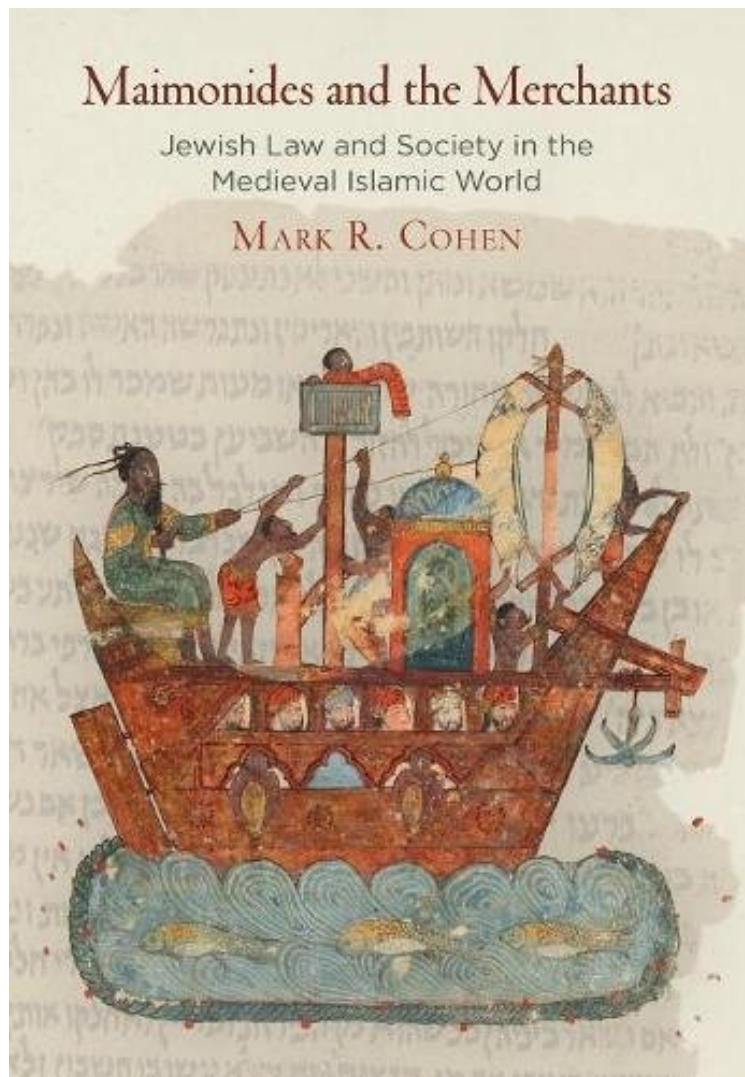


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Maimonides and the Merchants: Jewish Law and Society in the Medieval Islamic World (Jewish Culture and Contexts)

Mark R. Cohen

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Mark R. Cohen : Maimonides and the Merchants: Jewish Law and Society in the Medieval Islamic World (Jewish Culture and Contexts) before purchasing it in order to gage whether or not it would be worth my time, and all praised Maimonides and the Merchants: Jewish Law and Society in the Medieval Islamic World (Jewish Culture and Contexts):

The advent of Islam in the seventh century brought profound economic changes to the Jews living in the Middle East, and Talmudic law, compiled in and for an agrarian society, was ill equipped to address an increasingly mercantile world. In response, and over the course of the seventh through eleventh centuries, the heads of the Jewish yeshivot of Iraq sought precedence in custom to adapt Jewish law to the new economic and social reality. In *Maimonides and the Merchants*, Mark R. Cohen reveals the extent of even further pragmatic revisions to the halakha, or body of Jewish law, introduced by Moses Maimonides in his *Mishneh Torah*, the comprehensive legal code he compiled in the late twelfth century. While Maimonides insisted that he was merely restating already established legal practice, Cohen uncovers the extensive reformulations that further inscribed commerce into Jewish law. Maimonides revised Talmudic partnership regulations, created a judicial method to enable Jewish courts to enforce forms of commercial agency unknown in the Talmud, and even modified the halakha to accommodate the new use of paper for writing business contracts. Over and over again, Cohen demonstrates, the language of Talmudic rulings was altered to provide Jewish merchants arranging commercial collaborations or litigating disputes with alternatives to Islamic law and the Islamic judicial system. Thanks to the business letters, legal documents, and accounts found in the manuscript stockpile known as the Cairo Geniza, we are able to reconstruct in fine detail Jewish involvement in the marketplace practices that contemporaries called "the custom of the merchants." In *Maimonides and the Merchants*, Cohen has written a stunning reappraisal of how these same customs inflected Jewish law as it had been passed down through the centuries.

