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

The Geonim were prominent Jewish leaders in the Babylonian diaspora from the 7th to the 11th centuries. A sharp shift in the epistemology of the Halakha distinguishes the late Geonim of Babylonia (10th–11th 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, these works contrast with the collective oral traditions comprising the earlier geonic corpus. The judges’ duties genre, therefore, stands as the legal and jurisprudential climax of this monographic genre, and all other works in the juridical field should be seen as derivative legal aspects of this highly conceptualized, instructive genre.

As widely accepted spiritual leaders in Babylonian academies and, therefore, the worldwide Jewish community in the early medieval era, the Geonim wielded secular authority over the Jews in Islamic lands. Se’adya and his successors, Rav Hai Ibn Shrira Gaon and Rav Samuel Ibn Ḥofni, specialized in writing professional monographs on a variety of topics, mostly in civil law, which encompasses the genre I study 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 seek to fill this research gap by identifying and contextualizing individual Genizah 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 within the general Arabic genre *Adab al-Qāḍī*.[[3]](#footnote-4)

1. ‘כתאב לַוַאזם אלחֻכַּאם’ (*Kitāb lawāzim al-ḥukkām*), Rav Samuel Ibn Ḥofni Geon Sura (c. 997–1013)

This book not only almost completely disappeared, leaving few hints of its existence, but even its title is ambiguous.[[4]](#footnote-5) Some transcriptions are rendered *alAḥkam*, not a*lḤukkām*, and Genizah and *Rishonim*-literature offer different transcriptions.[[5]](#footnote-6) The book was plausibly written for judges or about judges, jurisdiction, or judges in their judgment. It deals with judges’ *theological, ethical, and jurisprudential* duties and posits a fundamental theological basis for civil procedures.

Unfortunately, even the introduction in the Genizah is only partial.[[6]](#footnote-7) Several fragments from the body of the book were identified based on matches with the title appearing in the fragment (T-S Ar. 48.61) of the table of contents in this introduction. This introduction suggests a theological background for this jurisprudential work because most geonic monographs have a theological introduction, following the custom of their Muslim contemporaries, who preceded meta-legal materials with introductory sections (*Mukadima)*. The theological evidence serves to justify the Law, legal authority granted to judges, and ethical-juridical principles that emerged later.[[7]](#footnote-8) The author gives a lengthy divine justification for the earthly legal authority of the judges and the halakhic court (*Dayyanim and Beit Din*) based on the belief in the one God (*Tauḥīd*): from His unlimited power and authority, He gives judges authority to do justice, although they are limited human beings capable of making mistakes.

As customary in this type of literature, the introduction mentions no sources or evidence and quotes only anonymous sources (Bible verses, Mishna, and Talmud: וקאלו = and they said). Many books in this genre were written and preserved in Islam, in contrast to the entangled history of the Judaeo-Arabic genre, which disappeared not much later due to the destruction of the Yeshivot of Babylonia and internal transformations of the Jewish center. Comparing the main themes and subjects of interest appearing in Samuel b. Ḥofni’s introduction with other book introductions written by his Muslim contemporaries makes it quite clear that the surrounding culture transmitted and mediated in both Muslim and Jewish savants of the *Adab* genre and its legal language and this is to show reciprocally sharing of philosophical world that preceded common legal thought.[[8]](#footnote-9)

1. ‘כתאב אדַבּ אלקצ̇א’ (*Kitāb adab alqḍā/Book of Judges’ Duties*), Rav Hai Geon Pumbedita (998–1038)

In comparison to the first work discussed, the scientific destiny of this book is somewhat different. This book was also completely lost: from some point in the Middle Ages later to the 10th century – quite shortly after the probable appearance of this book – and until modern scholarship, we find no clear evidence for the existence of this book. There is also ambiguity about its proper title. The word *Adab* can be translated in many ways because it has broader scope of meaning in history, culture, and literature. The term *Adab al-Qāḍī*, however, serves a narrower purpose in a sub-genre. Here again, it is not completely clear if the text’s subject is the judge, his halakhic job, or his jurisdiction in formal institutions. The qadi’s obedience is, in *Adab al-Qāḍī* context, both religious and theological, and his personal characteristics must reflect this subordination.

