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Co-produced Legal Documents

*Compliance and Resistance in Fatimid Jewish
Debt Acknowledgements in the Cairo Geniza*

Introduction

Over the past five decades, the study of Jewish and Islamic legal institutions in the medieval Islamic world has changed significantly as documentary sources from the Geniza and other similar archives have become increasingly more central as objects of analysis.[1] Outside of and prior to this development, historians in the field of medieval Middle Eastern history have generally demonstrated an inclination toward studying prescriptive and narrative sources, or what Geniza historians call 'literary sources', in lieu of documentary ones.[2] The study of literary sources has brought the field enormous benefit; one challenge with studying prescriptive and normative texts exclusively, however, is that they often convey how their authors thought social actors *should* function, rather than how they *actually did* function.[3] This in turn has impacted how historians have written about the medieval period, often interpreting prescriptive sources as approximations of medieval lived realities.[4] In other words, medieval prescriptive primary sources, in lieu of being understood as evolving artefacts acting and being acted upon, would often be taken at face value as reflecting

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1 Krakowski and Rustow, 'Formula as Content', pp. 111–46.

2 Rustow, *The Lost Archive*, pp. 4–5. Examples of relevant literary sources would be chronicles, juristic works, and religious edicts. Examples of documentary sources would include court records, administrative records, and genres like security agreements or debt acknowledgements. A number of variables can be attributed to the inclination toward literary sources, but perhaps one significant variable has been the problem of access to documentary sources. Geniza documentary sources have required several decades to archive and organize, and subsequently digitize, whereas literary sources have generally been more readily available.

3 Rustow, *The Lost Archive*, pp. 4–5.

4 Krakowski and Rustow, 'Formula as Content', pp. 111–19.

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historical realities, in the same way monographs or encyclopedias would be viewed as factually accurate secondary sources today.

Increased access and exposure to documentary sources alongside other developments has altered this trend significantly in the fields of Jewish and Islamic legal history. In turn, social historians and sociologists of law studying other legal systems have introduced robust frameworks to facilitate how we can think about primary source texts. Scholars like Bruno Latour and Stewart Macaulay among many others explain that texts are fundamentally reflexive institutions which, like social actors, are *not static*. Rather, they are part of a reflexive cycle in which social norms and actors produce texts, and texts in turn produce social norms.[5] Even if a particular text appears static, changes may be occurring in ways less visible, such as in the introduction of new legal formulas or the altering of a document's sections and framework.[6] These shifts in the text are not minor, but rather tell us a great deal about the social and political dynamics of the society that produced it.[7]

A noteworthy example demonstrating the aforementioned shift is how the writings of medieval religious elites and legal prescriptive texts are interpreted in the field of Jewish and Islamic legal history. In 1030 CE, Shelomo ben Yehuda, a Palestinian *gaon*, wrote to his Jewish colleagues in Egypt, lamenting that Jews were using Islamic courts to adjudicate their cases.[8] Jewish law in the Fatimid era prohibited Jews from litigating cases in Gentile judiciaries. Ben Yehuda noted that though it was in his power as the foremost religious authority to excommunicate violators, doing so would have little effect on stymying Jews' resorting to Islamic courts. He was not wrong. Jews persisted in their practice of appealing to Islamic judicial institutions for various types of litigation.[9] At the same time, scholars like ben Yehuda across the Jewish, Muslim, and Christian communities would persist in issuing religious edicts warning believers not to appeal to judicial institutions outside of their own confessional boundaries.[10]

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5   Latour, *The Making of Law*; Macaulay and others, eds, *Law in Action*.
6   The idea of written documents being conceptualized as historical artefacts and the notion of 'imprints' on documents and related ideas are inspired by this literature.
7   Islamic legal historians borrow frameworks from this body of literature to theorize about the evolution of Islamic legal texts. See for example: Stilt, *Islamic Law in Action*; Rabb, *Doubt in Islamic Law*; Husain, 'Making Legibility between Colony and Empire', pp. 349–68.
8   From the sixth to the eleventh centuries, *gaon* — the singular for *geonim* — referred to the heads of the Talmudic academies and were largely deemed to be the spiritual leaders of the early medieval Jewish community. From the eleventh to the fifteenth centuries, many prominent rabbis, irrespective of whether or not they were the main authoritative leader of an academy, were given this title as an honorific. Simonsohn, *A Common Justice*, p. 174. For a summarized version of this specific narrative, also see Marglin, Jessica, 'Review of Uriel Simonsohn, "A Common Justice"'.
9   Simonsohn, *A Common Justice*, pp. 174–204.
10 Simonsohn, *A Common Justice*, pp. 147–73.

