-16)
16. The staff at the Izhak Ben-Zvi Institute kindly provided a preliminary list, preliminary in the sense of not differentiating among categories. Ordering these materials constituted a substantial part of the work; see Introduction to Ariel, *Manuals*. [↑](#footnote-ref-17)
17. Shraga Abramsohn, “Qeta hadash mi-mekhilta de-Rabbi Shimon bar Yohai,” *Tarbiz* 41 (1972): 361–372. [↑](#footnote-ref-18)
18. Such comparative studies are rare because the preconditions for pursuing them entail well-integrated interdisciplinary knowledge. Several comparative works bear mentioning here: Ross Brann, “The Arabized Jews,” in *The Literature of Al-Andalus,* ed. Maria Rosa Menocal, R. P. Scheindlin, and M. Sells (New York: Cambridge University Press, 2000), 435–454; Mark R. Cohen, *Maimonides and the Merchants―Jewish Law and Society in the Medieval Islamic World* (Philadelphia: University of Pennsylvania Press, 2017); Janosh Jany, *Judging in the Islamic, Jewish and Zoroastrian Legal Traditions: A Comparison of Theory and Practice* (Farnham and Burlington: Catholic University Press, 2012); Hubert Kaufhold (1984). “Der Richter in den syrischen Rechtsquellen: Zum Einfluß islamischen Rechts auf die christlich-orientalische Rechtsliteratur (The judge in the Syriac legal sources: Regarding the influence of Islamic law and the Christian-oriental legal literature), *Oriens Christianus* 68: 91–113; Gideon Libson (1991), “Islamic Influence on Medieval Jewish Law? ‘Sefer ha’arevuth’ (Book of Surety) of Rav Shmuel ben Ḥofni Gaon and Its Relationship to Islamic Law,” *Studia Islamica* 73:5–23; idem (1996). “Halakha and Law in the Period of the Geonim,” *An Introduction to the History and Sources of Jewish Law,* ed. Neil Hecht et al. (Oxford: Clarendon Press), 197–250;GideonLibson (1999), “The Structure, Scope and Development of the Halakhic Monographs of Rav Shemuel Ben Ḥofni Gaon,” in *Te’uda XV: A Century of Genizah Research,* ed. M. A. Friedman (Tel Aviv: Tel Aviv University Press, 1980), 139–189; Gideon Libson, *Jewish and Islamic Law—A Comparative Study of Custom During the Geonic Period* (Cambridge, MA: Harvard University Press, 2003); James E. Montgomery (2007). “Islamic Crosspollinations,” in *Islamic Crosspollinations―Interactions in the Medieval Middle East,* ed.Annas Akasoy, James E. Montgomery, and Peter Portmann (Cambridge: Gibb Memorial Trust, 2007), V–X); Ido Shahar (2008), “Legal Pluralism and the Study of Shari’a Courts,” *Islamic Law and Society* 15:112–141; Uriel I. Simonsohn, *A Common Justice—The Legal Allegiances of Christians and Jews under Early Islam* (Philadelphia: University of Pennsylvania Press, 2011); Y. Sinai (2009–2010), “The Religious Perspectives of the Judge’s Role in Talmudic Law,” *Journal of Law and Religion* 25, no. 2: 357–377; D. Sklare, *Samuel ben Ḥofni Gaon and His Cultural World* (Leiden: Brill, 1996); Y. Zvi Stampfer, *Laws of Divorce (Kitāb al-Ṭalāq) by Samuel ben Ḥofni Gaon* (Jerusalem:IzhakBen-Zvi Institute, 2008); S. Stroumsa, “Saadya and Jewish Kalam,” in *The Cambridge Companion to Medieval Jewish Philosophy,* ed. Daniel H. Frank & Oliver Leaman (Cambridge: Cambridge University Press (2003); Moshe Yagur, “Religious Identity and Communal Boundaries in Genizah Society (10th–13th Centuries): Proselytes, Slaves, Apostates” (Ph.d. Diss, The Hebrew University of Jerusalem, 2017); Hava Lazarus Yaffe, “Ben halakha ba-Yahadut la-halakha ba-Islam: ‘Al kama hevdelim ‘iqariim u-mishni’im,” *Tarbiz* 51 (1982): 207–225; idem, “Ha-yahas le-meqorot ha-halakha ba-Islam be-hashva’a la-Yahadut,” *Proceedings of the World Congress of Jewish Studies*, Vol. 8, Jerusalem 1981, 47–49. For further bibliographical notes, see Nahum Rakover, *A Bibliography of Jewish Law—Modern Books, Monographs and Articles in Hebrew* (Jerusalem: Harry Fischel Institute for Research in Jewish Law, 1975), Vol. 1, 136, Vol II, 140. [↑](#footnote-ref-19)