Only remnants of medieval translated version have survived indirectly. Assaf published two fragments of this work, stored at the British Library and translated into Hebrew by Rabbi Yehudah al-Barzeloni (author of *Sefer Ha-’Ittim*). Without clear evidence for Rav Hai’s original work, Assaf made plausible assumption without further support due to an absence of further evidence and lack of proficiencies in both classical and Judaeo-Arabic. It goes without saying that the databases available in Assaf's time were quite primitive and his achievements preceded the emergence of the digitized humanities are worth mentioning. My thesis reinforces the identification of many fragments based on careful deliberation and reconsideration of scholarly achievements.[[9]](#footnote-10) Drawing on thorough work utilizing computing technology, I confidently venture that about 60 related fragments in Judaeo-Arabic are verified as portions of this incomplete reconstruction, and 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 Genizah,[[10]](#footnote-11) further Genizot and digitalized manuscript collections, search tools,[[11]](#footnote-12) helpful modern dictionaries,[[12]](#footnote-13) grammar,[[13]](#footnote-14) and flourishing scholarship by scholars of Machon ben Zvi and the *Society of the Judaeo-Arabic Studies* (SJAS).

# פאצל פי אדב אלדיינים (“A Chapter on Judges’ Duties”), Rav Yosef, son of Yehuda Ibn Aknin al-Barceloni

# Along with these two above mentioned works, another text has almost escaped scholarly attention. Under the advice of Professor Paul Fenton of the Université Sorbonne, I found this relevant chapter in a codex from the Bodleian Library collection entitled “Hygiene of the Souls” (طب النفوس). The chapter title is inscribed at the top of a leaf from the Genizah (JTS ENA 2715.35r), but the provenance of the chapter was unknown. The texts in the codex and the Genizah fragments are identical.[[14]](#footnote-15)

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

# Finally, this chapter is not an independent work and is well integrated into the larger framework of Ibn Aknin’s *Tib alNufūs*, a jurisprudential section of *The Worldly Soul*. Ibn Aknin’s methodology for working on his book remains unknown because not all the materials are edited in the same way, and the discussion in this chapter proceeds very differently than the didactical and philosophical chapters.[[15]](#footnote-16) These raise intense questions regarding the compilation of the work and the editing together of such characteristically different materials.

# In my research, I clearly identify five unknown Genizah fragments, all part 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) The remnants of this work in the Genizah, therefore, enrich our textual knowledge of this work, which has no existing full versions, except the unicum in Oxford. These Genizah occurrences prevent some confusion regarding the jurisprudential Geonic works and help 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 Genizah documents: geonic legal monographs, comprehensive professional manuals for judges on jurisprudential themes (e.g., legal principles, court procedures, the judge’s character, and prohibitions of 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 this research will be built on these previous achievements and its subjective aims to make a contribution in the field of comparative, interdisciplinary and interreligious Jurisprudence. Still in its early stages, interdisciplinary research to compare between Jewish and Muslim legal systems has been pursued by very few scholars. In the field of substantive law, previous works 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 research aims to contribute an analysis of legal-jurisprudential literature to the comparative work that has been carried out thus far. [[18]](#footnote-19)

