

Book Reviews



Uriel Simonsohn

A Common Justice: The Legal Allegiances of Christians and Jews Under Early Islam.
Divinations: Rereading Late Ancient Religion. Philadelphia: University of
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Uriel Simonsohn's *A Common Justice* explores a phenomenon that, on the face of it, may seem surprising: Jews and Christians living under Islamic rule seeking justice in Islamic courts rather than with the judicial authorities of their own communities. The most direct evidence for this phenomenon comes from the statements of those very authorities decrying the practice, attempting to dissuade or prohibit their coreligionists from seeking justice from outsiders. Simonsohn is generally aware of the limitations of his evidence; we often do not have enough data to know why this was occurring, under what social and political circumstances, or what the motivations of the plaintiffs were, and thus we can only hazard reasonable guesses on all of these scores. However, what we do have is ample testimony of the attitudes of Jewish and Christian communal leaders who condemned the practice. Simonsohn is at his best when he is able to exploit this imbalance to his advantage: thus, what he offers us in *A Common Justice* is not so much a history of how and why Jews and Christians took their legal cases to qadis and other Muslim officials, but rather a deft analysis of the reasons why Jewish and Christian communal authorities were preoccupied with this practice, the means they adopted to curtail it, and what they achieved through the attempt.

The book consists of six chapters bracketed by a robust theoretical introduction and a synthetic conclusion. Simonsohn is to be commended on the ambitious range of material he tackles here; the story he tells spans the centuries from Rome before Constantine to Fatimid Egypt, and he adduces evidence from literary materials in Syriac, Hebrew, Arabic and Judeo-Arabic, Pahlavi, and other languages. There are some inconsistencies here, which are perhaps unavoidable because of the enormous gaps in the available evidence; Simonsohn can hardly

be faulted if his attempt to draw Sasanian judicial policy into his discussion falters due to the paucity of surviving sources. On the whole, the project is immensely worthwhile, demonstrating the insights to be gained from an investigation of the cultural and religious continuities between Late Antiquity, the early Islamic period, and the high Middle Ages. The breadth of Simonsohn's research affords him a perspective on macro-level trends that could not be achieved through a more narrowly focused approach.

The Introduction ably sets the stage for the study, focusing in particular on legal pluralism as the theoretical frame (or "conceptual paradigm") for the work. Simonsohn draws this concept from contemporary legal theorists who argue for the validity and utility of competing legal orders (whether jurisdictions, sources of law, or both), against the radical attempts at legal centralization characteristic of the modern state. Admittedly, much of the existing literature on this concept is prescriptive and normative rather than descriptive and historical. But the interdisciplinarity of Simonsohn's approach yields interesting dividends: His application of this paradigm to the premodern societies of the Near East and eastern Mediterranean helps us to envision a world in which justice might credibly be pursued in a variety of forums, to the general benefit of both the individual and society. The only losers, it seems, were those who sought to maintain a monopoly on the administration of justice in their communities.

This is a crucial point, because one of the primary insights generated by Simonsohn's approach is the realization that Jews and Christians in the *Dār al-Islām* likely perceived the implications of pursuing justice outside of their communities in a radically different way than we typically imagine – namely, not as a betrayal of their faith or transgression against their community, but rather as the most practical course of action given their circumstances. Simonsohn persistently challenges the expectations imposed by our common concept of "communalism" – the idea that Jewish and Christian *dhimmīs* lived in strictly defined, rigorously policed, hermetically sealed social worlds in isolation from the dominant Muslim "host society." Scholars have long asserted that the survival of Jewish and Christian subalterns under Islamic rule was dependent on communal discipline, strict maintenance of autonomy, group cohesion, and rigid boundaries. But this approach to the *dhimmī* experience, actively challenged for a number of years now, ignores certain characteristics of Islamicate society of the Middle Period, particularly the centrality of highly fluid and personalized ties of loyalty, patronage, and obligation that transcended religious identity and narrow communal boundaries.