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Introduction Research for this book began unexpectedly, with my study of poverty and charity in the Jewish community of medieval Egypt. That work is based primarily on documentary evidence from the Cairo Geniza about the poor and those who came to their relief whether through private charity or communal institutions. For the normative stance of Jewish law (halakha), I consulted Maimonides' Code, the *Mishneh Torah* specifically, the section "Laws of Gifts for the Poor" (Hilkhot mattenot 'aniyyim). Maimonides' Laws of Gifts for the Poor represented the first attempt to draw together and systematically codify all the rabbinic teachings about charity, assembled from rulings scattered throughout the Bible and the Talmudic and post-Talmudic literature. To my surprise, I discovered that several enigmatic rulings about charity in the Code over which some medieval commentators had puzzled could be explained by drawing on Geniza evidence of how charity operated "on the ground." I hypothesized that other subjects in the Code relating to daily life could be similarly illuminated using the same methodology. Commercial law seemed an obvious candidate for further inquiry.

0.1 Jews and Jewish Law in the Commercial Economy of Medieval Islam The Mishna and its commentaries, the Palestinian and Babylonian Talmuds, put heavy emphasis on agrarian life, and it is certain that most Jews in pre-Islamic Palestine and Babylonia engaged in farming. This does not mean that Jews were not to be found in urban areas. The situation was quite the contrary, especially in Palestine. The many craftsmen mentioned in rabbinic texts probably dwelled in towns, as did many farmers. The merchants we encounter in the Mishna, the Tosefta, and the Gemara of the two Talmuds seem to have operated mainly in local or regional markets connected with farming and handicrafts: the merchants of Jerusalem (tagarei yerushalayim); the merchants of Lydda (tagarei lod); the Gentile merchants (tagareiummot ha-'olam, tagarei goyim); and the merchants who (unlawfully) sold produce grown in the sabbatical year (soharei shevi'it). Long-distance commerce was exceedingly rare. To be sure, one can point to those Jewish members of the triad of adventurous itinerant "Syrian, Jewish, and Greek" merchants, who traversed the western reaches of the Roman Empire and its Germanic successor states in late antiquity and the early Middle Ages. Or one can cite those Middle Eastern Jews who plied the ancient spice-trade route to southern Arabia; or those rabbis and other Jews who traveled from Babylonia to Palestine and sold silk imported from the Far East. But these were exceptions proving the rule: Talmudic society rested firmly on an agricultural base. Reflecting the predominantly agricultural character of Jewish society in eastern Roman and Sasanian late antiquity, neither the Palestinian nor the Babylonian Talmud has a well-developed commercial law or maritime law. The Mishna, the foundational text of both Talmuds, assumes a predominantly agrarian economy even in its discussions of commercial exchange. It is only in the Gaonic period that we begin to find responsa and other legal texts that deal in detail with commercial matters. This was, in large part, a result of the Islamic conquests.

