**The Adab al-Qaḍī Jurisprudential Genre:   
the Beginnings of a Comparative Case Study**

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**Abstract**

This paper provides several examples of contentual parallels and structural equivalents between Geniza remnants from a newly discovered Judaeo–Arabic subgenre and already-known works in a well-established genre of literature produced by their Muslim contemporaries. Examining textual similarities and the possible ideological juxtaposition of legal, philosophical, and literary contexts, I consider several characteristic issues in reference to the genre of judges’ duties—*Adab al-Qāḍī* in Arabic and [*ḥ*](https://en.wikipedia.org/wiki/Visarga)*ovot ha-dayyanim* in Hebrew—concerning such questions as the ethical character of the judge, the perception of the adjudication process, and the comprehension of civil procedure.

**Exposé**

The Geonic age spanned the seventh to eleventh centuries CE in Babylonia. While the early Geonic corpus was composed of collective oral traditions, the successors of Se‛adya Gaon (882–942) specialized in the composition of individual legal-halakhic codices. Known as “late monographic works,” the genre of *judges’ duties* (*[ḥ](https://en.wikipedia.org/wiki/Visarga)ovot ha-dayyanim*) constitutes the legal-jurisprudential climax of this monographic genre. In what follows, I offer some comparative reflections on my recent project, titled “Comparative Judaeo-Islamic Legal History:*Adab al-Qāḍī.*”

The Arabic term *adab* (أَدَب *plural* آدَاب)means “literature” or “culture.”[[1]](#footnote-2) The subgenreAdab al-Qāḍī(“etiquette of judgeship”) is a juridical genre comprised of manuals designed to provide professional and ethical-personal guidance for judges.[[2]](#footnote-3) The first known works in this genre date to the eighth century. Most likely written by professional judges and grounded in their theoretical and practical knowledge, these manuals address various facets of the judge’s position, such as qualifications, jurisprudential methods, sources to be consulted, court procedures and practices (*‛amāl*), and the final outcome of court proceedings in the form of adjudication. The Adab al-Qāḍī corpus, however, does more than shed light on the nature of the legal system at the relevant time. In their discussions of the reliability of witnesses, the moral and legal gravitas of oaths, and the judge’s social obligations—such as concern for widows or orphans—among other issues, these works reveal their socio-political context as well as the values and principles of those involved.[[3]](#footnote-4)

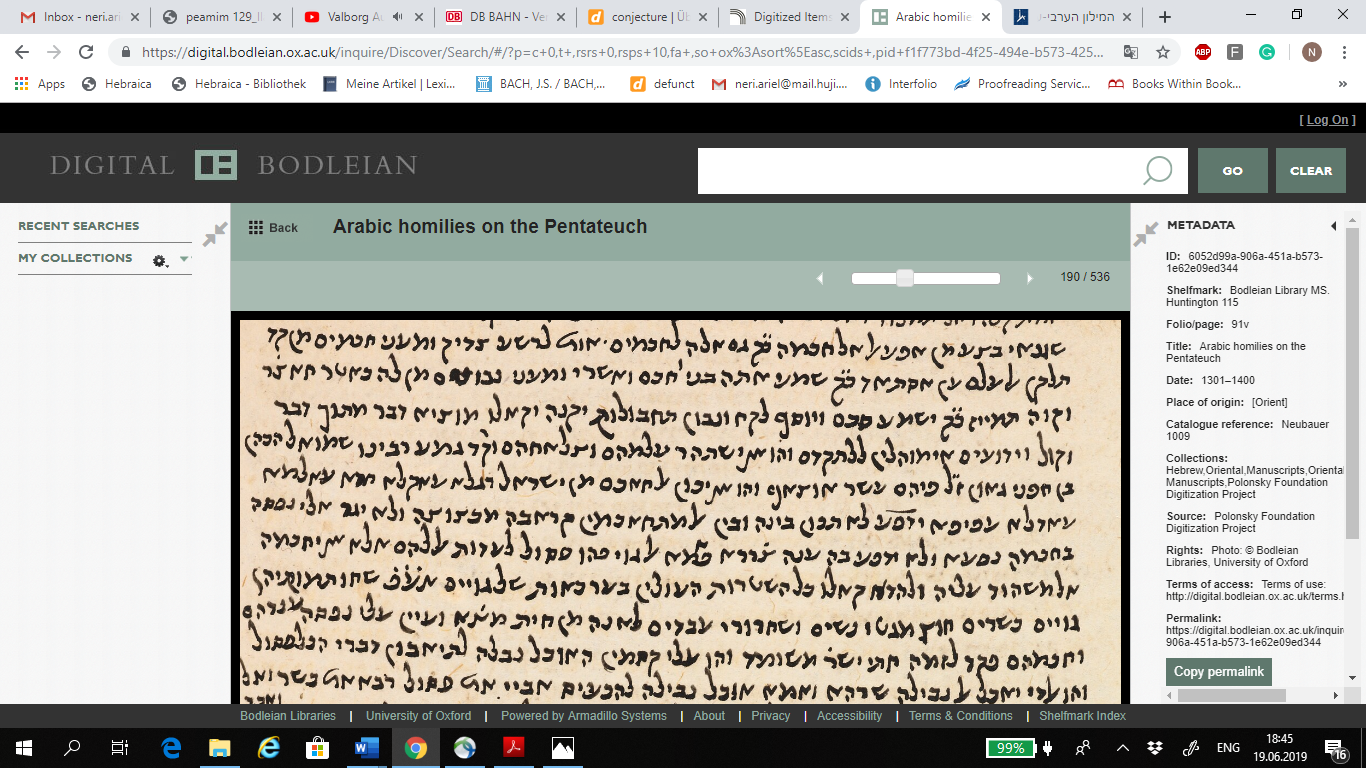
My recently completed study is devoted to Judeo-Arabic works in the Adab al-Qāḍī genre as found in the Cairo Geniza.[[4]](#footnote-5) In the course of my research, I discovered, identified, and pieced together important works dating to the late Geonic period (seventh to eleventh centuries) that were previously little known.[[5]](#footnote-6) The authors of works from the Jewish branch of this genre include Rav Hai Gaon (Pumbedita, d. 1038), the greatest rabbinical legalist of his period;[[6]](#footnote-7) Rav Samuel ben Ḥofni Gaon (Sura, d. 1013), his father-in-law; as well as Karaite writers such as Benjamin ben Moses Nahawandi (Persia, ninth century)[[7]](#footnote-8) and Samuel ben Moses al-Maghribī (ha-Maʿaravi, fifteenth century).[[8]](#footnote-9) Adab al-Qāḍīwas disseminated in Andalusian works and by prominent Mediterranean savants, such as Rav Yosef b. Yehudah ibn Aknin (c. 1160–1226, Tunisia/Algeria) in *Faṣl fī ādāb al-dayyanīn* (Chapter on the Good Manners of Judges), part of his encyclopedic theological compendium *Ṭibb al-Nufūs* (*טִבּ אלנֻּפוס*, Treatment of the Souls).[[9]](#footnote-10) Additional anonymous works within the genre originated in the Maghrib, Egypt, and Palestine.[[10]](#footnote-11) My research corresponds with studies by other Geniza scholars, past and present. This research, the product of three generations of Shlomo Dov Goitein’s students,[[11]](#footnote-12) covers the history of the court system and the status of Qāḍīship in medieval Mediterranean society. Drawing on these works, I hope to reconstruct the subject-matter of this genre and delineate the relationship between its Jewish and Muslim instantiations.

