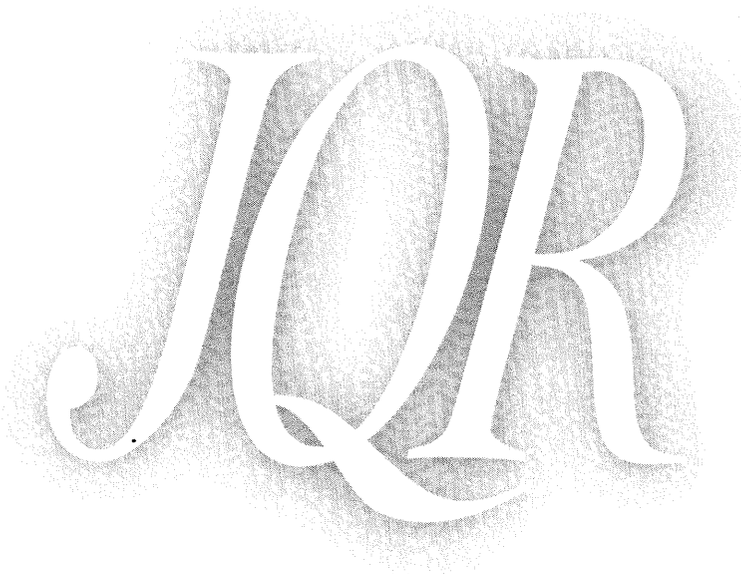
Fall 2013

Reconstructing the social history of rabbbinic ideas

David M. Freidenreich, *Colby College*



THE JEWISH QUARTERLY REVIEW, Vol. 103, No. 4 (Fall 2013) 581–588

Reconstructing the Social History of Rabbinic Ideas

DAVID M. FREIDENREICH
Colby College

MARINA RUSTOW. *Heresy and the Politics of Community: The Jews of the Fatimid Caliphate*. Conjunctions of Religion and Power in the Medieval Past. Ithaca, N.Y.: Cornell University Press, 2008. Pp. xxxv + 435.

URIEL I. SIMONSOHN. *A Common Justice: The Legal Allegiances of Christians and Jews under Early Islam*. Divinations: Rereading Late Ancient Religion. Philadelphia: University of Pennsylvania Press, 2011. Pp. viii + 306.

HOW SHOULD HISTORIANS study the social context and the social impact of rabbinic ideas? This question poses a serious challenge precisely because rabbinic literature itself is so often aspirational rather than descriptive. The challenge is especially acute for those who seek not merely to trace the social history of rabbinic Jews but more specifically the social history of rabbinic ideas. Many scholars, including the present writer, seek to avoid this dilemma entirely by studying rabbinic literature with an eye toward intellectual history, tracing the evolution of rabbinic thought without making any claims about the relationship between elite exhortations and the Jewish masses. This simple solution, however, comes at the price of dismissing important aspects of Jewish history as unknowable.

Marina Rustow and Uriel I. Simonsohn, in contrast, confront head on the complex challenges of writing social history about two fundamental rabbinic ideas, namely the notion that Qaraites[1] are heretics and the principle that Jews should not take recourse to gentile courts. Their recent books make significant contributions to our understanding of relations

1. I employ the spelling preferred by Rustow.

The Jewish Quarterly Review (Fall 2013)

between Rabbanites and non-Rabbanites in the medieval Islamic world. This essay focuses particular attention on their equally valuable contributions to the field of rabbinic historiography, namely, their distinct yet complementary approaches to contextualizing rabbinic thought.

Heresy and the Politics of Community thoroughly disproves the once-prevalent presumption among historians of Rabbanite Judaism that the anti-Qaraite polemics of Saʿadya Gaon effectively severed ties between Rabbanites and Qaraites, rendering the latter a marginalized, heretical sect. Rustow accomplishes this task by marginalizing the polemical literature of the Rabbanites, once central to historiography of Rabbanite-Qaraite relations, in favor of documentation from the Cairo Geniza. The questions Rustow poses to these documents are no less influential in shaping her revisionist history: they orient her work toward social dynamics instead of the issues of orthodoxy and orthopraxy that animate polemical literature. "Rather than asking only what those accused of heresy believed that made them vulnerable to the charge, I have asked here about the causes and consequences of the accusations—if there were any consequences at all" (p. xviii).