0.1.1 The Islamic Commercial Revolution The advent of Islam in the seventh century brought profound economic changes to the Middle East and to the Jews living there. Beginning with the Qur'an and the precedent of the Prophet's own mercantile activities, and building on the extensive trade of pre-Islamic Arabia, Islam showed itself to be more favorably disposed toward commerce and the accumulation of wealth than either pagan Roman or early Christian society. The unification through Islamic conquest of the formerly warring great empires of Byzantium and Persia opened up vast territories for long-distance trade and exchange of goods within a single realm. Accelerated urbanization accompanied a monetized "commercial revolution," to borrow a term used to describe similar economic developments in medieval Europe that began only centuries later. With minimal restrictions, passage through the huge "Domain of Islam," stretching from Spain to Transoxiana, was open to resident merchants of all

faiths, though non-Muslims paid heavier commercial taxes than Muslims, in addition to the discriminatory poll tax, the jizya. Non-Muslim foreign merchants might remain for a year without being required to accept the status of dhimm#299 ("protected people") imposed upon native Jews and Christians and a few other groups. The territories of the empire possessed extensive resources that fueled this commercial revolution. Access to gold, particularly in conquered lands of West Africa and Nubia, provided abundant currency for the monetized economy. Waterways the Persian Gulf, the Mediterranean Sea, the Red Sea, the Indian Ocean, as well as many long, navigable rivers facilitated midrange and long-distance trade, independent of the slower and more cumbersome overland caravan routes. Merchant practices long entrenched in the ancient Near East took off in new directions in the train of Muslim traders. The predominantly agrarian Jewish economy was utterly transformed by these developments. Emblematic of this radical change are the Rahnite Jewish merchants of Babylonia described in Arabic sources from the ninth century, who traded as far as western Europe, at one end, and South Asia and the Far East, at the other. The expansion of commerce was accompanied by and benefited from demographic changes affecting the Jews. Some Jews doubtless joined the waves of migrations from the Islamic East to the western provinces at the time of the conquests. They moved west in large numbers later on, during the breakup of the Abbasid Empire into successor states in the late ninth and tenth centuries, establishing new Jewish settlements in the Mediterranean lands and thickening others that were already there. Many of these migrants sought their livelihood in long-distance trade. Already in the very early period of Islamic rule, mercantile customs that were hardly known in the Talmud came to the fore. Partnerships for international trade became more complex. A form of commercial agency, likely stemming from the pre-Islamic trade of Arabia but unimagined in the Talmud, became widespread. Shared by all traders regardless of confessional adherence, these forms of business collaboration gave the Islamic marketplace a truly interdenominational character. Islamic law, particularly the Hanaf school, originating in Islamic Iraq in the eighth century (the Iraq of the Babylonian Geonim), Baber Johansen writes, considered "commercial exchange . . . open and accessible to everyone whose rational capacities qualify[ed] him for the calculation of profit and loss, [and] everybody ha[d] access to the bazaar." The Babylonian Geonim, the post-Talmudic halakhic and communal authorities and heads of the yeshivot, or academies of learning, in Islamic Iraq, who dominated rabbinic leadership from the seventh to the eleventh centuries, responded to the new prominence of merchants in Jewish economic life through their responsa, through taqqanot (new legal rulings), or by considering custom as a source of law. Through the lens of the Geniza documents pertaining to commercial life and with an eye on his own responsa, the present book will show that Maimonides (1138-1204) went beyond the Geonim, adapting the halakha to accommodate the new economy through codification in his Mishneh Torah. The present study, therefore, uncovers an aspect of originality and creativity in Maimonidean legal thought that has not hitherto been recognized.

