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# The Organization Of Halakhic Knowledge In Early Modern Europe: The Transformation Of A Scholarly Culture

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## Abstract

ABSTRACT

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David B. Ruderman

Far from being abstract and immaterial, knowledge is impacted in myriad ways by non-intellectual factors, such as technology, organization, culture, and erudite practices. The scholarship of halakha, Jewish religious law, is a millennia-long tradition that was shaped by historical changes in its particular contexts. In sixteenth-century Europe specifically, historical circumstances — the advent of print, the dislocation of the Jewish communities of Ashkenaz (the German lands) reconstructed in Eastern Europe, and the shift to systematic organizational paradigms introduced by newly dominant works — led to a complete reordering of halakha. Drawing upon methods from the history of knowledge, social and cultural history, book history, media studies, and studies of knowledge-organization, this dissertation shows that the changes taking place in Europe between the 1470s and the 1570s influenced a profound transformation of the halakhic system. These changes in technology, organization, and community, fundamentally transformed Jewish law, which became more ordered and therefore more easily accessible, transmissible and applicable than its predecessor. To argue this, the dissertation's first two units examine the shift from personal manuscript collections to printed books, from heterogeneous compilations to hyper-structured codifications, and from a panoply of localized customs to unified, universalized, Jewish law. The third unit studies the evolution of one form of halakhic writing – the responsum, epistolary exchanges about legal problems – to examine how the abovementioned changes shaped halakhic texts and their structure. An analysis of responsa as they evolve from letters, to documents in the rabbinic archive, to published works, displays the scholarly practices and forms of logic specific to each one of these media against the backdrop of the larger shifts in the history of knowledge. As a whole, this study shows that, in the sixteenth century, halakhic culture transformed from a flexible, heterogeneous, and personal universe to an increasingly stable, homogenous, and generalized legal system that henceforth shaped Jewish legal study and adjudication.

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# THE ORGANIZATION OF HALAKHIC KNOWLEDGE

# IN EARLY MODERN EUROPE

# THE TRANSFORMATION OF A SCHOLARLY CULTURE

Tamara Morsel-Eisenberg

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mysterious bounty of PDF-files with me. Chaim Saiman was one of the first to read and critique any of my graduate work and I thank him for his friendship, intellect, and for the hospitality he and his wife Shari have shown me over the years.

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I have been blessed with the most incredible family. First and foremost, I owe an infinite debt of gratitude to my parents, Vivian Liska and Charles Morsel. Few PhD students can boast the distinct fortune of having a mother who is perfectly qualified and also willing to provide insightful advice and hands-on support in absolutely everything from chapter drafts through fellowship applications to sartorial dilemmas and childcare woes, at the most scandalous hours of the night. She instilled in me a love for books and culture, through museum visits and our so-called "*Lesestunde*" when I was a child and continues to be a role model in so many ways. Watching her pass these joys on to my own children makes me incredibly happy. My father has always believed in my capabilities and considered my eventual success a mere question of myself and the world finally realizing this too. He expressed his faith in me and his support for my studies since he first hired a

# ABSTRACT

## THE ORGANIZATION OF HALAKHIC KNOWLEDGE IN EARLY MODERN EUROPE: THE TRANSFORMATION OF A SCHOLARLY CULTURE

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Far from being abstract and immaterial, knowledge is impacted in myriad ways by non-intellectual factors, such as technology, organization, culture, and erudite practices. The scholarship of halakha, Jewish religious law, is a millennia-long tradition that was shaped by historical changes in its particular contexts. In sixteenth-century Europe specifically, historical circumstances — the advent of print, the dislocation of the Jewish communities of Ashkenaz (the German lands) reconstructed in Eastern Europe, and the shift to systematic organizational paradigms introduced by newly dominant works — led to a complete reordering of halakha. Drawing upon methods from the history of knowledge, social and cultural history, book history, media studies, and studies of knowledge-organization, this dissertation shows that the changes taking place in Europe between the 1470s and the 1570s influenced a profound transformation of the halakhic system. These changes in technology, organization, and community, fundamentally transformed Jewish law, which became more ordered and therefore more easily accessible, transmissible and applicable than its predecessor. To argue this, the dissertation's first two units examine the shift from personal manuscript collections to printed books, from heterogeneous compilations to hyper-structured codifications, and from a panoply of localized customs to unified, universalized, Jewish law. The third unit studies the evolution of one form of halakhic writing – the responsum, epistolary exchanges about legal problems – to examine how the abovementioned changes shaped halakhic texts and their structure. An analysis of responsa as they evolve from letters, to documents in the rabbinic archive, to published works, displays the scholarly practices and forms of logic specific to each one of these media against the backdrop of the larger shifts in the history of knowledge. As a whole, this study shows that, in the sixteenth century, halakhic culture transformed from a flexible, heterogeneous, and personal universe to an increasingly stable, homogenous, and generalized legal system that henceforth shaped Jewish legal study and adjudication.

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# UNIT I
# INTRODUCTORY MATERIAL

**THE ORGANIZATION OF HALAKHIC KNOWLEDGE IN EARLY MODERN
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**INTRODUCTION**

**1.**

The study and application of religious law is considered a traditional enterprise, an attempt faithfully to reconstruct and interpret the divine will revealed in a distant past. The learning and implementation of Jewish religious law – or halakha, as it is called, is such an enterprise. As halakha is often regarded as existing beyond time, whereas history seems grounded only in the earthly realm, the inclination to separate history from halakha is nearly instinctive. In this sense, Orthodox Judaism, for instance, largely eschews the historical dimension of halakha, viewing this law as eternal and unchanging. A famous joke that rabbis tell about the history of halakha goes: "Historians can go ahead and tell you what the rabbis wore, but *I* will tell you what they said!" What the rabbis said, like Jewish law itself, does, indeed, relate to the transcendental; however, it definitely takes place in time.

Notwithstanding the timeless, unchanging nature of halakha's objectives, revolutions have, in fact, taken place within its realm. These changes were not solely the result of reactions to external physical or ideological crises threatening religious Judaism – a frequent focus of Jewish historiography. As scholarship has shown, some of the most radical changes in early modern Europe in general were revolutions that occurred inside the realm of knowledge. The failure to engage in the historical component in halakha would, therefore, be a double loss, both for intellectual history and for our understanding

of Jewish law. This dissertation explores one of the most significant such revolutions in Jewish intellectual history. It focuses on the scholarship of halakha, which, in sheer volume, cultural importance, and specificity is one of the main – or, arguably, *the* main branch of Jewish intellectual activity before the modern period.

More specifically, my dissertation investigates the reorganization of halakhic knowledge in early modern Europe, as this corpus, which featured a combination of orality and loosely ordered textual compilations, shifted almost exclusively to textual, highly structured codifications. The religious culture of Ashkenaz, the communities with roots in the German lands,[1] which, by the sixteenth century, for the most part, had moved eastward to Poland and Lithuania, had traditionally ordered its halakhic texts in a largely haphazard, often miscellaneous, and highly fluid manner. My dissertation focuses roughly on the sixteenth century, or, to be more precise, on the century between the 1470s and the 1570s, which begins with the birth of Hebrew print and ends with the death of rabbis Moshe Isserles (ca.1572) and Shlomo Luria (ca. 1574), the first generation of great Eastern European rabbis who wrote halakhic works. This period saw upheavals in various realms: technological innovation in the form of the printing press and groundbreaking books, particularly the *Shulḥan Arukh* (Set table), a halakhic codification printed in the middle of the sixteenth century; it also witnessed communal disruption as the original Jewish

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[1] The meaning of Ashkenaz is, in many ways, constantly in flux, and this dissertation deals with some of the fluctuations in the ashkenazic cultural, scholarly and religious makeup. In the most general terms, Ashkenaz can be defined, geographically, as the communities with roots in the German lands, linguistically, as the Yiddish-speaking sphere or, halakhically, as the early modern communities following Rabbi Moshe Isserles' glosses of the *Shulḥan Arukh*, which will be discussed in the course of this dissertation. Ashkenaz is, of course, no monolith. See, for instance, chapter 3 in this dissertation for distinctions within Ashkenaz depending on the trajectory of particular communities; chapter four for chronological differences in ashkenazic modes of transmission and attitudes to their past.

communities of Western Europe disappeared. The combination of these changes led to a veritable knowledge revolution in the field of halakha.

The texts that determine Jewish law belong to a complex web of religious scholarship and adjudication, encompassing various types of written and oral elements. In Ashkenaz, halakhic texts had traditionally been ordered and copied in loose, heterogeneous, and flexible ways, featuring strictly legal material alongside other types of text, while eschewing any strict organizational structure and leaving considerable room for non-textual elements. The contrast between late medieval and early modern organization was stronger in Ashkenaz compared to other halakhic cultures, such as that of Sfarad (the Iberian diaspora), where halakhic texts were traditionally more rigidly organized. The reorganization of the body of ashkenazic halakha entailed increasing systematization; distinctions between various types of texts grew sharper; the ordering of similar texts became more structured; and hierarchies of authority within the same types of texts and amongst the disparate categories of halakhic writing, as well as their relationship to non-textual elements, were crystallizing and being renegotiated. Even as the substantive contents of the law remained relatively intact, this organizational transformation caused a profound disruption in the halakha of Ashkenaz, affecting its modes of transmission, interpretation, and adjudication.

The disruption of halakhic scholarly culture in Ashkenaz provided opportunities for introducing a more methodical and universally standardized halakha, on the one hand, but, on the other, it undermined the more fluid and particularistic ashkenazic approach. In analyzing this transformation and its consequences, this dissertation aims at describing an

important and thus far understudied chapter in the history of Jewish knowledge. At the same time, it examines broader questions pertaining to the organization, interpretation, and transmission of knowledge, and the intellectual, technological, and socio-cultural dynamics underlying the development of religious law. I call the reorganization of Jewish law in Ashkenaz a "disruption," a term from the recent vocabulary of digital knowledge technology that signifies advances so fundamentally groundbreaking that they redefine a field, rendering earlier practices useless. The term's twofold implication of destruction and innovation conveys my dual focus on new organizational forms; it points to the gains they represent on the one hand, and, on the other, to the losses incurred with the disappearance of the old forms as the organization of knowledge develops.

The narrative proceeds not by relating a series of biographies and portraits of great rabbis and great works, as has often been the case for Jewish intellectual history, but by analyzing a series of radical shifts in the field of knowledge. This profound change has not yet been fully studied because, in a sense, it has not been recognized as a major moment in Jewish intellectual history. Historians of Jewish culture and intellectual history have often overlooked the history of halakha because the study of Jewish law, with its reputation of hairsplitting casuistry and its seemingly excessive preoccupation with the minutiae of daily religious life, did not present itself as the most pre-eminent classical field of intellectual activity compared to Jewish philosophy, biblical commentary, poetry, or even kabbalah. Scholars of Jewish law, for their part, both academics and rabbis, have tended to omit this chapter in the history of halakha because it was *so* successful in shaping the world of Jewish

law, even to this day, that is difficult to imagine that Jewish legal scholarship ever looked any different than it has since those sixteenth-century transformations. But it did.

Ever since the late Middle Ages, ashkenazic halakhic texts were transmitted by means of manuscript compilations, which I call *likutim* (pl.). The word *likut* (sing.), which is derived from the verb *le-laket* (to glean/harvest or collect), is a term sometimes used by historians specifically to designate personal collections of various texts. In the context of this dissertation, it will be used more broadly to describe a range of halakhic collections, some personal and haphazard, others less so. I employ this term (rather than miscellany, for instance) because it encompasses both the practice of compiling textual material and its product, thus enabling an inquiry into the connections between the practice of creating such collections, their outcomes, and the fundamental approaches to knowledge that these collections reflect.

*Likutim* were personal and flexible: personal, in that every scholar copied his[2] own compilation (or had one copied for him), according to his own focus, possibilities, and needs; no two compilations were identical. They were flexible, as the contents varied and fluctuated from one copy to another. *Likutim* contained a multitude of genres of disparate (often incommensurable) texts from different sources and authors. This individual nature and flexibility represented more than a matter of material form (personal manuscripts) and organization (compilations that lacked an overarching structure); it was deeply embedded in the culture's approach to religious knowledge and law. Unlike a purely oral culture,

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[2] I will be using masculine pronouns for scholars of halakha throughout this dissertation, not, of course, because women cannot be halakhic scholars, but rather, because it reflects the historical reality at the time.

scribal culture relies on written texts and interprets them as such, but, unlike print culture, manuscript culture shares characteristics of fluidity with oral culture. The profound roots of ashkenazic halakhic culture in *likut* practices and its specific significance for religious knowledge and law will be explored in the *first* unit, an introductory chapter dealing with the inherited ashkenazic tradition leading up to the upheavals of the sixteenth century. I present a theoretical sketch of various approaches to religious law and knowledge, placing compilations at one end of the spectrum and codifications, which are comprehensive, complete, and structured, at the other. The ashkenazic approach favored local transmission and scribal culture, encompassing a combination of orality and text that late medieval manuscript compilations supported.

By the end of the sixteenth century, this scholarly culture – and the religious-legal approach that accompanied it – could not look more different. It transitioned from a multi-vocal system that operated according to principles of personal transmission and local, scribal dynamics to a highly systematized textual world in which all legal texts were expected to fit into one dominant and consistent system of codification. Transmission of halakhic texts in stable form via print favored codifications over compilations as the regnant organizational paradigm. Moreover, the Jewish communities of Ashkenaz had undergone deep changes and dislocations. These shifts added up to a fundamental metamorphosis, opening up innovative possibilities for halakhic reasoning and legal structures. In the three central chapters of the dissertation, comprising its *second* unit, I study the mechanism of this shift in knowledge organization by analyzing: (1) material and technological changes, namely, the transition to print; (2) the emergence and gradual

predominance of new paradigms of organization, primarily, complete and comprehensive codifications, with the *Shulḥan Arukh* as its outstanding representative; and (3) social and cultural changes, including the disappearance of the small local communities in the areas of Germany and Austria, and the rise of the large urban communities in Poland-Lithuania that replaced them.

The chapters in this second unit describe these changes and consider the reactions of the traditional ashkenazic scholarly community to these transformations. Moreover, the intellectual and legal impact of these new forms of knowledge is illustrated by introducing specific case studies throughout the chapters, which provide concrete examples of the developments and changes in legal reasoning and halakhic approaches before and after this revolution. These variances were effected not by adding or subtracting specific data, but, rather, as a result of the transformations in the organization of knowledge, which supported new ways of working with religious law and precluded older ones.

The impact of print is analyzed in a systematic comparison of all the fifteenth-century ashkenazic collections of responsa printed in sixteenth-century Italy. The first such works to be printed (most notably *Trumat ha-deshen,* [Offering of the ashes], Venice, 1519), were unprecedentedly structured for ashkenazic responsa collections; they include finding aids, introductions, and references to one single author and to an unknown potential readership. Other responsa books printed in this period, organized in a way resembling their pre-print existence, demonstrate, however, that technology alone is not a sufficient motivation for change. Established scholarly practices remained resilient despite their incompatibility with new production technologies.

UNIT I, INTRODUCTION

The consequences of new organizational paradigms and codification are approached through an examination of *Sha'arei Dura* (Gates of Düren), a medieval compilation on kosher slaughter and the first Hebrew book printed in Poland (Cracow, 1534). With its random progression, multiple authors and sources, and unstable transmission (even in print), this work characterizes traditional ashkenazic scholarship. I compare laws on prohibited blood in meat as they appear in this work with the same laws in two progressively more systematic sixteenth-century works. New methods of legal reasoning compromising between tradition and legal innovation met with strong ideological and legal criticism when presented in the context of the older work, but, when they appeared as glosses on the newer code, opposition waned. The new organizational context thus facilitated such innovations.

Subsequently, I explore the communal rupture that permitted such a staunchly traditional culture to adopt new organizational modes. The significance of communal continuity for traditions of legal scholarship is approached through a case study – a chronological comparison of ashkenazic halakhic approaches to firstborn cattle, a complex issue combining ritual and monetary law. I examine the legal tradition as it existed in the German communities until their rupture in the sixteenth century and the subsequent changes when the original communities were erased and reconstructed in Eastern Europe. Scholars who saw themselves as loyal disciples of the ashkenazic tradition, such as Rabbi Isserles, effected these transformations. Reconstructing his legal arguments and pointing to subtle shifts in emphasis and logic allows me to demonstrate how scholars who found themselves in a new environment, far from the medieval ashkenazic communities with

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their pious self-image and traditional logic of custom, were, in fact, subtly but surely reinventing the tradition they were purporting to perpetuate.

Having traced this overarching change in the second unit, in the *third* and final unit of the dissertation, comprising two chapters and a case study, I shall examine the fate of one specific halakhic genre in this period, namely responsa, and the vicissitudes of this genre throughout these changes. Responsa, or *She'elot u-Tshuvot* (questions and answers), are epistles written by rabbis in response to halakhic questions usually relating to a specific case posed by colleagues or students. Instead of following the roughly chronological arc of the previous units, this final unit's progression follows the "life-cycle" of a responsum, from the initial handwritten letter to its publication in printed collections of responsa, which are then consulted by scholars. This genre, which has existed ever since Jewish law was practiced, had a specific role and took on a particular form in the early modern period. In its epistolary stage, discussed in the first of these chapters, it functioned as an important mode of communication for the establishment of halakhic discourse. The responsa in printed collections, as the second chapter of this unit will show, retained many characteristics of the earlier stages of the responsum. These earlier stages include not only the epistolary original but also the subsequent stages of collection, consultation, and transmission in manuscript. The presence of these remnants in sixteenth-century printed responsa collections positions them as the ideal genre for examining the fate of halakhic texts that were not easily converted to codifications and thus retained traces of the more flexible organizational practices exemplified by ashkenazic *likutim*.

UNIT I, INTRODUCTION

The nature of the individual responsum as a holistic self-enclosed unit – that is, a finished work whose value derives from the selection and ways in which the particular source material within it are combined, rather than the halakhic knowledge that can be extracted – means that responsa cannot truly be abstracted into units that are integrated within the system of the *Shulḥan Arukh*. The halakhic conclusion of a rabbi in a responsum can usually be encapsulated and added to the system; however, the responsum as a unit, with the specificities that stem from the question at hand and the particular author's own approach, can find its full expression only in a different, more heterogeneous, organizational scheme. As such, responsa remained, in many ways, the answer to halakhic codifications, a reminder that this form of religious legal inquiry can never be entirely systematized. The peculiarities of printed collections of responsa, with their miscellaneous contents and lack of homogeneity or internal structure, highlight the difficulties of a culture transitioning from one regime of knowledge organization to another.

This interim stage, I argue, should not be considered a mere prelude to a more systematized future, but, rather, a type of order in its own right, in which scholars attempted to preserve the fluid forms of medieval ashkenazic organization among new technologies, changing paradigms, and communal rupture. In his seminal *Early Modern Jewry*,[3] David Ruderman argued that, rather than representing a nascent Enlightenment order with some atypical elements that needed to be discarded, early modern Jewry was characterized by *blurred boundaries* in matters of religious and social identity. In line with Ruderman's

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[3] David Ruderman, *Early Modern Jewry: A new cultural history* (Princeton, NJ: Princeton University Press, 2011).

argument, I contend that, in the world of scholarly culture and intellectual history of halakha, blurred boundaries, were, likewise, a dominant formative characteristic rather than a trivial defect on the path towards a desired, neatly ordered system. The tangled transitory phase of halakhic scholarship in early modern Ashkenaz should not be ignored in favor of its more clear-cut successors; rather, its complexity can be regarded as a rich and fruitful phenomenon in its own right that holds the key to understanding the revolution in progress.

Moreover, although it may seem counterintuitive at first, indefinite borders have certain benefits over distinct boundaries: As I argue in the third unit, responsa represent that which does not lend itself to codification in halakha. Placing the trajectory of responsa into its context of scholarly practices will highlight the advantages of this decidedly unstructured form of organization for scholarship. As the final case study will emphasize, responsa bring out aspects of Jewish law that the process of codification obscures. These aspects of halakha not only accentuate differences in the scholarship of ashkenazic religious law prior to the sixteenth century and thereafter, but they also lie at the basis of an alternative justification for the authority of halakha, which is based on heterogeneity, dialogicity, and argumentation, rather than on unification, systematization, and universal order.

**2.**

The tendency to separate halakha from history has also found expression in Jewish historiography, which began with an almost disdainful treatment of halakha as irrelevant or even pejorative to Jewish history and gradually gave way to more positive attitudes and,

ultimately, to approaches that took halakha seriously as a historical source. The earliest

modern attempt at a complete history of the Jewish People, Heinrich Graetz's nineteenth-

century *Geschichte der Juden*, already recognized the central place of halakha in Jewish

scholarship, albeit not as a positive factor. Far from considering it a valuable asset, he

deplored halakha as detrimental to the development of true Jewish culture. Graetz lauded

figures such as Maimonides, the medieval philosopher-rabbi, whereas he sometimes

praised rabbis engaged only in the study and interpretation of halakha for their cerebral

abilities but then criticized them for their intellectual limitations.[4] In a description of Polish

Jewry, Graetz conjectured that the flourishing halakhic scholarship affected the entire

"trend of Jewish thought in Poland," but he was tellingly critical of its effects, attributing

everything from the awkward speech and gestures to the dishonest behavior of Polish Jews

to their preoccupation with halakhic scholarship.[5]

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[4] For instance, Graetz writes as follows on the ashkenazic rabbis who came to Italy in the 15th century: "They re-indoctrinated with their prejudice and narrowness of vision the Italian Jews, who were making determined efforts to free themselves from the bonds of the Middle Ages." On Rabbi Joseph Kolon: "Endowed with extraordinary penetration, and fully the equal of the German rabbis in the depth of his Talmudic learning, Joseph Kolon was celebrated in his day as a Rabbinical authority of the first magnitude.... On scientific subjects and all matters outside the Talmud, he was as ignorant as his German fellow-dignitaries." Graetz *Jewish History* (Philadelphia: JPS, 1891) 4: 294-5.

[5] Graetz described how this "talmudic deportment" went along with "ungraceful shrugging of the shoulders and a peculiar movement of the thumbs," as well as a degeneration of the language into a "ridiculous jargon." This "hairsplitting" went so far as to cause a "false wit" that led Jewish traders to outwit and trick non-Jews in business. "Together with their language the Polish Jews lost that which really constitutes a man and were thus exposed to the scorn and contempt of the non-Jewish society…. Children were put to the study of the Talmud at a tender age, certainly to the detriment of the natural development of their minds." Graetz, *Jewish History*, 4: 640-1.