For many decades, historians often understood exhortations like ben Yehuda's as well as the legal texts supporting his position as reflective of actual practice on the ground.[11] In other words, Jewish legal prohibitions against using Gentile judiciaries and exhortations like those expressed by ben Yehuda supporting this position were often read as not only representative of religious prescriptions for how social life ought to function, but also as descriptive representations of how medieval Jewish communities actually functioned.[12] This perspective yielded a theoretical framework in the field of Fatimid Islamic and Jewish history that Muslims and Jews lived in communities autonomous from each other, with rigid confessional boundaries separating them. In this context, the most significant variable determining interaction was religious identity.[13]

This narrative shifted quite significantly, however, with critical engagement with Cairo Geniza documentary sources; these documents gave historians the ability to examine sources beyond the prescriptive, and altered their understanding of how judicial institutions and legal norms functioned in reality.[14] From the eleventh century onwards, Jewish visitors to the Ben Ezra synagogue in Fustat, Egypt practised *geniza*, a ritual process of disposal and storage of certain kinds of texts that were no longer being used.[15] These documents were stored in a specific chamber in the synagogue and remained intact for centuries. Historians and archaeologists rediscovered this collection towards the end of the nineteenth century and had the documents moved to libraries in Britain, Russia, and the United States. It took until the middle of the twentieth century, however, for Geniza fragments to be appropriately archived and made accessible to the wider research community. Fifteen per cent of the 400,000 manuscript pages constituting the Geniza archive are comprised of documentary material, including court records, property deeds, debt acknowledgements, and bureaucratic chancery records. Fatimid and Ayyubid material constitutes more than half of the documentary corpus, of which a significant portion are Islamic and Jewish legal documents.[16] Because Egypt has historically been quite dry and arid, Geniza documents have remained well-preserved. The fact that they are also quite detailed and

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11   For more on this, see Rustow, *The Lost Archive*, pp. 4–5. Also see Krakowski and Rustow, 'Formula as Content', pp. 111–19.

12   For a discussion regarding the emphasis on studying prescriptive and literary texts see Rustow, *The Lost Archive*, pp. 4–5. Documentary sources as well were usually sifted for philological analysis. Scholars like Marina Rustow, Eve Krakowski, and Jessica Goldberg take the view that while this approach is useful, more can be gleaned from the sources. For more on this see: Goldberg and Krakowski, 'Introduction', pp. 115–30; Krakowski and Rustow, 'Formula as Content'; Goldberg, *Trade and Institutions*.

13   Goldberg, *Trade and Institutions*. See also Frenkel and Yagur, 'Jewish Communal History in Geniza Scholarship', pp. 131–42.

14   Krakowski and Rustow, 'Formula as Content', pp. 111–19.

15   Goldberg and Krakowski, 'Introduction', p. 117.

16   Goldberg and Krakowski, 'Introduction', p. 118.

diverse makes the corpus a useful source for studying the social, economic, and legal history of medieval Mediterranean societies. Based on this corpus of social history sources, many historians now argue that the framework of autonomous religious communities separated by rigid confessional boundaries is not reflective of how Muslims and Jews in the Fatimid period actually interacted, especially in legal contexts.[17] A more accurate framework is that individuals maintained interpersonal relationships and social networks that spread beyond confessional boundaries for business, political, and social reasons.[18] Documentary sources from the Geniza demonstrate a social reality consisting not of autonomous communities but rather of 'overlapping realms of authority' in which confessional institutions existed alongside judicial and extra-judicial sources of authority.[19] Though religious identity contributed to one's daily experiences, it was neither the only nor necessarily the dominant variable that dictated social order in the Fatimid context.[20] Hence, according to these historians, religious communities are best conceptualized as 'semiautonomous communities in which individuals partook based on their cultural, economic, political, and religious ties'.[21]

Moving back to our original focus of texts as reflexive artefacts, knowing that Fatimid religious communities are best understood as semiautonomous, how do we as historians trace evidence of ideational borrowing and interdependence between religious communities in textual sources? Are there specific patterns that we ought to search for in terms of textual additions or substitutions? Do religious or cultural borrowings leave a specific type of 'imprint' on the text that is recognizable to an external observer? When such borrowing contradicts religiously prescribed norms as expressed by religious leadership, does the 'imprint' on the text appear different from what would have been produced from cooperative engagement? Does the integration of specific formulas or material conventions from an external legal culture perform a specific type of 'work' in the artefact's shape and survival?

The heuristic framework of 'co-production' advanced by Katharina Heyden and David Nirenberg is useful in identifying and understanding discursive patterns in this context.[22] Heyden and Nirenberg take as their point of departure that, given that Judaism, Islam, and Christianity have inextricably influenced each other in their development in fundamental ways, these religious traditions should not be studied in isolation from each other.[23] They note that the concept of co-production entails 'the ongoing

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17   For more on this see: Simonsohn, *A Common Justice* and Goldberg, *Trade and Institutions*.

18   Simonsohn, *A Common Justice*, pp. 201–14.

19   Simonsohn, *A Common Justice*, p. 10.

20   Simonsohn, *A Common Justice*, pp. 201–02.

21   Simonsohn, *A Common Justice*, p. 214. For more on interpersonal ties transcending confessional boundaries, see Goldberg, *Trade and Institutions*.