Simonsohn demonstrates that Jews and Christians construed their identities and place in the world according to overlapping networks of affiliation and

association that were largely pragmatic and only partially defined by religion. Thus, it made perfect sense for them to seek justice in multiple jurisdictions. As moderns, we have trouble appreciating the complexity of this situation, both because we live in societies in which the legal terrain has been radically flattened by centralizing processes, and because our view of the past has been distorted by our reliance on the statements of *dhimmī* communal authorities who noisily condemned coreligionists who “sought refuge” with gentiles or outsiders. Simonsohn brings into focus the real nature of the communalist bias, which is rooted in an ideology promoted by elites seeking to enforce standards of discipline among their coreligionists for their own benefit; exclusive loyalty to the community was hardly an indispensable component of *dhimmī* self-understanding, at least for ordinary people. In the spirit of Boyarin’s *Border Lines*, Simonsohn emphasizes that our historical sources were produced by elite agents who strove to maintain a segregated social and cultural system, working over the course of centuries to construct a concept of rigidly demarcated Muslim and *dhimmī* identities that was by no means self-evident to ordinary people. Nor was this concept in the best interest of ordinary people, since what was at stake was not communal survival, as those authorities often insisted, but rather the preservation of elite privileges and prerogatives.

Chapters 1 and 2 provide a broad background to the main part of the study. Chapter 1, “A Late Antique Legacy of Legal Pluralism,” plumbs some of the complexities surrounding the administration of justice in the enormous and incredibly diverse Roman and Sasanian empires in Late Antiquity. Here, Simonsohn shows that a preoccupation with asserting judicial prerogatives – and casting aspersions on coreligionists who sought justice outside the community – was hardly a new development among *dhimmī* elites under Islamic rule. The establishment of a Christian political order in Rome after the reforms of Constantine and his successors involved colonization of church resources to shore up the civil infrastructure of a crumbling imperial dominion; this involved, among other things, the enfranchisement of ecclesiastical courts as official extensions of Roman judicial power. This was at most a stopgap measure that only partially addressed the Roman government’s need to rely on a host of minor officials who presided over cases in a variety of forums, while maintaining at least the pretense of a unified administration of justice.

Though patchy in places, the evidence strongly suggests that legal pluralism was very much the norm in many parts of the Roman Empire, in particular in the eastern provinces, both before and after Christianization, and that the co-existence of overlapping jurisdictions was in tension with the desire of elites – imperial, ecclesiastical, or communal – to exercise the privilege of defining and enforcing law. The same tension between ideal and reality (or rather ideol-

ogy and pragmatism) appears to have characterized the Sasanian Empire, though here, it must be acknowledged, the evidence is thin and the dating of the relevant sources questionable. Simonsohn, like so many of us, seeks to draw parallels between developments in Roman and Sasanian society in Late Antiquity, but one wonders if the comparison is really borne out by the evidence.

In Chapter 2, "Islam's Judicial Bazaar," Simonsohn ably captures the diversity of venues that seem to have been available for the resolution of disputes in the early and classical Islamic period. Especially after the attenuation of caliphal power and the fragmentation of the 'Abbasid Empire into a host of polities, would-be litigants had a variety of options for the resolution of cases, with justice being administered in different ways by qadis, court officials, the police, governors, and market supervisors. Virtually from the start, it seems that many of the forums in which Muslim authorities heard and ruled on legal cases were open to *dhimmīs*.

Simonsohn's approach to law in the early Islamic period is perhaps too idealizing. It is certainly true, as he asserts, that the Islamic state did not prescribe pluralism, but rather was powerless to curtail it. However, there is a strong tendency running through this chapter to characterize this legal eclecticism as a devolution from an original unity, with qadis and other officials exploiting political fragmentation to assert their autonomy; alongside the inevitable centrifugal forces that accompanied the spread of empire into new territories, these competing agendas made legal pluralism inevitable. But one wonders how much uniformity and consistency existed in the early period, or whether the adjudication of justice through a variety of means, with recourse to a variety of sources of law, was really the result of increasing disunity, or rather characterized the Islamic legal landscape from the very beginning.