Like works in many Jewish literary genres, compositions in the field of Adab al-Qāḍīdid not emerge in a vacuum. Muslims also composed writings in this genre, more-or-less concurrently with their Jewish neighbors. Noteworthy (among many others) are three major works by the Muslim authors al-Khaṣṣāf (Ḥanafī, Iraq, 847), al-Māwardī (Shāfiʿī, Iraq, 1058), and Ibn Abī al-Damm (Shāfiʿī, Syria, 1244). Some of the works to be considered are chapters within more developed *fiqh* books – for examples, the chapters on jurisdiction and judicature in *Uʿyūn al-aȟbār* by Ibn Qutaybah (828, Iran).

The striking similarities between the Jewish and Muslim works raise the question of their interrelations and reciprocal influence.[[12]](#footnote-13) Given that both cultures use an Arabic term to designate the genre, and in view of the greater prevalence of these works among Muslims than among Jews, the origins of this literature should be sought in the Muslim context. While similarities between Muslim and Jewish law are usually ascribed to the influence of the latter on the former (especially by way of *Isrā’īliyāt*),[[13]](#footnote-14) I hope to support the claim, already raised by Libson and others,[[14]](#footnote-15) that Jewish law and legal literature were, in certain cases, influenced by Islamic works.

**The Judicial Personality**

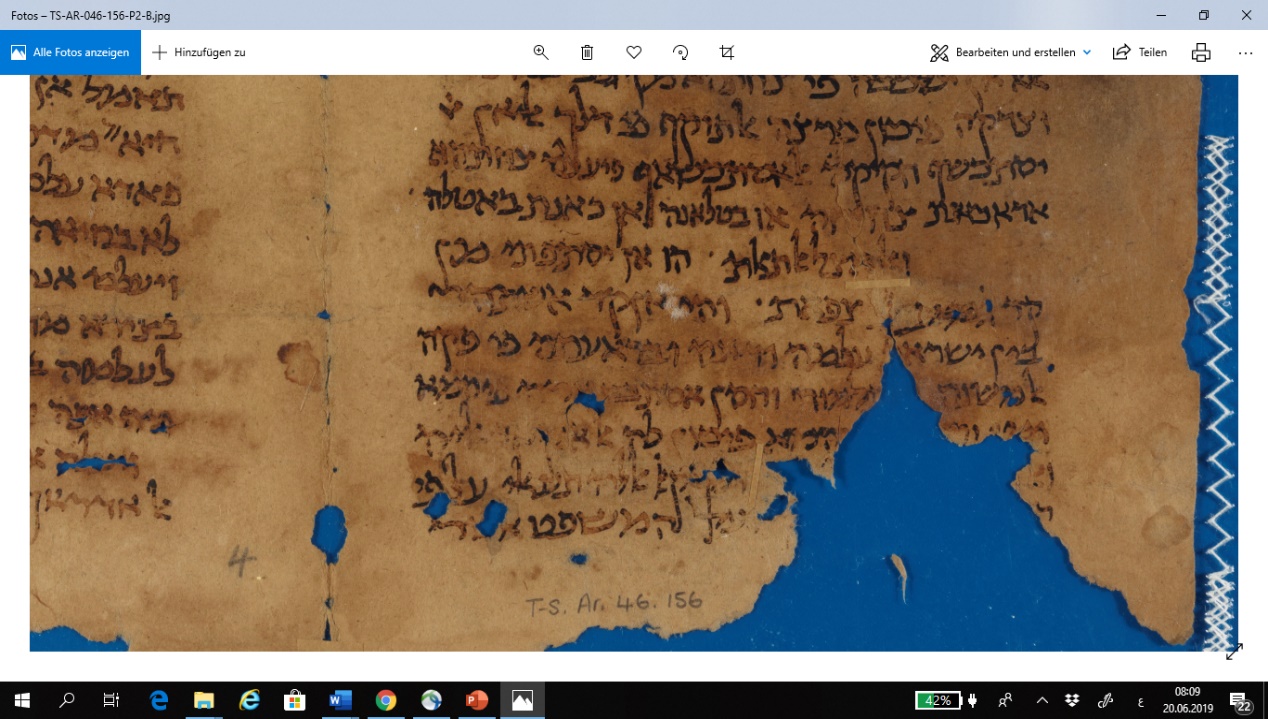
Like other genres in various world cultures, such as the Latin-European medieval literary genre known as *Fürstenspiegel* (“Mirror of princes”),[[15]](#footnote-16) as well as other genres in Islamic writing that deal with descriptions of Muhammad, other prophets (*Ḳiṣāṣ al-anbiyāʾ*), or, more generally, Biblical personalities (*Tawrāt* and Ind̲j̲īl ), the Adab al-Qāḍī literature is well known for its keen interest in constructing a model for the true judge and his ideal character. Rav Samuel b. Ḥofni, in his commentary on the Torah as quoted by *Kitāb* *al-tufaḥa* (Ox. Hunt. 115), writes:[[16]](#footnote-17)



