

Gideon Libson
The Oath of Destitution 'I have no means'
**(*Yamin al a'dm*): On the Relationship between Jewish
and Islamic Law**

This article focuses on the geonic innovation of the custom to administer the oath 'I have no means' to impoverished debtors with its two accompanying procedures: imposition of a ban as a preliminary measure and arrangement of assets thereafter. All three elements find parallels in the legal literature of Islam (the Muslims using imprisonment instead of ban). The three procedures, particularly the oath and the arrangement of assets but also the ban, depart from the general rulings in halakhah as laid down in the Talmud. The oath administered to a self-declared impoverished debtor which defers payment of the debt but does not set it aside entirely is an exception to the general rule of biblical and talmudic oaths in which litigants who take oaths are either entirely acquitted or immediately entitled to take possession. The geonic ban on debtors whose ability to pay has not been established expands the talmudic law, which imposes on persons evading payments of their debts only if they are known to possess property. R. Hai Gaon's unique allowance for the need of the debtor's wife and children runs contrary to talmudic law, which takes only the debtor's individual needs into account. The parallels that have been traced between the two systems concern not only the three procedures but also various particulars and details. My main argument is that all three of these procedures show clear influence from Islamic legal literature and practice. In general the particular elements of civil execution procedure was adopted by Jews who emulated the Muslim milieu with which they came into daily contact. The Geonim had no choice but to legitimate it, albeit with efforts that were not always successful to iron out the contradictions with talmudic law. To support my theory that it was the Geonim who were influenced by Muslim legal practice rather than the reverse, I give a list of reasons and also try to explain why the Geonim define the oath 'I have no means' as custom (*minhag*).