The most central Polish rabbis of the 16th century are described as follows: "The fame of the rabbinical schools of Poland was due to three men: Shalom Shachna, Solomon Lurya, and Moses Isserles. ... Had he [Luria] been born in a better, a more intellectual epoch, he would have been one of the makers of Judaism, perhaps another Maimuni. But being the son of an age of decadence, he became only a profound and thorough Talmud scholar." Graetz, *Jewish History*, 4: 634.

Leopold Zunz had a much less negative view of halakha. Approaching Jewish history from the perspective of philology, the entire moral and mental activity of a people, and thus all its texts, were crucial.[6] In *Etwas über die rabbinische Literatur* (1818), often considered the founding document of a historical study of Judaism, he counts halakha among those "literary products of the Jewish people" that require close examination in order to write a scholarly history of the Jews.[7] Zunz introduced halakhic writings as belonging not to theology but to the realm of "the State … in the field of law-giving and jurisprudence, where some excellent work written by Jews is waiting for our scientific treatment."[8] He appreciated halakhic literature as a window onto the development of Jewish law and jurisprudence, and, in this vein, suggested a comparison of Jewish tort law to its equivalent in Roman Canon law.[9] His own historical work did not deal with halakha specifically, but he provided information about rabbinical figures and occasionally used responsa and other halakhic sources for data on Jewish religious and daily life.[10] Moritz Güdemann, a nineteenth-century Austrian rabbi and historian, opened one of his works

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[6] Thus, as Leon Wieseltier put it, "Zunz's pioneering approach to Jewish texts bequeathed to subsequent Jewish historiography perhaps its fundamental premise: that the scope of the Jewish historian's activity be no less wide than the scope of Jewish life itself." See Leon Wieseltier, "Etwas Über Die Judische Historik: Leopold Zunz and the Inception of Modern Jewish Historiography," *History and Theory* 20, no. 2 (1981): 139.

[7] "Gehen wir nunmehr zu den litterarischen Producten des jüdischen Volkes überm so fragt sich vor allem, was den ihr Inhalt sei?" Zunz, "Etwas über die rabbinische Literatur," in *Geschriften von dr Zunz* (Berlin: Gerschel, 1875-6), 1: 7.

[8] Zunz, *Geschriften*, 1:9: "Verlassen wir den Unterthan der Kirche und verweilen bei dem des Staates; so sehen wir uns in das Feld der Gesetzgebung und der Jurisprudenz versetzt, worin manches treffliche Werk von Juden geschrieben für unse wissenschaftliche Bearbeitung daliegt."

[9] Similarly, Zunz recognized that many central Jewish literary figures were halakhists. The tosafists are important for the "bisher nicht versuchte Characteristik des jüdischen Rechts und die Geschichte der … reichen jüdischen Rechtspraxis." Zunz, *Geschriften*, 1: 29.

[10] For example, he uses medieval halakhic sources as preserved in *Sefer ha-Mordekhai* as sources for the games that children played in medieval Ashkenaz.

with the insight that, although the Torah may have been understood as *Gesetz* (law) or

*nomos*,[11] it should, more correctly, be understood as *Lehre* or "teachings." He viewed

halakha as an important part of Jewish culture inasmuch as it belonged to Jewish education

and pedagogy. This led him to publish an important collection of sources about halakhic

scholarship that contributed to the "*Geschichte des Erziehungswesens und der Cultur der*

*Juden*."[12] He regarded these sources as important not only as law, but more broadly, as a

field of knowledge that was both studied and taught and, as such, also as a larger part of

Jewish educational culture.

The next generation of historians was more inclined toward social and political

questions than toward issues of intellectual history or rabbinics. Their works do accord an

important role to halakha, but their scholarly focus is trained upon other elements of Jewish

history. Simon Dubnow's *History of the Jews in Russia and Poland*, despite its focus on

Jewish communal and political autonomy in the diaspora, recognizes the halakha as central

to Jewish "inner life," as he called Jewish autonomous culture and society.[13] Dubnow's

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[11] Moritz Güdemann, *Quellenschriften zur Geschichte des Unterrichts und der Erziehung bei den deutschen Juden Von den ältesten Zeiten bis auf Mendelssohn* (Berlin: Hofmann & Comp, 1891), 3.

[12] Güdemann was not always favorably impressed by the contents of these works. He calls the fifteenth-century compilation of Rabbi Israel Isserlein's teachings, *Leket yosher*, "Eine interessante Quelle fur die Cultur und Unculturgeschichte der deutschen Talmud-Hochschüler im 15. Jahrhundert," In Moritz Güdemann, *Geschichte des Erziehungswesense und der Cultur der Juden in Frankreich und Deutschland von der Begründung der jüdischen Wissenschaft in diesen Ländern bis zur Vertreibung der Juden aus Frankreich (X.-XIV. Jahrhundert)* (Wien: Hölder, 1880), 16.

[13] Alongside his interest in the *ḥeder* and *yeshiva* as prime examples of Jewish self-governed institutions in 16th-century Eastern Europe, Dubnow also explained, "The high intellectual level of the Polish Jews was the result of their relative economic prosperity. As for the character of their mental productivity, it was the direct outcome of their social autonomy.... For the enactments of the Talmud regulated the inner life of Polish Jews...." Thus, Jewish self-government meant that Jewish law was once again important, which explained its scholarly flourishing in this period.

See Simon Dubnow, *History of the Jews in Russia and Poland* (Philadelphia: JPSA, 1916), 1:121-2.

work acknowledged halakha by alluding to important rabbis and some of their works. He describes the creation of new codes, mainly the *Shulḥan Arukh*, including some reactions to it and Rabbi Isserles' ashkenazic gloss of this code.[14] Salo Baron's rejection of Graetz's "lachrymose history" led to a very different kind of Jewish history, with a noticeable social bent and a commitment to compare the status of the Jews to that of other corporations in any given period. Although Baron regarded halakha positively as part and parcel of Jewish culture, he did not devote special attention to this area.[15] Halakha was examined primarily inasmuch as it provided a view of Jewish worship and practice, not as an intellectual field per se. His treatment of the early modern period mentions the *Shulḥan Arukh* and its importance, but the focus of his investigation lies elsewhere.[16] His volume on *Poland-*

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[14] Dubnow finds himself more at ease when discussing Rabbi Isserles' disagreement with Rabbi Luria regarding the study of philosophy, which came up almost as an aside in a handful of letters amidst their vast works and collections of halakhic responsa. Dubnow, *History of the Jews in Russia and Poland*, 1:123-126.

[15] In his volume of *A Social and Religious History* dedicated to intellectual achievements, titled "Hebrew Language and Letters of the High Middle Ages," for instance, Baron dedicates an entire chapter to Hebrew "Belles-Lettres," but merely mentions briefly Maimonides' "Summary," his biggest work, which is halakhic. The late medieval "Western Compilations" of halakhic material can be found in a chapter focused mainly on liturgy and dedicated to "Worship." Salo Baron, *A Social and Religious History of the Jews*, 7: 62. This chapter opens with a quote by F.C. Grant: "No religion in the world can be thoroughly understood if its normal daily worship of God is left out of account: for here it is where the pulse-beat of every genuine religion is to be felt." The halakhic miscellanies are of interest insofar as they relate to religious worship: "the aforementioned juridical miscellanies entitled *Sefer ha-pardes, Ha-orah* … and *Sefer isur ve-heter* have given us deep insights into the entire realm of legal practice and ritualistic thinking of the founders of Jewish learning in Western Europe." He explains that none of these "deserve the name prayer book," as "they also included many other legal materials ... admixtures from other domains of law" (Baron, *A Social and Religious History*, 7: 122). Baron is searching in these sources for "worship" and "daily life," but what of those halakhic discussions throughout: where do they fit in the phenomenon of "Hebrew Letters," are they there only to regulate worship?

[16] In his justification of the periodization 1200-1650, he writes: "Intellectually, too, the period ... represented the completion of the medieval Jewish codification and its final fruition in the Shulchan Arukh, the Karo-Isserles Code, together with its major commentaries." Immediately after this line, he moves on to discuss kabbalah. Baron, *A Social and Religious History*, 9: vi-vii.

See also in Baron's chapter on humanism: "Nor did the Polish Jews remain unaffected by the Renaissance. Some of them engaged in the study of science, at least in so far as they could from Hebrew books.... The two giants of Polish rabbinic learning in sixteenth-century Poland, Moses b. Israel Isserles and Solomon b. Yehiel Luria, became engaged in a lively dispute over the merits of philosophic studies, which

*Lithuania in the Late Middle Ages* even dedicates an entire chapter to the "Extraordinary

Creative Élan" of Poland's "Golden Age," but the discussions of halakhic culture are, in

line with the broad outlines and social focus of the work, restricted to general statements.[17]

In sum, Jewish histories in the twentieth century contain frequent nods to the crucial

significance of rabbinic scholarship. Allusions to its vitality and energy and the use of

positive adjectives such as "giant" and "luminary" when introducing a rabbi's name

abound; occasional references mention a polemic, but real in-depth studies of the

development of halakha were not part of these scholars' orientation. Conversely, most

scholars interested in halakhic texts were not historically minded. History and halakha

remained separate. An exception to this approach was Chaim Tchernowitz, also known as

Rav Tzair, a talmudist who taught the likes of Bialik in Odessa and died in New York in

the mid-twentieth century. He wrote from a decidedly historical perspective, explaining

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as we shall see in a later chapter, ended in the victory of the anti-Maimonist Luria" (Baron, *A Social and Religious History*, 16: 56-7). This is the very same controversy as the one mentioned by Dubnow.

[17] While acknowledging that halakha is clearly important to the Jewish intellectual and cultural past and that its practitioners were cultural heroes, Baron's orientation precludes further specific attention to halakha. Throughout his work, there is often mention of the "intellectual leaders," and the "talmudic learning of their day," the "giants" of a certain century, rabbinic "vitality," "intellectual expansion," and so on. For instance: "By the end of the sixteenth century, the most glorious chapters of Polish Jewish learning had already been written. No longer were there halakhic giants like the rabbis Solomon Luria, Moses Isserles, and Mordecai Yaphe, who revived the glory of rabbinic scholarship for all of Ashkenaz, indeed of world Jewry. Yet the continued growth of rabbinic studies on the broad plateau of mass education, combined with the work of a larger number of fine scholars, compensated by the quantitative spread of Jewish learning, for the lack of some of its earlier profundities...." Once again, he quickly turns to other intellectual fields such as kabbalah, moral philosophy, Yiddish Bible translations, and belles-lettres (Baron, *A Social and Religious History*, 16: 310). The description of Lublin mentions its: "...famous academy of learning, successively headed by such luminaries as Rabbis Solomon b. Yehiel Luria and Meir b Gedalia ... respectively" (Baron, *A Social and Religious History*, 16: 13); "...the famous Cracow rabbi Jacob Polak..." (Baron, *A Social and Religious History*, 16: 26); "...the truly distinguished rabbinic authority Jacob Polak..." (Baron, *A Social and Religious History*, 16: 60).

that he was not interested in "*what*" the halakhic contents were but, rather, "*how* they came

into being" and the ways in which halakha influenced life, and vice versa.[18]

Tchernowitz criticized his predecessors' tendency to limit themselves to

biographies, writing that they "invested all their strength and energy in the creators rather

than the creations, so that the frame is much broader than the picture itself."[19] Believing in

the value of historical study for achieving an understanding of the essence of halakha, he

wrote that his goal in writing a history of halakha was "to reveal ultimately the secret of its

creation."[20] His approach was both concentrated on halakha as well as historical and

contextual; however, his ultimate goal, revealing the secret of halakha, remained largely

internally-focused. Tchernowitz's interpretation of the historical elements also remains, in

many ways, indigenous. The studies are structured around important works and polemical

moments in halakhic history, providing some of the political, geographic, economic, and

physical milieu for the action, but consulting the external (non-Jewish) context only in a

limited fashion.[21] In any event, his three-volume *Toldot ha-poskim* (History of the Jewish

codes), the third volume of which treats the early modern period in depth, remains one of

the fullest portraits of the history of halakha.[22]

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[18] Chaim Tchernowitz, *Toldot ha-halakha* (The history of halakha) (NY: Jubilee Committee, 1934-5), vii (emph. in original):.כללו של דבר אין הספר עוסק בחומר אלא בצורה, לא *במה* שנתהוה אלא *באיך* שנתהוה.

[19] Tchernowitz, *Toldot ha-halakha*, vi: השקיעו...ועוד...גראטץ והלוי וכרנ"ק...חכמי ישראל האחרונים מצד שני, כל כחם וגבורתם ביוצרים יותר מביצור, באופן שהמסגרת היא יותר רחבה מן התמונה עצמה, ולפיכך אם הם לא הספיקו להוכיח על חיבור ההלכה עם החיים ועל השפעת גומלין שביניהם.

[20] Tchernowitz, *Toldot ha-halakha*, vii: ושיגלה, ביחוד, את סוד הבריאה שלה ואת עילת כל העילות וסיבת כל הסיבות לאצילות הראשונה שלה ולהפצת אורה.

[21] His works were never translated from the Hebrew. In the United States, he taught Talmud at the Jewish Institute for Religion, founded by the reform rabbi Stephen Wise as a training school for rabbis "for the Jewish ministry, research, and community service," rather than joining an academic establishment, yet another way in which his work did not fully reach a general public.

[22] Chaim Tchernowitz, *Toldot ha-poskim: kolel shalshelet ha-posḳim tekhunat ḥiburehem yi-yesodei shiṭotehem be-darkhei ha-hora'ah mi-tḳufat ha-ge'onim 'ad ha-Shulḥan-'arukh ye-nosei-kelav*. (The history

UNIT I, INTRODUCTION

The study of Jewish history has changed immensely since its beginnings in the nineteenth century, and halakha has increasingly found a place in these studies. As this is a brief overview, I outline only in very general fashion some of the more recent approaches that touch upon early modern halakha in Ashkenaz, focusing on responsa in particular. Halakhic sources have been studied in three general ways: as source material that provides circumstantial evidence of Jewish life in a particular time and place; as the Jewish equivalent of traditional intellectual history, focusing on great figures and/or great works; and as a window into Jewish legal, ethical, political, and philosophical theories. The first approach consists essentially of dissecting responsa literature in an attempt to recover empirical information about the lives and times of its questioners and respondents, thus neglecting the halakhic discussions themselves. The second approach treats responsa as primarily a source of historical information about their authors, or about specific works, schools of thought, and intellectual debates. Such studies provide crucial information about the history of Jewish learning, but nonetheless forego the opportunity to analyze the halakhic contents, regarding them only as portents of historical data to be added to a "succession of major thinkers and works" in Jewish culture, without fully exploring the role of the historical dimension for the intellectual achievements of these rabbis. The third

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of the Jewish codes. The history of Hebrew law in the period of its codification: the codifiers and the codes, their principles and methods, from the Geonim to the Shulḥan Arukh and its commentators), 3 vols. (NY: Jubilee Committee, 1946-1947). Elon's *Jewish Law* is similarly large and treats the topic with significant depth, but it is focused primarily on the legal, not the historical, dimension. His focus on contemporary Israeli law also means that he is more interested in the judicial part of halakha (that which parallels secular legal systems) than in the religious part (such as ritual law).

approach relates to halakha not as a source for other information but as a valuable field of study in and of itself.

The particular topics of interest in halakhic sources depend on the orientation of different schools of research. The establishment and growth of fields such as Jewish thought (*maḥshevet Israel*) and Jewish legal theory (*mishpat ivri*) have contributed immensely to the study of halakhic sources. The latter school was established by Menachem Elon, who sought to integrate principles of halakha into the modern Israeli legal system. Among the scholars who pursue this approach, halakha is understood primarily as law, and halakhic texts are analyzed for characteristics of the particular author's legal theory.[23] Legal approaches to halakha can result in important insights, but they risk obscuring the aspects of halakha that are intellectual and scholarly rather than purely legal. Those interested in Jewish thought, on the other hand, will search halakhic sources for the larger belief system of its authors, often attempting to tease out the meta-halakhic beliefs embedded in these texts. Some of these approaches search for allusions to philosophy in halakhic sources, leading to what one historian has called a "needle-in-the-haystack"

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[23] Menachem Elon, *Jewish Law: History, Sources, Principles* (Jerusalem: Magnes, 1973), 3:1485. This work emphasizes the importance of responsa for the study of halakha, comparable to "collections of judicial decisions in other legal systems." Elon explains that Ashkenazic responsa of the early modern period are "difficult for continuous study" because they introduce "theoretical discussions of the Talmud and *rishonim* (earlier commentators) that were not directly relevant to the question posed."

The framing of *halakha* within the field of legal theory and Jewish thought has led to studies by more recent scholars, such as those put forward in volumes edited by Avinoam Roznak, *New Streams in Philosophy of Halakha*. (Jerusalem: Magnes, 2008) and *Explicit and Implied Theoretical and Ideological Aspects* (Jerusalem: Magnes, 2012). Contributors to these volumes, for instance, examine halakhic writings in order to analyze the authors' stances as legal formalism or positivism.

approach to sources, in which reams of rabbinic literature are examined in search of rare references hinting at something else.[24]

Others yet wish to discover the historical circumstances or worldview of a halakhic author by trying to isolate the halakhic argumentation from its "a-halakhic aspects," which are then read as consequences of "external" factors, such as political, social, or philosophical crises impinging upon the rabbi's thought (and finding expression in the form of apologetics, for instance). This approach yields important insights, but it also rests on the assumption that there is a form of halakha that is "pure" – read: non-historical – effectively divorcing the halakhic text from the history within which it is embedded. This attempt at separation, however, risks eliminating the most interesting issues, as it is precisely the story of *how* halakha develops in history that can shed light on Jewish intellectual and cultural history, something that Israel Ta-Shma's groundbreaking work on late medieval Ashkenaz has made boundlessly clear.[25]

Halakhic material remains a useful treasure trove for historical detail and *realia*, and is still, justly, being used as such, although its current use entails more qualifications and a greater consciousness of the dangers in assuming that halakhic material is a direct

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[24] Eliyahu Stern, *The Genius*: *Elijah of Vilna and the Making of Modern Judaism* (New Haven: Yale University Press, 2014), 5. Stern relates this term to the search for signs of "modernity" or "secularization" in the writings of traditional rabbis.

[25] Ta-Shma's writings on the interaction of custom and halakha in Ashkenaz that connect the material with the intellectual aspects of halakhic history include: Israel Ta-Shma, *Minhag Ashkenaz ha-kadmon* (The ancient ashkenazic custom) (Jerusalem: Magnes, 1992), 16-22; idem, "Halakhah, minhag u-meẓiut be-Ashkenaz, 1000 – 1350" (Halakha, custom and reality in Ashkenaz, 1000-1350), in *Kneset meḥkarim* (Collected studies) (Jerusalem: Bialik, 2005); on medieval halakhic interpretation: "Halakha minhag u-masoret be-yahadut Ashkenaz ba-me'ot ha 11-12" (Halakha, custom and tradition in the Jewry of Ashkenaz in the 11th-12th centuries), *Sidra* 2 (1987); idem, *Minhag Ashkenaz,* 9-10, 16, 93-103; and on print: "Ha-Gra ve-ba'al Sha'agat Aryeh, ha-pnei Yehoshua ve-sefer ẓiyun le-nefesh ḥaya: le-toldoteihem shel ha-zramim ha-ḥadashim ba-sifrut ha-rabanit erev tnu'at ha-haskalah," *Sidra* 15 (1999): 181-191.

window onto lived life. The study of halakha in terms of cultural and intellectual history, however, has not been sufficiently explored. Jacob Katz once complained that his predecessors wrote "rabbinical biographies, never a history of *Halakha* itself."[26] Katz himself did, of course, lavish extensive attention on halakha. A student of Karl Mannheim, Katz was interested in social history and used halakha as a barometer for rabbinic authority and communal obedience.[27] Conversely, he also used sociology as a tool to illuminate halakhic texts, introducing the concept of "ritual instinct" to explain why some halakhic interpretations that seemed inconsistent from a purely legal or logical halakhic perspective made complete sense if one takes sociological theories into consideration.[28] His scholarship exerted a crucial influence on the historical study of halakha.[29]

As intellectual history has come to incorporate increasingly varied and sophisticated approaches, drawing upon social and cultural history; material and book history; histories of science; knowledge-organization; media studies; linguistic theories; and more, these approaches have been brought to bear on the study of halakha. Many recent studies of halakha are especially promising in their complex and wide-ranging

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[26] See the introduction to Jacob Katz, *Halakha and Kabbalah* (Jerusalem, 1986).

[27] His studies showed, for instance, how the eighteenth century marked a break from the past, as rabbis were newly concerned with accommodating problematic existing practices in halakhic decision making. The novel element was that Jewish communities now had a "neutral society" available for their assimilation and therefore were no longer solely subjected to rabbis and the community leadership, a phenomenon to which the rabbis were becoming sensitive. See Jacob Katz, *Out of the Ghetto: The Social Background of Jewish Emancipation, 1770-1870* (Cambridge, Ma.: Harvard University Press, 1973); idem, *Tradition and Crisis: Jewish Society at the End of the Middle Ages* (Jerusalem: Mosad Bialik, 1958).

[28] Jacob Katz, *Goy shel Shabat* (Jerusalem: Zalman Shazar, 1984).