וקד ג̇מע רבינו שמואל הכהן בן חפני גאון ז"ל פיהם עשר אוצאף: והו אן יכון אלחאכם (1) מן ישראל (2) רגלא (3) עאקלא (4) חרא (5) עאלמא (6) עאדלא (7) עפיפא. ((ידפע)) (8) לא תכון בינה ובין אלמתחאכמין קראבה מכצוצה, (9) ולא יגר אלי נפסה בחכמה נפעא, (10) ולא ידפע בה ענה צ̇ררא

Our rabbi Samuel b. Ḥofni the Cohen of blessed memory gathered ten characteristics regarding them [the judges]: the judge should be (1) Israelite, (2) male, (3) rational (= of sober judgement), (4) independent (not a slave), (5) erudite, (6) righteous, (7) humble, (8) devoid of any concrete kinship with the litigants; (9) he shall not receive[[17]](#footnote-18) any benefit for himself through his judgment; and (10) he shall not defend himself from any personal damage by his decision.

In a Geniza fragment (T-S Ar. 46.156), which I suggested elsewhere should be identified as Rav Samuel b. Ḥofni’s *Kitāb lawāzim al-ḥukkām*,[[18]](#footnote-19) one finds some further elaboration, which has survived partially:



**ואלאצל אלתאלת.** הו אן יסתפתי מן קד ג̇מע ג̊ צפאת. והי אן קד אשתהר בין ישראל עלמה ודינה ובראעתה פי פקה אלמשנה <ואל>תלמוד, וחסן אסתכ?<ב?>ארה פיהמא

And the third principle is that [only] he who embodies three characteristics may make halakhic decisions (= sit in judgment). These are that he be well known among the Israelites for his knowledge; his halakhic decisions; and his expertise in the law of Mishna and Talmud, as well as the quality of his comprehension of these two.

It is not only Samuel b. Ḥofni who mentions the “ten commandments” for the judge; this number of characteristics recurs in Muslim literature, as we find in Ibn Abi al-Dam’s *Kitāb adab al-qaḍā*[[19]](#footnote-20):

في صفة القاضي وما يعتبر فيه من شروط: شرائط القضاء عشرة: (1) الاسلام، (2) والحريه، (3) والذكورة، (4) والتكليف، (5) والعدالة، (6) والبصر، (7) والسمع، (8) والنطق، (9) والكتابة، (10) والعلم بالأحكام الشرعية... وشرط صحة تولية القضاء على مذهب إمامنا رضي الله عنه الاجتهاد المطلق، وهو ان يكون عالماً بالكتاب والسنة والإجماع، والقياس وأقاويل الناس، ولسان العرب.[[20]](#footnote-21)

(A chapter) regarding the description of the judge and the conditions that are considered as obligatory. The conditions for judgeship are ten: (1) Islam, (2) independence, (3) being male, (4) observance, (5) righteousness, (6) comprehension (mental/conceptual capacity), (7) (being meticulous in) listening, (8) rhetorical power, (9) writing skills, and (10) knowledge of the Sharia (the law). The condition of validity of the appointment for Qaḍiship is, according to our Imam, may he be blessed by God: *al-Ijtihād*,[[21]](#footnote-22) which is altogether valid, namely that he should be knowledgeable in the *Kitāb* (Qur᾿ān), *Sunna, Ijmāaʿ*,[[22]](#footnote-23) *Kiyās*,[[23]](#footnote-24) and the speech of people,[[24]](#footnote-25) and proficient in the Arabic language.

The following table shows the differences and similarities between characteristics of the ideal judge as enumerated by Samuel b. Ḥofni and Ibn Abi al-Dam:

|  |  |  |
| --- | --- | --- |
| **Type of Characteristic** | **Jewish Law (Samuel b. Hofni)** | **Islamic Law (Ibn Abi al-Dams)** |
| Belief/Religion | Israelite (1) | Islam (1) |
| Dependency | Independence (4) | Independence (2) |
| Gender | Male (2) | Male (3) |
| Intellectual Capabilities | (3) Sober judgement, (5) erudition | (6) Comprehension, (7) listening capacity, (8) rhetorical power, (9) writing skills. |
| Religiosity | Righteousness | Observance, righteousness |
| Personal virtues | Humility | ? |
| Kinship | X | ? |
| Salary/ benefit/ Utility | X | ? |
| Required Bodies of knowledge | (T-S Ar. 46.156): reputation for being knowledgeable; halakhic decisions; proficiency in Mishna and Talmud. | Sharia; Ijtihād; Qur᾿ān, *Sunna, Ijmāaʿ;* *Kiyās;* *aqāwīl al-Nās;* proficiency in the Arabic language |