Many of Rustow's questions are profoundly political: who stood to gain from accusations of heresy, what power did Rabbanites have to make those accusations stick, and what power did Qaraites have to thwart such efforts? Rustow finds evidence in the Geniza for only four instances in which Rabbanites in the Fatimid empire purportedly accused Qaraites of heresy during the eleventh century. In each case, the accusers sought political objectives unrelated to Qaraite doctrines. The failure of these accusations to affect Rabbanite-Qaraite relations, Rustow demonstrates, reflects the degree to which Qaraites played key roles in Jewish communal politics, including those of Rabbanite institutions. "The history of heresy," Rustow concludes, "encompasses not merely the ideas or practices ascribed to heretics, but the set of human circumstances that cause the label to be attached to them" (p. 348).

Rustow's rich depictions of Rabbanite-Qaraite relations, woven from various genres of textual evidence and enlivened with especially effective case studies, demonstrate that even Rabbanite officials did not act on the anti-Qaraite polemic of such figures as Saʿadya. Rustow documents the heavy reliance of geonim and other officials of the Rabbanite yeshivahs on Qaraite merchants and courtiers in their efforts to obtain, preserve, and extend their authority. She highlights wedding contracts drawn up in Rabbanite courts that preserve the rights of Qaraite spouses to follow their own ancestral customs, and she draws particular attention to Rabbanite use of Qaraite ketubba formularies as exemplary of Rabbanite

respect for Qaraite norms. In one of her many case studies, Rustow shows how a Rabbanite from Toledo sought to help landsmen who had converted to Qaraism remain Qaraites in their new home, Jerusalem. "He did not seem to mind whether Ibn Fadānj and his wife chose Qaraism or Rabbanism. His only mandate was that of helping his fellow Andalusīs" (p. 261). The primacy of geographic ties over scholastic loyalty exemplified in this case encapsulates Rustow's broader argument that by the end of the eleventh century the Babylonian Rabbanites, Palestinian Rabbanites, and Qaraites of the Fatimid empire effectively fused into a single territorially defined political community, religious differences notwithstanding. The wealth of evidence Rustow wrings from the Geniza makes abundantly clear that, with only few exceptions, the Rabbanites of Egypt and Syria did not regard Qaraites as constituting a sect or a heresy but rather a *madhhab*: a distinct yet, in effect, equally legitimate school of legal thought.

Heresy and the Politics of Community is effective not only because it poses new historical questions of underutilized documentary evidence but also because it provides a thick background against which to understand this evidence. Rustow draws particular attention to the westward migration of Jews from Iraq to the Mediterranean and its impact on Jewish communal politics. This phenomenon may be well known to specialists on this region but was unfamiliar to this reader and surely will be to others; I am grateful to Rustow for taking the time to explain it and look forward to drawing on her treatment of this subject in my classroom. Rustow also offers detailed introductions to more obscure subjects, such as the science behind the Jewish calendar, the mechanics of book production, and—at great length—the political functions of honorific titles in the Abbasid and Fatimid empires. In each case, this background information proves directly relevant at key junctions in Rustow's argument. It would be unfortunate if the extra heft these discussions add to an already lengthy book dissuade nonspecialists from reading a study that Rustow has sought to write in an accessible manner. The insights Rustow offers will likely be of great benefit to scholars of Western Mediterranean and Northern European Jewish communities and, as the author clearly intends, scholars of orthodoxy and heresy in other religions as well. That said, I would be reluctant to recommend this book to undergraduates or nonacademics.

