THE LAW OF POWER OF ATTORNEY IN MAIMONIDES’
CODE OF JEWISH LAW

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Discussing an agenda for the future study of Maimonides’ Code, Gerald Blidstein, the noted authority on the Mishneh Torah, writes: ‘Though law is a notoriously conservative aspect of culture, legal systems do reflect changing economic and social realities. This is certainly true in the sense that law responds to these realities in order to regulate them; and it is probably true in more subtle senses as well. To what degree does Maimonides’ work consciously respond to its time? And to what degree is it shaped, willy-nilly, by its historical context? The economy of the medieval East was, in certain ways, a continuation of that dominant in Talmudic times; but certain realities had of course changed. The Muslim East was urban and mercantile. Does Maimonidean law reflect this shift? Or does it—the responsa aside—remain firmly fixed within the Talmudic reality, both in its resources, rulings, and attitudes? Do we find extrapolations from Talmudic law to the new situation—or perhaps more than that, or less’?

Another agenda, regarding ‘society and legal change’, is put forward by the eminent legal historian Alan Watson, writing about Roman and English law. In his 1977 book by that title, Watson points to what he calls the ‘inertia’ of private law, its tendency to resist change. ‘The argument of this book’, he writes, ‘is that in the West, rules of private law have been and are in large measure out of step with the needs and desires of society and even of its ruling elite; to an extent which renders implausible the existing theories of legal development and of the relationship between law and society.’ In the Conclusion he asks, further, ‘[c]an codification [by which he means new codification] remove the significant divergence between law and society and [can] it abolish legal scaffolding’, by which he means an encrustation of legal

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rules meant to modify the existing laws but which in fact make them more complex than otherwise would be necessary. The present paper, part of a much larger work in progress, attempts to address the issues about Maimonides’ Code raised by Blidstein as well as the more theoretical question regarding legal change raised by Alan Watson.

One way to approach Blidstein’s agenda while at the same time dealing with Watson’s hypothesis about codification and legal change is to examine the Mishneh Torah in the light of social and economic realities of the Islamic world, as revealed in the documentary treasures of the Cairo Genizah. These unmediated sources are our best witness to how life was lived ‘on the ground’. To the best of my knowledge, this methodology has not been applied to Mishneh Torah criticism. It differs from the approach of legal scholars like Gideon Libson, who investigates the influence of Islamic law on Maimonides (as well as on other legists of the Islamic period) without reference to the documentary material, though the two approaches complement one another.

Supported by evidence from the Genizah, the texts I shall discuss here, and many more like them, show that Maimonides was, in Blidstein’s words, responding to his times, especially the new economic realities of the post-Talmudic world, though much of this is invisible to the naked eye. Only with the aid of the Genizah manuscripts are we able to lift the veil on this hitherto undocumented feature of the Code. Further, the evidence provides an answer to legal historian Alan Watson’s question and illustrates how codification could be used to ‘remove the significant divergence between law and society’.

3 Watson, Society and Legal Change, pp. 136–137, and ch. 8, ‘Legal Scaffolding’.