As the table shows, the similarity between the criteria enumerated by the two authors is remarkable. The differences are expressive of unique elements that each culture considered representative of an ideal judge’s personality – that is, each author adapted this system to his own religious and textual tradition. It is very likely that Samuel b. Ḥofni, who was deeply acquainted with both Arabic literature and Islamic law, drew inspiration from the common model he knew from his Muslim contemporaries, who enjoyed scientific supremacy at that time. However, Jewish authors adapted the system to their own world of legal thought and beliefs, transforming Islamic elements into their own ideas, “painting” them with their own colorful personalities. This is not, of course, an exhaustive description of the relationship between Judaism and Islam in this area, as there are many more characteristics of judges’ personalities described in the many works that constitute this vast literary genre.[[25]](#footnote-26) Some of the descriptive characteristics missing here are found in later sources. A side-by-side comparison of these two texts, however, helps us identify the most significant difference to be observed (other than obvious differences, such as loyalty to Islam or Jewishness), namely: the respective sources in each tradition which the judge is expected to consult. One may carefully suggest, therefore, that the main difference relates to the respective authoritative bodies of texts. The Jewish author exerted great efforts to adapt his own system, combining Islamic “scientific” patterns with authoritative and obligatory Jewish traditions.

This accumulation of meaningful personal virtues subsequently evolved into a self-standing model of personal and professional wholeness. The topic of characteristics and attributes of the judge as a superhuman, as well as the method of categorization and classification undertaken by mediaeval savants, must be further studied,[[26]](#footnote-27) not only with respect to the Adab al-Qāḍī literature but also in the later literature that took shape against the background of that monographic literature.[[27]](#footnote-28) Maimonides, for example, took the attributes available to him and attempted to develop them systematically, resulting in an untidy texture of attributes. Although there is no definite proof of a direct textual juxtaposition, Maimonides may have borrowed some of these integrated attributes from his Muslim contemporaries as well, either from sources known to him in his immediate environment or through the mediation of contemporaneous and previous Jewish sources (such as Geonic literature).[[28]](#footnote-29) Maimonides, as usual, does not reveal his sources and leaves the reader with the vague feeling that the entire contents of his book belong to some nonnegotiable divine law. The criteria for the ideal judge in this chapter are summarized as follows:

|  |  |
| --- | --- |
| § [Halakhah no.](https://www.chabad.org/library/article_cdo/aid/1172726/jewish/Sanhedrin-vehaOnashin-haMesurin-lahem-Chapter-3.htm) | * Function |
| 2:1 | Wide professional, scientific, and cultural knowledge (including astronomy, mathematics, etc.) |
| 2:2 | Halakhah 2: social class—*cohanim* and Levites are preferable, Israelites optional. [Extension in halakhot 4–5: he must be negotiable and, therefore, not a king, but a *cohen gadol* (high priest) is allowed]. Continuation in 2:9 regarding converts and *mamzerim*. |
| 2:3 | Personal status: not old, not emasculated, not solitary [the explanation: so that he will be merciful] |
| 2:6 | Personal completeness: physical and conceptual (continuation of 2:1 and 2:3—these are physical and mental attributes); continuation in 2:9 regarding blindness. |
| 2:7–8 | Personal virtues according to *Mekhilta* (*Neziqin* b:198; cited roughly ad loc by Ibn Aknin) and Yerushalmi Sanhedrin 1:4. |

As is customary, Maimonides’ interpreters strive mightily to explain the provenance of these characteristics, why they are necessary for judgeship, and why they are jurisprudential criteria at all.[[29]](#footnote-30) Some sources presented by Maimonides are cited explicitly by his contemporaries.

Much like Maimonides, Rav Yosef b. Yehudah ibn Aknin, in his aforementioned *Faṣl fī ādāb al-dayyanīn,* cites the following sources (Mss. Ox. Hunt. 518 f.97b) in his discussion of the characteristics of the ideal judge:

**פצל פי אדאב אלדיינין.** קאלוא רבותי' ז"ל אמ' שמואל כיון שנתמנה אדם פרנס על הציבור אסור בעשית מלאכה בפני שלשה שמא יזדלזל בפניהם. פמן שרוטהם אן יכונוא: פהמא, עארפין, אתקיא, אכ̇יאר, מחבין אלחק, מבגצ̇ין פי אלבאטל, ד̇וו גזאלה ונהאצ̇ה. קאל יתרו פי אשארתה עלי' משה רבי' ע'אל'ס' ואתה תחזה מכל העם אנשי חיל יראי אלהים אנשי אמת שונאי בצע. וקאלוא פי מכילתא פי שרח הדא אלפסוק: "ואתה תחזה"—אתה תחזה להם מנבואה. אנשי חיל וכו'.

A chapter of judges’ ethics. Our rabbis said: Shmuel says: Once a person has been appointed a leader of the community, he is prohibited from performing labor in front of three people, lest he belittle the honor of his position. From their [appointment] onward, [the desired] conditions [are] that they should be scholarly, learned, observant, loving of the just, hating of falsity, rich, and wealthy. Jethro, in his advice to Moses our Rabbi, may his memory be blessed, says: You shall also seek out from among all the people capable men who fear God, trustworthy men who spurn ill-gotten gain. And they [our Rabbis] said in the Mekhilta regarding the interpretation of this verse (ibid., 21): “You shall also seek out from among all the people”: by prophecy; “capable men”: men of wealth and men of means; “men who fear God”: in judgment; “trustworthy men”: men who can be trusted; “who spurn ill-gotten gain”: who hate to accept money [for collusion] in judgment. These are the words of R. Yehoshua. R. El‛azar ha-Moda‛i says: “You shall also seek out from among all the people”: clearly, as by the glass through which the kings look; “capable men”: trustworthy men; “men who fear God”: those who ordain conciliationin judgment; “trustworthy men”: such as R. [Ḥ](https://en.wikipedia.org/wiki/Visarga)anina b. Dossa and his fellows; “who spur ill-gotten gain”: who “hate” (i.e., who are prepared to lose) their own money in judgment. If they (thus) “hate” their own money, how much more so (are they solicitous for) the money of others!

