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Merchants, Trade, and Jewish Law in the Islamic Middle

Ages

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During the Talmudic period, Jews engaged primarily in agriculture and crafts and only minimally in trade, which was mainly local or regional. Not surprisingly, therefore, Talmudic law reflects an agrarian society. The advent of Islam in the seventh century brought profound economic changes to the Middle East and to the Jews living there. The unification of the formerly warring great empires of Byzantium and Persia opened up vast territories for 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” was open to resident merchants of all faiths, though non-Muslims paid heavier commercial taxes than Muslims and incurred other disabilities imposed upon the “People of the Book.” 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 economy. Waterways—the Persian Gulf, the Mediterranean Sea, the Red Sea, the Indian Ocean, as well as many long, navigable rivers—facilitated mid-range 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 Jewish economy was utterly transformed by these developments.

The expansion of commerce was accompanied by and benefited from demographic changes affecting the Jews. Jews joined the waves of large-scale migrations from the Islamic East to the Western provinces, first, at the time of the conquests, and later, during the breakup of the Abbasid Empire in the ninth and tenth centuries. They established new Jewish settlements in the Mediterranean

lands and thickened others. 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 new form of commercial agency unimagined in the Talmud, proliferated. Shared by all traders regardless of confessional adherence, these forms of business collaboration gave the Islamic marketplace a truly interdenominational character.

The Babylonian Geonim--the post-Talmudic halakhic and communal authorities and heads of the yeshivot, or academies of learning, in Iraq--who dominated rabbinic leadership from the seventh to the eleventh centuries, were quick to recognize the economic transformation and, in particular, the role that merchant custom—some of it inconsistent with Talmudic halakha--played in Jewish trade.¹ With unabashed transparency, they introduced modifications in Talmudic law to accommodate the new reality.

A well-known example is the *suftaja*, a bill of exchange. Muslim long-distance traders widely employed this commercial instrument, and Jews, themselves, may have begun using it as early as the mid-eighth century;¹ it is

¹ See Walter J. Fischel, *Jews in the Economic and Political Life of Mediaeval Islam* (London: Royal Asiatic Society, 1937), 17-21; *Med. Soc.*, 1:242-245; Libson, *Jewish and Islamic Law*, 84-

abundantly attested in the Geniza for the 11th, 12th and 13th centuries.² In a typical example, A. would issue a *suftaja* to B., who was en route to a distant destination where A. had money on deposit with C., or was owed money by C. Upon arrival, B. would collect the money due him, after presenting the *suftaja* to C. The avoidance of loss due to the danger of transporting specie was considered a benefit to B., hence a veiled form of interest. For that reason, some Islamic law schools objected to the device, and it was problematic for the Geonim as well.

The Geonim were realists. Queried about the halakhic permissibility of a *suftaja*, a unnamed Gaon, in his responsum, permitted its use. The responsum is significant, not only because it illustrates realistic rabbinic adjustment to economic change, but also for its specific use of the term “law (or custom) of the merchants.” (no. 1 on the handout)

Our law (*fiqh*) does not support the sending of a *suftaja*, as our rabbis said:

“One may not send money with a *diyogne*, even if witnesses have signed it.”

However, when we saw that people use it in doing business with one another, we began admitting it in court, lest trade among people cease. We sanction it, no more and no less, in accordance with the “custom (or law) of the

85, 96-97, 262 note 34, 270-271 note 30. *EP*², s.v. *suftadja* (M. Y. Izzi Dien). The *suftaja* may have originated in the seventh century; see Morony, “Commerce in Early Islamic Iraq,” 711.

² A keyword search of the some 4300 historical documents in the Princeton Geniza Project database (summer 2014) (<http://etc.princeton.edu/genizaproject/>), dating mostly from the eleventh to mid-thirteenth centuries, retrieves 34 distinct letters mentioning the *suftaja*

merchants” [*ḥukm al-tujjār*]. Such is the law and nothing should be altered in it.