1. The term “Gaon” stands for the Terminus Technicus Rosh Yeshivat Geon Yaacov, the head of the Babylonian academy. The relevance of this term is that the aforementioned individual was a spiritual-theological guide of the diaspora and thereby a halakhic authority. Robert Brody, *Sa’adyah Gaon* (Oxford, Portland, and Oregon: 2013), 118–139; Ibid. חיבורים הלכתיים של רב סעדיה גאון (Jerusalem: 2015); Ibid. "מפעלו ההלכתי של רב סעדיה גאון" , *Peamim* 54 (1993): 82–92; Henry Malter, *Saadia Gaon—His Life and Works* (Philadelphia: 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 ibid., “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 pursuing 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 preliminary discussion see: Muhammad Khalid Masud, “Adab Al-qāḍī,” in *Encyclopaedia of Islam, 3rd* 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>. Schneider, Irene, *Das Bild des Richters in der Adab al-Qadi Literatur*, Frankfurt am Main, Bern, New York, Paris: Peter Lang, 1990; Masud, Muhammend Khalid, Rudolph Peters and David S. Powers, “Qadis and Their Courts: An Historical Survey,” in *Dispensing Justice in Islam – Qadis and Their Judgments*, eds. Muhammend Khalid Masud, Rudolph Peters and David S. Powers, Leiden: Brill 2006, pp. 1–44. The translation of the genres name is of Powers (s. pp.\*) and recently also Raha Rafii The Judgeship and the Twelver Shīʿī Adab Al-Qāḍī Genre, 11-14th Centuries C.E., PhD. Disserataion University of Pennsylvania 2019. [↑](#footnote-ref-4)
4. Ariel, “Discovery,” 300–302; S. 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, “תרומת הגניזה לחקר המונוגרפיות ההלכתיות של רב שמואל בן חפני גאון – מבנן היקפן והתפתחותן,” *Teudah* 15: 189–239. For further research, see Ariel, “Ein Relikt,”(forthcoming). [↑](#footnote-ref-6)
6. Simḥah Assaf, משיירי ספרותם של הגאונים“,” *Tarbiz* 15 (1944): 27–35, here 35; Simḥah Assaf, “שלשה ספרים נפתחים לרב שמואל בן חפני גאון—Kittāb Lawazim al-Ḥukkām,” *Sinai* 17 (1945): 113–118. [↑](#footnote-ref-7)
7. In my forthcoming book following my PhD dissertation and in my above-mentioned forthcoming article, I will provide the basis for the literary background of this identification. Although it is uncertain whether this fragment is part of RaShBaḥ's book, it is quite evident this kind of literature was available to both professional and popular theologians. In this regards s. David Sklare, “The Reception of Mu’tazilism among Jews Who Were Not Professional Theologians”, *Intellectual History of the Islamicate World* 2 (2014), pp. 18–36. [↑](#footnote-ref-8)
8. Several are here bear mentioning: a.) *Kittab Adab alQada* of Ibn Abi AlDam’s (1187–1244, s. Krauss-Sánchez, Heidi R., “Ibn Abī al-Dam,” in: Encyclopedia of the Medieval Chronicle, ed. Graeme Dunphy, Cristian Bratu. Consulted online on 16 July 2018 <http://dx.doi.org/10.1163/2213-2139_emc_SIM_01369>); b.) *Kitāb adab alqaḍ****ī*** of alKhassaf. c.) Regarding the contribution of alMawardi to the understanding of the theme Judges Characteristics, see Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb Al-Dīn alQarafi* (Leiden, New York, and Köln: 1996), 154–160. Further discussion appears in my forthcoming article (cf. above f. 4). There are also remnant of this genre in the Karaite literature, these will be further discussed in additional paper: “*Adab al-Qāḍī* – Jurisprudential Genre – Beginnings of a Comparative Case Study”, *Festschrift For 100th Prof. Joshua Blau’s anniversary – Proceedings of the 19th SJAS conference, 1-4 July,* Antwerp 2019(forthcoming: Brill 2020). [↑](#footnote-ref-9)
9. Neri Y. Ariel, “Towards an Identification Methodology of Genizah Fragments,” *Trumah* 24 (2018): 185–200*.* [↑](#footnote-ref-10)
10. The term "Genizah" refers to the Hebrew common name of this phenomenon of burying torn writings. As far as I know, there is no sufficient English translation for this kind of "storage" of sacred scripts that were damaged due to a multiple use. The term "Genizot" in this context refers to additional storages existed in parallel to the one in Cairo. S. 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,* Siam Bhayro, Ben M. Outhwaite, and Geoffrey Khan (Eds.), (Leiden: 2011): 43–52. It is common to differentiate between this Genizah and the misleading term "Genizah" used mistakenly for Hebrew Fragments in Europe, S. Martha Keil, “Zeugen von Gewalt. Mittelalterliche hebräische Fragmente in niederösterreichischen Bibliotheken”, in: Martha Keil, Elisabeth Loinig (Hg.), Quellen zur jüdischen Geschichte Niederösterreichs. Die Vorträge des 33. Symposions des NÖ Instituts für Landeskunde gemeinsam mit dem Institut für jüdische Geschichte Österreichs, St. Pölten, 19. - 20. November 2013 (= Studien und Forschungen aus dem Niederösterreichischen Institut für Landeskunde, hg. von Elisabeth Loinig und Reinelde Motz-Linhart, Band 58). St. Pölten 2016, 13-36 (here: 15-18). Almost all the Genizah fragments I studied are available from <https://fjms.genizah.org/>, except for some fragments of the Mosseri Collection and St. Petersburg (scans are available upon personal request). The Bodleian library’s collection – among other collections of Genizah sources in 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: 2006); Mordechai Akiva Friedman, *A Dictionary of Medieval Judeo-Arabic: In* *the India Book Letters from the Geniza and in Other Texts* (Jerusalem: 2016) and also dialectal dictionaries: Moshe Piamenta, Dictionary of post-classical Yemeni Arabic, 2 vols., Leiden : E.J. Brill 1990-1991. [↑](#footnote-ref-13)
13. Joshua Blau, A Grammar of Mediaeval Judaeo-Arabic, The Magnes Press: The Hebrew University of Jerusalem, 1980 (2nd edition). [↑](#footnote-ref-14)
14. For a critical edition with a publication of this chapter, further legal discussion, and a detailed bibliography, see S. Neri Y. Ariel, “Annotated Edition with Commentary of *Fasl fi Kitab adab al-Dayyanin* from طب النفوس by Ibn Aknin,” *Sefunot* (forthcoming 2020). [↑](#footnote-ref-15)
15. Halkin published Greek aphorisms transmitted into Judaeo-Arabic from 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. Another chapter on education is provided by Moritz Güdemann, *Das jüdische Unterrichtswesen während der spanisch-arabischen Periode—Nebst handschriftlichen arabischen und hebräischen Beilagen* (Wien: 1873). [↑](#footnote-ref-16)
16. Machon Ben Zvi Team provided kindly a preliminary list. This list was firstly without any differentiating among categories. A substantial part of the work was to order these materials, s. the introduction to Ariel, Manuals. [↑](#footnote-ref-17)
17. Shraga Abramsohn, ”,קטע חדש ממכילתא דרשב”י“ *Tarbiz* 41 (1972): 361–372. [↑](#footnote-ref-18)
18. Such comparative studies are rare because the preconditions for pursuing them demanding well-integrated interdisciplinary knowledge. Several comparative works are to be mentioned here as a promo: Brann, R. (2000). The Arabized Jews. In R. P. Scheindlin & M. Sells (Eds.), *Maria Rosa Menocal* (pp. 435-454). Cambridge: The Literature of Al-Andalus; Mark R. Cohen, *Maimonides and the merchants―Jewish law and society in the medieval Islamic world.* Phiadelphia: 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; Kaufhold, H. (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; Libson, G. (1991). Islamic influence on medieval Jewish law? “Sefer ha’arevuth” (Book of Surety) of Rav Shmuel ben Hofni Gaon and its relationship to Islamic law. *Studia Islamica, 73,* 5-23. Ibid. (1996). Halakha and law in the period of the Geonim. In Neil Hecht et al. (Eds.), *An introduction to the history and sources of Jewish law* (pp. 197-250). Oxford: Clarendon Press;Libson, G. (1999). The structure, scope and development of the Halakhic Monographs of Rav Shemuel Ben Ḥofni Gaon. In M. A. Friedman (Ed.), *Teuda XV: A century of Geniza research* (pp. 189-239). Israel: Tel Aviv; Gideon Libson, *Jewish and Islamic Law – A Comparative Study of Custom During the Geonic Period*, Cambridge MA 2003; idem., “Islamic influence on medieval Jewish law? "Sefer ha’arevuth" ("Book of Surety") of Rav Shmuel ben Hofni Gaon and its relationship to Islamic law”, *Studia Islamica* 73 (1991), pp. 5-23;