Maimonides gathers together comprehensive conditions for the ideal character of judges generally, some of which are absent in earlier Jewish sources. He may have found these general instructions and guidelines in diverse sources, including Muslim texts. Like Samuel b. Ḥofni’s “ten commandments” for judges, Maimonides also invokes a typological number, seven (§2:7—even though de facto he included many more), which carries kabbalistic and spiritual meanings and is significant for later Jewish thinkers like Judah Loew ben Bezalel and others. It is not sourced in the Mekhilta, which Maimonides probably drew from.[[30]](#footnote-31) The common Arabic enumeration in law books, as well as the monographic literature, is known to have been an influential source for Maimonides.[[31]](#footnote-32) These sources may have served as background for his legal compilation, the *Mishneh Torah*, in general, and these halakhot in particular. These are only preliminary remarks that should be further explored and contextualized against the breadth of the Adab al-Qāḍī genre.

**In Lieu of a Summary: Preliminary Remarks for Further Research**

To substantiate the foregoing conjecture and determine the channels of influence, Jewish treatises in the Adab al-Qāḍīgenre must be examined against their Muslim counterparts in greater depth. I consider such an investigation a prime objective in my further research. Although the Muslim literature produced several studies on Adab al-Qāḍī, the ground for comparative research in this respect remains untilled. After my previous research on Jewish sources, I intend to further compare these Jewish compilations of Adab al-Qāḍīwith their Muslim counterparts in terms of content, structure, terminology, and methodology. Such a comparison, it is hoped, will reveal whether the Jewish authors composed their works under Muslim influence and, if so, may illuminate the precise nature of this influence. More specifically, in my forthcoming research I intend to determine whether one of the four Muslim legal schools—Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī—was more prominent than the others in its influence on the Jewish instantiation of this genre.[[32]](#footnote-33)

Study of this legal genrewill also abet our understanding of its *Sitz im Leben.* Notwithstanding their great socio-historical value*,* earlier studies on the Muslim works of Adab al-Qāḍī have been rather limited in scope. The foremost study in this field[[33]](#footnote-34) investigates only one aspect of this literature, the archetype and character of the ideal judge. Through the inquiry that I intend to conduct, I hope to shed light on additional aspects of the Adab al-Qāḍīgenre, expanding our knowledge and understanding of the social and legal contexts in which these works were produced, as well as how these compared with those of their Jewish contemporaries.

To contextualize the Adab al-Qāḍīworks, I propose to compare them in the following respects: tables of contents, structures, topics of discussion, terminologies, methodologies, rhetorical characteristics, socio-historical references, impact on contemporaries, and influence on later works belonging to this genre. Muslim Adab al-Qāḍīworks reference the Qur᾿ān, the Ḥadīth, and fiqh. This practice should be compared with how their authors’ Jewish counterparts quote their own canonical sources, such as the Mishna, Midrash, and Talmud.

The Adab al-Qāḍīgenre stands at the crossroads of religion, law, and philosophy. Due to its comprehensive nature, it may provide an optimal case study for a comparative analysis of Muslim-Jewish relations. Such a study of Jewish and Muslim Adab al-Qāḍī works would fill a scholarly lacuna by contributing to the interdisciplinary research on medieval jurisprudence. Furthermore, the philological-literary inquiries that it entails are likely to yield a richer historical understanding of legal procedures during this period and to contribute important insights on the development ofAdab al-Qāḍī in its broad context.