[29] Hayim Soloveitchik, *Halakha, kalkala, ve-dimu'i aẓmi: ha-mashkona'ut bi-yemei ha-beinayim* (Pawnbroking in the Middle Ages: A study in the interrelationship between halakha, economic activity, and self-image) (Jersualem, Magnes, 1985).

approaches.[30] In the realm of early modern Ashkenaz, Elhanan Reiner has, more than any

other scholar, contributed to the analysis of halakhic texts, informed by deep understanding

of the texts themselves and their embeddedness within the broader material, social, and

cultural contexts, such as scholarly practices (in his work on teaching casuistry and in his

seminal article on changes in ashkenazic learned society),[31] material history (i.e., the

*pinkasim* of the traveling secondary elite),[32] communal structure (in his work on the urban

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[30] These include: Haym Soloveitchik, *Yeynam, sachar be-yeynam shel goyim: Al gilgula shel halakha be-olam ha-ma'aseh* (*Principles and pressures: Jewish trade in gentile wine in the Middle Ages*) (Israel: Am Oved, 2003), a "thick" description of the historical, social, and cultural context in which a certain halakhic topic (in this case, "gentile wine") is embedded. Jay Berkovitz's study of rabbinic self-fashioning through responsa indicates an understanding of halakha not only as a legal text but also as a work written and published with an audience in mind: "The Self-Portrait of a Seventeenth-Century Posek: Between Biography and Autobiography," in *Yosef da'at* : *Studies in Modern Jewish History in Honor of Yosef Salmon*, ed. Yossi Goldstein (Beer Sheva: Ben-Gurion University Press, 2010). Among other works are Amnon Raz-Krakotzkin's study of book history and censorship: *Ha-ẓensor, ha-orekh, ve-ha-tekst: ha-ẓensura ha-katolit ve-ha-dfus ha-ivri ba-me'ah ha-16* (The censor, the editor, and the text: Catholic censorship and Hebrew print in the 16th century) (Jerusalem: Magnes, 2005)]; Elliot Horowitz's readings of halakhic sources as part of ritual and culture: "The Eve of the Circumcision: A Chapter in the History of Jewish Nightlife," in *Essential Papers on Jewish Culture in Renaissance and Baroque Italy*, ed. David Ruderman (NY and London: NYU Press, 1992); Zeev Gries' essays on the history of Jewish print: *The Book in the Jewish World: 1700-1900* (Portland, OR: Littman Library, 2007); Talya Fishman's sweeping study of textualization in Jewish cultural and intellectual history in the Middle Ages: *Becoming the People of the Talmud: Oral Torah as a Written Tradition in Medieval Jewish Cultures* (Philadelphia: University of Pennsylvania Press, 2011); Maoz Kahana's analysis of responsa, *Me-ha-Nodah bi-Yehuda la-Ḥatam Sofer: Halakha ve-hagut le-nokhaḥ etgarei ha-zman* (Halakhic writing in a changing world, from the 'Noda b'Yehuda' to the 'Hatam Sofer', 1730-1839) (Jerusalem: Zalman Shazar, 2015), which traces the ascendancy of new conceptions of the ideal Jewish scholar; Tirẓa Kelman's study of knowledge organization and print in Yosef Karo's writings, "Ktuvot be-et barzel ve-oferet be-dfus: mahapekhat ha-dfus ve-yeẓirat ha-ḥibur Bet Yosef" (Written in a metal pen and lead in print: The print revolution and the creation of the work Bet Yosef), *Pe'amim* 148 (2016): 9-27, and many others.

[31] Elhanan Reiner, "Tmurot be-yeshivot Polin ve-Ashkenaz ba-meot ha-16 ve-ha-17 ve-ha-vikuaḥ al ha-*pilpul*" (Transformations in the Polish and Ashkenazic yeshivot during the sixteenth and seventeenth centuries and the dispute over *pilpul*) in *Ke-minhag Ashkenaz ve-Polin*: *Sefer yovel le-Chone Shmeruk* (According to the custom of Ashkenaz and Poland: Studies in honor of Chone Shmeruk), ed. Israel Bartal, Ḥava Turniansky, and Ezra Mendelsohn (Jerusalem: Zalman Shazar Press, 1993).

Elhanan Reiner, "me-Ever le-gvulot ha-Haskala: Tmurot be-tavnit ha-limud ve-ha-yeda ba-ḥevra ha-yehudit ha-masortit ba-et ha-ḥadasha ha-mukdemet" (Beyond the realm of Haskalah: Changing learning patterns in Jewish traditional society) in *Yashan mipnei ḥadash: Meḥkarim be-toldot Yehude Mizraḥ Europa u-be-trabutam, Shai le-Emanuel Etkes* (Let the old make way for the new: Studies in the history of the Jews in Eastern Europe and their culture, A gift to Emmanuel Etkes), 2 vols., ed. David Assaf and Ada Rapaport-Albert (Jerusalem: Zalman Shazar, 2009): 2: 289-311.

[32] Elhanan Reiner, "Darshan noded madpis et sfarav: Perek alum be-toldot ha-tarbut ha-'ivrit be-eropah ba-meah ha-17" (A wandering preacher prints his books: a hidden chapter in Jewish cultural history

community),[33] print history, (in his study of rationalism in early modern Ashkenaz),[34] and the organization of knowledge (in his study of the *Shulḥan Arukh*).[35] His work – in true early modern ashkenazic fashion, both published and private, written and oral[36] – has inspired countless scholars, including this one, to consider halakha as a form of Jewish intellectual history deserving treatment as such, combining halakhic textual analysis with the wealth of tools available for the study of the history of knowledge at large.

**3.**

I utilize tools from legal theory and history, and, mainly, from the "history of knowledge," that is, print and book history, social and cultural history (especially the history of scholarly cultures and erudite practices), media studies (such as network theories), and studies of the organization of knowledge in order to tell the story of this revolution. An additional obstacle facing attempts to treat halakha as a form of intellectual history is the challenge of defining an enterprise as intellectually complex and religiously broad as halakha. These difficulties have led to a limited assessment of its significance. Typically translated as "Jewish Law" because of its prescriptive and regulative religious role, halakha has been

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of 17th-c Europe) in *Ḥut shel ḥen: Festschrift for Ḥava Turniansky*, ed. Israel Bartal et al. (Jerusalem: Zalman Shazar, 2003 ), 123-157.

[33] Elhanan Reiner, "Aliyat ha-kehila ha-gedola: Al Shorshei ha-kehila hayehudit ha-'ironit be-Polin ba-et ha-ḥadasha ha-mukdemet" (The rise of the large community: On the roots of the Jewish community in Poland in the early modern period), *Gal-'ed* 20 (2006): 13-37.

[34] Elhanan Reiner, "The Attitude of Ashkenazi Society to the New Science in the Sixteenth Century," in *Science in Context*, 10, no. 4 (1997): 589-603.

[35] Elhanan Reiner, "The Ashkenazi Élite at the Beginning of the Modern Era: Manuscript versus Printed Book," *Polin*: *Studies in Polish Jewry* 10 (1997): 85-98.

[36] Reiner's unpublished articles on the correspondence of Rabbi Luria and Rabbi Isserles ("Al sod hakaat ha-ẓur") as well as his seminar on ashkenazic halakha at the National Library of Jerusalem in the summer of 2017 come to mind.

considered a purely legal enterprise. Accordingly, legal theory is often considered the most appropriate tool for its analysis, and this approach has resulted in numerous illuminating projects and studies, which have significantly guided my research in this dissertation.[37] The definition of halakha as purely legal has also affected some of the historical approaches to such sources, which consider halakha as important for historical study only as evidence of religious life and ritual or for the study of social and communal life and of rabbinic authority. The relevance of halakhic literature is not limited, however, to a strictly legal realm; its importance as a (at times even *the* most) significant field of scholarship and religiously venerated intellectual enterprise means that halakha occupies a much broader place in Jewish culture than its analogy to legal texts might imply. Imagine the position of lawyers and legal study in a culture where the law is the most central form of divine revelation. Halakha thus has the potential to serve as a rich source for the study of an entire cultural and intellectual universe and should be studied as such.

This dissertation studies halakhic scholarship as a form of cultural and intellectual history, analyzing its texts as sources for the history of knowledge and studying its participants as members of an erudite culture. Halakha is a particularly intriguing field for intellectual history precisely because it defies the generic borders that are drawn (often artificially) around cultural realms. Halakha possesses not only a legal, religious, intellectual, and scholarly dimension; it is also simultaneously popular and elitist;

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[37] This field was pioneered by Elon. In Israel, *mishpat ivri* is studied mainly at the law departments of the major universities. Some of its most prominent scholars include Naḥum Rakover, Moshe Halbertal, Ḥanina ben-Menaḥem, Yair Lorberbaum, and others. Outside of Israel, it is studied in projects and groups such as the Jewish Law Association, YU Cardozo Law School's Center for Jewish Law and Contemporary Civilization directed by Suzanne Stone, the more recent Julis-Rabinowitz Jewish Law Program at Harvard Law, the various Gruss programs in Jewish Law at Harvard Law, NYU Law and Penn Law.

theoretical and practical; and mundane and imaginary. It can thus reveal complex interactions between knowledge and culture, without being limited to a particular class, institution, or discipline. My own study concentrates mainly on the works of halakhic scholars, a very particular intellectual class; but the broader place of halakha, I believe, permits such a focus without blocking out the many other elements that are interwoven with halakhic scholarly culture into the larger fabric of Jewish law.

This approach aligns with developments in intellectual history in general, which have increasingly come to recognize the importance of historical context of all kinds – social, cultural, material, technological, political – even (or, perhaps, especially) for the history of something as abstract as texts and knowledge. As Peter Burke points out in *A Social History of Knowledge from Gutenberg to Diderot*, the very recognition that knowledge has a history, that truth does not develop in a vacuum, but, instead, is influenced by other elements, was, not too long ago, still a controversial notion.[38] Pioneers of media studies such as Marshall McLuhan had, of course, already considered the effects of dissemination technologies upon information.[39] Using a historical orientation, Elisabeth Eisenstein's *Printing Press as an Agent of Change* represents one of the earliest attempts to connect technology to the development of knowledge in early modern Europe.

As Eisenstein argued, print influenced some of the most important developments of the period, including the Renaissance, the Reformation, and the scientific revolution.

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[38] Peter Burke, *A Social History of Knowledge from Gutenberg to Diderot* (Cambridge, UK: Polity Press, 2000), 6.
[39] He is most known for his famous phrase "the medium is the message," introduced in his book, *Understanding Media: The Extensions of Man* (NY: Mentor Press, 1964).

UNIT I, INTRODUCTION

Subsequently, scholars have studied the effects of print on everything from the law through popular literature to the public sphere, to name but some examples.[40] Others have discussed at length the ensuing debate on technological determinism and its limits, and I shall refer to it in the chapter of this dissertation that deals with print specifically. Technology is still considered a crucial element of intellectual history, especially in this period, but the history of knowledge has significantly refined its earlier focus upon print technology alone by including perspectives from social and cultural history, book history, media studies, and studies of material history and knowledge organization, resulting in a complex interdisciplinary field. Roger Chartier's works, including *l'Ordre des Livres* and *Inscrire et Effacer*, reflect on the impact of print and knowledge re-organizations in complex and inventive ways.[41] Countless studies, from Steven Shapin's *A Social History of Truth* to Anne Goldgar's *Impolite Learning*,[42] have shown the importance of including the social element in studies of intellectual history. Anthony Grafton's work on erudite culture, scholarly practices of reading, and his inquiries into the hidden cultural intermediaries at the printing house has proven the need to adopt social, cultural, and material perspectives,[43]

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[40] Robert Mandrou, *De la culture populaire au XVII et XVIII siècle* (Paris: Stock, 1964); David J Harvey, *The Law Emprynted and Englisshed*: *The Printing Press as an Agent of Change in Law and Legal Culture 1475-1642* (Oxford and Portland, Oregon: Hart Publishing, 2015); David Zaret, *Democratic Culture: Printing, Petitions, and the Public Sphere in Early Modern England* (Princeton, NJ: Princeton University Press, 2000).

[41] Roger Chartier: *Inscrire et effacer* (Paris; Seuil, 2005), *L'ordre des livres* (Paris: Alinea, 1992) and *The Cultural Uses of Print in Early Modern France*, trans. Lydia G. Cochrane (Princeton, NJ: Princeton University Press, 1987); Guglielmo Cavallo and Roger Chartier, *Histoire de la lecture dans le monde occidental* (Paris: Seuil, 1997).

[42] Anne Goldgar, *Impolite Learning: Conduct and Community in the Republic of Letters, 1680-1750* (New Haven: Yale University Press, 1995); Steven Shapin, *A Social History of Truth: Civility and Science in Seventeenth-century England* (Chicago: University of Chicago, 1994).

[43] Anthony Grafton, *Worlds Made by Words: Scholarship and Community in the Modern West* (Cambridge, MA: Harvard University Press, 2009); *the Culture of Correction in Renaissance Europe* (UK:

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as have Ann Blair's contributions on note-taking practices, knowledge management, and

organization in her books, such as *The Theater of Nature* and *Too Much to Know*.[44] I apply

these new perspectives, in addition to approaches from legal theory and the history of law,

to analyze the disruption of ashkenazic scholarly culture in the early modern period. My

frequent reference to actual halakhic cases and my focus on issues such as materiality and

the methods of knowledge production and dissemination, as well as the connections

between scholarly culture and the community attempt to do justice to this approach.

    The first unit's focus on compilations as a form of organizing knowledge seeks to

meld questions of material transmission with issues of organization, manuscript culture,

and specific approaches to text, law, and religion. The complex of themes at the core of the

second unit – technology, organizational paradigms, and community – aim at presenting a

nuanced and complex model of a knowledge revolution in Jewish history. In studying the

shift from manuscript compilations of halakha to printed codifications, I integrate a

discussion of the material and technological impact of the printing press with an

exploration of abstract questions of organizational structures and socio-cultural questions

of scholarly culture, communal identity, and legal traditions. Notwithstanding the reductive

nature of such distinctions when taken too strictly, one can say that manuscript culture is

inherently miscellaneous and flexible, whereas print culture is inherently structured and

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British Library, 2011); Lisa Jardine and Anthony Grafton, "'Studied for action': how Gabriel Harvey read his Livy," *Past & Present* 129 (1990): 30-78.

    [44] Ann M. Blair, *Too Much to Know: Managing Scholarly Information before the Modern Age* (New Haven: Yale University Press, 2010); "Note Taking as an Art of Transmission," *Critical Inquiry* 31, no. 1 (Autumn 2004): 85-107; Ann Blair, *The Theater of Nature: Jean Bodin and Renaissance Science* (Princeton, NJ: Princeton University Press, 1997).

stable.[45] Once the technological determinism associated with Eisenstein's initial formulations of the printing press as an agent of change is thus attenuated, the distinction between manuscript and print culture becomes all the more useful for examining how societies interact with texts.[46] Utilizing such perspectives for studying this particular episode in the history of halakha has helped me develop a better understanding of Jewish intellectual developments. Moreover, the application of these perspectives to Jewish culture helps to clarify, and sometimes slightly adjust or question some of the narratives of intellectual history in early modern Europe.

### 4.

The main, perhaps most obvious, conclusion from this research is that forms of organization matter; they impact the knowledge being organized, in this case, religious legal knowledge. A culture that organizes its texts in compilations and one that favors systematic, structured, comprehensive and complete codifications will, consciously or not, treat these texts differently; such variances inevitably find expression in transmission, scholarship, and adjudication of texts. Ashkenazic culture before the sixteenth century did not differentiate sharply between law and custom when collecting works that included responsa amidst lists of laws, customs, and communal decisions; those offering legal

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[45] See Michael Johnston and Michael Van Dussen, "Introduction: Manuscripts and Cultural History," in *The Medieval Manuscript Book; Cultural Approaches*, ed. Michael Johnston and Michael Van Dussen (Cambridge, UK: Cambridge University Press, 2015), 4-5: "Late medieval manuscript culture was inherently miscellaneous, with texts being compiled alongside other texts throughout a manuscript's history…. The dominance of miscellaneity is a unique feature of manuscript culture. Miscellaneity also existed within print culture, of course, but in a much more circumscribed way."

[46] Johnston and Van Dussen, "Introduction," 2.

interpretations of these texts operated under the assumption that the two realms were closer than later halakhic authorities imagined them to be. Rather than separating law from custom and establishing a hierarchy between those fields, as many later halakhic works implied, traditional ashkenazic scholarship saw no strict difference. As more thoroughly structured forms of organization became popular, however, these distinctions grew.

My inquiries into the world of knowledge organization and Jewish law have led to numerous additional insights and perceptions. As many of the more recent explorations of print and manuscript culture have, in fact, shown, manuscript culture extended into the age of print. Although the two represent strongly distinct approaches, they often coexist and overlap. Rather than weakening the case of manuscript versus print culture, such qualifications, in fact, serve to explain and illuminate phenomena in the history of early modern halakha. For instance, Eliezer Galinsky, who prepared a recent edition of Rabbi Isserles' *Torat ḥatat* (the Torah of the guilt-offering) on the laws of slaughter, studied a manuscript[47] that belonged to a pupil of Rabbi Isserles and sheds light on some scholarly practices from their *bet midrash* (house of study).[48]

In most early modern printed books, every page would have only one printed page number, typically on the *recto* side of a page. The specific folio would, then, be referenced by page number and folio (a or b). In such a book, then, only one page number is visible at a time. We refer to the side with the number as folio 'a' of that page, and the reverse is folio 'b' of the same number. The notes in this student's manuscript have shown, however,

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[47] Paris Ms44.

[48] Galinsky also uses this manuscript to support his notion that the source references that were inserted into the printed *Torat ḥatat* stem from Rabbi Isserles himself.

that Rabbi Isserles followed a different system in referring to the number of the page that could be seen when consulting the book. He called the page with the number printed on it (usually on the left in Hebrew books) folio b of that number, and the facing page (usually on the right in Hebrew books) folio a of the same number visible on that page. (Thus, a page that we would conventionally call 3b, he would call 4a.)[49] These rather unconventional (and perhaps quite trivial) discoveries about Rabbi Isserles' practice of referring to printed sources while teaching underline very meaningful truths about the relationship between manuscript and print culture: Not only did the two overlap, they did so in more complex ways than we tend to imagine. Much has been made of the standardization of the page that print instituted and its potential for scholarly communication and cooperation. Rabbi Isserles utilized the potential of the standardized printed page very consciously when he arranged his printed *Torat ḥatat* to correspond to the structure of the most popular printed edition of the most popular earlier source on the same topic,[50] showing his attunement to the potential of print and the stabilization of the

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[49] Rabbi Isserles used a similarly unexpected practice when he referred to passages from *Mordekhai*, a compilation of ashkenazic sources that was printed as a run-on gloss of the Talmud, with divisions wherever a new talmudic chapter begins. Thus, on a page of *Mordekhai* where a chapter changed and a title was printed, the text of the *Mordekhai* appeared, interrupted by the name of the new chapter (for instance, "*Gid hanashe,*" the sciatic nerve, the name of chapter seven in tractate *Ḥulin*), after which the text continued. Rabbi Isserles would often refer to the text as at the end or the beginning of a chapter, depending on whatever chapter title was visible on that printed page, whether the current chapter or the next one. Everything after the chapter title was thus called "the beginning of chapter *Gid hanashe"* (as is also our convention), but everything before the title was called "the end of chapter *Gid hanashe*" (the name of the title visible on the page, although it was the end of some other chapter).What Rabbi Isserles meant was not that this quote belongs to the ending of the chapter being named, but rather, that on the page where the passage in question appears, it is written *before* the title – which was the name of the next chapter. In addition, Rabbi Isserles would often correctly reference the page on which the passage in question was printed, but the talmudic chapter was sometimes off. Galinsky explains that the Venice editions of the Talmud that had the *Mordekhai* printed at the end had no running headers declaring which chapter it was.

[50] Galinsky, "Introduction," in Isserles, *Torat ḥatat*, 17.

page. Simultaneously, however, this example shows that these very same standardized printed pages were used in unexpected ways while teaching. If we consider this in further depth, it is a natural choice to refer to the visible number or title in the context of oral study and group teaching – even if that reference is to a printed work. When looking up something on one's own in a printed book, however, this method makes little sense.

This example makes it clear that, although print culture initiated an immense revolution that changed almost everything about the ways in which cultures interacted with texts, the myriad manifestations of these changes were all but clear-cut. One cannot simply conceive of print and manuscript culture, oral and textual approaches, as two entirely separate realms, the one disappearing, with all its attributes, to make way for the other. The period during which this coexistence of print and manuscript culture was at its most intense is around 1500, my period of focus.[51] While the scales were already tipping in favor of print culture, manuscript culture was still very much in play at this time, especially for the active scholars whose scholarly culture and practices were, to a great extent, still grounded in manuscript culture.

Modified and nuanced models of print versus manuscript culture can thus illuminate rabbinic scholarly culture of the sixteenth century in meaningful and sometimes unexpected ways. The second chapter of this second unit examines the connections between print technology and organizational paradigms, especially codification. This chapter includes a discussion of the polemics of Rabbi Ḥayim ben Beẓalel against

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[51] Johnston and Van Dussen, "Introduction," 3: "1500 …by then the printed book had taken off and the balance had tipped against the hand-copied codex. The manuscript book would not become obsolete for several centuries, but by 1500 the future belonged to Gutenberg."

codification, which have been cited by numerous historians to exemplify opposition to the *Shulḥan Arukh*,[52] and which I relate to the ashkenazic anti-codificatory approach to halakha.[53] This paradigm shift, as any other such shift, however, played out not only – or mainly – as polemics; it finds its strongest expression at the level of small changes in scholarly practices, in legal weight, in source preference and in textual organization. The case studies included in this unit are crucial for the elucidation of such changes. When pinpointed and understood as markers of a culture, these small changes add up to a revolution in ashkenazic halakha.

The printing press, however, was not an unrestricted agent of change; as we shall see, technology's impact upon the knowledge that it disseminates is not direct and absolute but involves the mediation of many other factors. The case studies in this unit exemplify how printed codifications enabled innovative forms of halakhic reasoning. Once again, however, these novel forms of reasoning do not emerge immediately from the printed codifications. During the period under discussion, halakhic interpretation relied on both kinds of halakhic rationale that I present – the logic of custom and transmission on the one hand and the logic of law and reasoning on the other and on two kinds of textual organization– the compilation and the code. These possibilities wax and wane and take on different forms, depending on the vicissitudes of history. The sixteenth century in Ashkenaz was a turning point from compilatory logic of custom to the codificatory logic

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[52] For instance, Eric Zimmer, *Gakhalatan shel ḥakhamim* (The fiery embers of the scholars) (Beer Sheva: Ben Gurion University Press, 1999).