22   Heyden and Nirenberg, 'Religious Co-production'.

23   Heyden and Nirenberg, 'Religious Co-production', p. 6.

dynamics of forming, re-forming, and transforming the three religions in their manifold sectarian forms through mutual interaction in thinking and (sometimes) living with each other'.

In terms of conceiving of a document as a historical artefact that is both the product of social norms and actors as well as something that produces norms reflexively, Heyden and Nirenberg bring to the fore two key insights relevant to certain Geniza documentary genres. First, as they explain through several examples, such as in the Christian Sergius-Bahira narratives, and to be explored further in an investigation of Jewish debt acknowledgements, co-production does not necessarily imply cooperation, nor is it necessarily voluntary or even intentional.[24] A document or practice that is the product of religious interaction can also be borne from intra-communal tension or opposition.[25] Just as the Christian Sergius-Bahira narrative corpus presents the Christian faith as compatible with Islam while at the same time undermining Islam by depicting it as a Christian creation, a co-productive document as a material artefact can be at once 'a platform of compliance and resistance'.[26]

Second, co-production need not be synchronic. In other words, influence, borrowing, or other forms of interdependence between religious communities that leave 'imprints' on a textual artefact can be multi-stage, diachronic, or even cyclical. Given the evolutionary process of document genres in terms of being the recipients of multiple influences or traditions, specific moments in the history of Judaism, Christianity, and Islam are 'also interconnected with prior moments, even if evidence for such connections has not survived or is not known to us'.[27] Hence, the 'imprints' left on a textual artefact might initially seem quite subtle or invisible without deeper inquiry.

Fatimid Islamic and Jewish court documents from the Cairo Geniza, particularly a document genre known as the *iqrār*, or debt acknowledgement, which was part of both Islamic and Jewish legal traditions, demonstrate numerous instances of inter-confessional borrowing and influence. In what follows, I investigate Jewish debt acknowledgements as a document genre in the Cairo Geniza in terms of their construction and use and discuss where identifiable 'imprints' of co-production and borrowing are observable. Can the relationship of 'compliance and resistance' found in the aforementioned polemics around a narrative (and the narrative itself) be extended to how we characterize the development of certain co-produced textual artefacts like the Jewish debt acknowledgement?

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24 Heyden and Nirenberg, 'Religious Co-production', pp. 9–10.
25 Heyden and Nirenberg, 'Religious Co-production', pp. 9–10.
26 Heyden and Nirenberg, 'Religious Co-production', pp. 9–10.
27 Heyden and Nirenberg, 'Religious Co-production', p. 5.

The Debt Acknowledgement Corpus in the Cairo Geniza

A debt acknowledgement, also known as a security agreement in many legal systems, is known in Islamic and Jewish textual sources as an *iqrār*, or more broadly as an *iʿtirāf*.[28] Goitein, in discussing sources relevant to social history, also uses the term *iqrār* to refer to debt acknowledgements in the Jewish community in the Fatimid era. Fatimid government elites, in order to establish and maintain power in a growing empire, created bureaucratic processes to facilitate more efficient methods for lay subjects to interact with government institutions. The *iqrār* document was likely developed as an easier alternative to navigating what often became long and complicated litigation processes between creditors and debtors contesting what had been stipulated in a loan agreement.[29]

In Fatimid Islamic courts, there were normally two parties involved in a dispute in the context of financial or material transactions. The first party, designated as the plaintiff, was the individual who claimed that a discrepancy had taken place in a transaction, which needed to be remedied. This individual was responsible for producing evidence, known as *bayyina*, demonstrating that a discrepancy had occurred.[30] An example would be a creditor who claimed that a debtor had not paid his most recent instalment of repayment for a debt. The creditor would be required to show proof that the debtor owed him a payment.

The second party in this dispute, known as the defendant, would not initially bear the onus of producing evidence. Rather, this party had three options on how to respond to the plaintiff. They could 1) offer counter-evidence refuting the plaintiff's claim; 2) if the plaintiff was only able to provide circumstantial evidence, then the defendant could refute the plaintiff's accusation and proclaim an oath testifying to the veracity of their refutation; and finally 3) the defendant could acknowledge the plaintiff's right and remedy the situation by giving them that right.[31] The defendant would be the debtor in the example above. If a creditor accused them of not paying their last instalment, they could exercise any of these three options as a response.

A debtor and creditor could bypass this however by drawing up an *iqrār*. In the *iqrār* agreement, the debtor, who was always the potential defendant, could draw up a document in which they conceded that they owed a specified material amount to a creditor or potential plaintiff. On the other hand, a potential creditor could also request that their debtor initiate an *iqrār* as a pre-condition for providing a loan. Once the *iqrār* had been written, signed by both parties, and notarized by two court-validated witnesses, the debtor's responsibility to pay the agreed upon amount to the creditor was binding

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28 Müller, 'Acknowledgement', <http://dx.doi.org/10.1163/1573-3912_ei3_COM_0166>; Lutfi, 'A Study of Six Fourteenth Century "Iqrārs"', p. 255.