0.2 The Mishneh Torah Completed around 1178, the Mishneh Torah was unique in the history of Jewish codification. In fourteen volumes, it encompassed all of Jewish law, from the Bible through the Mishna, the two Talmuds, and the opinions of the post-Talmudic teachers in the Islamic period, the Geonim and the Talmudists of al-Andalus. In its scope, form, and structure, Maimonides' Code departed from all earlier efforts to codify Jewish law. Maimonides assembled halakhot that were diffused throughout the classical legal corpus, including laws that would come into force only in the messianic era, and arranged them topically. To make the work even more "user-friendly," he devised new, rational categories to make it possible to access rulings on specific subjects easily. Rulings that, in the Talmuds, are found associatively in a variety of not so obvious places. To make it accessible to all, including those who could not understand the abbreviated Aramaic style of the Talmud, he composed the Code in the lucid Hebrew of the Mishna. Further breaking with precedent, he included a basic summary of Jewish beliefs, founded on philosophical principles. In an even more radical departure from the method of classical halakha and that of the Geonim, Maimonides did not identify his sources in rabbinic law. Finally, and particularly important for the present study, whereas the Talmud is notably deficient in the field of commercial law, Maimonides established a firm place in the halakha for such subjects as partnership, agency, sale, leasing, and credit, consolidating disparate Talmudic statements on these subjects and, as we shall see, adjusting business law to adapt to the ways of the Islamic marketplace. The study of the Code goes back to the author's own lifetime. Its early dissemination evoked questions about its contents from students and other readers. The work was the object of particular scrutiny by later medieval and early modern commentators. A selection of important commentaries surrounds the text in the standard printed editions, but the total quantity of premodern and modern commentaries numbers in the hundreds. Many of the commentators' efforts were devoted to uncovering and citing the sources underlying individual rulings. In modern research, the most influential work on the Code is Isadore Twersky's Introduction to the Code of Maimonides, which appeared in 1980. In seemingly exhaustive manner, Twersky described the form, scope, classification, language, and style of the work, as well as the revolutionary inclusion of a philosophical credo in a book of halakha. One aspect missing from his study, however, is a social-historical analysis of the Code in the context of everyday Jewish life in the Islamic world. Such an analysis is undertaken in the present book, made possible thanks to the documents of the Cairo Geniza.

0.3 The Cairo Geniza The extraordinary evidentiary value of the Cairo Geniza for the present study results from the circumstances of its creation and from its contents. Following an ancient Jewish custom practiced by traditional Jews to this day and by Muslims as well, pages of religious writings no longer in use are "buried," usually in

a cemetery (Islamic practice varies in this regard), and left to decompose on their own, rather than violating their sanctity by physically destroying them. Originally, a geniza was designated to accommodate only holy writings, such as torn sections of a Torah scroll or pages from books of the Bible that had become separated from their original codices. This is true of "Islamic geniza" as well, for pages of the Qur'an. Later, the practice was extended to anything written in the Hebrew alphabet. The Cairo Geniza, discovered in the latter half of the nineteenth century, was "buried" not in a cemetery but in a storage room of a medieval synagogue in Old Cairo (Fustat), the house of worship known today as the Ben Ezra Synagogue. Different reasons have been suggested for this seemingly atypical form of geniza, but, whatever the reason, the anomaly worked to our good fortune because the contents of the Geniza were all the easier to retrieve, once it was discovered. Moreover, because Egypt has an arid climate, the paper and inks have survived largely intact, even though the fragments are often torn. With careful reconstruction and conservation of damaged portions, the writing is almost as readable today as it was at the time it was written, as long as 1,000 years ago, when the bulk of the earliest dated or datable manuscripts was composed. The Cairo Geniza trove numbers (at latest count) some 330,000 folio pages. Of these, the vast majority are literary texts. Genres represented include Bible, late antique and medieval Hebrew poetry, midrashic and halakhic works, philosophical treatises, magical and mystical texts, prayer books, and even fragments of Arabic belles lettres and Islamic literature, including pages of the Qur'an transcribed into Hebrew letters. The rest, probably 20,000 or more self-contained items, are materials from everyday life, which we would call "secular." They date mostly from the eleventh to mid-thirteenth centuries, the so-called classical Geniza period, which includes the years that the Maimonides family lived in Egypt, after arriving there from the Islamic West in about 1165. Small amounts of "secular" material date from later times as late as the end of the nineteenth century. This "documentary Geniza," as it is called, following Goitein, includes letters, court records, marriage contracts, deeds of divorce, wills, documents concerning pious trusts, business contracts, merchant accounts, book lists, lists of recipients of charity, and registers of gifts for charitable purposes, and more. Though many of them are in Hebrew or Aramaic, most of them are written in Judaeo-Arabic, that is, Arabic in Hebrew characters, a form of Middle Arabic containing many vernacular features as well as lexical meanings not found in dictionaries of classical or modern standard Arabic. Filled with realia about real people and daily life, these sources reveal aspects of economic, social, and family life, as well as of material culture and individual mentalities that were previously completely unknown. With the benefit of the documentary Geniza, we have direct and relatively unmediated access to these realia and a basis on which to evaluate Maimonides' codification.