Simonsohn focuses on the tension between survivals of pre-Islamic and properly Islamic practices – *jāhili* versus *sharʿī* norms and institutions – as a critical issue in the early evolution of the legal landscape. How the line between these categories might be drawn with any accuracy eludes this reviewer, because the distinction is wholly derived from normativizing legal sources that hardly provide us with an objective window onto these developments. Likewise, do early efforts at systematization, like the reform proposed by the 'Abbasid courtier Ibn al-Muqaffa' (d. c. 758 CE), really represent an attempt to resist increasing heterogeneity and hybridity, a fall from an original unity, or rather an imperial project of imposing a novel uniformity to facilitate political centralization?

In Chapters 3 and 4, Simonsohn gets to the heart of his topic by discussing the nature of Jewish and Christian judicial administration in the period just before and after the Arab conquests. The approach here is typical of the contemporary study of Late Antiquity, emphasizing continuity and adaptation

rather than radical disruption. The institutional contexts in which ecclesiastical and geonic authorities administered justice were of course different. Ecclesiastical authorities had a rigorously hierarchalized structure upon which they could depend in administering justice, whereas Jewish authorities had to impose their will upon their coreligionists through far more diffuse means. These differences are reflected in the ways in which each group dealt with threats to its exclusive claims to administer justice. Christian authorities sought to staunch the flow of their coreligionists to extra-ecclesiastical courts (including, it seems, legal forums over which Christian laymen presided) by seeking to develop a civil law that was incorporated into canon law, producing more comprehensive codes by which law could be administered in ecclesiastical courts. Notably, this seems to have occurred earlier among East Syrian populations under Sasanian control, where the threat presented by Christians seeking justice under a non-Christian government was felt most acutely before the Arab conquests.

The geonim, on the other hand, who generally did not administer justice directly but rather issued legal opinions based on rabbinic law to far-flung communities throughout the diaspora, addressed the same problem by adapting halakhah to Islamic law. “Non-sovereignty” was a pervasive and abiding condition for Jewish communities, and so the adjudication of law was always marked by fluidity and compromise, more dependent on persuasion than coercion, with the geonim typically trading on a moral authority derived from claims of continuity with the rabbinic past. Here the difference from West Syrian, East Syrian, and Coptic comparanda is sharp, given the relative stability and hierarchalization of ecclesiastical structures in these communities. But the cases of Jews and Christians under Islam are similar in one fundamental respect: the religious elites of both communities sought to establish their authority among their coreligionists by claiming the prerogative to define the law and to administer justice. That is, social control depended upon a credible public rehearsal of judicial prerogatives; appointing judges over one’s coreligionists and enforcing God’s law were the means by which authority over *dhimmī* communities was constituted, not the result of such authority.

Chapters 5 and 6 examine the different responses of Jewish and Christian communal authorities to challenges to their claims to judicial prerogatives. In both cases, the challenge presented by the advent of the Islamic empire is abundantly clear: living under Islamic rule, both Jewish and Christian authorities were at a distinct disadvantage regarding the coercive powers they could employ against their coreligionists. Simply put, Muslim qadis and governors could enforce their decisions with relative consistency and efficiency, and Jewish and Christian authorities could not. As Islamic states became more bureaucratized, they had more and more power to enforce civil and commercial law in particu-

lar, and there were numerous reasons why it was advantageous for *dhimmīs* to turn to state-supported courts. Thus, Christians could seek recourse to non-ecclesiastical authorities, either Muslims or Christian elites outside the church who had been empowered by Muslim rulers, in an effort to attain more beneficial dispensations of bequests and wills, for example, in cases involving monastic property. While it is not clear exactly who presided over these legal proceedings, which were condemned by Jewish and Christian authorities as illegitimate, it is clear that plaintiffs frequently turned to “outsiders” to resolve their cases simply because doing so might yield a more desirable outcome.