29 Thung, 'Written Obligations', p. 8.

30 Müller, 'Acknowledgement'.

31 Lutfi, 'A Study of Six Fourteenth Century "Iqrārs"', p. 255; Müller, 'Acknowledgement'.

and irrevocable, excluding exceptional circumstances.[32] The *iqrār* document could be used to document a variety of obligations, not just financial debt.[33] However, the term *iqrār* would come to be associated with debt in later centuries because this was one of its most common uses. Because of the widespread usage of *iqrārs* in many institutional settings, exploring this genre significantly enhances our knowledge of how legal systems functioned 'on the ground' in medieval contexts.[34]

Before the development of the *iqrār* as a document genre, debtors and creditors engaged in loan agreements independently without judicial supervision or any form of judicial notary process.[35] Therefore loan agreements were not authenticated from the point of inception. If a dispute arose between the debtor and creditor, the judiciary was first obligated to investigate whether the original loan agreement was authentic and valid in the first place.[36] In addition to the time the actual litigation took, the initial investigative process could become quite time-consuming and was burdened with uncertainty. If one of the parties fled the city, if it was discovered that any witnessing party to the original agreement was not honest and upright, or if the agreement was only oral and not verifiable, this could endanger pursuing not only any potential claims but also the validity of the original loan agreement, costing the litigants significantly.[37]

The process of drawing up a Fatimid *iqrār* document accomplished two tasks. First, it simplified and streamlined the loan agreement procedure into one recognized documentary written process, removing possible sources of doubt introduced by varying oral or written procedures that individual creditors might have used in their loan agreements. Second, the loan agreement procedure was attached to the judicial process of validating the authenticity of the *iqrār* document, which entailed the agreement being witnessed by two court-validated witnesses who were classified as being sufficiently reliable and upright so as to not have their testimony thrown out. Joining the two procedures had the effect that in case of conflict between creditor and debtor the *iqrār* did not necessitate a judicial investigation to check the document's validity and authenticity in order to take legal effect.[38] In other words, the creditor would be able to move forward in collecting his debt based on the terms in the loan agreement without being set back by procedural challenges.

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32 Müller, 'Acknowledgement'; Weiss, 'Documents Written by Hillel Ben Eli', pp. 124–29.
33 Müller, 'Acknowledgement'.
34 Lutfi, 'A Study of Six Fourteenth Century "Iqrārs"', p. 255; Weiss, 'Documents Written by Hillel Ben Eli'; Ackerman-Lieberman, 'A Partnership Culture'; Thung, 'Written Obligations'; Goitein, *A Mediterranean Society*.
35 See Jeanette Wakin's introductory chapter in: al-Tahawi, *The Function of Documents*, pp. 5–23; Thung, 'Written Obligations', pp. 2–5.
36 al-Tahawi, *The Function of Documents*, pp. 5–23; Thung, 'Written Obligations', pp. 2–5.
37 al-Tahawi, *The Function of Documents*, pp. 5–23; Thung, 'Written Obligations', pp. 2–5.
38 Lutfi, 'A Study of Six Fourteenth Century "Iqrārs"', pp. 255–56.

One important consequence of the introduction of this process was that the *iqrār* could be authorized in extra-judicial and private settings without concern that the contract would not be legally recognized, assuming that the court-recognized witnesses were present when the procedure took place.[39]

Muslims, Christians, and Jews in Fatimid Courts

Court records from the Fatimid era in the Cairo Geniza demonstrate that, despite repeated appeals from religious elites discouraging the use of courts outside of one's confessional boundaries, Jewish, Muslim, and Christian litigants engaged in Fatimid Islamic *iqrār* agreements between and among each other for a multitude of differing types of financial and material transactions.[40] The Geniza archive is replete with Fatimid *iqrārs* drawn up between a Jew and Muslim, a Jew and a Christian, two Jewish litigants, and other combinations.[41] Put differently, Jews did not appear to be using Islamic courts only when necessitated by transacting with a Muslim party. Rather, they were using Islamic courts even when a Jewish court would have been feasible.[42] The pattern of usage that we observe in Geniza records demonstrates that Jewish litigants' use of Islamic courts was a strategic choice.[43] Islamic courts, backed by Fatimid state institutions, were more formalized and had a greater ability to enforce specific agreements and outcomes. The pattern we see in Geniza records is that the loan amounts brought to Islamic courts was on average much higher than what we observe in Jewish court documents. The Jewish *iqrār* process was more informal, similar to a mediation process. This informality was useful in those cases in which flexibility was a greater priority than the possibility of experiencing significant financial loss, such as instances in which tailored payment plans for small sums supervised by a local communal leader proved to be advantageous or satisfactory.[44] Jewish creditors loaning larger sums could have considered state-backed Islamic courts to be a more dependable source of authority should the enforcement of a contract become necessary. Geniza documents demonstrate this trend. On average, loan amounts in Jewish *iqrārs* constituted far less monetary value than those found in Islamic *iqrārs*, irrespective of the confessional identities of the litigants.[45]

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39   Müller, 'Acknowledgement'.