[53] Elhanan Reiner suggests this in his fundamental article, "The Ashkenazi Élite at the Beginning of the Modern Era."

of law. A comparison to other early modern European cultures highlights this dynamic. Around the same time as the halakhic upheavals discussed here, the British common law began to be printed, undergoing a similar change. Slowly but surely, lawyers and judges began to prefer the printed law reports to what had been called "the common learning" of common lawyers, typically obtained orally.[54] Just as Rabbi Luria complained that students were now studying from books rather than from the mouths of authors, giving more credence to anything in writing than to what they heard from a living scholar,[55] so, too, early modern lawyers were concerned that their students relied on reading rather than on receiving oral instruction in the Inns of Court.[56]

Promising as these parallels are, the differences are even more instructive. For instance, the rise of printed collections of English common law that came to replace earlier reliance on the unwritten "common learning," in fact, supported the conservative legal forces. As common law is precedent based, the primary foundation for legal authority is a prior ruling by a judge. A reliable source of precedent is, therefore, crucial. As Ian Williams has argued, printed reports of cases were increasingly viewed as having more "credit" or reliability, meaning that they were considered true records that a case had, indeed been brought before a court and decided in the manner reported. Once the printed collections were considered more reliable, the reasoning of precedent was simply transposed onto

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[54] Ian Williams, "'He Creditted More the Printed Booke;' Common Lawyers' Receptivity to Print, c. 1550-1640," *Law and History Review* 28, no. 1 (February 2010): 39-70.

[55] See Shlomo Luria, *Yam shel Shlomo* on tractate *Ḥulin*: והנה שגו בזה מאחר שראו שכ"כ בספרו שכך הלכ':
אמרו כ"כ הקאר"ו להדיא, כי כך העניין הרע אשר לפניהם, מה שכ' בספר יאמינו, אם יעמוד א' חי וצוח ככרוכיא שאין הדין כן בראיות
גמורות או אפי' בקבלה, לא יחושו לדבריו כאשר כתבתי בהקדמ' ראשונה, ובפרט האידנא שבעו"ה הנסמכים מרובים והלומדים
מועטים...

[56] Williams, "'He Creditted More the Printed Booke," 68.

these sources, effectively limiting the much broader array of non-printed precedent such as the manuscript and oral recollections of lawyers, thus curtailing legal innovation. This dynamic played out differently in the case of halakha because of the presence of pre-existing traditions of legal interpretation and adjudication by means of reasoning or "calculus," as I call it (in which alternative opinions, majorities, minorities, and extenuating circumstances are weighed, measured, combined and subtracted to arrive at a conclusion).

This example illustrates how comparative perspectives can clarify aspects of the development of Jewish law: Printed halakhic codifications in Ashkenaz invited innovative modes of reasoning, whereas printed common law reports in England supported conservative law. This indicates that one must take into consideration additional factors such as the available alternatives for legal reasoning in a given culture and the existing models of legal authority before drawing conclusions based solely on technology. Print can, thus, have varied effects on different legal systems, depending on their earlier makeup and traditions. It is therefore critical that interpretations of law and the history of knowledge not leap directly from print technology to legal thought but, rather, isolate the dynamic, then take into consideration added factors that are no less important in the consideration of how the organization of knowledge affects its contents.

Insistence upon the explanatory limits of print technology, however, does more than merely impel the historian to consider additional and mediating factors; it also suggests that knowledge could be transmitted without any fundamental change, regardless of organizational factors. Adrian Johns has presented one such argument for early modern England by offering the many errors, variabilities, and differences among printed books at

the time as evidence that the printing press did not guarantee stable transmission.[57] One

can likewise provide such examples from the history of halakha, countering, for instance,

that Maimonides wrote the halakhic codification *par excellence*, which was transmitted in

relatively stable form, even in an age of manuscript transmission. Ashkenazic culture was

not only highly traditional but also its very halakhic logic was, in many ways, structured

on notions of traditional transmission such as local difference, custom, and personal

reception. The suggestion that such a strongly traditional culture changed so dramatically

in the wake of the printing press, then, seems questionable, especially in the wake of this

discussion of the limits of technology. Surely, it would take more than the printing press

for a knowledge revolution to occur. The final chapter of unit two suggests one of these

additional elements.

By introducing the idea of a legal tradition, the non-textual approaches and

underlying rules of a scholarly community, this chapter examines how the very resistance

to textualization, and the high reliance on non-written elements turned out to be a major

weakness for the transmission of ashkenazic law as it had been practiced traditionally. The

prominence of non-textual traditions of legal scholarship in this particular halakhic culture

represented a danger because precisely such traditions cannot be transmitted in the event

of communal discontinuity. The case study in that chapter illustrates the crucial role of

those scholarly culture and legal traditions that are not transmitted textually; no new texts

were discovered, no old texts were destroyed between the fifteenth-century Western

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[57] Adrian Johns, *The Nature of the Book: Print and Knowledge in the Making* (Chicago: University of Chicago Press, 1998).

ashkenazic examples and their sixteenth-century Eastern counterparts, but, somehow, legal traditions had shifted; and it made all the difference.

The third unit of the dissertation explores the life cycle of the early modern responsum, from letter to printed collection, placing these texts within the framework of scholarly culture and erudite practices. Considering halakhic scholarship as a learned practice and, therefore, comparing it to the erudite practices of its surroundings has been a helpful tool in gaining a deeper understanding of halakhic scholarship in early modern Europe. For instance, practices of keeping letter books has helped clarify some of the peculiarities of sixteenth-century collections of responsa, such as the (divergent) types of material included, the (low) degree of editing in these collections, and the (dis)order of their contents. In another example, scholarly practices of compiling personal archives for reference, which were frequently consulted by colleagues, has shed light on early modern rabbinic practices of writing, collecting, and publication that were previously unclear, thus exposing the dynamic nature of scholarly research that emerges precisely from less organized books.

In addition to shared practices and some geographical overlap, the resemblances are often morphological; actual cases of direct influence and contact are rare. Nevertheless, my dissertation research has benefited tremendously from comparisons to early modern phenomena and studies of these phenomena. It is my hope that the implications of my study can extend beyond Jewish history and contribute to early modern and intellectual history in general by serving as a comparative basis for other erudite cultures. The focus on scholarly practices that are ideologically neutral and often shared cross-culturally renders

this study especially useful for comparative purposes and it highlights the relationship of attitudes, meanings, and dogmas to scholarly practices. For instance, my analysis of the communications network that emerges from rabbinic responsa benefited from ideas about humanist epistolary networks, a comparable web of scholars that existed at the same time and in similar regions. This comparison has led to a better understanding of how letters of responsa constituted a halakhic discourse in time and space by creating a partially public sphere, a so-called "forum" that determined the acceptable forms of legal reasoning.

The commonalities between the humanist *République des Lettres* and what I call the Rabbinic Republic of Letters are striking, but so are the differences. There are various connections between the humanist Republic of Letters and its Enlightenment successors, as well as with empirical science, such as shared techniques and a certain degree of overlap between their members. Many have taken this one step further, arguing that the collaborative aspect of humanist correspondence was, in essence, a precursor of the philosophies of empiricism and the openness of the Enlightenment.[58] Comparison to the early modern Rabbinic Republic of Letters can serve to qualify such theories, presenting an example of a similarly collaborative intellectual network that did not develop in such ways. The contemporaneous rabbinical parallel serves to emphasize the importance of the early modern characteristics of the Republic of Letters, such as the communicative and discourse-building force of epistolary networks, for their own sake instead of reading them in terms of later evolutions.

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[58] To give but one example, see Charles B. Schmitt, "Science in the Italian Universities in the Sixteenth and Early Seventeenth Centuries," in *The Aristotelian Tradition and Renaissance Universities* (London: Variorum Reprints, 1984). See n1010 in this dissertation.

UNIT I, INTRODUCTION

  As an inquiry into the interaction of knowledge and technology, my study generates insights that go beyond the specific culture and corpus it investigates. My focus on the advantages and possibilities of less systematized organizational cultures has fostered the conviction that any study of the history of knowledge would benefit from considering non-ordered scholarly cultures not as immature stages in a teleological progression to increasing systematization but as scholarly cultures in their own right, with unique and meaningful approaches to knowledge. Different forms of organizing knowledge, such as compilations versus codifications, are alternative modes of textual organization that do not relate to one another hierarchically – that is, they do not imply that one is superior to the other in quality or that one represents the final product of its counterpart, which is merely a preliminary phase. Rather, the varieties of modes of knowledge organization are alternatives, each with its own possibilities and limitations, advantages and disadvantages, and each with its own approach and implied philosophy about knowledge, in this case religious knowledge and law. Although the compilation has certain deficiencies – it lacks a comprehensive structure making it is difficult to navigate or obtain an overview, it has the advantages of flexibility, personalization, and the capacity to contain different and incommensurable types of information. In a more current vein, digital culture encourages ordering and controlling information; however, the internet's lack of linearity and multifarious contents resists this control. This current tension makes my emphasis on multiplicities of organization and the early modern "loss of disorder" particularly relevant.

**THE INHERITED TRADITION**
The Organization of Halakhic Knowledge in the Age of Manuscript *Likutim*

### 1.  INTRODUCTION

Historians constantly face the risk of anachronism, but it is especially acute regarding the history of knowledge. Because the state of knowledge organization in any given period is usually not made explicit or articulated consciously, even great shifts in the organization of knowledge can be easy to overlook. Using a variety of methods ranging from numerical analysis through literary and social studies, to cultural and material history, historians have determined many ways in which changes in the organization of knowledge intersect with technology, culture, and society. However, these interactions take place in ways far more complex than we might expect. Earlier modes of organization do not instantaneously evaporate at the appearance of new technologies or social change. In fact, bodies of knowledge often tend to perpetuate their organizational state without immediately or necessarily responding to shifts. In the face of radically changed circumstances, novel possibilities, and unprecedented new requirements, earlier modes of producing, transmitting, and organizing knowledge can persist with surprising tenacity, even when, at times, this seems counter-intuitive given new circumstances. Once we cease to conceive of changes in knowledge organization as a progression of neat breaks and clear transitions, it becomes possible to detect moments of overlapping paradigms and adaptations of older organizational regimes to new methods in ways that are often unexpected and surprising from our vantage point.

UNIT I, CHAPTER 1: THE INHERITED TRADITION

The persistence of older forms of knowledge is a particularly strong force in deeply traditional scholarly cultures, which place a distinct value on continuity, such as Ashkenaz. Therefore, this culture's adaptation to changes in the history of knowledge requires close attention not only to the novel elements, but also to the traditional elements and their adjustment to change. Moreover, changes in the history of knowledge, while always at risk of being overlooked, are even harder to notice the more successful they were. The more fundamental the changes, the more obvious the resulting organizational forms appear. The shift that took place in the early modern period was so profound and thorough that it determined the shape of halakha thereafter, the influence of its reorganization persisting to this very day, thus making it difficult to imagine that halakha was ever organized differently than the ways familiar to our contemporary experience. In order to appreciate the significance of the change that took place in the early modern period, then, it is crucial to compare early modern knowledge-organization not only to our current ideas of organizational possibilities, but to depart, instead, from the forms of organization that preceded the early modern period. An inquiry into the state of the organization of halakhic knowledge in the thirteenth and fourteenth centuries in Ashkenaz is, therefore, paramount. Utilizing the scholarship of bibliographers and historians of Ashkenaz in the Middle Ages, and studies of manuscript culture more generally in medieval Europe, this discussion aims to ascertain the traditions of knowledge organization that preceded the halakhic writings of the early modern period. This study will thus facilitate an understanding of the sources of various forms of organizing halakhic knowledge in the early modern period that stem from these older traditions and enable comprehension of the depth of the change that followed.

UNIT I, CHAPTER 1: THE INHERITED TRADITION

This discussion will encompass the period beginning with the decline of Ashkenaz

in Western Europe at the end of the thirteenth century until the end of the fifteenth. Starting

roughly around the time of the Rindfleisch massacres of 1289 in Germany and the

expulsion of the Jews from France in 1306 and continuing with the Black Death in the mid-

fourteenth century, the political situation of the Jews in this part of Ashkenaz was

deteriorating in terms of security and stability. The many evictions and persecutions led to

the breakdown of communities and the flight of many Jews to other areas. The level of the

development of halakhic activity in this period corresponds to the moment after the apex

of the twelfth-century tosafists, who were known for interpretations of the Talmud based

on textual comparison and logical hermeneutics. Around the end of the thirteenth century,

the formulation of these innovative explanations waned. In 1293, when Rabbi Meir of

Rothenburg (b. ca. 1215) died in the fortress of Enisheim, Alsace, after years of

imprisonment, the tosafist period definitively ended. The time span that followed this

period is often regarded as an epoch of intellectual decline in Ashkenaz, as the creativity

and virtuosic thinking of the earlier tosafists was replaced by the "mere" compilation of

halakhic summaries.[59] The writings of some of his most illustrious students, Rabbi Asher

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[59] Chaim Tchernowitz, *Toldot ha-poskim* (History of the Jewish codes) (New York: Jubilee Committee, 1946-7), 1:15. Tchernowitz calls this entire period from the *Arba Turim* (14th c.) to the *Shulḥan Arukh* (16th c.) "the period of decline and narrowing" (תקופת הירידה והצמצום). See also Güdemann's discussion of such compilations in terms of intellectual decline throughout. Moritz Güdemann, *Das Jüdische Erziehungswesen und der Cultur der abendländischen Juden während des Mittelalters und der neueren Zeit* (Wien: Hölder, 1880).

See also Israel Ta-Shma, "Halakha, minhag u-meẓiut" (Halakha, custom and reality) in *Kneset meḥkarim: Iyunim ba-sifrut ha-rabanit bi-yemei ha-beinayim* (Collection of studies: Inquiries into the rabbinic literature of the Middle Ages) (Jerusalem: Mosad Bialik, 2004), 16. He considers the so-called "Renaissance of the twelfth century" to end around 1350. The peak of the tosafist period is placed in the first quarter of the thirteenth century and the decline in the beginning of the fourteenth, which saw "a great decline in all senses of the term…"

ben Yeḥiel, Rabbi Mordekhai ben Hillel, and Rabbi Meir ha-Kohen will be discussed in the following pages, with special focus on the organizational profile of their works. The chapter will end with the further decline of Jewish intellectual activity in Western Ashkenaz in the late fourteenth century, after the period of the students of Rabbi Rothenburg ends, on the one hand; and with the organizational changes that resulted from the advent of print technology in the last third of the fifteenth century, on the other.

Scholars such as Ephraim Elimelech Urbach, Israel Ta-Shma, Malachi Bet-Arié, and Simcha Emanuel have, each in their own way, paid special attention to the development of halakha in this period by studying its main authors, works, and techniques, and have established a firm basis for further study. They have not always attempted to bring to the fore the broader implications of these findings on the attitudes towards halakhic knowledge. Scholars of medieval methods of knowledge organization in Europe in general, such as Malcolm Parkes, Stephen Nichols, and Mary and Richard Rouse, have adopted an approach that can provide valuable insights into Latin manuscripts. Their methods, however, have not been sufficiently applied to the realm of Jewish history. I will integrate the studies of the former scholars with the context and insights provided by the latter, aiming to add a crucial perspective to the study of the development of halakhic writing in the post-tosafist period.

This chapter focuses on the phenomenon of *likutim*, manuscript compilations of halakhic texts that were the main form of Jewish legal writing in this period. These compilations were often miscellaneous collections. The connections between the materiality of manuscript collections and their often miscellaneous contents have been

explored by scholars of Latin and vernacular medieval manuscripts, most notably in a volume edited by Stephen Nichols and Siegfried Wenzel.[60]   More recently, Lucie Doležalová and Kimberly Rivers edited *Medieval Manuscript Miscellanies: Composition, Authorship, Use*, which included contributions seeking to define and distinguish particular types of miscellaneous compilations and varying levels of coherence versus unity.[61] Within the broad category of halakhic compilations, it is also possible to distinguish between several kinds of *likutim*: Some are closer to typical literary works, containing primarily the input of one author who is providing his personal intellectual contribution on a more-or-less determined topic; some are closer to anthologies, works that offer a selection of sources, abridged, or in full; some provide legal conclusions, while others merely summarize material; others, yet, are almost entirely unedited, and appear closer to notes and jottings, rather than representing a unified work; some are strongly identified with a known author, while others are the work of multiple, sometimes anonymous hands over an

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[60] *The Whole Book: Cultural Perspectives on the Medieval Miscellany*, ed. Stephen Nichols and Siegfried Wenzel (Ann Arbor: University of Michigan, 1996).

[61] *Medieval Manuscript Miscellanies: Composition, Authorship, Use*, ed. Lucie Doležalová and Kimberly Rivers (Krems: Medium Aevum Quotidianum Gesellschaft zur Erforschung der materiallen Kultur des Mittelalters, 2013).

Notable definitions and distinctions are, for instance, Greti Dinkova-Bruun's differentiation between primary miscellanies and secondary miscellanies, in which the former was a compilation created by one compiler at one point in time, whereas the latter is the result of various primary miscellanies combined with no rhyme or reason at different points in time. Greti Dinkova-Bruun, "Medieval Miscellanies and the Case of Manuscript British Library, Cotton Titus D.XX." in *Medieval Manuscript Miscellanies,* 14-34. Similarly instructive is the codicological unit versus the composite manuscript, in which the former was put together in one action whereas the latter is made up of several codicological units, a distinction Peter Gumbert already introduced in Peter Gumbert, *"Codicological Units: Towards a Terminology for the Stratigraphy of the Non-Homogeneous Codex," Segno e Testo* 2 (2004): 17-42.

Another useful term, introduced by Derek Pearsall is the distinction between anthologies and commonplace books as opposed to truly miscellaneous volumes, as well as his notion of "spasms of planning" to denote miscellaneous collections that seem to include coherent units here and there. See Derek Pearsall, "The Whole Book: Late Medieval English Manuscript Miscellanies and Their Modern Interpreters," in *Imagining the Book*, ed. Kelly Stephen and John J. Thompson (Turnhout: Brepols, 2005), 17–29.

undetermined period of time; some have been copied often enough to be considered a known work, while others did not survive; some are aimed at more popular audiences than others, and many do not appear to be aiming at any audience at all.

As this chapter develops, I will touch upon these different properties of compilations. My primary interest, however, is not in one specific type of *likut*, but, rather, in their broader organizational character. I employ the term *likut* not as a classification of genre, but rather, as a form of organization that compiles rather than unifying. The *likut* is neither a genre nor a specific work; it is the material embodiment of a paradigm of organization. *Likutim*, very broadly speaking, designate any compilation of halakhic textual material that is *open*, both in its contents and its structure, and *personal* in its nature. My inquiry focuses on the functions and uses of the *likut* and its underlying logic, which continued to determine practices of knowledge organization and approaches to halakhic knowledge well into the fifteenth century and beyond.

In the next section of this chapter, I offer a definition of the *likut* as an organizational principle, contrasting it to the codification. Next, compiling as a practice of copying is contextualized more specifically for the thirteenth and fourteenth centuries, and different motivations for compiling are considered. The discussion of compiling as a scribal practice is followed by a closer inquiry of compiling as something more significant, namely, a mode of organization. Sections four to six analyze two related organizational characteristics that significantly distinguish manuscript *likutim* from other halakhic writings: First, they are fundamentally open, both in content and in structure; *likutim* are characterized by flexibility and adaptation. These compilations were created by freely collecting and customizing

material, sometimes copying it verbatim, at other times paraphrasing, summarizing, arranging it in whichever way the scribe saw fit, and augmenting it with glosses and new texts. Second, they are highly personal, as *likutim* were usually transmitted and copied by those who had a personal connection to the author (students, sons, or colleagues). A *likut* subsequently provided material for the creation of one's own *likutim*, either by itself providing the basis for additional material, or by copying information from the former *likut* into one's own compilation.

Moreover, the *likut*'s openness and its personal nature are connected: as the compilations were created for personal use, they were always adapted and customized, and individual *likutim* differed widely from one another. Published works, on the other hand, are considered more stable and closed. In the context of manuscript publication, the notion of personal works versus published ones requires further clarification, which section seven advances, together with the question of how the general lack of stability of manuscript transmission affects the nature of published compilations.

In section eight, I discuss the ways in which rabbinic responsa specifically relate to compilations in terms of the organizational structures that this genre privileges. The period under discussion can be considered "the age of *likutim*" in Ashkenaz. The *likut* may seem to be an arbitrary method of writing halakhic texts, its prevalence merely a result of contingent factors such as technical limitations, an unstable political situation, and a general decline in intellectual creativity in the realm of halakha. Certainly, the use of *likutim*, as any other method of collecting, studying, and transmitting knowledge, was determined by technical, intellectual, social, and political circumstances, and responded to

specific situations, possibilities, and needs. A closer look at the order and logic underlying various examples of *likutim*, however, can reveal specific ways of approaching knowledge and thinking about halakha, which are explored, respectively, in sections nine and ten.

As a whole, this chapter will indicate how pervasive the *likut* was in post-tosafist Ashkenaz, not only as a method of note taking, but also as a genre of halakhic writing. Most of all, however, it is, as I will argue, an approach to knowledge. From the perspective of knowledge organization, the *likut* represents an approach that is active, creative, open, highly personalized, and flexible. As this chapter's epilogue argues, this flexibility will become ever harder to uphold with the growing systematization of halakhic texts.

## 2.      THE COMPILATION AS AN OPEN FORM OF ORGANIZATION

The *likut* is a quintessentially medieval and ashkenazic form of organization, for reasons that will be explored later, but the varieties of organizational models, and the logic that governs each such method, which the current section discusses, apply equally to different times and places. The following paragraphs will present such a more general definition of the *likut*. What distinguishes a *likut* from other forms of halakhic organizing and collecting is its openness. Other forms of halakhic knowledge organization, most notably, halakhic codes, similarly strive to collect various materials in one place in a searchable manner.

Codes and compilations are both primarily concerned with collecting, summarizing, paraphrasing, and, in some cases, providing interpretations, conclusions, and additional insights into a body of texts. The first step in creating a code is often the process of collecting all the disparate material. Although this initial collection, which can resemble

a compilation, is frequently a first step towards codification, compilations are more than just the rough material for the creation of codes, and compiling must be viewed as a distinct practice of organizing knowledge, with its own characteristics and uses. Codifications are usually closely connected to authoritative legal projects, while compilations have a looser relationship to determining the law; but the legal or intellectual project and its organizational structure are two separate elements and should, thus, be considered separately.[62] The following paragraphs will define compilations versus codes purely in terms of their structure and organization.