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   See Gabrieli, Pellat, and Ronart. Many scholars have dealt with different aspects of Adab as high literature; see Shinar, *Sifrut*; idem., *Peraqim*. Shinar, referring mostly to ninth-century authors such as al-Jahiz and Ibn Qutayba, defines the Adab as an encyclopedic literature. Several scholars have concentrated on this literature, e.g., Arazi, Sadan, and Wasserstein. [↑](#footnote-ref-2)
2. Masud and Powers, pp. 1–44; Schneider; Rafii. The translation of the name of this genre was coined by Powers, p. 16. Regarding the definition of moral “etiquettes” or “conducts” as a literary genre within in the Mussar literature due to the influence of Arabic literature, see Gries, *Hanhagot*, pp. 1–40; idem, *Mussar*. [↑](#footnote-ref-3)
3. Therefore, this study fills a lacuna in previous scholarship; see: Assaf, “Perurim”; Shochetman; Sinai. For more on this, consult the bibliographical references in the following note. [↑](#footnote-ref-4)
4. Ariel, *Manuals.* Regarding the discovery of this genre, see idem, *Discovery*. On the basis of this research, a manuscript of a book was recently presented to the Ben-Zvi Institute in Jerusalem: *Etiquette of Judgeship*. In this book, I endeavor to publish all known remnants of *Kitāb adab alqaḍā* (Book of Judges’ Duties) by Rav Hai Gaon and *Kitāb lawāzim al-ḥukkām* (Book of Judges’ Duties) by Rav Samuel Ben Ḥofni Gaon. Research currently under way (idem, Habilitation) will supply extensive examples of contentual parallels and structural equivalents of Geniza remnants in this newly discovered Judaeo-Arabic sub-genre and already-known works by their Muslim contemporaries in a firmly established genre. Examining textual proximities and the possible ideological juxtaposition of the legal, philosophical, and literary contexts, I wish to ponder several issues characteristic of the distinguished Adab al-Qādi or the judges’ duties genre (Heb. [*ḥ*](https://en.wikipedia.org/wiki/Visarga)*ovot ha-dayyanim*) relating to questions such as the judge's ethical character, the conception of the adjudicative process, and the understanding of civil procedure. The publication of this jurisprudentially contextualized monograph will be a breakthrough in interdisciplinary and interreligious Judaeo-Islamic research. [↑](#footnote-ref-5)
5. For further details regarding previous literature, see Ariel, *Manuals*, p. 3, pp. 46–62. In a forthcoming paper, I intend to elaborate on the existing evidence relating to this important monograph by Rav Hai Gaon. The few relevant discussions in the secondary literature (mostly by Assaf) will be enumerated there fully, thus making them available to the English-speaking public. [↑](#footnote-ref-6)
6. For further literature, see Ariel, *Methodology*. [↑](#footnote-ref-7)
7. See Nahawandi. On this savant, see <http://d2b4hhdj1xs9hu.cloudfront.net/GK3KK32R.jpg>. [↑](#footnote-ref-8)
8. The relevant chapter from *Kitāb* *al-Murshid* is published in Gitelson’s series by Cohen, *al-Magrebi.* Cohen based his work on several manuscripts, mainly those in the Prussian State Library of Berlin (Staatsbibliothek zu Berlin Preußischer Kulturbesitz Ms. Or. Oct. 351), which includes the whole work. The book as a whole continues the tradition of Karaite *sifrei miẓvot*, but parts of it are written as elaboration and as small, independent, and quite developed treatises; it is this that justifies Cohen’s separate work on this chapter alone. Al-Gamil published the *sifrei miẓvot* of al-Maghribi en bloc; however, the philological and critical basis of these works is completely missing. In the meantime, many Geniza fragments have been discovered, dozens of which are accessible at the Russian National Library in St. Petersburg. For further discussion of Karaite materials on jurisprudence, see Ankori. [↑](#footnote-ref-9)
9. Ariel, *Aknins*; idem., *Annotated edition*. [↑](#footnote-ref-10)
10. For example, Assaf published a medieval work in Judaeo-Arabic that makes use of Rav Hai Gaon’s *Kitāb adab al-qaḍā*: Assaf, “Perurim.” Some works are yet to be identified and cannot be ascribed to this genre. One of them, in which Rav Hai Gaon is quoted, is considered a later responsum (draft in Mss. Mosseri: Moss. III, 235. A corrected version [!] of the responsum in Mss. Kaufmann DK 416 has now come to light; see Ariel, *Etiquette*; Friedman, *Maimonides*). Other works are still dubious and several relevant shelfmarks appear in the **appendices** of my forthcoming book, mentioned above. Further research of Adab al-Qāḍī works is now possible due to digital developments at the Friedberg Jewish Manuscript Society (FJMS). Additional fragments may be found with the assistance of colleagues at the Ben-Zvi Institute, who are working diligently on classification and publication of monographs by the late Geonim who specialized in Judaeo-Arabic legal creativity. The relevant fragments for such research are not only those from genre-related monographs but also documentary material of *batei din* (rabbinical courts), among other documents from diverse literary genres that have been found in the Cairo Geniza. Ongoing projects on Geonic responsa and *oẓar ha-Geonim*, mainly by Prof. Robert Brody and his students, are expected to have further correlations with jurisprudential or procedural issues. Furthermore, works of the Adab al-Qāḍī literature will be compared and further contextualized within the scope of already-published works in this field (Brody, *Ḥiburim*; Ben-Sasson and Brody, *Sefer ha-Eduyot*; Stampfer, *Laws*; idem., *Ha-mekaḥ*; Meacham; Abramson; Libson, *Structure*) and against the backdrop of additional unpublished monographs that still await intensive treatment. [↑](#footnote-ref-11)
11. See Ackerman-Lieberman, Cohen, Goldberg, Krakowski, Rustaw, Yagur, and Zinger, to mention a few. [↑](#footnote-ref-12)
12. On the problematicsof the term “influence” in this context, see, e.g., Montgomery. Comparative research in this field is still limited; several sources may be found in works mentioned in the following footnotes. [↑](#footnote-ref-13)
13. Goitein, *Isrā’īliyāt* (I, II); Vajda. For an adequate summary of the subject with further references, see Ilan, pp. 152–154. [↑](#footnote-ref-14)