40   Lutfi, 'A Study of Six Fourteenth Century "Iqrārs"', pp. 255–56; Müller, 'Acknowledgement'.

41   See numerous documents in Weiss, 'Documents Written by Hillel Ben Eli'; Ackerman-Lieberman, 'A Partnership Culture'.

42   I will discuss this in more detail in a forthcoming article. Also see Simonsohn, *A Common Justice*, pp. 174–204.

43   For more on strategic use of courts more generally, see Simonsohn, *A Common Justice*, pp. 63–90, 174–204.

44   For examples, see Weiss, 'Documents Written by Hillel Ben Eli'.

45   Based on research I conducted at the Geniza Lab, Princeton University, article forthcoming.

Jewish Debt Acknowledgements

The significant number of individuals who, despite appeals from religious elites prohibiting the use of courts outside of confessional boundaries, made use of such courts anyways demonstrates that boundaries between religious communities in the Fatimid period were porous.[46] But what about Jewish debt acknowledgements used in Jewish courts? In fact, the Jewish debt acknowledgement as a material object was the result of centuries of co-productive religious exchange, borrowing, and influence, though this was rarely if ever acknowledged in the religious and legal texts of Judaism and Islam. Jews created their own courts as a means of abiding by scriptural commands to avoid adjudicating cases outside of confessional boundaries, as Shelomo ben Yehuda had instructed. However, the documents used within such institutions, like the Jewish debt acknowledgement, while integrating formulary from Jewish sources, nonetheless absorbed norms from Islamic sources as well. Hence, even in the act of 'resisting' there existed an element of 'compliance' with the dominant religious legal culture. This dynamic of 'compliance and resistance' is a hallmark of co-produced textual artefacts.

Figures 3.1 and 3.2 are two examples of Jewish debt acknowledgements written in Judeo-Arabic illustrating aspects of this co-productive exchange. The first (Figure 3.1) is entirely preserved without significant damage, allowing one to read the text in entirety, which is a rarity; the second (Figure 3.2) is torn, obscuring part of the text, which is what is more typically found in Geniza archives. When studying *iqrārs* as a corpus, one can still benefit enormously from examining fragments since *iqrārs* contain textual patterns and formulary used repeatedly across individual documents.

In this first *iqrār*, we learn that the scribe is the well-known Abū Saʿīd Helfon ben Menashe. The numerous documents in the Geniza penned by him range in date from 1100 to 1138 CE.[47] There are several rips and holes, and the script is faded in some areas, but the written body of the document is clear and legible. The entire text is nineteen lines written in block text with straight handwriting. The two witness signature lines can be clearly seen at the bottom of the page. The *iqrār* agreement is located on the *recto*, with a different document on the *verso*.[48]

In terms of substantive content, the debtor is Abū Maʿalī ben Yūsuf, who is also known informally as Tamar.[49] He acknowledges that he owes a debt of

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46 For more on porous communal boundaries in the Fatimid context, see Goldberg, *Trade and Institutions*.

47 Weiss, 'Documents Written by Hillel Ben Eli', pp. 5–15.

48 Cambridge, Cambridge Digital Library, Taylor-Schechter Collection, TS 10 J 7.10, <https://cudl.lib.cam.ac.uk/view/MS-TS-00010-J-00007-00010/4> [accessed 17 January 2024].

49 My own translation and a full detailed analysis of this *iqrār* will be provided in a forthcoming article. A transcription of this document can be found in: Weiss, 'Documents Written by
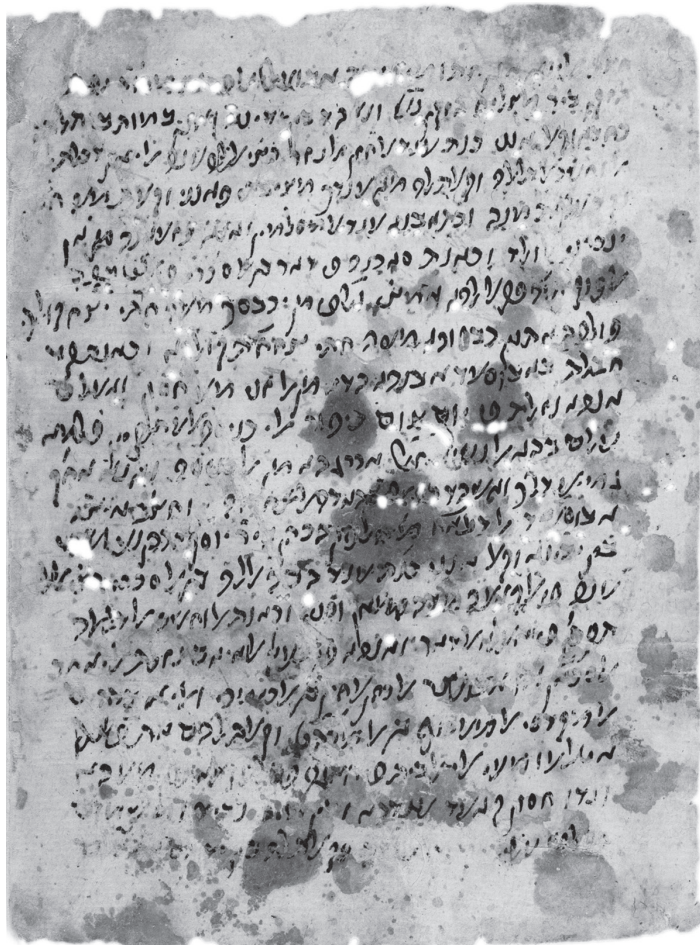
Figure 3.1. *Iqrār* contracted between Abū Maʿalī ben Yūsuf and Yeshuʿa ben Hananya in 1129 CE, Cambridge, Cambridge University Library, Taylor-Schechter Collection, TS 10 J 7.10, fol. 1ʳ. 1129 CE. Used with permission of the Syndics of Cambridge University Library.