Organizationally, codes generally attempt to be complete and cover every facet of a certain topic, even where there is little need to comment upon or add to certain components. They aspire to address their topic in a specific order that assigns every component a particular location, without repeating the discussion in another area. The specific locations of the components follow a certain logic, as they are placed within one fully integrated and continuous organizational scheme. This renders a code easily and systematically searchable. In a successful code, the user expects that nothing will be missing. In terms of finding aids, we can contrast the index, which presents the reader with thematic insight, to the table of contents, which is merely a shorter version of the work.[63]

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[62] Generally, codifications also aim at determining the bottom-line of the law, but this is not necessarily so, and we can find examples of works that are organized as codifications without subscribing to such a legal project; *Sefer Mizvot Katan*, for instance, is a codification, as will be discussed in the following passages, but it does not attempt to determine the final law in a definite manner and will, for instance, present differences of opinion. Similarly, *Orḥot Ḥayim*, also mentioned below, is structured like a code without presenting final legal decisions.

[63] Mary A. Rouse and Richard H Rouse, *Authentic Witnesses: Approaches to Medieval Texts and Manuscripts* (Michigan: Notre Dame University Press, 1991), 198, call it the simplest of finding devices.

The arrangement of an index need not be alphabetical;[64] it can be logical, thematic, chronological, or it may follow some other order that was intuitive to its users. Unlike the compilation, where a table of contents provides a more contracted version of the work but adds nothing more, the table of contents in a code can be used for more meaningful searching, similarly to an index. In a code, the table of contents reflects the fact that the work's arrangement and division follows a logical order, which, as a whole, presents a comprehensive and complete scheme of the topic at hand. In the case of codes of halakha, the religious life cycle, the biblical weekly readings, or the Talmud were oft-used structures. Unlike the chapter headings of a code, tables of contents in compilations do not necessarily present the reader with an intuitively accessible additional structure. It is simply a reiteration of the contents of the work itself and thus presents, at most, an overview of the contents in shorter form.

The paradigmatic example of a halakhic code is Maimonides' *Mishneh Torah*, composed around 1170-1180. The topic of this code is the entirety of Jewish Law and its organizational scheme is a thematically (one may even say, philosophically) logical one, which begins with the monotheistic foundations of the law. An additional example is the *Arba Turim*, (Four columns/pillars) written by Rabbi Yacov ben Asher (Cologne ca. 1269-Toledo ca. 1343). [65] This work covers only Jewish Law that applied in daily life in the

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[64] Alphabetical indexes were used as finding devices in the Latin milieu only in the following stage of organizing material. A combination of particular cultural changes (the growth of the learned community from monastic culture to the schools), conventions (the use of the *distinctiones* in sermons), and changes in mentality – a utilitarian approach to knowledge (see Rouse, *Authentic Witnesses*, 204) led to a break with the more traditional forms of organization.

[65] The author's illustrious father was Rabbi Asher –also known as ROSh. The *Arba Turim* can most definitely be considered a code, but it is not as paradigmatic as the *Mishne Torah* and has many elements that resemble a compilation, most importantly the retention of multiple opinions and the paraphrasing and quoting

fourteenth century; its organization is roughly thematic and, at times, chronological. *Sifrei miẓvot*, or "Books of commandments," a genre of halakhic writing that attempts to enumerate and explain all 613 positive and negative commandments may also be considered a kind of code. Maimonides' *Mishne Torah*, the quintessential code, in fact, started out within this genre, as is evident in its introduction. The works in this genre aspire to be complete and comprehensive, and they list every one of the 613 commandments in its place. *Sifrei miẓvot* usually employ an organizational scheme that is accessible, either by means of an intuitive structure or, for instance, by following the order of the weekly biblical readings, as is the case in the *Sefer ha-ḥinukh* (The book of education), written anonymously in thirteenth-century Spain. The *Sefer miẓvot gadol*, (Large book of commandments), also known by its acronym *SMaG*, is one of the most famous thirteenth-

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of various sources rather than distilling them into a seamless whole. Rabbi Yacov's introduction clearly stated the need for a work that would manage the growing multitude of information, as he explains, "Because our days in exile have become long, and our strength has waned ... and the disagreements have grown, and the opinions have multiplied..." He claims first to have wanted to write only the laws of blessings, "As our Sages of blessed memory have said, 'A man should go to a sage and be taught the laws of blessings so that he does not arrive at enjoying God's world without permission (*me'ilah*).' Therefore ... I will stand up and wander around ... and understand in books. And I will collect two or three crumbs ... from the words of the [different] authors. And I will compile a book on the topic of prayers and blessings and will arrange for every single thing its appropriate blessing before and after...."

Once he finished this task, he explains that he decided to compile laws from an additional field: "I sought to compile also the laws of the Sabbath and the holidays and the *megilah* and Ḥanukah and *Rosh Ḥodesh* and fasts, because these are things that come up often at known points in time." More and more fields are added to these until the entire four volumes of the *Arba Turim* emerge.

Ultimately, however, this is not merely a compilation of compilations. *Arba Turim* rearranges, organizes, streamlines, and summarizes the material to a certain degree, with a result resembling a code in many ways. Menachem Elon characterizes *Arba Turim* as the "middle way" between the extremely codificatory *Mishne Torah*, on the one hand, and the expansive and inconclusive Talmud, on the other. See Menachem Elon, *Jewish Law: History, Sources, Principles*, trans. Bernard Auerbach and Melvin J. Sykes (Philadelphia: JPS, 1994), 3:1286.

On the work's position "between" Ashkenaz and Sefarad, see Israel Ta-Shma, "Between East and West: Asher b. Yeḥiel and his son Rabbi Ya'akov," in *Studies in Medieval Jewish History and Literature*, vol. 3, ed. Isidore Twersky and Jay Harris (Cambridge, MA: Harvard University Press, 2000), 179-196 and Judah D. Galinsky, "Ashkenazim in Sefarad: The ROSh and the Tur on the Codification of Jewish Law," *Jewish Law Annual* 16 (2006): 3-23.

century works in this genre.[66] Although written by a scholar from Coucy, he composed it

between 1239 and 1247, after his wanderings in Spain, during which he also preached. It

is divided into two main parts, namely the positive and the negative commandments of

several fields of halakha (family law, foods, torts, the Temple, etc.), and one section for the

non-biblical commandments (such as the laws of Ḥanukah). Others, such as *Sefer yere'im*

(Book of the God-fearing) by Rabbi Elazar of Metz (twelfth century) have a much more

intricate structure.[67]

Compilations, on the other hand, do not aspire to be complete, meaning that they

need not cover every aspect of a certain topic, but, instead, can skip around within a topic,

based on the specific need of the compiler, the availability of material, or his particular

interests. Moreover, a compilation need not be as systematically organized as a code; the

order can be more random, the organizational scheme much looser, and the same topic can

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[66] On the *Sefer miẓvot gadol*, see Judah D. Galinsky, "Rabbis, Readers, and the Paris Book Trade: Understanding French Halakhic Literature in the Thirteenth Century," in *Entangled Histories: Knowledge, Authority and Jewish Culture in the Thirteenth Century*, ed. Elisheva Baumgarten, Ruth Mazo Karras, Katelyn Mesler (Philadelphia: University of Pennsylvania Press, 2017), 73-93.

[67] *Sefer yere'im* by Rabbi Eliezer of Metz (12th c.), was rearranged, abridged, summarized, and supplemented. Rabbi Ḥayim Yosef ben David Azulai (1724-1806), in his bibliography *Shem ha-gdolim* (The names of the great), remarks that the printed version does not resemble the manuscript versions that he saw, which are longer. In fact, the printed work is less than a third of the manuscripts in length. *Sefer yere'im* is divided into pillars and hooks (seven pillars, nearly every pillar has "hooks," the "hooks" are arranged according to the gravity and seriousness of the punishments for transgressing these commandments); on the hooks, he "hangs" the individual commandments (positive or negative). Every individual commandment includes the relevant source material, from the biblical through the talmudic, geonic, etc., with some discussion woven through. There is a table of contents arranged thematically according to his particular system. In his conclusion, Rabbi Eliezer proclaims: "I concluded the commandments and their sub-commandments as I planned, and I calculated them as I found them in the book of Yehudai Gaon of blessed memory, and I conflated them as 464 [rather than 613] because in some places, I conflated two commandments as one, and blessed is our Rock, who helped my heart succeed this far, to complete that which was in my heart, this book…." The work is based on the *Baal halakhot gedolot*, a *Sefer miẓvot* written by Rabbi Shimon Kayara (or Rabbi Yehudai Gaon – as the author seems to have believed).

On *Ba'al halakhot gedolot* in Ashkenaz, see Ta-Shma in *Kneset meḥkarim*, 1: 33, 54. See also Avraham (Rami) Reiner, "Le-hitkabluto shel *Sefer halakhot gdolot* be-Ashkenaz" (On the reception of the *Sefer halakhot gdolot* in Ashkenaz) in *Limud ve-da'at be-maḥshava yehudit*, ed. Ḥaim Kreisel (Beer-Sheva: Ben Gurion University Press, 2006), 95-121.

be treated in more than one place. As a result, a compilation can contain material from different registers of knowledge that cannot readily be unified and streamlined into one organizational scheme. Compilations, thus, are not as reliable as codes, as they do not aspire or promise completeness, and their less systematic order makes them more difficult to search. Compilations, however, have the advantage of being more flexible in three ways: First, as compilations do not strive to be complete and comprehensive, only relevant information is included, without the need to touch upon every component of the topic at hand. In this it is unlike a code, which must at least mention every element that comprises its topic, even when it is uninteresting, repetitive, or not innovative. Second, a larger variety of different kinds and genres of material can be included in a compilation, despite the fact that they are not easily integrated into one organizational scheme. Finally, the addition of material over time does not necessarily require re-arranging the whole compilation. New material, whether newly discovered or newly generated, can simply be tacked onto the end of the compilation or to the end of one section.[68]

It is worth noting that the distinction between compilations and codes is not a binary one. Some compilations are systematically organized but still include knowledge from different generic registers that do not fit together seamlessly into one continuous organizational scheme as the information in codes do. Similarly, codes sometimes are not entirely systematic and include some repetition, or they may be incomplete and contain

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[68] For a discussion of the advantages of flexibility in knowledge organization, see, for instance, Michael Hunter, "Mapping the Mind of Robert Boyle: The Evidence of the Boyle Papers," in *Archives of the Scientific Revolution: The Formation and Exchange of Ideas in Seventeenth-Century Europe*, ed. Michael Hunter (Woodbridge, UK: Boydell, 1988), 135-136.

gaps. There is a spectrum that separates the two poles – a perfect code and – (though this may be a contradiction in terms) a perfect compilation – from one another, and most works will fit somewhere along that spectrum, rather than squarely at one of the poles. The most basic body of Jewish legal texts, the Talmud, is in most ways structured similarly to a compilation; it is not entirely systematized, and includes digressions, repetitions, and discussions of similar issues in separate places, which makes it hard to search and not easily accessible.[69] Moreover, it is not complete or comprehensive, and contains many lacunae. The Talmudic discussion, over generations of redactions, tried to fill in some of its own gaps by bringing texts from parallel bodies of halakhic knowledge such as the Jerusalem Talmud or the *Tosefta* into the conversation. It also, at times, investigated internal contradictions by comparing similar statements from disparate parts of the Talmud and attempting to resolve the differences. Notwithstanding these unifying efforts, the Talmud

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[69] Menachem Elon, in chapter 32 of his magnum opus, *Jewish Law*, considers the main dilemma in the writing of any form of halakhic summary to be the degree of codification. By codification, he primarily means the process by which halakha is detached and distilled from its expansive, messy, and often inconclusive Talmudic textual source and transformed into a more manageable and decisive summary. Elon classifies halakhic summaries according to the degree to which they summarize the Talmud. Works of *psikah*, or adjudication, provide only the ultimate halakhic conclusion, whereas other types of halakhic summary retain some of the Talmudic discussion that precedes the conclusion. Elon places *Mishne Torah* on the most extreme end of summary, entirely transforming the Talmudic source material and retaining no connection to it but the very essence. He considers the *Arba Turim* the perfect balance; it summarizes, on the one hand, but retains a connection to the Talmudic source-material, on the other. See Elon, *Jewish Law*, 3:1138-1148.

Elon's considerations are, of course, accurate, but it is important to include the dimension of order and reorganization in addition to his dimension of summary versus retention of the original sources. This added dimension of order allows us to distinguish between various additional kinds of halakhic summaries based not only on the degree to which they summarize but also on the nature of their structure.

See also Judah Galinsky, "Ashkenazim in Sefarad," 3-23. Galinsky agrees with Elon's classification, but places Elon's more platonic distinction within the historical context of Rabbi Asher and his son Yacov and their move from Ashkenaz, where study focused on the Talmud, to Sfarad, which relied heavily on codes such as *Mishne Torah*. Rabbi Yacov actively chose the "middle way" that organizes halakha as a code but is nonetheless more expansive and provides different halakhic opinions and references to the Talmudic texts. He did so in order to make his father's Ashkenazi form of study accessible to the sfardic study practices, which were more code-oriented.

is far from a codified body of knowledge. This is not to say, however, that the organization

of the Talmud is completely open; every Talmudic tractate has one main topic, and the

tractates, in turn, are grouped according to their more general subject-matter, based on the

six *sdarim* (orders) of the Mishna, the source that the Talmud is explicating. For instance,

the mishnaic order of *Nashim* (Women) includes tractates such as *Gitin* (Divorce

documents), *Nidah* (Menstrual Impurity), *Kidushin* (Marriage), and topics relating to

family law. Because of this rudimentary order, it is possible for a work of scholarship that

focuses on the Talmud to be structured like a code, although it would require some degree

of re-organizing and consolidating of the material.

Many later scholars attempted to create such aids to facilitate access to the Talmudic

body of knowledge. Some, such as Rabbi Yiẕḥak al'Fasi (Algeria 1013–Spain 1103, also

known as RYF), did so by re-producing a more distilled version of the text, leaving out the

non-legal discussions, thus creating a narrower, more unified genre of texts (those texts

pertaining to the legal genre), whose smaller dimensions are easier to survey. Others did so

by creating cross-references with newer, more systematic codes of Jewish Law, such as the

sixteenth-century Rabbi Joshua Boaz's *Ein mishpat* (Fount of justice), which refers

talmudic passages to the correct locations in *Arba Turim* and Maimonides' code. Certain

schools of interpreting the Talmud sought to integrate the body of knowledge and

streamline it by comparing passages in one place in the Talmud to similar ones elsewhere

in order to illuminate differences and harmonize contradictions. The most famous example

of this are the tosafists, who, in the words of a sixteenth-century rabbi, "made the whole

Talmud into one perfect sphere."[70] Because so many products of halakhic scholarship are centered on the Talmud, they often follow its order and thus display compilation-like organizational characteristics.

Some compilations were created by using a pre-existing code, glossing the code's contents, and inserting new material into these glosses. Occasionally, compilations were created simply by arranging a collection of material based on the pre-existing code's organizational structure without relating to the contents of the code in any meaningful way. The reverse phenomenon – a code based on a compilation – does not exist, strictly speaking, as creating a code would require completely re-organizing, streamlining, and filling in the missing parts of the compilation on which it is based. This would entail devising a structure, placing the material in its proper location, transforming different types of writing into a consistent register, and filling in gaps; and streamlining and integrating the new whole. In sum, codifications are complete, consistent, and stable, while compilations are open, uneven, and flexible. This distinction is valid in general, and often relevant; but it is especially crucial for understanding late medieval Ashkenaz, where the compilation becomes dominant as a practice of organizing writings, as a form of structuring works, and as an approach to textual knowledge and halakha writ large.

### 3. THE THIRTEENTH AND FOURTEENTH CENTURIES: COMPILATION AS A SCRIBAL PRACTICE

The compilation's open form of organization is, in many ways, a result of specific practices of writing and copying. The practice of copying other sources for one's own use, as well

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[70] Shlomo Luria, *Yam shel Shlomo*, first introduction to tractate *Ḥulin* (Cracow, 1633).  שאשעהו ככדור אחד.

as the practice of collecting one's material based on or surrounding other works, often results in compilations. Both of these practices were highly important in early modern Ashkenaz. One of the most significant innovations of the medieval ashkenazic sphere, in comparison to earlier Jewish centers, is the growth in the practice, primarily by students, of putting down in writing the interpretations, commentaries, and teachings that were being studied in the *bet midrash* (house of study),[71] an innovation that ultimately created the need for *likutim*.[72] The growth of this practice of writing is noticeable in fields as varied as interpretations of *midrash*, of mystical texts, and of *piutim* (liturgical poems); it is even truer of talmudic commentary and interpretation, the most central tosafist activity.[73] The

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[71] Reuven Bonfil, "Mytos, retorika, historia? Iyun bi-megilat Aḥima'aẕ," (Myth, rhetoric, history? A study of the scroll of Ahima'aẕ) in *Tarbut ve-hevra be-toldot Israel bi-yemei ha-benayim* (Culture and society in Jewish medieval history), ed. Reuven Bonfil, Ḥaim-Ḥillel Ben-Sasson, Yosef Hacker (Jerusalem: Merkaz Zalman Shazar, 1989), 99-135. Bonfil characterizes the transition of Jewish society from "orality" to "textuality" in the Middle Ages; in terms of sheer volume of written Hebrew texts, he explains that the Middle Ages are on the other side of a "great manuscript divide" compared to earlier periods.

On the scarcity of manuscript remnants in Hebrew that precede the ninth century when compared with remnants of Latin manuscripts from the same period, which number over 1,600, see Malachi Bet-Arié, "Palimpsest Munchen: Sridei megilah mi-lifnei ha-me'ah ha-shminit," (The Munich palimpsest: remnants of a scroll from before the eighth century) *Kiryat Sefer* 43 (1968): 415. He ties this to the halakhic prohibition to write down the oral Torah.

See also A. Samely and P. Alexander, "Artefact and Text: Recreation of Jewish Literature in Medieval Hebrew Manuscripts," *Bulletin of the John Rylands University Library* 75 (1993): 8-9, as quoted in Talya Fishman, *Becoming the People of the Talmud: Oral Torah as Written Tradition in Medieval Jewish Cultures* (Philadelphia: University of Pennsylvania Press, 2011), 7-8. When Fishman discusses the process of "textualization," she means, "this slow and unconscious cultural process, during the course of which the society in question came to ascribe greater value to the authority of the inscribed word than it did to oral testimony...." Fishman, *Becoming the People of the Talmud*, 9. The growth in the practice of writing down is a significant phenomenon, even if we leave aside the question of consequences and significance, such as the changing conceptions of authority and its sources and the different value assigned to oral as opposed to written text.

[72] See Israel Ta-Shma, "Review of Ephraim Kupfer, ed., *Tshuvot u-psakim me'et ḥakhmei Ashkenaz ve-Ẕarfat*," (Responsa and rulings from the sages of Ashkenaz and France) *Kiryat Sefer* 51 (1977): 480. Ta-Shma succinctly describes the results of this growth in written material in this review: "With the spreading of Torah study in the big and small towns of Ashkenaz during the whole extended period of the activity of RaShY and the tosafists, a wide and varied spectrum of opinions developed that touched upon halakhic theory and practice, in responsa and in talmudic interpretations, in books of commandments, and in collections of custom, and the students needed specific notes, in order not to tax their memories too much."

[73] Although the tosafist school was also active in genres other than halakha, such as biblical exegesis, *piut* (poetry), mysticism, and theology – see, for instance, Ephraim Kanarfogel, *The Intellectual History and*

tosafist studies were typically centered on one specific talmudic *sugya* (a discussion or issue, usually a section within a specific tractate), often taking into account the interpretations of these issues by their predecessor, Rabbi Shlomo ben Yiẓḥak (known as RaShY). As a result, their insights took the form of a commentary arranged by tractate and chapter of the Talmud.[74] As the tosafists' studies centered on the talmudic text and most of their notes derived from the study hall, it made sense for them to record their teachings as a discussion parallel to the talmudic section under study. The discussions and interpretations would be *added* to RaShY and the relevant part of the talmudic discussion; hence the name *tosafot* (additions).

Students not only took notes, they also copied from the writings of their teachers or colleagues. The order of the *sugyot* of the Talmud was, in this case, also the order that developed most spontaneously for these writings, as it followed both the text that was at its center and the manner in which the studies took place.[75] The writings were, at times,

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*Rabbinic Culture of Medieval Ashkenaz* (Detroit: Wayne State University Press, 2012) – this discussion will limit itself to the organization of halakha in all its different forms.

See Simcha Emanuel, *Shivrei luḥot: Sefarim avudim shel ba'alei ha-tosafot* (Fragments of the tablets: lost books of the tosafists) (Jerusalem: Magnes Press, 2006), 2.

[74] See Emanuel, *Shivrei luḥot*, 2.

[75] For a discussion of *hagahot*, meaning notes on a text or glosses, see Shlomo Zalman Havlin's entry on "Hagahot" in the Encyclopedia Judaica online: http://www.jewishvirtuallibrary.org/haggahot (Jewish Virtual Library: The Gale Group, 2008).

For an explanation of the meaning of the word, in the sense of correcting as well as clarifying and explaining, see Yakov Shmuel Shpigel, *Amudim be-toldot ha-sefer ha-ivri*, vol. 1: *Hagahot u-megihim* (Chapters in the history of the Jewish book, vol. 1: Scholars and their annotations) (Ramat Gan: Bar Ilan University Press, 1996), 32-34; 143-193, on the developments of glosses from a method of correcting canonical texts to a way of organizing remarks and halakhic writings of all kinds. On page 158, Shpigel distinguishes these two actions as glossing something (i.e. correcting a text), on the one hand, versus writing glosses on something, on the other; that is, commenting and reflecting upon the work. Our discussion of halakhic texts written and organized as glosses on other halakhic works relate mainly to the second kind mentioned.