0.4 Responsa and Legal Monographs

Legal sources apart from the Code play an essential role in this study as well. They exist primarily in the vast reservoir of Jewish responsa from the Islamic world. A responsum (Heb., *teshuva*), like an Islamic fatwa, is a legal opinion written by a jurisconsult in Arabic, a *mufti* in answer to a question often arising out of litigation in a court. The responsa of the Babylonian Geonim, preserved in editions of medieval manuscripts or retrieved in the form of loose leaves from the Geniza, emanate from Iraq of the eighth to eleventh centuries, before the time of Maimonides. Many, if not most, of them, however, respond to queries from outlying Jewish communities in the Mediterranean, as far away as Spain. Thus, they shed light on commercial life in the geographical area of primary interest here and, importantly, during the centuries for which the Geniza provides no documentary remains. Other relevant responsa include those of Maimonides' predecessors in al-Andalus, notably, the illustrious R. Isaac Alfasi (d. 1103), who came to Spain from North Africa and taught in the yeshiva of Lucena, and his equally brilliant disciple and successor, R. Joseph ibn Migash (d. 1141). The latter was the teacher of Maimonides' father, and through his father, the son absorbed the teachings of that great sage and of Alfasi himself. Maimonides was thus familiar with both the Gaonic and the Andalusian traditions, which need to be taken into account in any study of his Code. Complementing the responsa of the Babylonian Geonim, another important source emanating from their academies are their legal monographs, most of them written in Judaeo-Arabic. These cover a variety of subjects, many in the realm of civil law. They include treatises on divorce, inheritance, gifts, buying and selling, partnership, preemption, bailment, suretyship, debts, oaths, judicial procedure, and methods of acquisition, as well as formularies for composing different types of legal documents. Gaonic legal monographs consolidate rules governing everyday life and represent a sphere of intellectual creativity that took place against the background of the formation and systematization of Islamic law in Iraq and elsewhere. With the exception of the few monographs that were translated into Hebrew in the Middle Ages, most of them are preserved, if at all, in a fragmentary state, including hundreds of small or larger scraps from the Geniza. Robert Brody notes that these Gaonic monographs "practically disappeared from view as the center of gravity of the Jewish world shifted to Christian Europe, beginning in the twelfth century." Like the responsa, however, they are relevant to a sociolegal study such as the present one. A particularly important Gaonic monograph for the subject at hand, partially reconstructed and recently published by Brody from Geniza fragments, is Saadya Gaon's "Book of Bailment." This minicodex illustrates how Saadya attempted to accommodate within the halakha the form of commercial agency alluded to above. Saadya's halakhic step places in bold relief Maimonides' own and different attempt to assimilate this same merchant custom into Jewish law. Of particular importance for this study are the hundreds of extant responsa written by Maimonides himself, most of them "published" in medieval manuscript collections and edited, most recently, by Joshua Blau. Many individual responsa, some with Maimonides' own handwritten answer, were discovered among the

manuscripts of the Geniza or elsewhere. Since Maimonides' responsa date from the twelfth century, their historical value is nearly equivalent to that of the Geniza documents. A considerable number of them deal with economic affairs, and, as we shall see, it is sometimes possible to detect nuances in the Code that are illuminated by responsa that he issued. Their significance is enhanced by the fact that most of them preserve the original Arabic in which they were composed.