That Islamic judicial institutions often provided *dhimmīs* with readily available alternatives to the courts of their own communities seems to have been especially true for Jews of the *Dār al-Islām*, who were highly assimilated into the dominant culture, with Islamic legal institutions deeply imbricated into the Jewish communal fabric. For example, Jews regularly sought to transact business before the qadi simply because the state-sanctioned legal apparatus endowed its rulings with greater legitimacy and bureaucratic formality, especially regarding exchanges of property. To do so was just good business practice, and religion had very little to do with it.

The geonim reacted to this situation by employing creative solutions to the ineluctable problem of the attractions Islamic courts presented to their coreligionists. A certain degree of strategic improvisation is visible here: in some cases, the geonim brought halakhah into conformity with Islamic law, to make it more lenient, and thus more attractive; at the same time, they often implied that Islamic courts were illegitimate and unreliable, without overtly saying so. In other cases, they authorized Jewish plaintiffs’ recourse to Islamic courts, even casting such courts as a legitimate means of enforcing halakhically sound decisions – in effect subordinating them to their own jurisdictions, at least notionally. This flexibility epitomizes the ways in which communal authorities in a diverse and complex social landscape could reconcile themselves to the existence of a vastly more powerful competing legal order, recognizing the limits of their own authority and even at times co-opting their rivals to advance their own interests.

By contrast, it is clear that the primary response of Christian ecclesiastical authorities to competition was not accommodation but rather denunciation. At the end of Chapter 5, Simonsohn closely examines the “legislative wordplay” of Christian pronouncements regarding the administration of justice, charting certain discursive trends from the Syriac versions of 1 Corinthians and the *Didascalia* to late antique and medieval canon law. Comparison of the sources from the pre-Islamic and Islamic eras shows a remarkable consistency, not only in the language used to denote unbelievers and outsiders, but also in basic function; rather than simply seeking to dissuade or prohibit Christians from seeking

justice among “pagans” or “secular rulers,” these sources construct an image of a properly ordered Christian community populated by perfectly disciplined Christian believers. Insiders are those who obey divine law and seek justice within the confines of the Church; outsiders are those who trespass and betray. In short, “a terminology of sanctity was employed to define the boundaries of worldly affairs” (171); seeking justice outside the delineated bounds of ecclesiastical structures was portrayed as a sin tantamount to renunciation of the faith. Although seeking justice outside the Church likely had nothing to do with an individual’s convictions, this literature re-framed it as an issue of faith.

Simonsohn is least convincing when he seeks to interrogate the sometimes weak evidence for actual cases of *dhimmīs* bringing their cases to Muslim authorities. He is most convincing, by contrast, when he illuminates the specifically rhetorical functions of the prescriptive and obviously biased statements of churchmen and geonim on the matter, which function to project an image of their own authority as legitimate and that of outsiders as far less so. Simonsohn concludes by noting the complexity of the social networks inhabited by Christians and especially Jews living under Islamic rule, and he drives home the point that religious affiliation was only one of many forms of social identification. For *dhimmīs*, communal loyalty based exclusively on claims of religious affiliation was hardly self-evident, but rather was negotiated over time through the efforts of communal leaders. These figures, in turn, sought to assert their authority primarily through symbolic means. The result may sometimes have been actual conditions of segregation, but the more important consequence was the construction of an ideology of separation, the articulation of a concept of religious community that naturalized the boundaries between different groups as absolute and insuperable.

Even if Jewish and Christian authorities failed to dissuade their coreligionists from seeking justice from outsiders, their attempts to assert judicial prerogatives served to establish and maintain both a sense of communal identification and their own elite status. In the final analysis, Simonsohn argues, these efforts constituted an effective means of resistance to the dominant culture regardless of their practical impact. In short, *A Common Justice* elegantly demonstrates that the most significant development for Jews and Christian living under Islamic rule was not an intensification of legal pluralism *per se* – for this certainly antedated the rise of Islam in the Middle East and eastern Mediterranean – but rather an intensification of demands for judicial exclusivity as a sign of religious commitment and communal loyalty.

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