14. Libson, *Comparative*; idem., *Influence*; Jani; Simonsohn; Yagur; Lazarus Yaffe, *Attitude*; idem., *Differences*. For further bibliographical notes, see Rakover, Vol. 1, p. 136, and Vol II, p. 140. Still in its early stages, interdisciplinary comparative research on Jewish and Muslim legal systems has been pursued primarily by Prof. Gideon Libson. In the field of substantive law, Libson’s work deals with subjects 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 proposed research will augment the comparative work done thus far by contributing an analysis of the legal-jurisprudential literature. [↑](#footnote-ref-15)
15. For further research in this direction, see Anton, *Fürstenspiegel;* Bowman; and Kaufhold. As for the role of the judge and the governor in Spanish legal texts and Fürstenspiegeln, see *Siete Partidas Alfons X. el sabio* (c. 1265–80), Edition von 1807; Especulo Alfons X. (1255–60)— Bizzarri, Hugo Oscar (ed.), Castigos del rey don Sancho, 2001; *Hofordnung und Hofämterbeschreibung König Jaumes II. von Mallorca 1344*: <https://www.uni-trier.de/index.php?id=12877> (text edition Latin-German). We find personal biographies of luminaries, including judges, in Christianity as well as in Islam; see Nepos, Koji, and Landau. Regarding the office of the judge, see Oestmann, Vol. 2, Tl. 2 S. Sp. 27–31. [↑](#footnote-ref-16)
16. Greenbaum, p. 57 (with Heb. translation); idem., *Seridim*, pp. 221–222. [↑](#footnote-ref-17)
17. Blau, p. 81; Friedman, *Dictionary,* p. 119, denoting משך ממון מן הקופה or משך ממון על חשבון. [↑](#footnote-ref-18)
18. Fragments: CUL T-S.8.236+ T-S 8K 11; Assaf, *Mi-shyarei*, p. 35; idem., *Shelosha sefarim*, pp. 113–118. For further discussion of these fragments, see Ariel, *Manuals,* pp. 6-24; idem., *Relikt*; idem., *Überbleibsel*. [↑](#footnote-ref-19)
19. d. 643 Hijra (1246 CE). [↑](#footnote-ref-20)
20. Ibn Abi Al-Dam, pp. 33-36. [↑](#footnote-ref-21)
21. The term *ijtihad* denotes rational human deliberation. For more about this concept and the *shāfi‘i* development, see Schacht and MacDonald. Notably, this term is also associated with qadā, which is likened to godly rationality; see Campanini. [↑](#footnote-ref-22)
22. *Ijmāaʿ* is the third origin of legal decision-making in Islam; it is based on the consent of the general Islamic community; see Bernand. [↑](#footnote-ref-23)
23. In a concrete case, the judge applies *Kiyās* as a syllogism or an analogy of the Holy Scriptures; see Tsafrir. [↑](#footnote-ref-24)
24. Since *aqāwīl* has several meanings, an alternative translation would be: “involved in the conversational opinion of people”. This alternative is similar to what appears in the lyrical wording of the Mussaf service for Yom Kippur, following the Ashkenazi rite: ומעורב בדעת עם הבריות (‘whose disposition is pleasing to his fellow-men’). As for the judge as a *shaliaḥ ẓibbur* (שליח ציבור—normally denoting a *ḥazan* [cantor] and a congregation’s messenger in public worship, i.e., namely its representative vis-à-vis God)— see Reiner. See also Baumgarten for general discussion of attributes in inscriptions on graves in medieval Ashkenaz. For further on databases of this sort, visit <http://www.steinheim-institut.de/cgi-bin/epidat>. [↑](#footnote-ref-25)
25. See, as an example, *Kitāb adab al-qaḍ*ī, Ibn Al-Qas, Abu al-Abas Aḥmad b. Abi Aḥmad al-Tabari (Shāfiʿī, Iran, c. 947). For further bibliographical details, see: Ariel, “Kalām” and idem., *Relikt*. [↑](#footnote-ref-26)
26. The main research on this topic is yet to be carried out, which is why I define it as one of the main objects of my present research. Here is the place to mention several preliminary remarks on compilations that deal thematically with the subject. The Geonim specialized in codifying the halakhic literature. Given that the first halakhic codices devoted chapters to judges’ duties, we find such compilations in *Halakhot gedolot* (Hildesheimer, III, Hilkhot Dayyanim, pp. 1–16); *Halakhot Pesuqot* (Sasson, pp. 122–123); *Hilkhot reu* (Schloßberg pp. 93–94) *Sheiltot* (Mirsky, §§65, 158, 167) and the like (see Emanuel, *Hidden Treasures*, II pp. 24ff, and Ariel, *Halakhot qetanot*). This motif reaches its pinnacle after Se’adya Gaon. These independent halakhic monographs followed Se’adya’s halakhic compilations, which gave scientific attention to specific legal issues (see Ben-Sasson and Brody, *Sefer ha-shetarot;* Brody, *Ḥiburim hilchatiim*). We find almost no halakhic record of court procedures in the subsequent halakhic discussion, and sources that reflect continuations of the Adab al-Qāḍī genre are frequently found in ethical literature or as appendices to some other halakhic discussion. The insertion of such chapters is especially interesting due to its literary variability and mobility in the Islamic legal literature as well. To the best of my knowledge, the only monograph subsequent to the Geonic period that follows this pattern is the monumental *Ḥukot ha-dayyanim* by Rabbi Avraham Tazarti (a disciple of Rabbi Shlomo ben Adret). In Maimonides’ *Mishneh Torah,* this is part of the ideal structure of his monumentality: a comprehensive halakhic code, which strives to encompass the entire Torah for Maimonides’ own generation. Therefore, some of these halakhot are included in Maimonides’ *Hilkhot Sanhedrin*. The judge’s duties, however, are no longer presented in the Adab al-Qāḍī manner, as in Rav Hai Gaon’s *Kitāb adab alqaḍā* or Samuel Ben Ḥofni’s *Kittāb lawazim al-Ḥukkām;* instead, they are dispersed across the *Mishneh Torah* and included in different halakhic sections (e.g., *Mamrim*, *‘Edut*, and so forth). Likewise, Chapter 12 of *Kaftor va-feraḥ* (Estori Haparchi, fourteenth century) is devoted to jurisprudential issues in the context of pilgrimage to the Holy Land and the sanctified halakhot (mainly from Seder *Zera’im*) that are unique to an idealized future Israel and are given ahead of the reestablishment of the Sanhedrin as a symbol of justice precipitated by worldly redemption. For elaboration on this context in *Ṭibb al-Nufūs*, see Ariel, *Aknins*; idem., *Annotated edition*. This is, in a way, an extension and sharpening of Messianic tendencies that already appear by Maimonides’ reflected self-image in *Mishneh Torah* as a guide for the perplexed among the dispersed Jewish nation. A unique insertion is found