The key sentence in this responsum is “when we saw that people use it in doing business with one another, we began admitting it in court, lest trade among people cease.” The Gaon’s pragmatic solution was to let custom override the halakha² and sanction the *suftaja*, “lest trade among people cease.” Saadya Gaon (d. 942) expressed the Gaonic opinion with similar resignation: “Concerning whatever merchants trade with, *diyogna’ot* (plural of *diyogne*) are not acceptable according to strict law, *but the merchants have disregarded [the prohibition] in order to facilitate their transactions.*”³ The comment, like the statement “*we saw that people use it in doing business with one another*” in passage no. 1 in your handout, shows that Jewish merchants followed a well known pragmatic tendency of their economic class to take the path most likely to maximize profit and minimize loss, following norms that may not be consistent with the dominant legal system. In validating the *suftaja* the Jewish legal establishment certainly knew that, absent their accommodation of this financial device, in any dispute concerning it, Jewish merchants would simply resort to Islamic courts where the commercial instrument was recognized. The Gaonic concession meant that Jewish merchants could now

bring litigations involving this financial device before the Jewish *beit din*, rather than seeking resolution in the court of the Muslim judge.

In conforming Jewish law to the needs of the Islamic marketplace, the Geonim faced a greater challenge than their Muslim jurist counterparts. The formative period of Islamic law coincided with the Islamic commercial revolution. Most of the early Muslim jurists were themselves merchants, or at least au courant with merchant custom.⁴ These customs were therefore absorbed into Islamic law as early as the eighth century. The most progressive of the law schools (*madhhabs*) in this respect, the Ḥanafīs, named after its founder, Abū Ḥanifa (d. 767), and to a lesser extent other legal schools, incorporated these practices into Islamic law as it crystallized.⁵

In contrast, the formative period of Jewish law had long passed when the Islamic commercial revolution arrived. The Geonim had a huge corpus of halakha from the pre-Islamic period—the period of the Talmud—to contend with, and, as noted, the Talmud served a society mainly composed of farmers and craftsmen, not a highly commercialized, monetized society in which long-distance trade and credit as a means of investment figured prominently. Like the examples cited above, the Geonim accommodated these transformations through their responsa, through *taqqanot*, through what they called “the custom of the yeshiva,”⁶ and through rulings incorporated into mini-codes, many of which deal with commercial

law. Along the same lines, Maimonides, the most authoritative and respected jurist in the Jewish world in the second half of the twelfth century, made halakhic accommodations to commercial practice in his comprehensive Code of Jewish law, the Mishneh Torah, which he completed around the year 1178.

The Mishneh Torah is unique in the history of Jewish codification.⁷ In fourteen huge volumes it encompasses 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 (Muslim Spain). In its scope, form, and structure Maimonides' Code departs from all earlier efforts to codify Jewish law. Maimonides assembled halakhot that were diffused throughout the classical legal corpus, including laws that would only come into force 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 classical sources, were 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.⁸ Further breaking with precedent, he included a basic summary of Jewish beliefs, founded on philosophical principles. Finally, in a radical departure from the method of

classical halakha and of the Geonim, Maimonides did not identify his sources in rabbinic law.

In restructuring the logic and the presentation of Jewish law, Maimonides was able, sometimes imperceptibly, to introduce changes dictated by new, economic realities of post-Talmudic, Islamic society. We can penetrate the near invisibility of these amendments thanks to evidence from everyday life in the documents of the Cairo Geniza. I know that you had Peter Cole and Adina Hoffman here a few years ago talking about the Geniza so I will be brief.

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 and left to decompose on their own, rather than violating their sanctity by physically destroying them.⁹ Originally, a Geniza—the burial place--was designated to accommodate only holy writings, like torn sections of a Torah scroll or pages from books of the Bible that had become separated from their original codex—this is true of “Islamic geniza” as well, for pages of the Qur’ān.¹⁰ Later, the practice was extended to anything written in the Hebrew alphabet.