For instances of earlier organization of responsa according to tractates, see, for example, Fishman, "Rabbinic Compositions in Qayrawan," *Becoming the People of the Book*, 67-71. They were aware of *ge'onim*, corresponded with them, and also drew up lists of *ge'onic* responsa and responsa from other places

noted as glosses in the margins of the relevant part of the text or as a separate commentary

organized in the same way.[76] There were, however, also instances in which the evolution

of the writings did not follow any specific organizational scheme. Emanuel, who studies

thirteenth- and fourteenth-century manuscripts (in an attempt to unearth fragments of

earlier tosafist works that might have been copied within the later manuscripts), explains:

> ...the students encountered in the course of their studies in the *bet midrash* texts that
> did not fit the framework of the tractate that was being studied, and for this reason, they
> could not have been included in the tosafot on the Talmud that the students wrote in front
> of their rabbis…. In order to preserve these texts, the students wrote books of *likutim*, a
> kind of memory notebook into which they brought whatever seemed important to them,
> without any order or system.[77]

Thus, in addition to the halakhic writings that were organized in a manner that

reflected the mode of teaching and study, we also note the presence of a more general kind

of halakhic "memory notebook" into which other written material was copied and studied,

or in which witnessed behavior and oral statements were recorded. Students who became

rabbis in their own right took their notebooks with them, which is what Ta-Shma calls the

"private book of compilations that every scholar has and that was passed on as an

inheritance from father to son and from rabbi to student."[78]

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and compiled them according to the order of the tractates. *Sefer ha-yashar* of Rabbenu Tam or Rabbi Eliezer
bar Nathan (Mainz, 12th c.) are examples of tosafist compilations that included their interpretations of the
Talmudic text (not originally according to its order), plus additional material of theirs, plus students'
summaries of their rabbis' opinions.

[76] *Seder Olam* of Rabbi Simḥa of Speyer, which was lost, was, according to Urbach, most likely
organized by tractate. See Emanuel, *Shivrei luḥot*, 160 and Efraim Elimelech Urbach, *Ba'alei ha-tosafot:
toldoteihem, ḥibureihem, shitatam* (The tosafists: their history, works, approaches), 2vols., 4th ed. (Jerusalem:
Mosad Bialik, 1986)1: 417-418. According to Emanuel, it is impossible to know how the lost work was
organized.

[77] Emanuel, *Shivrei luḥot*, 250.

[78] Ta-Shma, "Review of Kupfer," 480. הלוא הוא ספר הליקוטים הפרטי שהיה ביד כל חכם, ושעבר בירושה מאב
לבן ומחכם לתלמיד. נקל לשער את דרך מסירתם של ספרי הליקוטים מדור לדור. גליונות והוספות, מחיקות, עיבודים וקיצורים סייעו
''לגלגל'' ספרי ליקוטים ישנים לחדשים, ורעיונות שנראו חשובים בעבר שוב לא נראו כך, ובאו אחרים תחתיהם, 'כפי הפשטים
המתחדשים בכל יום

UNIT I, CHAPTER 1: THE INHERITED TRADITION

As students and sons inherited these compilations, they added to and removed from them, rearranged them and edited them according to their particular needs. As the era of the great tosafists began to wane, towards the end of the thirteenth century, the creation of innovative interpretations of the talmudic texts that were generated and studied alongside them gave way to simpler, piecemeal summaries of practical halakha that did not reinterpret the talmudic text. The organizational principle of the compilation became one of the most prevalent forms of halakhic writing in Ashkenaz. Moreover, in the course of the thirteenth, and, mainly, the following century, the compilation of such collections turned into an art form in its own right and the composition of notebooks such as these became the central textual focus of scribal energies.

Compilation as a practice of collecting and transmitting texts was gaining ground in thirteenth-century Europe. The scholar of medieval manuscripts Malcolm B. Parkes describes the thirteenth century in the following terms: "the age of the compiler had arrived."[79] This phenomenon has a parallel in the world of halakhic scholarship at the same

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[79] Malcolm B. Parkes, "The Influence of the Concepts of Ordinatio and Compilatio on the Development of the Book," in *Scribes, Script and Readers: Studies in the Communication, Presentation, and Disemination of Medieval* (London: Hambledon, 1991), 35-69.

See also Armando Petrucci, *Writers and Readers in Medieval Italy: Studies in the History of Written Culture*, trans. Charles Radding (New Haven: Yale University Press, 1995), who discusses the shift from the unitary work to the miscellany and relates it materially to the shift from scroll to codex (the latter begins earlier, obviously); he also distinguishes anthologies and excerpts written separately and successively over time from the category of miscellanies (which are "finished" works). He concludes, "One has the impression, indeed, that it was only toward the end of the Gregorian age or immediately afterwards that the model of miscellaneous book as incoherent, inorganic, and reduced purely and simply to being a container of heterogeneous texts – a model already in use in Egypt's Christian community – was introduced into European written culture. This phenomenon seems of greatest importance because the inorganic miscellaneous book ends up being one of the greatest and most significant novelties of book production in the eighth century." Petrucci, *Writers and Readers*, 16.

See Mariken Teeuwen, *Intellectual Vocabulary of the Middle Ages* (Brepols: Turnhout, 2003), 237-239 – under "compilare, compilatio, compilator," she points out the pejorative source of the word (to plunder, pillage...) and notes, "In medieval definitions of the terms, it is often stressed that the compiler, as opposed

time and place. In Jewish Ashkenaz of the thirteenth century, the intellectual practice shifted away from creating new commentaries and intervening in the interpretative tradition and turned increasingly toward putting halakhic sources, summaries, and conclusions into textual form. In that century, noting, reflecting on, and copying summaries, quotes, and pieces of knowledge from disparate halakhic sources and collecting these into compilations, *yalkutim* or *likutim* (the verb *le-laket* means "to harvest/collect")[80] became the predominant mode of relating to halakhic information.

The *likutim* contained primarily summaries of halakhic opinions and excerpts of interpretations, usually based on the tosafist tradition, but they also included other halakhic material, such as *minhagim* (customs), *shmu'ot* (transmissions of oral matters), *psakim* (lists of halakhic rulings and decisions), *takanot* (rabbinic ordinances), practical halakhic instructions, and also *tshuvot*, rabbinic responsa to (usually) practical halakhic questions. Depending on the scribe, a *likut* could also contain additions, such as personal glosses and copies of opinions or responsa from the author's rabbi or father. The purpose of such a compilation was not only to have a repository in which to store information that memory

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to the compositor or -> auctor, in principle adds no matter of his own." She points out that the term was used mainly in this more negative sense until the second half of the twelfth century (plagiarizing, stealing, "illicit borrowing," etc.). "This changed in the thirteenth century, when the genre of florilegia began to flourish in all kinds of areas ... the activity of compiling became more prevalent and sophisticated, and it was only then that the terms compilare, compilatio and compilator became firmly rooted in the vocabulary of the phenomenon." See Alastair Minnis, "Nolens Auctor Sed Compilator Reputari: The Late Medieval Discourse of Compilation" in *La Méthode Critique au Moyen-Age*, ed. Mireille Chazan and Denis Gilbert (Brepols: Turnhout, 2006), 47-63, on the shift in discourse concerning compilatio around the thirteenth century.

[80] In modern Hebrew, the word is suggested by the Academy for the Hebrew Language as the translation of "anthology"; their explanation for the word is as follows: ילקוט הוא אוסף של יצירות ספרות (שירים, סיפורים קצרים וכדומה) שיש להן דבר-מה במשותף, כגון נושא או תקופה. כחלופה לאנתולוגיה משמשות גם המילים אסופה וקובץ While *likut* or *yalkut* can be used to mean "anthology," I consider compilations to be a less edited and organized collection of texts, not necessarily meant for external readers, whereas anthologies are carefully curated, organized, and aimed at an external audience.

alone could not preserve, it was also a working tool, a usable archive that served the scholar in his studies,[81] containing a collection of halakhic texts that focused mainly on conclusions and summaries directed at determining actual halakha.[82] Compiling was not merely a scribal practice and form of transmission; it was an organizational approach. Some of the most important ashkenazic halakhic works in this period were themselves organized in compilation form, and more attention will be devoted to these works later.

Historians have advanced various reasons for this shift in focus from tosafot to *likutim*. Urbach points out that the period between the thirteenth and the sixteenth centuries is known in German legal history as "the period of the law books," and, according to him, a similar tendency can be seen in the Jewish milieu. "These law books are not books of laws, nor are they the fruit of official lawmaking; rather, they are private summaries of the law as it is practiced, and such summaries can also be found in books of halakha of *poskim*

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[81] Parkes shows how the shift from monastic to scholastic culture (and thus a shift in focus from the spiritual to the rational) leads to changes in the layout of books (from glosses on the bible to compilations). These compilations required investing thought in the organization of the compilation, which brought to the fore the issue of organizing compilations specifically. This new focus on organization was also reflected in book production, where organization was newly emphasized in many different ways (tables of contents, rubrication, alphabetical lists, cross-references, etc.). A shift in needs led to a shift in book production; order and organization thus mattered in new ways. Parkes, *Scribes*, 35-69.

In the Jewish world, an increase in textual material, and perhaps other changes, such as reduced self esteem, as discussed above, led to the need to collect and summarize material. There are several options as to the organization of such a compilation. Organization in itself did not become as central a concept to Jewish manuscript production as it was in the Latin scholastic world. However, the question of how (not) to organize remained a decision that every compiler had to make, and it is this phenomenon that is important here.

[82] See Emanuel, *Shivrei luḥot*, 8: "The specific ways of the German sages reached their apex at the end of the thirteenth century, precisely as the original creation diminished. The sages of Germany invested their industriousness in writing various types of *yalkutim*, which assembled fragments upon fragments from the writings of the tosafists, without adding almost anything from their own Torah. The collectors (*melaktim*) did not intend to present their own innovations in their books, and their entire goal was to present the student with the largest amount of texts that he might need at every stage of his studies."

(legal deciders) in Ashkenaz."[83] Urbach repeatedly mentions the low self-esteem and humility of the tosafists in the late thirteenth and fourteenth centuries and the high esteem in which they held their predecessors.[84] Ta-Shma connects this humble preference for collecting and summarizing the practiced law over the desire to innovate and generate new material by virtuosic legal interpretation to the ashkenazic pietist tradition. In his opinion, the compilation enterprise allowed the ashkenazic students of the tosafists to engage with tosafist material without engaging in their masters' sophisticated intellectual feats. This enabled the students to continue the tosafist project while also upholding the pietist value of humility, "merely compiling" for the sake of knowing how to implement the practical halakhic decisions.[85]

The two interpretations mentioned above consider the type of contents of the work to be directly tied to its organizational structure, associating the tendency to compile with lower intellectual aspirations. Scholars of the phenomenon in the Christian world have linked the increasing focus on working tools in the world of thirteenth-century Latin manuscripts to the shift from the monastic tradition of study to the scholastic approach to text, which generated new needs and emphases. Parkes considers the emergence of the Latin compilation a sign of a shift from a more spiritual monastic approach to the text to a

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[83] See Urbach, *Ba'alei ha*-tosafot, 1: 345. התקופה שבין 1200 לבין 1500 ידועה בתולדות המשפט הגרמני כ"תקופת ספרי המשפט." ספרי משפט אלה אינם ספרי חוקים ואינם פרי חקיקה רשמית, אלא הם סיכומים פרטיים של המשפט הנהוג. וסיכומים מעין אלה יש למצוא גם בספרי ההלכה של הפוסקים באשכנז.

[84] See Urbach, *Ba'alei ha-tosafot*, 2:585: "…the repeated chorus in those days was: 'We are not great scholars like the earlier ones.'"

[85] Ta-Shma, quoted in Emanuel, *Shivrei luḥot*, 5. חיבורים כמו ספר התרומה לר' ברוך ב"ר יצחק מוורמייזא, ספר יראים לר"א ממיץ, ספר הראבי"ה לר' אליעזר ב"ר יואל הלוי, ספר אור זרוע לר"י מווינה וסמ"ג לשר מקוצי הם ניסיון מונומנטלי לסכם את ההישג ההלכי של מפעל התוספות, ולשלבו כחלק אורגני בספר פסיקה נטול פלפול ונעדר משא ומתן נרחב בהלכה...

more rational scholastic approach, while Ta-Shma's analysis of Hebrew compilation highlights the humility inherent in the transition from creative interpretation to mere compilation. This can be helpful for considering some of the differences between the two cultures; in the Hebrew case, for instance the intellectual bent of the tosafists, who preceded the age of compilations, was more scholastic in nature than their successors, unlike the Latin case, where the scholastic approach replaced a the monastic one. Thus, the same modes of organization can carry different religious meaning depending on the culture that preceded it. In the Latin context, the shift from monastic study which clung to the order of the canonical texts to a different order that was easier for scholastic use signified a more rational approach, whereas, in the case of the tosafists, the writing down of texts and summaries marked an abatement in interpretational license and creativity. This comparison also cautions against any attempt to interpret religious and intellectual attitudes directly from the structure of works alone. Comparing these cultures of compilation is, therefore, especially productive not at the level of religious psychology but, first, at the level of practice and of knowledge management. Only after having arrived at an understanding of the organizational practice in its own right can one proceed to add social, communal, cultural and legal context, after which it becomes possible to advance more far-ranging interpretations.

Emanuel, for his part, suggests an explanation that considers the issue primarily from the perspective of managing knowledge. He considers it excessive to interpret these tendencies as immediate results of either external surroundings (German legal traditions) or internal religious attitudes (ashkenazic pietism), especially since he disagrees with

Urbach and Ta-Shma, who saw these compilations as mainly a German phenomenon. Emmanuel regards compiling as a general ashkenazic phenomenon, present in the French realm as well as in Germany.[86] Moreover, he thinks that the rise of the phenomenon is closely related to the rapid growth in textual material, which required a digest in order to become more manageable and to facilitate applying the law.[87] Thus, Emanuel's interpretation views this phenomenon, first, at the more neutral level of scholarly practice, building a much steadier basis as a starting point for subsequent inquiries into religious attitudes and cultural comparison.

Richard and Mary Rouse, who study the organization of medieval manuscripts in the Christian world, discuss the main shifts in the organization of manuscript texts. They describe the first such change in the Middle Ages as the progression from the use of memory as the primary search device, "the era in which one literally searched one's memory,"[88] to an increased use of artificial search devices. Rouse points out that many compilations "were in effect 'finding devices' in themselves."[89] Collecting material in a concise manner made it easier to obtain an overview and to find specific pieces of information. Emanuel emphasizes a similar use for Hebrew compilations; with the increase of varied written halakhic texts in the ashkenazic medieval tradition, by the thirteenth century, a very large number of halakhic texts were already in circulation. This posed

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[86] On the provenance of the compilation *Sefer ha-trumah*, see Emanuel, *Shivrei luḥot*, 6. Notwithstanding the name of the author, Rabbi Barukh of Germaiza, he was not from Worms, but rather, French.

[87] Emanuel, *Shivrei luḥot*, 5-6.

[88] Mary A. Rouse and Richard H. Rouse, *Authentic Witnesses,* 193. See also Thomas Clanchy, *From Memory to Written Record,* 3rd ed. (UK: Wiley-Blackwell, 2013), who notes this shift in the 12th-13th c. regarding official and legal record keeping (not scholarship).

[89] Rouse, *Authentic Witnesses*, 196.

intellectual as well as technical problems, as it became steadily more difficult to master all the material necessary in order to study a topic, and the sheer amount of material was almost impossible for scribes to copy in its entirety. The challenge was thus not only one of memory but also of management. "The solution to these problems is found by means of compilers and summarizers, who collected into one work all the books of the previous generations and gave to the scholars one work within which many commentaries can be found."[90] Providing a brief and concentrated version of a larger body of information that was spread over disparate works and writings, the compilation made it easier to locate information.

At the organizational level, we can thus generalize and say that ashkenazic *likutim* were knowledge-management tools. Parkes mentions that the emphasis on utility is evident in many thirteenth-century compilations: "Thirteenth-century scholars paid close attention to the development of good working tools ... this led to the development of the notion of *compilatio* both as a form of writing and as a means of making material easily accessible."[91] Mary and Richard Rouse also point out the function of compilations as tools: "These compilations were a new kind of literature in many ways, not the least which is that they're designed, not for reflective reading, but for seeking out specific information."[92] Many of the Hebrew *likutim* were similar tools. Writing a *likut* was a way of copying and summarizing only the necessary material. The *likut* functioned as a form of concentrated

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[90] Emanuel, *Shivrei luḥot*, 7.
[91] Parkes, *Scribes*, 58.
[92] Rouse, *Authentic Witnesses*, 197.

archive that not only contained collections of earlier halakhic material but also provided a place for the owner to add his own material that had been copied, collected, and created.

In view of the Rouses' discussion of contemporaneous compilation practices in the Latin world, Jewish scribes may, it seems, simply have shared the scribal methods and writing practices popular in their surroundings. It is at this level of practice that the two forms of compilation can most usefully be compared, namely, as a form of information management. It was necessary for all those who wished to engage in halakhic activity to possess as much halakhic textual material as they could bear to copy or have copied. Compilations were created in order to make the copying more manageable and to facilitate an overview and comparison of the multitude of materials. Moreover, the dispersion of Jewish communities after the Rindfleisch Massacres and Black Death, which led so many Ashkenazic scholars to wander in the process of their studies,[93] may also have increased the need for portable collections of halakhic texts.

In addition to responding to the growing volume of textual material, it becomes necessary to address the issue of finding information within the compilation itself, especially as the compilation grows larger. Along with the increased use of compilations as a working tool came increasing sophistication in the techniques of organizing and representing this knowledge. To this end, the pages of medieval compilations were often

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[93] See Elhanan Reiner, "Ben Ashkenaz li-Yerushalayim," [Between Ashkenaz and Jerusalem] *Shalem* 4 (1984): 27-62. See also Judah Galinsky, "Of Exile and Halakha: Fourteenth-century Spanish *Halakhic* Literature and the works of the French exiles Aaron ha-Kohen and Jeruham b. Meshulam," *Jewish History* 22 (2008): 81-96. Another explanation for the creation of compilations (especially those centering on custom) can be found in Rachel Mincer's study of compilations of Ashkenazic custom, which she relates to the displacement of communities and their need to preserve traditions in their new locations. See Rachel Zohn Mincer, "Liturgical Minhagim Books: The Increasing Reliance on Written Texts in Late Medieval Ashkenaz"(PhD diss., JTS, 2010) and Judah Galinsky, "Ashkenazim in Sefarad," 3-23.

laid out in ways that aided searching. Parkes states, "Compilation was not new ... what was

new was the amount of thought and industry that was put into it, and the refinement that

this thought and industry produced. The transmission of these refinements onto the page

led to greater sophistication in the presentation of texts."[94] He lists several techniques of

these layout methods that belong to the so-called non-verbal "grammar of legibility."[95]

Some of these techniques, such as rubrication and the marking of a citation by inserting

dots above the beginning (..) and ending (:) of the citation, are not so common in halakhic

manuscripts from the same period.[96] Some of the other methods, however, such as running

headlines, can be found frequently. Malachi Bet-Arié, in his study of thirteenth-century

Hebrew manuscript compilations, points out that such methods became more frequent and

more developed in the thirteenth century. He points out other techniques, such as the use

of differences in scale by employing bigger letters for the initial words of units, and he

notes continuous growth in the use of such devices to shape reader's understanding of the

text.[97] An additional way of simplifying searches started to become routine at this time. As

Mary and Richard Rouse point out, "the simplest finding device was the list of chapter

headings prefaced to the work."[98] In the Latin context, the Rouses explain, "Tables of

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[94] Parkes, *Scribes*, 58.

[95] Parkes, *Scribes*, 1-17.

[96] The equivalent of quotation marks in Hebrew writings are the abbreviations וז״ל ("*ve-ze leshono*" [and this is his language]) and עכ״ל ("*ad kan leshono*" [until here his language]), but those are found in the body of the writings and thus not as easy to spot – they are the equivalent of regular quotation marks, but not a technique or particular finding aid developed for *likutim* specifically. In some manuscripts, you also find actual quotation marks, but within the text, not above or around the lines; they are less prominent than the examples Parkes provides.

[97] Malachi Bet-Arié, *Unveiled Faces of Medieval Hebrew Books* (Jerusalem: Magnes Press, 2003), 59. "In this respect [finding techniques in layout], Hebrew manuscripts unquestionably display an evolutionary process that was radically accelerated in Europe in the thirteenth century."

[98] Rouse, *Authentic Witnesses*, 198. See also Parkes, *Scribes*, 54.

chapters can be found in earlier books. But with the mid-twelfth century, such tables in Latin works become the norm, rather than the exception...."[99] This "simplest finding device" is also present in many kinds of *likutim*. The table of contents, called a *reshimat simanim* (list of signs) or *rashei prakim* (heads of chapters), is, in a sense, a concentrated version of the *likut* itself, thus applying the process of summarizing and concentrating to the compilation, providing an even briefer version and enabling an overview.

Intellectually, this shift implied a move away from scholarly interpretation and a move towards summary and paraphrase, although some exceptions can be noted. More importantly for our purposes, however, is not the question of scholarly project versus summary, but, rather, the organizational aspects shared by these writings, most significantly, openness.

## 4.     OPENNESS OF CONTENTS: MULTIPLICITY

The two following sections will inquire into two aspects of the *likut* and its openness: contents and structure. These characteristics will be discussed more generally, as well as in context of some of the more famous halakhic works of the thirteenth and fourteenth centuries. As mentioned, *likutim* of all kinds existed. Some of these were merely personal notes and excerpts, while others resemble our notion of books in many ways. In the process of listing the main ashkenazic works of halakha in this period, I inquire whether the openness of the *likut* can be said to apply to these works. If these works can indeed be

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[99] Rouse, *Authentic Witnesses*, 197.

characterized as *likutim*, then the element of openness is central for our entire understanding of the development of ashkenazic halakha in the early modern period.

The most important examples of halakhic works from this era, the thirteenth and fourteenth centuries, were copied often, eventually printed, and are thus known to us. These are: *Sefer Raviyah*, (Book of Raviyah), a compilation written by Rabbi Eliezer ben Yoel ha-Levi; *Sefer ha-terumah* (Book of the offering) by Rabbi Barukh of Germaiza;[100] *Sha'arei Dura* (Gates of Düren) by Rabbi Yiẓḥak of Düren;[101] *Sefer ha-Mordekhai* (Book of Mordekhai) by Rabbi Mordechai ben Hillel; *Or zarua* (Sown light) by Rabbi Yiẓḥak of Vienna; *Hagahot Asheri* (Glosses on Rabbi Asher) of Rabbi Yisrael Krems; and *Hagahot Maimoniot* (Glosses on Maimonides) of Rabbi Meir Kohen. In this section, the characteristic openness of the compilation will be related to the aspect of its *contents*; the variety of types and genres of writing that can be found in compilations. The subsequent section will consider the characteristic openness of the compilation in terms of its structure, and discuss each of these works individually.