    Montgomery, J. E. (2007). Islamic crosspollinations. In A. Akasoy, J. E. Montgomery, and P. E. Portmann (Eds.), *Islamic crosspollinations―Interactions in the medieval Middle East* (pp. V-X). Cambridge: Gibb Memorial Trust. Shahar, I. (2008). Legal pluralism and the study of Shari’a courts. *Islamic Law and Society, 15,* 112-141;

    Simonsohn,Uriel, I., *A Common Justice – The Legal Allegiances of Christians and Jews under Early Islam*, Philadelphia, 2011; Sinai, Y. (2009-2010). The religious perspectives of the judge’s role in Talmudic law. *Journal of Law and Religion, 25*(2), 357-377. Sklare, D. (1996). *Samuel ben Hofni Gaon and his cultural world.* Brill: Leiden; Stampfer, Y. Z. (2008). *Laws of divorce (Kitāb al-*Ṭ*alāq) by Samuel ben* Ḥ*ofni Gaon.* Jeruslam: Ben Zvi Institute; Stroumsa, S. (2003). Saadya and Jewish Kalam. In D. H. Frank & O. Leaman (Eds.), *The Cambridge companion to medieval Jewish philosophy*. Cambridge: Cambridge University Press.Moshe Yagur, *Religious Identity and Communal Boundaries in Genizah Society (10th–13th centuries): Proselytes, Slaves, Apostats,* Doctoral dissertation, Hebrew University of Jerusalem, 2017. Hava Lazaros Yaffe, "בין הלכה ביהדות להלכה באסלאם: על כמה הבדלים עיקריים ומישניים", Tarbiz 51 (1982), pp 207–225; Idem, *"היחס למקורות ההלכה באסלאם* *בהשוואה ליהדות"*, *Proceedings oft he World Congress of Jewish Studies*, Vol. 8, Jerusalem 1981, pp.\*. For further bibliographical notes s. Nahum Rakover, *A bibliography of Jewish Law – Modern books, Monographs and Articles in Hebrew*, Jerusalem 1975, Vol. 1 p. 136, Vol II, p. 140. [↑](#footnote-ref-19)