seventeen dirhams to his creditor, Yeshuʿa ben Hananya.[50] This loan is to be paid back to the creditor in instalments of three dirhams per month, or three-fourths of a dirham per week, without delay and starting immediately. The debtor releases the creditor from any claims or demands, and the creditor approves of this payment plan arrangement. Two witnesses testified to this agreement, in 1129 CE. One of the witnesses is the scribe himself, Helfon ben Menashe.[51]

This *iqrār* was also penned by the scribe Abū Saʿīd Helfon ben Menashe in 1137.[52] The document is torn at the top, and much of the script is faded though still legible. The entire text appears to be seventeen lines written in

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Hillel Ben Eliʾ, p. 269. For more on the honorifics included at the beginning of the document see Cohen, *Jewish Self-Government in Egypt*.

50 Weiss, 'Documents Written by Hillel Ben Eliʾ, pp. 268–70.
51 Weiss, 'Documents Written by Hillel Ben Eliʾ, pp. 268–70.
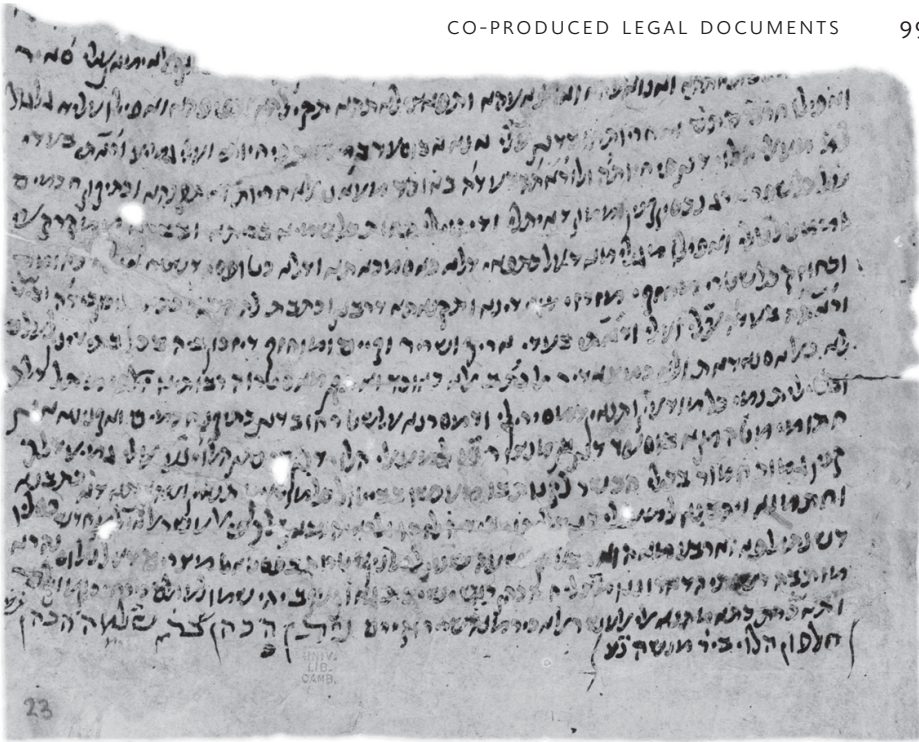52 Weiss, 'Documents Written by Hillel Ben Eliʾ, pp. 285–86.