Rustow's method of studying the social context and social impact of rabbinic ideas is to rely on Geniza documents, to the near total exclusion of rabbinic sources. Her treatment of Geniza materials is a tour de force: scholars specializing in other regions can only marvel at Rustow's vividly

detailed reconstructions of historical events and the effort that must have gone into producing them. Rustow devotes some attention to the social context of Iberian Rabbanite polemic against the Qaraites, particularly that of the chronicler Ibn Dāwūd, and discusses at length the political functions of Qaraite rhetoric claiming oppression at the hands of the Rabbanites. Her insightful analysis of this material led me to wish that she had devoted similar attention to Eastern Rabbanite polemical literature. Rustow opens her work by invoking the historiographic claims made regarding Saʿadya Gaon's anti-Qaraite polemic (pp. xv–xvii), but she never addresses the contents or context of that rhetoric. The absence of such a discussion is acutely felt in Rustow's otherwise excellent treatment of the Rabbanite rabble-rousers who pressured the gaon of Jerusalem to excommunicate the Qaraites in 1029. Rustow makes a strong case that the laity trumpeted Rabbanite ideals in opposition to their leaders' tendency toward realpolitik and regionalism (pp. 235–36), but what was it about these ideals that made them so compelling to the disaffected masses? Anti-Qaraite polemics by subsequent Babylonian geonim receive no attention either. Maimonides' anti-Qaraism similarly goes unmentioned in this work, although Rustow does offer an important correction to the notion that Maimonides forbade Rabbanite-Qaraite marriage (he only rejected the legitimacy of a Qaraite bill of divorce). Despite the fact that the Babylonian geonim fall outside the geographic scope of this book's focus on the Fatimid caliphate and that Maimonides lived after the time under investigation, consideration of their polemic would have further enriched this study. After all, as Simonsohn demonstrates, social historians need not set aside rabbinic literature to the extent that Rustow does.

Simonsohn, who also avails himself of Geniza documents, signals the different nature of his source material and also his different approach to studying the social history of rabbinic ideas in the opening sentence of *A Common Justice*. "The fragmentary remains of Christian and Jewish legal documents composed in the Eastern Mediterranean in the first five hundred years of Islamic rule reveal that Christian and Jewish religious elites were preoccupied with the fact that their coreligionists were taking legal cases outside the community for litigation in what appear to have been primarily Islamic courts" (p. 1). Even as he focuses considerable attention on the behavior of the Christian and Jewish masses, Simonsohn derives his data largely from legal documents produced in elite circles, primarily Babylonian geonic responsa along with Christian law codes and conciliar canons. Rustow uses the Geniza to establish the vantage point from which to critically assess rabbinic ideas. Simonsohn, in contrast, grounds

much of his assessment of rabbinic ideas within rabbinic literature itself. The effectiveness of Simonsohn's approach rests on his thorough and multifaceted contextualization of rhetoric about appeal to gentile courts.

A Common Justice contextualizes rabbinic ideas within both the broader legal culture of the Eastern Mediterranean and the institutional structures of the Jewish community; examination of Christian sources provides a third means of contextualizing rabbinic thought. Chapter 1 focuses not on the Islamic Eastern Mediterranean, which Simonsohn defines as extending from Egypt through Iraq, but rather the legal culture of its Roman and Sasanid predecessors. Simonsohn demonstrates that Roman and Sasanid societies displayed a high degree of legal pluralism, which is to say that individuals could take recourse to a wide variety of independent judicial institutions administering different kinds of law. In chapter 2, Simonsohn provides evidence that a culture of legal pluralism persisted during the first centuries of Islamic rule despite efforts of Islamic jurists to impose a uniform *sharīʿa*. In this era as well, Christians and Jews had the opportunity to litigate in courts that applied imperial (i.e., Islamic), customary, or confessional law, courts with varying types and degrees of coercive power to enforce their rulings.

These introductory chapters set the stage for an argument that unfolds over the remainder of the book. Simonsohn reads Christian and Jewish concerns about appeal to external courts as responses not to Islamic rule but rather to the phenomenon of legal pluralism, which predates the rise of Islam. Indeed, he demonstrates strong continuities between the pre-Islamic and Islamic-era efforts of ecclesiastical and rabbinic authorities to persuade their followers to rely solely on the courts of their own confessional community. Simonsohn observes that not only Christian and Jewish but also Islamic authorities resisted the phenomenon of legal pluralism, expressing their objection "primarily through outspoken censure but also by a disregarding silence" (p. 93). Under certain circumstances, however, these authorities also took advantage of the familiarity with other legal systems afforded by their legally plural culture to incorporate specific elements of foreign systems into their own law and jurisprudence.