Because the Cairo Geniza was “buried,” not in a cemetery, but in a storage room of a medieval synagogue [IMAGES OF BEN EZRA SYNAGOGUE AND OF DIARAMA], the contents, some 320,000 pages of writing, were easy to retrieve,

once their place of repose was discovered. Furthermore, because Egypt has an arid climate, the paper and inks have survived largely intact, although the pages are often torn and worn. [IMAGE SHECHTER AMONG THE GENIZA FRAGMENTS]

Of the total number of pages, perhaps 95% are literary texts--pages torn or otherwise separated from their original books, like the Bible, Hebrew poetry, midrashic and halakhic works, philosophical treatises, magical and mystical texts, prayer books, even fragments of Arabic belles-lettres and Islamic literature, including pages of the Qur'ān transcribed into Hebrew letters [IMAGE]. The other 3-5%, estimated between 10,000 and 15,000 (possibly as many as 18,000) self-contained items, are not religious writings at all. They constitute material from everyday life, which we would call "secular." They date mostly from the 11th to mid-13th centuries, the so-called "classical Geniza period," a stretch of time that includes the years that the Maimonides family lived in Egypt after arriving there from the Islamic West about 1165.

This "documentary Geniza," as it is called, 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, etcetera. [IMAGE OF SUFTAJA] Though many of them are in Hebrew or Aramaic, most of them are written in Judeo-

Arabic, that is, Arabic in Hebrew characters, reflecting a nonstandard form of classical Arabic and containing many vernacular features, including 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 unmediated access to these realia and a basis on which to evaluate Maimonides' amendments to commercial halakha.

Maimonides himself would probably have denied making substantive changes in the halakha. In the Introduction to his *Mishneh Torah* he announced that he was simply collecting Jewish law that was on the books, from the Bible to the post-Talmudic teachers, the Geonim and his own teachers in Spain. He claimed in a letter that only in a few places had he offered his own opinion, and these he had clearly marked with the words *לִי יִרְאֶה* "in my opinion." He does this about 120 times in the Code. Apart from this, he led his readers to believe that he had done nothing new. Modern scholars of the *Mishneh Torah* have mostly taken him at his word.

Let me illustrate Maimonides' method with one example, which is number 4 on your handout. Tomorrow and Thursday I will discuss other examples in our workshops. Example no. 4 concerns merchants working on the intermediate days

of the festival, Passover in the spring and Sukkot in the fall. The Mishna (Mo‘ed Qatan 2:4) restricts labor on those days to certain types of subsistence economic activity. It says: “It is not permissible to buy houses, slaves, or *cattle except for what is needed for the festival, or where the seller has nothing to eat.*”

Characteristically, the discussion of this Mishna in the Babylonian Talmud assumes agricultural work. However, it also allows copying the scriptural text for phylacteries (tefillin) and other ritual objects and selling them if need be for one’s own livelihood (Mo‘ed Qatan 18b-19a) or writing a deed of debt on the intermediate days of the holiday if a person lacks food to eat and needs a loan.

In the urban setting of early Islamic Iraq, when, as the Geonim themselves report, most Jews no longer owned land and when the agricultural lands around the capital of Baghdad were witnessing landflight to the cities, R. Naṭronai b. Hilai, Gaon of Sura (ca. 857/58-865/66), reflecting a Babylonian tradition, extended the permission to work on the intermediate days of the festival to include poor craftsmen like sandal makers, who had no choice but to work on those days, even if they had to work in public places in order to be seen by potential customers. He also permitted people to engage in business (*sehora*) on the intermediate days of the festival if transacted in the privacy of their houses, since business entails only talking. He permitted it completely if necessary to avoid a lost business opportunity. The Gaon further expanded the Talmudic dispensation to copy

religious texts. If a caravan was about to depart on one of the intermediate days of the festival Natronai permitted merchants to write and send a letter with the caravan to accompany merchandise or to convey instructions to a business associate located in a distant city, if this meant avoiding financial loss or protecting the well-being of his own family.³ As the Geniza letters abundantly show, long-distance traders relied heavily upon letters reporting the activities of business associates, the progress of consignments of merchandise, and market fluctuations, and they regularly sent written instructions to partners or agents instructing them about buying and selling and other matters vital to maximizing profits.⁴

Now let us see what Maimonides does with the Talmud and with Natronai Gaon's modifications.

Mishneh Torah יום טוב הלכות שביית יום טוב Laws of Repose on a Festival 7:22

One should not engage in trade (*sehora*) on the intermediate days of the festival, whether selling or buying. But if it is something that, if postponed, would entail lost business opportunity (*davar ha-aved*) regarding something that is not always available after the festival, **for instance, when ships or caravans have just arrived or are about to depart and people are selling cheap or buying dear**--in such cases a person is permitted to buy or sell (on the intermediate days). One may not, however, buy houses or slaves or cattle except if needed for the festival.