Figure 3.2. *Iqrār* contracted between Abū Saʿd ben Manṣūr and Maʿālī ben Nathan in 1137 CE, Cambridge, Cambridge University Library, Taylor-Schechter Collection, TS 13 J 2.23, fol. 1ʳ. 1137 CE. Used with permission of the Syndics of Cambridge University Library.

block text with mostly straight handwriting. The two witness signature lines can be clearly seen at the bottom of the page. The *iqrār* agreement is located on the *recto*, while the *verso* is blank.[53]

In terms of substantive content, the debtor is Abū Saʿd ben Manṣūr.[54] He acknowledges that he owes a debt to his creditor, Maʿālī ben Nathan.[55] This loan is to be paid back to the creditor in instalments. The debtor releases the creditor from any claims or demands, and the creditor approves of this payment plan arrangement. Two witnesses testified to this agreement in 1137 CE. One of the witnesses is the scribe himself, Helfon ben Menashe, and the other is Nathan ben Solomon.[56]

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53 Cambridge, Cambridge Digital Library, Taylor-Schechter Collection, TS 13 J Documents Written by Hillel Ben Eli.23, <https://cudl.lib.cam.ac.uk/view/MS-TS-00013-J-00002-00023/1> [accessed 7 February 2024].

54 A transcription of this document can be found in: Weiss, 'Documents Written by Hillel Ben Eli', pp. 285–86.

55 Weiss, 'Documents Written by Hillel Ben Eli', pp. 285–87.

56 Weiss, 'Documents Written by Hillel Ben Eli', pp. 285–87.

Other document genres predate the Fatimid empire, such as Jewish loan documents and Islamic testimonial documents; however, the *iqrār* was a fundamentally new genre developed during the Fatimid era and in that historical context.[57] The fact that this genre was new did not mean that the structure and formulary within the *iqrār* were brand new and invented entirely from scratch.[58] Rather, formulary from previously existing document genres were reconfigured, combined, and integrated together to create a new document type to accomplish new bureaucratic and legal functions.[59] Hence, Jewish *iqrārs* comprise of a consolidated patchwork of legal formulas from other earlier documentary sources and genres.

In the instance of these two *iqrār* examples, we find a combination of Arabic, Hebrew, and Aramaic formulas, all penned in Hebrew script. In combining Hebrew formulary from pre-existing Jewish document genres with Islamic formulary from Fatimid Islamic document genres, we can observe 'compliance and resistance' manifest in one textual artefact. The underlying structure of the *iqrār* displays astonishing similarity to the Islamic *iqrār*. Arabic formulary derived from the Islamic *iqrār* are most apparent near the beginning and end of the text. For example, in line three of the first *iqrār*, the scribe's inclusion of the debt acknowledgement formula, to the effect that the debtor 'has in his possession as a debt and obligation' the stated financial amount, bears resemblance to the acknowledgement clause found in Islamic *iqrār* documents signifying formal official consent to the agreement. Moreover, the testimony clause in line fourteen of the first *iqrār* and in line twelve of the second *iqrār*, which comprises both witnesses testifying that they 'wrote and signed this document to serve as a right and a proof', is precisely identical to that of the Islamic *iqrār*, with the same placement on the page. Additional similarities to the Islamic *iqrār* include the terminology used to identify the parties and provide their physical descriptions as well as the description of payment instalments and how the debt will be paid back, found in lines four to six of the first *iqrār* and lines three to five of the second.

While inclusion of Islamic formulary demonstrates 'compliance', what about 'resistance'? Alongside the structural aspects mentioned above, we also find that Hebrew formulary make up most of the text. For instance, in line four of the first *iqrār*, the scribe uses the binding debt formula, 'a binding obligation and a complete obligation', which can be found in pre-existing Hebrew loan documents, which constitute a distinct and older document genre, different from the *iqrār*. This formula denotes the enforceable quality of the contract.[60] Moreover, the release clause in line ten of the first *iqrār*, 'all

57   Müller, 'Acknowledgement'; Thung, 'Written Obligations', pp. 2–5.

58   Tahawi, *The Function of Documents*, p. 67.

59   See, for example, as a source of formulary that pre-dates the *iqrār* genre: *Kitab al-Buyuʿ* (Chapter on Sales Transactions) in *Kitab al-Shurut al-Kabi* in Tahawi, *The Function of Documents*, pp. 143–89.

60   For other documents that use similar formulary, see Khan, *Arabic Legal and Administrative*

that which has transpired between the two of them, from the beginning of time and all that which falls upon him', resembles what is found in the Hebrew loan document genre, denoting that all previous debts are recognized and accounted for. Perhaps the most visibly borrowed formula is the *qinyan*, a symbolic act of trade which initiates the process and document in which it is performed, is often found in Hebrew documents of sale. In lines eleven to thirteen of the first *iqrār* and in twelve to fourteen of the second, we find the *qinyan* clause, 'we performed a *qinyan* with him, a complete and weighty *qinyan* with an implement suitable for doing so effective from now on, nullifying all *modaʿin* and conditions and from hand to hand'. The word *modaʾin* points to a document written in advance of a legal action stating that the legal act will be invalid. Terms denoting the 'immediate' binding quality of the contract, and the debtor being free from any previous oath necessitating payment in 'complete and total absolution', are instances of Aramaic phrases and words integrated into the text of the document.[61]

In the context of 'compliance and resistance', the borrowed Islamic and Hebrew formulas from other or pre-existing document genres are straightforward to categorize for a document penned in Hebrew for Jews and developed in an Islamic context. However, in which category does the Aramaic terminology included best fit? Would it be an example of compliance, resistance, or a bit of both?