0.5 Historical Versus Comparative Legal Study

The large question that guides this study—the relationship between Jewish law and society in the medieval Islamic world—has, in recent years, been addressed from another angle by Gideon Libson in illuminating research on comparative Jewish and Islamic law. His findings, which I will have frequent occasion to cite, have brought to light striking evidence of the relationship between Jewish law and Islamic law in the Gaonic and post-Gaonic periods. Libson shows that halakhists like Samuel b. Hofni Gaon (d. 1013) and Maimonides were aware of Islamic law and adopted some of its approaches and rulings in their own legal works. He also shows that the Geonim adopted judicial procedures that were prevalent in Islamic shar'a courts but inconsistent with Talmudic halakha; and that Maimonides, in his Code, showed awareness of these departures from the Talmudic norm. Y. Zvi Stampfer has applied the comparative approach to Samuel b. Hofni's treatise on the laws of divorce. Amir Ashur has pointed to similarities (as well as differences) between stipulations in Jewish engagement, betrothal, prenuptial, and marriage contracts in the Geniza and stipulations in cognate Islamic documents. Deeply familiar with Islamic as well as Jewish law, Libson argues convincingly that, in many cases, the Geonim absorbed material directly from Islamic law as custom, employing the principle of halakhic jurisprudence that custom can serve as a source of Jewish law. For Maimonides, Libson looks in the first instance to Shfi' law, which was prominent in Egypt even when it was ruled by the Ism' Fatimids (969-1171), and even more so during Maimonides' time. Libson finds Shfi' legal parallels in the Mishneh Torah as well as similarities in theoretical approach. While Libson's scholarship in all these matters centers on a legal-historical reading, focusing on the influence of Islamic law on Jewish law in the realm of prescriptive texts, he properly understands the process of borrowing as a response to socioeconomic forces in the Islamic world. Central to his thesis is his taxonomy, drawing a distinction between "borrowed custom," a custom "lifted directly from Islamic law," and "responsive custom," which "stemmed from the Geonim themselves in response to the general economic and existential needs of the time." The present study puts primary emphasis on the economic aspect itself, foregrounding documentary evidence from the Geniza and in the responsa of economic realities in the Islamic world that are reflected in and responded to in Maimonides' Code. Through a careful analysis of a broad selection of halakhot dealing directly or indirectly with commercial law and practice, this case study in Maimonidean codification strengthens the conclusion about the relationship between Jewish law and society arrived at through comparative legal study. At the same time, it points to an aspect of originality in the Code that has hitherto gone unnoticed.

0.6 Islamic Legal Change

In order to situate Maimonides and his predecessors in their general intellectual milieu, it is instructive to consider what contemporary scholars of Islamic law consider to be the traditional Muslim view on legal change. Subhi Mahmassani explains that Muslim jurists place restrictions on making changes in ritual law. Concerning "worldly transactions," however, some Muslim jurists adopt a more flexible policy. They take the context of legal rulings into account and allow for changes in the law to conform with changing circumstances. Summarizing the relationship between law and society, Mahmassani adds that "some caliphs, imams, and jurists . . . endorsed the possibility of change in the explanation or interpretation of texts, because of a change in their causes or in the customs upon which they were based, or in answer to necessity and public interest." Frank Vogel explains the situation as follows: "Practice also reveals vital aspects of law going beyond substantive doctrine, such as the workings of morality or revealed precepts outside of law and the formal legal system (in our sense) and various methods of responding to social and economic circumstances and changes without overt change of doctrine, such as contingently justified gradations, variations or exceptions in doctrine, fictions, artifices, or court procedures." Hossein Modarressi notes the Qur'anic principle that "[n]o one can change [God's] words" but goes on to explain what he calls "the principle of discretionary judgment in Sunn law": "The interests of the community and individual welfare do not remain constant but rather change over time and from place to place, in accordance with changing social circumstances. The law legislated on such a changing basis must inevitably change too; and it is held to be the function of the jurists to modify the interpretation of the laws to conform with new social conditions and the requirements of the time." Wael Hallaq's view on legal change in Islam runs along a similar path. "Muslim jurists were acutely aware of both the occurrence of, and the need for, change in the law, and they articulated this awareness through such maxims as 'the fatw changes with changing times' (taghayyur al-fatw bi-taghayyur al-azmn), or through the explicit notion that the law is subject to modification according to 'the changing of the times or to the changing conditions of society.'" A maxim cited in the Ottoman Meelle (Article 39) sums this up succinctly: "There is no disputing that rules of law vary with the change in times" (I yunkar taghayyur al-ahkm bi-taghayyur al-azmn). Thus, despite the fact that custom is technically not accepted as a source of law in Islam, historically it has played an important role in legal evolution. The early nineteenth-century Hanaf jurist Ibn 'bid sums up the maxim about changes in the law with changes in the times: "Since the muft must follow custom even if it contradicts the written text in the established reports, is there a difference between general custom and special custom, as in the first part [of the treatise], that is when custom contradicts the textual rule? I say: there is no difference between them except