Maimonides' intimate knowledge of the realities of long-distance trade stands out boldly in his comments about ships and caravans and how their arrival

³ *Teshuvot Rav Natronai bar Hilai Gaon*, ed. Brody, 1:296-297 (no. 170).

⁴ See Jessica Goldberg, *Trade and Institutions in the Medieval Mediterranean: Geniza Merchants and their Business World* (Cambridge: Cambridge University Press, 2012), chapter 3 section 3. And see chapter 5 below.

or departure could affect market prices. Where Naṭronai permits writing and sending letters to business associates, Maimonides allows outright trading for the arriving goods. This elaboration, does not appear in R. Naṭronai Gaon's responsum which was evidently based on a Babylonian opinion. Maimonides seems to have based his amplification on a precedent in the rival Palestinian Talmud (Mo'ed Qaṭan 2:3, Venice ed. *) that allows doing business with a caravan that is arriving and then departing on the intermediate days of a festival. Furthermore, Maimonides does not, like Naṭronai, restrict activity to the privacy of one's house. Rather, he chooses a text that better fit the more dynamic and geographically more complex international business world of the Geniza period.

Maimonides was not just an ivory tower scholar. He was intimately familiar with the merchant life, from personal experience and from his work as a jurist. The Muslim scholar and younger contemporary of Maimonides, Ibn al-Qiftī, composed a catalog of great scholars including non-Muslims, and in his entry for Maimonides, he informs us that, on his arrival in Egypt, Maimonides engaged in commerce in precious jewels. We know from a Geniza letter that Maimonides' younger brother, David, was a trader traveling between Egypt and India. He lost his life in a shipwreck in the Indian Ocean.

Furthermore, Maimonides lived in Fustat, a city intimately linked to commerce in the Mediterranean through the port of Alexandria, and with India

through the Yemeni port of Aden. He knew as well as anyone that the arrival and the departure of caravans or ships was one of the defining factors in marketplace activity.

Two halakhot later Maimonides repeats the dispensation to work on the intermediate days of a festival in a different context (*Hilkhot shevitat yom tov* 7:24):

Whatever is forbidden to do on the intermediate days of the festival one may not instruct a gentile (*goy*) to do. If he has nothing to eat he may do whatever is forbidden to do on the intermediate days of the festival to provide enough for his livelihood. Likewise, he may engage in commerce (*'oseh sehora*) to provide enough for his livelihood. It is permissible for a wealthy man to hire a poor man who has nothing to eat to do work that is otherwise forbidden on those days, so he may earn wages with which to provide for his livelihood. Likewise, one may buy things that are not needed for the intermediate days of the festival if the seller is in need and has no food to eat.

The supposed Talmudic source for the first statement in this halakha is:

“whatever he may do, he may instruct a gentile to do, and whatever he may not do, he may not instruct a gentile to do” (Mo‘ed Qatan 12a). The concern with the alleviation of poverty, also present in the Talmudic discourse, had particular immediacy in Maimonides’ Egypt. As I discussed in my book *Poverty and Charity in the Jewish Community of Medieval Egypt*, the Geniza attests to the presence of a large population of poor Jews in Fustat, local poor as well as transient indigents and needy people seeking to settle down in that charitable

community. Each week hundreds of hungry people, local and foreigners, received a dole of loaves of bread and sometimes wheat as well. The poor received subsidies to help defray the poll tax levied on every non-Muslim adult male. Geniza letters reveal that Maimonides was personally involved in charity in the community, particularly on behalf of redemption of captives (who were usually foreigners), the most costly item in the community's charity budget.

The statement in 7:24 about protecting the hireling or the storeowner from dearth addresses the plight of the “working poor” in Maimonides' Egypt, who earned meager, subsistence wages and could not afford to sacrifice income for an entire week twice a year (*ḥol ha-mo'ed* plus the festival days which precede and follow). Noteworthy is the clear allusion here to Maimonides' own (and famous) “ladder of charity” near the end of the Laws of Gifts for the Poor (10:7), which puts employment of a poor person, entering into partnership with him, giving him a loan, or making an outright gift at the top of the list of recommended methods of charitable giving.