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[100] On *Sefer ha-trumah*, see Yoel Friedman, "Sefer ha-trumah le-Rabbenu Barukh ben rabbi Yiẓḥak: megamot, mivneh, ve-nusaḥ" (Rabbi Barukh ben Rabbi Yiẓḥak's *Sefer ha-trumah:* Agenda, structure and editions) (PhD diss., Hebrew University, 2013).

[101] See Jacob Freimann, "Das *Sefer Amarkal al Hilkhot Yayin Nesakh*" in *Festschrift zum Siebzigsten Geburtsage David Hoffmann's. Gewidmet von Freunden und Schülern*, 3 vols., ed. Shimon Eppenstein, Meir Hildesheimer, Joseph Wohlgemuth (Berlin: Louis Lamm, 1914), 421-422n4. Freimann believed that *Sha'arei Dura* is from the 14th century.

Rabbi Yeshaya Nathan Freilich, who published *Sha'arei Dura ha-shalem* (Complete *Sha'arei Dura*), ed. Yeshaya Nathan Freilich (Varnow, 1940-1), disagreed, claiming that Rabbi Yiẓḥak must have lived in the mid-13th century. Others still believed that he lived in the mid-14th century; see Yisrael Elfenbein's introduction to *Minhagim yeshanim mi-Dura: minhagim shel kol ha-shana me-Ashkenaz mi-me'ah ha-13* (Old customs from Düren: customs of the entire year from Ashkenaz in the 1300s), ed. Yisrael Elfenbein (New York, 1948), especially 132-134, and see Israel Ta-Shma, "Al sefer isur ve-heter shel Rabenu Yeruḥam ve-al R' Yiẓḥak mi-Dura," (On the book of prohibition and permission of Rabenu Yeruḥam and on Rabbi Yiẓḥak of Düren) *Sinai* 64 (1969): 254-257.

The contents of most ashkenazic *likutim* were not narrowly defined; typically, they were neither author-specific nor culled from one single type of halakhic writing. *Likutim* from this period encompass source material from a range of authors, periods, and types of halakhic writing. A *likut* is sometimes identified with one individual (either the scholar who created it or the prominent rabbi whose opinions are included within), but the material included in the *likut* derives from a wide variety of rabbinic figures, periods, and genres, which are not clearly differentiated or classified. Various halakhic textual material, such as witnessed custom; oral testimonies; exemplary documents; rulings; ordinances; correspondence; manuals; and so forth, were often included within the same compilation. These works were "inorganic" collections, to use Armando Petrucci's term.[102] If a scribe were to create a code, these distinct types of halakhic material would have to be processed and transformed before they could be placed within one continuous organizational scheme. In the ashkenazic *likutim*, however, they can often be seen alongside one another.

We tend to consider *psakim* (concluding decisions), *ḥidushim* (novellae), *minhagim* (customs), *shmu'ot* (statements that were transmitted orally), *tshuvot* (responsa), *takanot* (ordinances), and many other types of halakhic texts as significantly different genres. Within *likutim*, however, all of these types of text can be found, often side-by-side or intermingled. Practical manuals or professional literature constitute another form of halakhic writing often included in compilations. These were written for specific religious professions such as Torah scribes, ritual slaughterers, circumcisers, etc.[103] They contain

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[102] Petrucci, *Writers and readers*, 16, and see in this chapter n79.

[103] See Israel Ta-Shma, "Kavim le-ofyah shel sifrut ha-halakha be-Ashkenaz ba-me'ah ha-13-14," (Characteristics of halakhic literature in Ashkenaz in the 13th-14th centuries) in *Alei sefer* 4 (1977): 20-41,

instructions that often combine textual material (copied from earlier manuals) with oral teaching and observed, experienced tradition.[104] Professional literature and other manuals understandably follow a practical step-by-step order. In some cases, these manuals circulated separately. As such manuals were very short, they were often added to compilations, copied within them, and preserved alongside other material in compilations. In sum, the variety of the material means that the looser, more heterogeneous form of compiling, rather than codifying, was more appropriate for the creators of these ashkenazic *likutim*.

Another marker of this flexible nature is the fact that most ashkenazic books of *likutim* did not have titles or names that indicate one topic; instead, they are referred to simply as "*Likutei* (the *likutim* of) Rabbi so-and-so."[105] Alternately, terms such as *yalkut* (a noun similar to *likut*), *nimukei* (remarks of), *yesod* (foundation), *matbe'a* (coinage), *seder* (order), or *kuntres* (quire/booklet)[106] are used to refer to such works. Other terms are

where the concept of "professional literature" is explained. For instance, *sidrei get* (orders of divorce), which detail the ways in which a divorce document must be (first) written and (then) handed over or sent by a specially appointed messenger and (later) received, will usually follow the logical order of the necessary actions. The same is true for written instructions on conducting the ceremony to release a woman from levirate marriage (*ḥaliza*). Another manner of organizing practical instructions is in the form of a poem, which can facilitate memorization; this is particularly useful for the kind of practical laws and instructions that need to be carried out manually "in the field." Rabbi Mordechai ben Hillel's laws of slaughter and examination, for instance, are, unlike his compilation (known as "the *Mordekhai*"), written in the form of a poem. Professional literature is distinct from both codes and compilations. It resembles codes in the sense that it attempts to cover every relevant step, but it is much more limited in its scope and depth than standard halakhic codes. Moreover, they often are found as parts of larger compilations.

[104] See Emanuel, *Shivrei luḥot,* 249, who presents an example from the *Hilkhot bdika* (laws of examination, usually related to ritual slaughter) of Rabbi Yaakov of Eppenstein (from a dated responsum, we learn that he lived in 1326).

[105] Emanuel, *Shivrei luḥot*, 250.

[106] See Avigdor Aptowitzer, *Sefer mavo RAvYh* (Introduction to Rabbi Eliezer ben Yoel ha-Levi) (Jerusalem: *Mekiẓe Nirdamim,* 1984), 85, on Rabbi Eliezer ben Yoel ha-Levi's interchangeable use of "*kuntresim*" and responsa. Salo Baron translates the word *kuntres* as "a quntres (handbook, probably derived from the Latin commentarius)." See Salo W. Baron, *A Social and Religious History of the Jews: Volume VI*

*gilyonot* (also, booklets), *psakim* (rulings), or *koveẓ* (booklet). At times, a compilation is referred to in terms of the main book that was (ostensibly) being glossed: for example, "the *Mordekhai* of rabbi-such-and-such," will refer to a certain rabbi's compilation based on *Sefer ha-Mordekhai*, itself a compilation from the thirteenth century. Generally, titles of *likutim* are used interchangeably. One and the same work was often given different names by different scholars, with no "official," consistent and generally accepted name attached to the work.

Some of the terms used in titles of a *likut* highlight one type of halakhic writing. "*Piskei ...*" refers to rulings, for example; "*Minhagei...*" to customs; "*Tshuvot...*" designate responsa, and so forth. These "titles" will usually correspond to the material that sets the tone for the majority of the contents of these compilations. It rarely means, however, that a compilation contains exclusively the kind of material alluded to by the title. A collection

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– *Laws, Homilies, and the Bible*, 2nd ed. (New York: Columbia University Press, 1958), 49. Baron is referring to RaShY's own accumulation of written texts, which his students (the tosafists) referred to as RaShY's "*kuntres.*"

On the term *kuntres*, see also Malachi Bet Arié, *Codicologia Ivrit* [Hebrew codicology] (Accessed via Academia.edu, pre-publication internet version 2.0, 2013), 228-239.

It is worth noting that the term "commentarius" itself, however, had many uses (some referring to an intellectual activity such as writing a commentary, and some merely referencing a material phenomenon – "notebook" etc.). See, for instance, Teeuwen, "The most common method of teaching in the Middle Ages consisted of the reading of a(n authoritative) text, which was simultaneously explained and commented upon by a master. This activity of explaining and commenting on a textbook was, from late Antiquity onwards throughout and beyond the Middle Ages, commonly referred to by the verb *commentary ...* the result was called a *commentarius ...* and the writer of the commentary was called a *commentator.* Terms which could be used with similar meanings are *exponere ... annotare ... glossare ...* etc. One should note, however, that *commentari* and its derivative *commentarius* had more meanings than just this narrow one. [examples: register, record, things that need remembering, '*commentari*' as a derivative of '*con*' and '*miniscor*'] ... With reference to literary works, the verb was used to refer to the writings of note-books or treatises in general, or to the jotting down of short notes to aid one's own memory.... *Commentarius* was used for 'booklet' (of a synoptic nature), 'register,' 'enumeration,' or even '*translatio*'; commentator had the meaning of 'composer (author) of a literary work' in general, in addition to the more specific meaning of 'writer of a commentary.' ... The diverse meanings of *commentari* which were used in Antiquity continued to exist in the Middle Ages..." Teeuwen, *Intellectual Vocabulary*, 235-236.

would sometimes be called a "*Koveẓ tshuvot*," (booklet of responsa) for instance, but this does not necessarily mean that it contains purely – or even predominantly – responsa. The various compilations of responsa of Rabbi Meir of Rothenburg, for example, are usually termed "responsa," but contain a wealth of other halakhic material. Conversely, a collection of teachings from Rabbi Rothenburg compiled by a student who was learning with him during his incarceration, *Sefer tashbeẓ* ("Book of *taShbeẒ*", an acronym for Shimon bar Ẓadok, the student), is considered a book of customs, but also includes other material, such as rulings and responsa (indeed, the "t" in the acronym of the title probably stands for *tshuvot*, meaning responsa).

This openness when it comes to the variety and uneven nature of the *likut's* contents can be observed not only among the countless unknown manuscript compilations, but also among some of the most important works of halakha from Ashkenaz. When considering some of the more important ashkenazic works of this period, the variety of types of halakhic material that they include stands out. The thirteenth- and fourteenth-century ashkenazic compilations include rulings, customs, manuals, responsa, and many other types of material; often minimal or no efforts were made to unify the styles and the form of these different writings. All the main ashkenazic works of halakha contain more than one type of halakhic writing (usually several).[107] An early example is the compilation by Rabbi Eliezer ben Rabbi Yoel ha-Levi (the abovementioned "Raviya"), the teacher of Rabbi

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[107] In the words of Emanuel: "...the main method of the sages of Germany at the turn of the thirteenth century... They collected their entire teachings in one work, which was organized according to the order of the Talmud, more-or-less; and they embedded in it also explanations of Talmudic issues, responsa, and more. Emanuel, *Shivrei luḥot*, 134-135.

Yiẓḥak of Vienna, who wrote *Or zarua*. Rabbi Eliezer's work is known as "*Sefer Raviya*" or "*Avi ha-ezri*," and contains a mixture of responsa and *dinim* (laws) on the topic of the holidays, blessings and prayers, and ritual slaughter, arranged according to the talmudic tractates. Both *Or zarua* and *Mordekhai*, similarly, contain halakhic summaries, glosses, rulings, and responsa. A collection of responsa is appended to *Or zarua*. These responsa were mainly – but not exclusively – written by the compiler himself. In *Sefer ha-Mordekhai*, responsa, many of which stem from Rabbi Meir Rothenburg, are included throughout. One distinct genre of halakhic *likutim* prepared by collecting and compiling fragments were books of "*isur ve-heter*" (prohibition and permission), short, practical collections usually of basic laws, mainly concerning kosher food and slaughter, designed for use by local rabbis. One such work that became very widespread was *Sha'arei Dura*, a compilation of the laws of kosher foods and menstrual purity, which includes a wide variety of halakhic contents; testimonies, oral transmissions, and textual sources, mainly copied from several predecessors such as *Sefer ha trumah*.

More importantly, these compilations often reveal indifference to the question of diverse genres. There are, for instance, manuscript compilations of material associated with Rabbi Yiẓḥak of Düren that are distinct from *Sha'arei Dura* and usually called *Minhagim mi-Dura* (Customs of Düren). In several copies of this compilation, the title uses the term *minhagim* (customs) while the colophon of the very same manuscript refers to the compilation as containing *psakim* (rulings).[108] *Sha'arei Dura* itself had many names. It is sometimes referred to as "*Sha'arim*," or "*Dura*," or "*Isur ve-heter*" often followed by the

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[108] See Elfenbein, *Minhagim yeshanim mi-Dura,* 130-131.

name, not of the author, but of the specific scholar who owned and annotated that copy.[109] The end of each section in *Hagahot Maimoniot* contains an appendix titled "*Tshuvot Maimoniot*," (Maimonidean responsa) in which Rabbi Meir added additional tosafist material that consists mainly, but not solely, of responsa related to that section.[110] Appending material, rather than rearranging and integrating, is typical of a compilation, as opposed to a code.

This open manner of bringing together sources from different halakhic registers, authors, and times is one of the main characteristics of *likutim*. At the contingent level, it is a simple way of coping with too much textual information, enabling the collection of a variety of texts without the need to rearrange or process the material. On a deeper level, this process reflects a more fundamental approach. *Likutim* unify multitudes of disparate halakhic material without, at the same time, contending that these sources are homogenous, comprehensive, or form an ultimate collection.

### 5.     OPENNESS OF STRUCTURE: FLEXIBILITY

The Spanish milieu in the thirteenth and fourteenth centuries saw the writing of several important halakhic works that were structured as codes, such as the *Orḥot ḥayim* (Ways of life) by Rabbi Aaron ha-Kohen,[111] who emigrated from southern France to Majorca; the

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[109] See Israel Isserlein, *Trumat ha-deshen* (Venice, 1519), §97, for an example and Dvileiẓky "Introduction," *Sha'arei Dura*, ed. David Dvileiẓky (Bnei-Brak: Elon, 2016), 2, for more examples of scholars who had "their" *Sha'arei Dura*.

[110] Emanuel, *Shivrei luḥot*, 10.

[111] Rabbi Aaron ha-Kohen (c. 1260-1330). Shlomo Zalman Havlin suggests that *Orḥot ḥayim* was preceded by a compilation referred to simply as "*Kol bo*" (compendium), which he began prior to his expulsion and continued to work on and revise during his wanderings. Eventually, *Orḥot ḥayim* was printed as though it were a separate work under this title in the 15ᵗʰ century. "Orḥot ḥayim is thus a more elaborate

*Sefer meisharim*/*Toldot Adam ve-Ḥava*, (Book of righteousness/History of Adam and Eve)

written by Rabbi Yeruḥam ben Meshulam,[112] who likewise fled southern France for Castile;

and, of course, the *Arba Turim* by Rabbi Yacov ben Asher, who left Germany and wrote

this work in Castile. These works contain primarily halakha as well as strands of custom,

but their complete, integrated, and systematically organized nature places them in the realm

of codes, rather than personal and open compilations.[113] The collections of halakhic

material created in Ashkenaz, on the other hand, were almost all organized like

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and better structured version of the *Kol bo*," writes Galinsky. In this case, the work started out as a compilation in Ashkenaz and was then rearranged, elaborated, updated, and systematized into a code in Sefarad. See also Galinsky, "Of Exile," 84.

[112] Rabbi Yeruḥam ben Meshulam (c. 1290-1350)'s compilation of halakha, *Sefer toldot Adam ve-Ḥava* (late 13th-early14th c.) is organized according to the life cycle of man – "man" here is used intentionally – with *Sefer Adam* (The Book of Adam) representing all the aspects of life until marriage, and *Sefer Ḥava* (the Book of Eve) man's life from marriage until death. The author was preoccupied with creating a thorough structure and systematic scheme for the work. However, Rabbi Yeruḥam's decision to build this structure also meant that many other parts were wedged in by means of awkward associative bridges in unexpected places. For instance, the laws of desecrating the Sabbath in case of emergencies is placed near birth, because many cases when the Sabbath may be violated involve caring for those who are weak, such as newborns and women after birth. See also Judah Galinsky, "'A Straightforward Path for All': Jeruham the Exile and His Recensions of the 'Guide to Justice' (Sefer meisharim)," *Jewish Studies Quarterly* 15, no. 3 (2008): 251-68.

[113] For a discussion of the fact that all these authors emigrated from Ashkenaz but wrote these codes in Sfarad, see Galinsky, "Of Exile," 87, who explains, "The unique literary character of both the *Meisharim* and the *Toldot Adam ve-Ḥava* lies in their elaborate tables of contents." This alone points to their being codes rather than compilations.

compilations.[114] This section presents a short overview of these important examples[115] and

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[114] A further example, which is not as strictly "ashkenazic" as the other works discussed here, and, indeed, seems to occupy middle ground between a sfardic codification and an ashkenazic compilation, is from Italy: *Shibolei ha-leket* by Rabbi Ẓidkiyahu ben R. Avraham Rofeh, (13thc.). This compilation of responsa, rulings, and custom centered on laws of prayer and holidays: it contains a list of the twelve *arugot* (flowerbeds) into which the work is divided, with a one-line description of every item. A selection of topics from the work includes: prayer, Sabbath, blessings, the new month, Purim, Passover, the "intermediate" holidays, fast days, etc.

 *Shibolei ha-leket* was consciously reorganized on the basis of a less organized compilation that preceded it. Scholars have found other manuscript collections from the same author, which were most likely based on the notes of Rabbi Ẓidkiyahu himself, containing a collection of source material later to be worked into a finished compilation. This collection of notes, which came to be known later as *Ma'aseh ha-ge'onim* (The actions of the *geonim*.), however, is not a finished work, and it did not have a real title. In fact, the name *Ma'aseh ha-ge'onim* has no real meaning and is simply derived from the first passage of the collection. See *Shibolei ha-leket*, *helek sheni*, vol. 2, ed. Rabbi Simḥa Ḥasida (Jerusalem: Makhon Yerushalaim, 1988), introduction.

 The work is organized according to the aforementioned "flowerbeds," which each focus on one topic, and it concludes with a poem that hints at the order of the topics and the number of items in the book, yet another sign of careful planning and editing on the part of the author.

 In the introduction, the author mentions his name, as the person who wrote the work. The introduction includes an opening in which the author explains that he "stood up to wander in the fields of wise men and harvested among the stalks," in order to make it easier to study halakha. In this introduction, he also quotes his rabbi, Rabbi Yehoshua di Trani's use of the trope of dwarves standing on the shoulders of giants to justify the fact that his work sometimes dares to decide in favor of one esteemed precursor over another. These elements from the introduction highlight both the idea of an external audience being exposed to the work, as well as its coherence as a thought-out and defined, finished project. The connection between broadly published works and authorship, as opposed to works circulating privately and lacking authorship, will be discussed in the following sections of this chapter.

 *Shibolei ha-leket* was printed in Venice in 1546 by Daniel Bomberg under this title, based on a manuscript compilation. In fact, the work that was printed was closer to a work based on *Shibolei ha-leket* than to a printing of the book itself: it was abridged in some places, different source material, including more recent sources, had been added, and the name of the author was omitted. Although the book seems like a finished unit, the author clearly encourages his readers to continue compiling, adding, and removing from his book as they see fit:

וכל משכיל אשר ימצא את קומצו מבורץ גדוש או מפורס בגרגר או קורט לקט ופרט עומר שכחה ופיאה והיה ...

כי נראה פן תקדש המלאה ימלא את ידו ויוסיף שנית לקיים בו מצות פתיתה...ויכריעני לכף זכות כי לשם הקודש היתה כוונתי

[115] One perhaps lesser-known example*: Sefer ha-agudah* (collection) of Rabbi Alexander Zuslein ha-Kohen (Ehrfurt, d. 1349), which was printed in Cracow, 1571 by Rabbi Yosef Katz (known for his responsa collection, *ShUT she'erit Yosef*). From the first printed edition, it seems that 16th-century Jews almost forgot this work. Its order approximated that of the tractates. In the first printed edition, the 16th-century editor mentions that the work had no title (*Sefer ha-agudah le-R. Alexander Kohen* simply means "collection of R. Alexander Kohen"), שמחבר הספר הזה ספר האגודה לרוב ענותנותו לא קרא שמו על ספרו. והנה מצאתי בספר ישן וזה לשונו: 'ספר האגודה עשה אותו גדול ששמו מהר"ר אלכסנדרי הכהן ושנוי שמו היה מהר"ר זויסלין מק"ק ורנקוורט והוא ה"ר ז'"ך' עכ"ל

איך אסף בקיצור נמרץ ישנים גם חדשים מכל אשר לפניו, כי יש שקבץ גם כן הכל אבל באריכות ויש שהניח הישנות בסמכו על הגמרא ואלפסי, אבל מחבר זה חבר כל התורה בשיתא סדרים אפי' סדר טהרות וקדשים וזרעים שלא דברו ממנו רוב הפוסקי' וכל מה שחדשו מי שקדמוהו כתב גמר פסק ההלכות וגם כסה תשובות אשר לא נמצאו בפוסקים שלפניו כאשר לא היה סוף כל מחברי ספר על התלמוד כי אחריו לא מצא ספר מפורס על כל התורה. ועוד הוסיף מדיליה מה שדלה דלה ממעיין התלמוד בבלי וירושלמי בלבו הרחב ושכלו הזך חדושים הרבה עד מאד מה שלא נמצא בספרים שקדמוהו תמהתי ורעיוניי על משכבי למה הוא מונח בדור הזה בקרן זוית...

examines to what extent they constitute compilations rather than codes in their *structure*.

The majority of ashkenazic works of halakha do manifest some overall structure, albeit not a strong one. Sometimes this is simply the result of the work upon which the compilations were based.[116] In other cases, the creator of a *likut* broke up the older works that he was copying by summarizing the necessary parts (either quoting word-for-word or paraphrasing)[117] and adding a new layer made up of his own material, the notes from his rabbi or relative, another *likut*, or other newly acquired material. In these cases, organizational framework did not stem from the works that were being used as source material; the compiler had to decide upon the order for noting the summarized parts. Rabbi Mordekhai ben Hillel's *Sefer Mordekhai* (or *Mordekhai*, for short) is the prime example of this kind of compiling. Written in the thirteenth century, this collection contains the laws from the Talmud, the divergent talmudic opinions, and those of Rashi and the tosafists, the customs and laws of later authorities, and responsa. Structurally, *Mordekhai* chose to follow the order in which the laws appear in Rabbi Yiẓḥak al'Fasi's eleventh-century extraction and summary of the applied laws in the Talmud, known as "the *RYF*," which itself follows the order of the talmudic discussion.[118] As the *RYF* follows the Talmud, which is not a code, the order of *Mordekhai*, is, like that of the *RYF*, more akin to a compilation than to a code. Moreover, as *Mordekhai* presents information only intermittently, it can

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[116] Emanuel explains the main techniques for organizing such compilations: "These books [*likutim*]...were created in two opposing ways: either by writing new books, on the one hand, or by updating old books, on the other." Emanuel, *Shivrei luḥot*, 7.