that general custom establishes general rules and special custom establishes a special rule. In conclusion, the rule of custom applies to all people, whether custom is general or special, within general custom in all countries applying to people in all countries, whereas a custom special to one area applies only to this area."The Geonim and Maimonides lived, therefore, in a society in which custom played a significant role in juristic theory and practice, especially in commercial lawthe area, probably more than any other, where practice influenced legal norms. In seeking to understand Maimonides' method of codification, it is useful to consider Wael Hallaq's discussion of the relationship between the juriconsult and what he calls the "author-jurist." Hallaq proposes that the principal device effecting legal change in Islam were the fatws (responsa) issued by muft#299s (juriconsults) and, in turn, transformed by "author-jurists" into changes in normative law. By the very nature of his profession, fielding questions arising from daily life, the muft#299 knew, better than most people, where the discrepancies between law and society lay. Maimonides, who was both a Jewish muft#299, writing hundreds of responsamuft al-milla, "muft#299 of our religious community," in the words of one Jewish seeker of legal guidanceand at the same time an author-jurist, compiling a comprehensive code of Jewish law, belonged, therefore, to a cultural milieu shared with his Muslim counterparts.

0.7 Structure of the Book

To guide readers of this book, I present here a brief summary of its chapters. Chapter 1 discusses codification and legal change. I introduce two legal scholars who have raised the question of the relationship between the two. One of them is Maimonidean scholar, Gerald Blidstein; the other is Alan Watson, scholar of legal history and theory. Periodically in the book, I will return to these scholars, linking their views to the discussion at hand. In Chapter 1, I also review one of Maimonides' most discussed taqqanota reform in the synagogue serviceto demonstrate how he took daily life into account in his legal decision making in the Code, even in the realm of ritual.Chapter 2, "Halakha and the Custom of the Merchants," makes the case that the Babylonian Geonim and Maimonides were attuned to the ways of the Islamicate marketplace. The Geonim called this (in Arabic) hukm al-tujjr, "the custom of the merchants." I show how they accommodated merchant practice and other exigencies of the new mercantile economy with taqqanot, through their responsa, or by adopting new commercial practices, employing the legal maxim that custom can override the halakha. I include a discussion of the rabbinic concept of the "custom of the mariners," illustrating the importance of the custom of the surrounding society for Jews, even in Talmudic times.In contrast to the Geonim, Maimonides responded to the new commercial economy through codification. I establish the place of the custom of the merchants in the Code by closely analyzing one halakha from his Hilkhot sheluhin ve-shutafin, "Laws of Agents and Partners." Unlike the Geonim, Maimonides, who elsewhere freely uses the term "custom of the mariners," does not employ the actual phrase "custom of the merchants," a translation of the Gaonic hukm al-tujjr. Rather, writing in Hebrew and using Mishnaic language, he chooses a traditional rabbinic phrase, minhag ha-medina, "local custom," to clothe the new reality in ancient garb.Chapter 3, "Updating the Halakha," presents several examples from the Code (charity, Sabbath observance, marital relations, and others), where Maimonides incorporates the element of commerce into a ritual law of the Talmud where it is absent, in order to "update" the halakha to fit the mercantile economy.Chapter 4, "Partnership," discusses forms of commercial collaboration popular among Jewish merchants of the Geniza period. These