Most significant in terms of Jewish commercial life is the phrase sanctioning commerce: “*Likewise*, he may engage in commerce (*sehora*) to provide enough for his livelihood.” With the word “likewise” (*ve-khen*), Maimonides separates this clause from the sentences before and after it that address the needs of the poor.

Seemingly, the permission to engage in trade exceeds the Talmudic rationale--the concern that people might starve.

The Geniza merchants were not indigent. For them, the threshold of basic livelihood went beyond the subsistence level assumed by the Talmud in its discussion of work during the festival. Their livelihood depended upon doing business continually, with minimal interruption, constantly offsetting losses or potential losses with gains, always keeping their capital moving. Both week-long Jewish festivals fell within the Mediterranean sailing season, which ran from April through October: the week of Passover in early spring and the week of Sukkot at the dawn of the fall season. Ships delivered and exported goods, and the inability to engage in trade during the full week of those two festivals could cost Jewish merchants dearly, especially because, as Maimonides himself states two halakhot earlier (*Hilkhot shevitat yom tov* 7:22), prices for buying or selling could be at their optimum when ships or caravans arrived. The halakha in question (7:24) follows naturally, therefore, from the preceding one, which explicitly allows transacting business with merchants traveling by ship or by caravan on the intermediate days of the festival, and by implication, in the marketplace itself, not just in the privacy of their homes, as stipulated by R. Naṭronai Gaon. Refraining from work on the intermediate days of the festival could truly entail lost business—*pragmatia ovedet*.

This example is one of many passages in the Mishneh Torah that illustrate Maimonides' keen sensitivity to merchant practices. In the workshops tomorrow and Thursday I will present and we will discuss several others.

¹ This is discussed exhaustively by Gideon Libson, *Jewish and Islamic Law: A Comparative Study of Custom during the Gaonic Period* (Cambridge, MA: Islamic Legal Studies Program, Harvard Law School: Distributed by Harvard University Press, 2003). See especially chapter 4. Cf. also Menachem Elon, *Herut ha-peraṭ be-darkhei geviyat hov ba-mishpaṭ ha-ivri* (Freedom of the Debtor's Person in Jewish Law) (Jerusalem: Magnes Press, 1964), 38. On the Geonim see Robert Brody, *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture* (New Haven and London: Yale University Press, 1998).

² See section 2 below.

³ *Teshuvot ha-geonim sha 'arei sodeq* [Salonika, 1792; reprint Jerusalem: Kelal U-Ferat, 1966], part 4, chapter 6:8, cited in Libson, *Jewish and Islamic Law*, 270 note 30.

⁴ *Cahiers d'Histoire Mondiale* 3 (1956-1957): 583-604, reprinted in his *Studies in Islamic History and Institutions* (Leiden: Brill, 1966; new edition with an introduction by Norman A. Stillman, 2010), 217-241. Joseph Schacht had already shown that customary commercial law of pre-Islamic Mecca, echoed in commercial terms in the Qur'ān, entered Islamic law in its formative period. Schacht, *Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 6-7.

⁵ See A. L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970); Imran A. K. Nyazee, *Islamic Law of Business Organization: Partnerships* (Islamabad: International Institute of Islamic Thought, 1997), 232.

⁶ Robert (Yerahme'el) Brody, "Were the Geonim Legislators?" (Hebrew), *Shenaton ha-mishpaṭ ha-ivri* 11-12 (1984-1986): 290-304.

⁷ By codification I do not mean codification in its modern understanding, as a body of laws of the state resulting from legislation, but rather as understood in medieval religious systems like Judaism and Islam: a collection of laws, originating in scripture and subsequently elaborated through interpretation and augmentation in a central corpus. In Islam an example would be al-Sarakhsī's (d. 1090) collection of and commentary upon Ḥanafī law, *al-Mabsūṭ* (30 vols. Cairo: Maṭba'at al-Sa'adah, 1906-1913).

⁸ The Code is the only one of his major works he did not write in Arabic.

⁹ See Mark R. Cohen, "Geniza for Islamicists, Islamic Geniza, and the 'New Cairo Geniza,'" *Harvard Middle Eastern and Islamic Review* 7 (2006): 129-145.

¹⁰ See *ibid.*, 136-139.