Some historians note that during Abbasid and Fatimid rule, Jewish religious scholars in the Mediterranean region like the aforementioned Shelomo ben Yehuda penned letters and communicated with each other through writing in Hebrew. Hebrew, however, lacked some of the required vocabulary to translate new documentary terminology precisely and accurately.[62] Therefore over time they created a 'novel' body of terminology derived from imperial Aramaic, based on Achaemenid vocabulary in the Hebrew Bible (the books of Esther and Ezra).[63] Put differently, in an effort to keep up with the changing bureaucratic lexicon in the Islamic world, Jewish scholarly elites borrowed administrative terms from works co-produced under the influence of a much earlier empire, more than one millennium prior to Menashe's drawing up an *iqrār* for Yūsuf and Hananya or Abū Saʿd and Maʿalī ben Nathan. Twelfth-century CE documents penned in Hebrew integrated fifth-century BCE administrative terminology created under Achaemenid influence to convey Fatimid and Abbasid bureaucratic lexical equivalents. In seeking to adopt Fatimid terminological equivalents we perhaps observe an act of compliance.

Documents.

61   Special thanks to Eve Krakowski for her insight on this and several other matters related to Aramaic terms in *iqrārs*.

62   Rustow, *The Lost Archive*, pp. 247–74.

63   Rustow, *The Lost Archive*, pp. 16, 247–74.

However, in searching for such equivalents from Aramaic vocabulary we observe an act of resistance.

Conclusion: The Fatimid Jewish *Iqrār* as a Co-produced Textual Artefact

Legal documents are reflexive institutions which, like social actors, are not static. Rather, they are part of a larger reflexive cycle in which social actors and norms produce texts, and texts in turn impact social norms. Even when a specific text seems static, changes across time are often occurring in less visible ways, such as in the integration of new formulary or the re-structuring of a document's sections and framework. These changes tell us a great deal about the social context in which such documents were produced. The framework of co-production yields insights that tell us that such borrowings do demonstrate patterns in terms of the discursive 'imprints' they leave behind.

In particular, a text or practice that is the product of religious interaction can be borne from intra-communal tension or opposition. Hence, a co-productive document as a material artefact can at once be 'a platform of compliance and resistance' and contain discursive signals pointing to both aspects of this relationship. Second, co-productive influence, borrowing, or other forms of interdependence between religious communities that leave 'imprints' on a textual artefact can be multi-stage, diachronic, or even cyclical; however, these more subtle elements often require deeper inquiry to be legible.

In the case of the Fatimid Jewish *iqrār*, we find a markedly significant case of 'compliance and resistance'. Again, referring to the example of the Christian Bahira narratives discussed above, co-produced texts were not always the result of mutual, willing collaboration. Many cases entailed the performance of political compliance. However, in many of these cases one can also observe 'imprints' or traces of resistance, whether this be embedded in the text or more implicit in the text's evolutionary development. In the case of *iqrārs*, we can observe Fatimid Islamic structural norms and formulary incorporated into the text of the Jewish *iqrār*. However, we also observe strong exhortations against the use of non-Jewish judicial institutions from Jewish religious authorities, in addition to the proactive establishment of Jewish courts in Fatimid Jewish communities to avoid Gentile judiciaries. But, in these same Jewish courts, *iqrārs* were written and validated that integrated within them Islamic formulary and structural norms. Hence as co-produced texts, Jewish *iqrārs* are artefacts exhibiting the tension that religious communities experienced with regard to compliance and resistance.

Co-productive elements of the Jewish *iqrār* can additionally be viewed as part of a longer ongoing cyclical process, in which moments of co-production occur in relation to co-productive moments preceding and following it. Though the Jewish *iqrār* borrowed many legal formulas from pre-existing Jewish document genres, it also used formulary from the Islamic *iqrār* as well. These

documentary inclusions are easily traced. However, there was also a cyclical and ongoing process occurring, the traces of which can be observed in the Fatimid Jewish *iqrār*. Though Jewish religious elites in the Mediterranean region used Hebrew to communicate with each other in writing, Hebrew did not possess sufficient vocabulary to precisely translate new Fatimid administrative terms. Hence Jewish religious elites, over the course of the Abbasid and Fatimid eras, would develop a corpus of terminology borrowed in part from imperial Aramaic to articulate and convey Fatimid terms in letters and documents. This was an ongoing process in which Aramaic terms were likely integrated into document genres preceding the *iqrār* and then transferred to the *iqrār* through those genres, as well as deployed as new terms with the creation of the Fatimid *iqrār* genre. Hence the Jewish *iqrār* was the recipient of several layers of co-production from multiple eras.

Fatimid-era Muslim, Christian, and Jewish communities lived in a social context in which norms from all three communities were used co-productively to produce documents and contracts that bound individuals from each community to one another. Fatimid Muslim and Jewish religious elites often claimed as their own co-produced documents, practices, or legal norms which were actually the result of entanglements with their neighbouring religious communities.

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