in *Maḥzor Vitri* §427, which combines a chapter on judges as part of the liturgical corpus and as a supplement to the ethical and spiritual aspects of Jewish ritual. This halakhic tendency follows the prayer books of the Geonim, e.g., *Seder Rav Amram*, *Siddur RaSaG,* and *Siddur Rav Shlomo b. Nathan,* who delve into legal issues in order to better comprehend ritual and rite. In *Sefer ha-tur / Arba‛a turim* of Rabbi Jacob Ben Asher (c. 1269–c. 1343), this discussion, represented in the introduction to the *Ḥoshen mishpat* section, deals with civil law. Since these are general and ethical issues per se, Rabbi Joseph ben Ephraim Karo (1488–1575), in his comprehensive *Shulḥan ‘arukh,* did not repeat this meta-legal discussion and did not include such a section in his halakhic codex. Such punctilious tendencies are found in sifrei miẓvot such as SeMaG, Assin §97. This common literary convention recurs in regard to the fiqh literature and insertions of Adab al-Qāḍīinto different genres within islamicate traditions. This genre has continuations, e.g., in *Gan ha-sikhlim* (*Bustān al-U‛kūl*) by Rabbi Netanel Beyrav Fayyumi; see Pines; Levine. Prof. Paul Fenton generously drew my attention to a treatise on Adab al-Qāḍī: Chapter 15 of *Sefer mussar* regarding judges, by Rabbi Yehuda Ibn Khalāṣ of Tlmsán (تِلِمْسان). On this forgotten savant, see Gross, Havlin, and the introduction to *Mesiaḥ ‘ilmim* (Jerusalem. 1986; 2000), pp. 15–16. This book shows a strong affinity with the genre of *Menorot ha-ma’or* by Rabbi Israel ben Joseph Alnaqua (d. 1391), Isaac Aboab (fl. late fourteenth century), and, probably, others in medieval Spain (see Griss, *mi-zikhronoteha*, pp. 324–327). The work of Khalāṣ was known mainly due to its widespread popular translations into Yiddish in relation to “Conqueror of Hearts”; see Rubin, pp. 84, 360, 369. This compilation must be further checked vis-à-vis the model of *Ṭibb al-Nufūs* in Judaeo-Arabic. It would be especially important to investigate further connections to North African sources that are implemented in this chapter. The Adab al-Qāḍī literature should be also read in the context of the general *sifrut ḥokhmah* (wisdom literature) in view of sages like Ibn Fatik the Sefardi and *Musrei ha-filosofim* of Hanaina b. Isaac. See Razhabi, *Pitgamei adab*. Prof. Haggai Ben-Shammai (personal communication) noted that many genres intermingled and the reason is clear: the distinctions are highly complicated and, in a way, also artificial. Even within this literature, one may differentiate between cultural literature for learned people, the *sifrut ḥokhmah* (see Ben-Shammai, *Mivḥar ha-peninim*) and the Adab al-Qāḍī, which is addressed mainly to judges as a part of their professional education. Importantly, there may be a difference between Adab al-Qāḍī as good manners for proper behavior and its insertion into fiqh texts. Worth mentioning in this context are works of more philosophical character such as ‘*Amud ha-din,* part of *Shenei luḥot ha-berit of* Isaiah ben Avraham Horowitz (1555–1630) and *Netiv ha-din* in *Netivot ‘olam* of Judah Loew ben Bezalel (1526?–1609). In modern halakhah, a wide variety of monographs addresses itself to these legal issues either as practical manuals or as interpretations of previous literature. Several are noteworthy: Darvrmdiker, *Seder ha-din;* Friedman, *Ḥukei ḥayyim*; Kook, *Baer Eliyahu;* Septimus, *Mishpetei* [*Ẓ*](https://en.wikipedia.org/wiki/%E1%BA%92)*edek*; *Halakha pesuqah.* Another source on which to draw guidelines for the Adab al-Qāḍīcorpus apart from legal and practical materials from the genizot are the *pinqasei qehilot* (community ledgers); see Berkovitz; Bornstein-Makovetsky. [↑](#footnote-ref-27)
27. The relevance of such discussions might be irrelevant for secular law; see Horwitz. However, we see in this discussion that it is not irrelevant for religious law, at least in the case of Jewish law which seems to have some of its origins in Islamic law, which aims not only for a final legal decision in order to close a given case that is being discussed in court, but rather for righteousness and the aspiration to attain objective truth, which is available to the judge who is perceived as an ideal human being. This theme was discussed by many legalists of Jewish law. To mention a few: Barak; Englard; Miron; Tova Strasberg-Cohen; Zilberg. These roles were given to many spiritual guides in antiquity, some of which was referred to by the title Teacher of Righteousness (*Moreh ha-* *zedek*), a central figure in Qumran. On the Arabic literature, see: Ben Shammai, *Mudawin*.   [↑](#footnote-ref-28)
28. *Sanhedrin ve-ha-‘onashin ha-mesurin lahem* §2. [↑](#footnote-ref-29)
29. See, e.g. *Kessef mishneh* 2:1 and the lengthy explanations by Rav Kafeḥ ad loc. [↑](#footnote-ref-30)
30. It may, however, reflect an exegesis of *sarei ‘assarot* (leaders of tens), namely, these *sarim* (leaders) are those who combine these ten preliminary requirements or commandments. Although I have not found any source that supports this interpretation of the law; it may be an option. [↑](#footnote-ref-31)
31. Gideon Libson invested intensive discussions in this topic, for a summary of the issues, see Ariel, *Manuals,* p. 199, n. 631. [↑](#footnote-ref-32)
32. Professors Ben-Shammai and Sarah Stroumsa, commenting on my aforementioned lecture at SJAS, noted that the criteria for the *mad’aheb* would most probably be geographic, namely, schools in these writers’ geographic proximity. A comprehensive bibliography is devoted to the Islamic legal schools; see, for example, the articles assembled in Bearman, Peters, and Vogel; Melchert; Tsafrir, Hanafism; Kalbarczyk. The identification of a theological school with a legal *madhhab* varies greatly from school to school and time and place. While the Mātūridite school became closely identified with the Ḥanafite school, the early Muʿtazila included both Shiʿi and Sunni theologians. Nevertheless, the Baṣran school, with its Muʿtazilite preoccupation with legal theory (noted by Sklare, pp. 108–109), is also relevant to the adoption of this vocabulary. I take this opportunity to thank these distinguished scholars again for their generous and most helpful remarks. [↑](#footnote-ref-33)
33. See above, n. 2. [↑](#footnote-ref-34)