Simonsohn's reading profoundly shifts the framework within which Christian and Jewish rhetoric about appeal to Islamic courts should be interpreted. Simonsohn rejects the understanding of *dhimmī* as legally autonomous and instead depicts Christian and Jewish communities as semiautonomous and their members as active participants in a pluralistic society. "The act of litigating outside confessional boundaries," Simonsohn concludes, "was not a sign of religious renunciation on the part of

'transgressors' but rather of their simultaneous participation in more than one social circle" (p. 214). The broader implications of this portrayal for understanding both the social history of *dhimmī* communities and the rhetoric of their religious elites are significant indeed.

Simonsohn focuses on a different aspect of the social context that encompassed Christian and Jewish discourse about recourse to Islamic courts in chapters 3 and 4, as well as the nature of Christian and Jewish communal structures and judicial institutions within the Islamic Eastern Mediterranean. This discussion sheds valuable light on what litigants could expect to encounter if they followed the guidance of their religious authorities, and what these authorities could do to coerce or sanction members of their communities inclined toward external courts. These chapters, coupled with the discussion in chapter 2 of early Islamic judicial institutions, provide an expansive and detailed portrait of the judicial environment in which ecclesiastical and rabbinic leaders sought to exercise social control.

A Common Justice devotes equal attention to Christian and Jewish responses to the opportunities offered by the legal pluralism of the Eastern Mediterranean, a welcome reminder that these communities, often studied in isolation, have much in common. Simonsohn uses data from Christian sources to enrich our understanding of the social historical context of rabbinic ideas. For example, East Syrian and West Syrian Christian sources provide evidence for the incentives that motivated members of minority communities to make use of Islamic judicial institutions, evidence that is frustratingly sparse within geonic responsa. These courts were appealing not only because of their coercive enforcement powers, the feature that figures most prominently in geonic documents, but also because they functioned as public record offices and as means of manipulating or escaping the judgment of confessional courts. The contrast Simonsohn draws between the hierarchical nature of the Syrian churches and the decentralized nature of rabbinic leadership highlights the fact that Jews, unlike Christians, could turn to a variety of formal and informal judicial institutions within their own communities.

The comparative dimension of *A Common Justice* is hampered by disparities in the surviving evidence. As Simonsohn himself observes, most of his Islamic-era Christian sources derive from the seventh through early tenth centuries (but some, problematically, date from the thirteenth), while his rabbinic sources date from the tenth and eleventh centuries. Further complicating matters, ecclesiastical and rabbinic authorities employed distinct literary genres and conceived of their legal roles very differently. Bishops promulgated unprecedented civil legislation, drawing

upon Islamic sources for their inspiration because there was no pre-Islamic ecclesiastical tradition of civil law. Geonim, in contrast, limited themselves to the interpretation of talmudic texts and adopted elements of Islamic judicial procedure rather than Islamic law per se. Simonsohn interprets the absorption of Islamic legal and jurisprudential ideas within Christian and Jewish law as a vehicle for the promotion of ecclesiastical and rabbinic authority that complements rather than conflicts with their claims to judicial exclusivity. This is a valuable insight that would merit further investigation.

Simonsohn introduces his monograph by stating that "this book examines the legislative response of Christian and Jewish religious elites to the problem posed by the appeal of their coreligionists to extra-confessional judicial institutions" (p. 1). One might expect, therefore, that a majority of the book focuses on such responses. It is unfortunate that this is not the case, although Simonsohn's careful efforts to contextualize these responses by first providing rich background information are praiseworthy nonetheless. Chapters 1 and 2, on legal pluralism in the Eastern Mediterranean, are "introductory" (p. 19). Chapters 3 and 4 also "lay the groundwork for an examination of the attitudes of East Syrian and West Syrian ecclesiastical leaders and the Babylonian geonim toward the phenomenon of their coreligionists' recourse to external courts, discussed in chapters 5 and 6" (p. 96). For a reader specifically interested in rabbinics, the treatment of Christian sources in chapter 5 is also prefatory. Only in the book's final chapter does Simonsohn discuss the popular practice among Jews of appealing to Islamic courts and geonic responsa on this practice. One would think that the subject matter of chapter 6 merits more expansive treatment.