include institutions of partnership recognized by the Talmud. A non-Talmudic form of partnership that seems to be an Islamic precursor of the later European commenda was acknowledged by Islamic law and practiced by Muslims and occasionally by Jews. Especially important in this chapter is the section on partnership with a Muslim, which responds to the reality of interfaith business relations in the Geniza world.Chapters 5 and 6 go together. Chapter 5, "Commercial Agency (Suhba)," describes a completely new institution of commercial collaboration practiced by Jews. Actually a form of commercial agency, it was first identified by S. D. Goitein and called "formal friendship"; I refer to it as suhba-agency. Geniza letters reveal that agency was twice as popular a means of doing business as all other forms of long-distance trade combined. In suhba-agency, merchants did not invest together or share profits and losses, as in a partnership. Rather, they compensated one another by doing reciprocal business favors. This informal procedure mimicked a form of commercial agency called ibd', practiced by Muslims and enshrined in Islamic law. Arabic letters written by Muslim traders confirm that Jewish traders followed the custom of the Muslim merchants. Because it was unknown to the Talmud, suhba-agency lacked a means of enforcement in Jewish courts, a defect that Maimonides, preceded by Saadya Gaon in the tenth century, sought to remedy in his Code (here in Chapter 6, "Suhba-Agency in the Code"). In Chapters 5 and 6, I also discuss the controversial theory of Stanford economist Avner Greif concerning the special way in which Geniza merchants enforced agency relations.Chapter 7 is devoted to an institution of agency that the Talmud recognizesproxy legal agency, equivalent to our power of attorney. Here we find Maimonides staunchly rejecting a Gaonic reform that had been designed to accommodate the transition from Jewish landownership in Iraq to commerce, following the Islamic conquest. However, as I shall show, Maimonides was not out of step with an economic reality that the Geonim had attempted to address. Rather, he was conscious of facts on the ground in Egypt and in his native Andalusia that rendered the Gaonic "fiction" unnecessary.Chapter 8 discusses Maimonides' ruling on buying and selling, the cardinal components of exchange in any commercial society and a constant form of activity in the daily lives of Geniza merchants. Maimonides stridently opposes selling or acquiring property by any other means than the ones prescribed by the Talmud. I hypothesize that his purpose was to discourage Jewish traders from employing the Islamic method of "offer and acceptance." At the end of the chapter, I explicate a halakha about writing

contracts that exemplifies Maimonides' effort to adapt the halakha to accommodate the technological innovation represented by the production and use of paper in the Islamic world, replacing papyrus or other writing surfaces assumed by the Talmud. In Chapter 9, I review the question of the status of Jews (and non-Muslims in general) in Islamic courts, both the position of Islamic law on the matter and the evidence of Jewish (and Christian) recourse to Islamic courts. This was a major and abiding problem for Jewish leadership (as for Christian religious elites). I offer my opinion that much of Maimonides' updating and reform of Jewish commercial law in the Code can be explained by his concern over this challenge to Jewish communal autonomy. I suggest that he wanted to provide Jewish merchants with an alternative and comparable Jewish equivalent to the Islamic legal system. The Conclusion to the book discusses the question of originality in Maimonides' legal thought, a subject that the book raises from a new angle. In closing, I compare my approach to legal change in Maimonides' Code with Haym Soloveitchik's approach to law and society in medieval Ashkenazic Europe.