Perhaps, however, the reader should give Simonsohn the benefit of the doubt. After all, he demonstrates effectively that "the geonic opinions that emerge from the surviving responsa pertaining to Jewish recourse to Islamic tribunals are almost uniform in their observance of early rabbinic rules" (p. 198). Both pre-Islamic and Islamic-era sources, after all, acknowledge the validity of evidentiary documents—those that attest to a transaction, such as a bill of sale—drawn up in gentile courts even as they deny such courts the authority to issue constitutive documents—those that create a new legal state, such as a bill of divorce. If there is very little distinctive to geonic responsa, how much need be said about them? I cannot help but wonder, however, whether there is a deeper issue at stake: if geonic responsa constitute little more than interpretations of talmudic texts, to what extent can they be used to reconstruct Rabbanite social history? Perhaps responsa about recourse to gentile courts

should be read primarily as scholastic rather than pragmatic documents. I readily concede, however, that this hypothesis reflects little more than my own predilections toward intellectual history. This concern notwithstanding, Simonsohn demonstrates that social historians can indeed derive important data about legal culture and judicial institutions from responsa literature once rabbinic ideas have been properly contextualized.

Both *Heresy and the Politics of Community* and *A Common Justice* offer valuable models for reconstructing the social history of rabbinic ideas. Such scholarship demands considerable effort to gather relevant data from sources other than rabbinic literature, including sources of non-Jewish provenance. The nature and mix of these external sources, as well as the degree to which rabbinic literature itself should be the subject of analysis, will differ from one study to the next in correspondence with their respective subjects and their authors' expertise. Rustow and Simonsohn have amply demonstrated, however, that these efforts can pave the way to understanding facets of Jewish history that would otherwise remain inaccessible.

THE JEWISH QUARTERLY REVIEW, Vol. 103, No. 4 (Fall 2013) 589–598

New Turns in Jewish Historiography?

TODD M. ENDELMAN
University of Michigan

GIDEON REUVENI AND SARAH WOBICK-SEGEV, EDS. *The Economy in Jewish History: New Perspectives on the Interrelationship between Ethnicity and Economic Life.* New York and Oxford: Berghahn Books, 2011. Pp. x + 239.

GIDEON REUVENI AND NILS ROEMER, EDS. *Longing, Belonging, and the Making of Jewish Consumer Culture.* Institute of Jewish Studies Studies in Judaica 11. Leiden and Boston: Brill, 2010. Pp. xii + 233.

THE CONTENT OF JEWISH HISTORY—the actors and the actions on which the historian focuses—remains a matter of dispute. While the social upheaval and intellectual ferment that transformed the writing of academic history in the 1960s and 1970s also broadened the Jewish historiographical stage, no consensus emerged about how the historian was to integrate those who had previously been excluded from it into the larger narrative. Were they now to become the center of attention, displacing heretofore hegemonic political, intellectual, and economic elites? Or were they to share the stage uneasily with those already there? Moreover, the question of whose behavior was more significant—that is, whose behavior the historian should privilege—depends on subjective assessments of what constitutes "significance." This is a problem that continues to bedevil the writing of Jewish history, even if historians rarely acknowledge it.

Beyond this question lurks another equally perplexing question of prioritization. Even were there consensus about which kinds of Jews merit the historian's attention, the question of which of their myriad behaviors and emotional states deserve exploration remains. Thinking and writing? Buying and selling? Courting and marrying? Soldiering? Politicking? Praying? Consuming? Pursuing leisure? This question, in turn, raises still another question. Were there distinctive ways in which Jews did

The Jewish Quarterly Review (Fall 2013)