[117] The former was, according to Emanuel, more typical for the German sphere, whereas the latter was common in many works stemming from France. See Emanuel, *Shivrei luḥot*, 7.

[118] See Reiner, "Ben Ashkenaz li-Yerushalayim," 27-62.

thus not be considered a comprehensive collection of the material in the *RYF* either. Its structure is thus clearly that of a compilation.

Similarly, Rabbi Yiẓḥak ben Barukh of Germaiza's thirteenth-century compilation *Sefer ha-trumah*, presents practical halakhic summaries primarily of tosafist opinions. In addition to these practical summaries and *psakim*, which relate to concrete questions that occurred to Rabbi Barukh and others, the work contains other types of writing, more akin to scholarly investigations. It is organized by topics (phylacteries, Sabbath, slaughter, etc.), which, in turn, are arranged according to the order of their treatment in the Talmud. In the case of *Sefer ha-trumah*, the compilation follows the talmudic discussion very closely – to the extent that it often preserves repetitions where the Talmud discusses a similar topic several times, rather than removing the repetitions in favor of a more consistent structure. Moreover, not every single topic of the talmudic discussion is of interest to Rabbi Barukh, and some issues are, thus, skipped. Although there is, on the one hand, considerable effort to create a clear structure, the repetitions and the skipping highlight the fact that it is organized as a type of compilation summarizing and glossing on the talmudic corpus, rather than as a unified code. The order of the tractates does not really create an entirely contained, complete, and unequivocal system of organization. In addition to discussing one topic in various places, the Talmud does not mention every possible law that a thirteenth-century compiler may want to add, meaning that an arrangement that follows the Talmud will not include every item of halakha. The author of *Sefer ha trumah* thus had to add sections to

the organizational structure of his compilation, such as sections for the laws of writing

phylacteries and *mezuzot*.[119]

*Or zarua*, written by Rabbi Yiẓḥak ben Moshe of Vienna (d. ca. 1250), is one of the

most important ashkenazic works from the period. The author's voice and intellectual

interventions are strongly palpable. Organizationally, it is structured like a compilation,

with topics roughly but not entirely following the order of the tractates, without mentioning

every item discussed in the tractates in the work. The author begins with an introduction

explaining the book's title: his favorite verse in Psalms begins with the words "*Or zarua*

*la-ẓaddik*"[120] and its final letters spell out the name "Akiva." Akiva the sage was said to

have interpreted the deepest meanings of the Hebrew alphabet, and, for this reason, Rabbi

Yiẓḥak explains, he prefaces his work with an interpretation of the mystical work attributed

to Rabbi Akiva, which delves into the secrets of the letters of the Hebrew alphabet. Rabbi

Yiẓḥak goes on to explain that he decided to begin with the laws of charity (*ẓdakah*), in

accordance with the verse from Genesis 18:29, "and they shall keep the way of the Lord,

to do justice (lit. *ẓdakah*) and judgment." The rest of the work is organized according to

the tractates of the Talmud, apart from the collection of responsa, which is appended to the

end of the book rather than being integrated into the work in a more streamlined manner.

In *Sha'arei Dura*, the part dealing with the laws of salting slaughtered meat is divided into

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[119] For example, in many compilations based on *Mordekhai*, sections with laws on specific topics were added, such as the laws of phylacteries and *mezuzot*, the order of a divorce document, laws of official documents, etc. See Shmuel Kahan, "Rav Mordekhai ben Hillel ha-Ashkenazi" *Sinai* 14 (1944): 41, and Yiẓḥak Sofer, "Hilkhot ẓiẓit mi-tokh sefer Mordekhai Katan le-Rabbenu Shmuel mi Shlittstadt," (The laws of fringes from the book Mordekhai Katan by our rabbi Shmuel of Shlittstadt) *Hizei ha-giborim* 9 (2016): 128-175.

[120] Psalms 97:11, "Light is sown for the righteous…"

ten subdivisions, called *she'arim* or "gates," hence the name of the work. After the ten sections on meat, the other laws simply follow one another without any definite structure.

Another type of compilation method used only the structure of a pre-existent work as the basis for organizing its material. This is similar to the way in which a gloss comments on an earlier work, but with the difference that there is very little connection to the pre-existent work itself. The most important examples of these are the *Hagahot Asheri* of Rabbi Yisrael Krems, which is organized as a gloss of *Piskei haROSh* (Rulings of the ROSh, Rabbi Asher ben Yeḥiel, c.1250-1327). Similarly, *Hagahot Maimoniot* of Rabbi Meir Kohen uses Maimonides' *Mishneh Torah* as a basis. Although their titles often include the word "gloss" (*hagahot*) and their organization may resemble that of a gloss externally, the result has little in common with the original work it is supposedly glossing.[121] Whereas glosses tend to explain, expand, and engage with the material they are glossing, this is not the case for these compilations. Rabbi Ḥayim Yosef David Azulai, a seventeenth-century rabbi who wrote a bibliographical work, describes *Hagahot Asheri* in this manner: "The known thing is that *Hagahot Asheri* are innovations from our early rabbis and they were made to lean on the *psakim* of *ROSh* and they have no relevance to the words of *ROSh* themselves, but, rather, with the words of the Talmud that *ROSh* mentions."[122] These compilations use the organizational structure of an earlier work without engaging the contents of the work that is supposedly being glossed. In some cases, the *likut* may simply

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[121] Emanuel, *Shivrei luḥot*, 10. In the words of Emanuel: "Usually, glosses come to elucidate the work or to remark upon it, but in the case of the *gilyonot* [glosses, lit. sheets, papers] that we are discussing, they are appended to the margins of the work in an artificial manner, and they do not, in fact, have anything to do with the work that is written within."

[122] Ḥayim Yosef David Azulai, *Yosef omeẓ*, §48 (Jerusalem, 1961), 68b.

have started out being written on the margins of another work,[123] in which case it technically resembled a gloss. In terms of explicating that work, however, it is not really a gloss but merely a compilation that makes use of another work's structure.[124]

Thus, far from being entirely random, many of the important ashkenazic *likutim* do manifest some rough structure. In the case of certain works, such as *Or zarua*, for instance, the author's remarks attest to the fact that he consciously re-organized the compilation on the basis of his less organized earlier collection.[125] *Or zarua*, *Mordekhai*, *Sefer ha-trumah* and *Sefer Raviya*, to name a few, were all organized according to the tractates of the Talmud (if not necessarily the internal order within every tractate). The other above-mentioned ways of organizing *likutim* were, similarly, quite intuitive to a readership versed in halakha. None of these works, however, were comprehensive, consistent, or unified in their treatment of the talmudic tractates they followed. In sum, while they were somewhat structured, they could, at most, be considered somewhat ordered compilations, but most definitely *not* codifications.

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[123] An example of this: the tosafist Rabbenu Tam, for example, seems to have written some *psakim* in his copy of the *Sefer miẓvot katan*, where he had some blank pages, some in his maḥzor, and some in yet another work. See Emanuel, *Shivrei luḥot*, 280-281.

[124] More comprehensive, better-known, or more systematically organized halakhic books provide a better basis for a search. For this reason, *Sifrei miẓvot* (works that attempt to enumerate all the biblical commandments), such as Rabbi Yiẓḥak of Corbeil's *Sefer miẓvot katan*, (and, in a sense, Maimonides' code *Mishneh Torah*, which is presented in the introduction as an elaboration on the genre of *Sifrei miẓvot*), works that distill only the halakhic aspects of the Talmud, such as Rabbi Yiẓḥak Alfasi's work, or other lists detailing many laws, such as *Piskei ha-ROSh*, were useful as an organizational basis for these compilations.

[125] In *Or zarua*, we often see formulations such as "I wrote such-and-such [a summary] in my compilation … and could not find it [in the source] …" ואני כתבתי בליקוטי שיש... ולא מצאתי אותו בירושלמי... in Yiẓḥak of Vienna, *Or zarua*, Laws of meals, §190 (Jerusalem: Makhon Yerushalaim, 2010), 1:166; or, for instance, "...and after writing this, I saw in my compilation…" ואחר שכתבתי זה מצאתי בליקוטיי שכתבתי... Yiẓḥak of Vienna, *Or zarua,* Laws of the eve of Sabbath, §38 (Jerusalem: Makhon Yerushalayim, 2010), 2: 48.

Similar observations about the lack of codification can be made when considering

the tables of contents, the only search aid – if at all – prevalent in these *likutim*. *Sefer ha-*

*trumah*, for instance, was compiled together with a list of "*simanim*" (sections, signs)

created by Rabbi Barukh. The conclusion of the work explains the use of this list as follows:

> I wrote this book and he who looks at the *simanim* will understand and realize that
> they are hints. If he will see in them something akin to his question, he will often also find
> there explicitly the explanation of the thing, in short, with some proofs in a brief manner;
> however, within the book, there where the *siman* will point him to go see, there he will find
> everything to clarify, the proofs and reasons at length, as is necessary....[126]

In many other cases, it is not the author of the original compilation who created this

list, but a later scribe: An abbreviated list of the contents for the fourteenth-century

compilation *Or zarua* by Rabbi Yiẓḥak of Vienna was created by his son, Rabbi Ḥayim.

Alongside *Sefer ha-Mordekhai*, there soon appeared the *Mordekhai katan*, literally the

"Little Mordekhai," a shorter version of the work compiled by his student, Rabbi Shmuel

of Shlittstadt (Selestat). Virtually every famous *likut* either contains such a list, or a list is

made for the *likut* shortly after having been written. Not necessarily written as finding aids

for the fuller version of the text, some of the lists were used independently as an abridged

version of the compilation.[127] Unlike an index, however, the table of contents provides an

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[126] Barukh of Germaiza, *Sefer ha-trumah*, introduction to the *simanim*: אני ברוך ב״ר יצחק פירשתי ספר זה ויבין וישכיל הרואה בסימנים האלו שהן רמזים, אם יראה בהם מעין שאילתו גם שם ימצא מפורש בהרבה מקומות בירור הדבר בקוצר עם קצת הראיות דרך קצרה אותם בתוך הספר אשר יורינו הסימן ללכת לראות שם ימצא הכל מבואר כסדר .... In most of the extant manuscripts, this list can be found at the beginning of the work, but in some of them, the list is divided according to its subtopic, and every topic is listed before its section, rather than in one list at the beginning.

See Yoel Friedman, "*Sefer ha-trumah*: The Character of the Book, the Topics, and the Time of the Work's Composition," in Barukh of Germaiza, *Sefer ha-trumah: Laws of Ḥallah and the Land of Israel,* ed. Yoel Friedman (Kfar Darom: Makhon ha-Torah ve-ha-areẓ, 2016), 15. See also Emanuel, *Shivrei luḥot*, 288-289.

[127] In the Latin works discussed by the Rouses, the tables of contents of thirteenth-century compilations would soon become alphabetical indexes. In the Jewish world, the use of compilations and tables of chapters as a finding device supplement the use of memory at about the same time as the same shift

overview of the work without reorganizing or unifying. It does not remove repetition or

consolidate the contents, nor does it rearrange the entries into a more accessible scheme

(such as by topic, alphabetically, or otherwise). The tables of contents of these works, thus,

reflect the extent to which *likutim* were not organized in a complete, comprehensive, or

systematic manner, and thus possessed a looser structure.

Compilations are thus open and flexible in two main ways: the *structure* of the

material and the selection of its *contents*. Whereas codes are complete, comprehensive,

thoroughly structured, and contain only material that can be placed within one unified

structure, compilations are partial, flexible, varied, and less consistent in terms of structure

and the kinds of material included. Most of the halakhic works created in Ashkenaz in the

thirteenth and fourteenth centuries conform to this description of *likutim*. Some of these

compilations strove for some degree of organization, clearly underwent some editing, and

exhibited a certain logical order. Others were entirely haphazard collections of various

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discussed by the Rouses. The comparison ends, however, with the move to alphabetical order, as almost no Jewish works existed that employed alphabetical organization. This, however, need not puzzle us, as, "The use of alphabetical order ... was not inevitable; once introduced, its acceptance was neither immediate nor widespread." Rouse, *Authentic Witnesses*, 204.

For Jewish alphabetization, see Bella Hass Weinberg, "Predecessors of Scientific Indexing Structures in the Domain of Religion," in *The History and Heritage of Scientific and Technological Information Systems*, ed. W. Boyd Rayward and Mary Ellen Bowden (New Jersey: American Society for Information Science and Technology, 2004), 126-134. Hass Weinberg studies the earliest alphabetical indexes in Hebrew, including Masoretic lists. The first manuscript citation index (not a compilation) was probably *Mafteaḥ ha-drashot* [The key to sermons] by an unknown author (some claim it was Maimonides). Significantly, as the title implies, this was created for the use of preachers, just as were the works studied by the Rouses. Judah Galinsky points to a plan (which never came to fruition) for the creation of an alphabetical compilation of Jewish law, by a late fourteenth-century scholar from Castile named Shmuel ben Ẓadok ibn Shoshan. See Judah Galinsky, "On Popular Halakhic Literature and the Jewish Reading Audience in Fourteenth-Century Spain," *JQR* 98, no. 3 (Summer 2008): 323-324.

For perhaps the first Hebrew encyclopedia, see Debra Glasberg Gail's doctoral dissertation on Rabbi Yizḥak Lampronti: Debra Glasberg Gail, "Scientific Authority and Jewish Law in Early Modern Italy" (PhD diss., Columbia University, 2016) (see Columbia University Academic Commons, https://doi.org/10.7916/D8N58MNN).

kinds of halakhic textual material. But it can definitely be said that all *likutim* were

fundamentally open and flexible.

## 6. ASHKENAZIC LIKUTIM: MORE THAN A PRACTICE OF COLLECTING

Having shown how these ashkenazic halakhic writings were overwhelmingly organized as

compilations, which I defined as open and flexible, I will now turn to the second aspect of

the *likut*: its personal nature. This requires some reflection on the difference between

unique and strictly personal compilations on the one hand, and the compilations that were

reproduced often enough to have become well-known, on the other. Most ashkenazic

*likutim* were singular collections that no other scribe reproduced but were at most recopied

and incorporated by others, often peers or students of the author, (which is why fragments

from older *likutim* can often be found in new contexts, such as in new compilations,

alongside other new material).[128] The original *likut*, however, was often lost.[129] Certain

compilations became very popular and were eventually printed. This phenomenon does not

always depend on a conscious original authorial decision; the more complete, innovative,

prestigious, more available, or for some other reason superior *likutim* would eventually

become important and oft-copied, whereas the others fell by the wayside and were not used

by anyone other than the author.[130] The former *likutim* were eventually printed, whereas

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[128] Emanuel, *Shivrei luḥot*, 245.

[129] Emanuel, *Shivrei luḥot*, 253. For an example of a collection of *psakim* that was, for the most part, lost, existing now only partially and in manuscript, see Rabbi Yeḥezkiahu ben Yaakov of Magdeburg's *Piskei ha-RYCh* (Rulings of Rabbi Yakov Yeḥezkiahu), which contains rulings organized according to the tractates. See Emanuel *Shivrei luḥot*, 220n9.

[130] Emanuel, *Shivrei luḥot*, 250. חשיבותם של ספרי הליקוטים ומהימנותן של העדויות שנמסרו בהם אינן אחידות:
ישנם ספרי ליקוטים שחכמי הדורות שלאחר מכן הסתמכו עליהם, אך היו גם ספרים שכתבו עליהם, כי אלו הליקוטין מן הדרך הישר
נוטין, כי אין ממש בכל מה שכתב וחלילה וח"ו שמעולם לא הורו רבותי כך...

the latter ones fell into oblivion.[131] Sheer chance also played a role, of course, and, in some

cases, even important and prestigious manuscript compilations were lost.[132]

I have characterized ashkenazic *likutim* as open in their contents and structure and

personal in their nature. The personal aspect of *likutim* is manifested in several ways: First,

they were circulated via personal connections – from rabbi to student and from father to

son. As a result, the particular order of the *likut* and its composition were adapted to the

needs, interests, and material available to the persons who were involved in its

transmission. Bet-Arié explains that the personal aspect was more characteristic of Hebrew

manuscript compilations in the Middle Ages than of manuscripts in the Latin milieu during

the same period. Hebrew manuscripts in Ashkenaz were, for the most part, individually

produced, with no institutionalized central authority controlling these scribes, as was the

case in monastic scriptoria in the Latin environment, for instance. Bet-Arié links the fact

that so many of these scribes were copying the work for their own use to the likelihood of

the scribe's intervening and editing as he copied, with his own opinions and needs in mind.

"Less than half of [the thousands of medieval colophons examined] were copied by

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[131] For a study of such a "forgotten" *likut* that was not copied often and did not make it into print until an academic press published it in the twentieth century, see, for example, Efraim Kupfer's edition of *Tshuvot u-psakim me'et hakhmei Ashkenaz ve-Tzarfat* (Responsa and rulings from the sages of Ashkenaz and France), ed. Ephraim Kupfer (Jerusalem: Meķiẓei Nirdamim, 1973). This work is based on Bodleian Ms. 692. The manuscript includes a variety of material from different authors and places, including parts of other works that were copied into it. It also includes a collection of 337 sections with responsa, halakhic inquiries, and other material. Kupfer explains that this collection of 337 sections is an unpublished *likut* and describes it as follows: חיבור זה של של"ז סימנים, שייך לסוג חיבורים הנקרא בפי חכמי אשכנז וצרפת בשם 'לקוטין,' 'אסופות'. בעל הליקוטין שלנו, הכניס בו: תשובות הגאונים, מספר המקצועות, תשובות מרבי' גרשום מאור הגולה, מס' הדינים של ר' יהודה הכהן, מספר מעשה המכירי, תשובות רש"י ומספרי דבי רש"י מצפנת פאנח של הראב"ן, מספר הישר של ר"ת, מס' יראים של ר' אליעזר ממיץ....תשובות ר' מאיר בר ברוך מרוטנבורג ועוד. Kupfer also mentions certain halakhic opinions of Rabbi Simcha of Speyer that have reached us only as recorded by others, but are copied in his name in this compilation. See Kupfer, "Introduction" in *Tshuvot u-psakim*, 11-12; 25-26.

[132] On the fate of some of these lost books, see Emanuel, *Shivrei luḥot*, chapter 7.

professional, or even semi-professional, or even casual scribes commissioned by private people to produce books for them; the rest were prepared by learned users of books or scholars for their own personal use."[133] The personal nature of creating a *likut* in practice, therefore, means that the resulting compilation tended to be intensely individual; the scribe adapted the material by omitting, abridging, adding, and combining as he saw fit. A consequence of this personalized production is the need for a reader to be familiar with a particular compilation in order to be able easily to locate elements within it, unlike codes, which present a far more accessible structure.

Thus, the personal nature of the *likut* is closely related to its openness. This raises the question whether well-known *likutim*, should be excluded from this categorization of being inherently open. I have shown that, while more established *likutim* do at times demonstrate some form of organization, they nevertheless remain squarely within the realm of compilations, rather than codes. In terms of structure, then even these works can be said to be inherently open. But does their published nature somehow negate their openness? This problem is considerably more challenging, since publication, in many ways, contradicts the openness of the *likut* as I defined it; publication seals a work and renders it a distinct whole, while also severing the personal connection between the work and its consumer. However, publication – especially in a manuscript culture – is no straightforward concept. Even published halakhic works, it will become clear, are much less of a distinct, closed, or stable work than we might assume.

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[133] Bet-Arié, *Unveiled Faces of Medieval Manuscripts*, 62.

Discussing publication in the pre-print era entails several challenges. First, the sharp technological difference that so clearly distinguishes between the pre-publication and the post-publication stages of printed books is lacking in published manuscripts. In addition, the frequent practice of repeated and continued authorial editing in manuscript culture makes it difficult to decide when a work is "finished" and, thus, when it crosses over from the realm of the author to the readership. Moreover, the situation is further complicated by the fact that the author, or others, would often make significant changes in the work as they copied, glossed, or otherwise appropriated a work.[134] Thus, the three markers typically used to identify publication: the technological barrier that changes the material presentation, the work's completion, and the boundary separating the author from the readership are all more difficult to pin down for manuscript publication than they are for print publication.

The strongest candidates for the distinction of "published works" in the realm of Ashkenazic halakha are those *likutim* that were copied often enough to be have circulated broadly, such as *Or zarua, Sefer ha-Mordekhai* or *Sha'arei Dura*. While the majority of *likutim* from this period do not belong to this category, these works represent the most important halakhic writings, the *likutim* that circulated and survived into posterity. These important ashkenazic halakhic works do display some elements of a finished work; their frequent copying suggest stability; their titles, introductions, and association with specific

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[134] See Ta-Shma, "The Open Book," *John Rylands Library Bulletin* 75, no. 3 (1993): 17-24; Haym Soloveitchik, "History of Halakhah: Methodological Issues: A Review Essay of I. Twersky's 'Rabad of Posquières,'" *Jewish History* 5, no. 1 (1991): 75-124, especially the section on "Bibliographical Foundations," which deals with medieval "texts in flux," 82.

authors implies a distinction between readership and authorship; and, as we have mentioned earlier, their somewhat structured state can indicate a finished work with a degree of completeness, internal coherence, and unity. Significantly, these are also the *likutim* that eventually made it into print. If we wish to consider the logic of the *likut* as a defining organizational approach to Jewish legal knowledge in this period, beyond a mere method of note-taking, we must show how characteristics such as openness and personal nature equally apply to these published works, such as *Sefer ha-Mordekhai* or *Sha'arei Dura*.[135]

Is it, then, possible to think about manuscript compilations such as *Mordekhai* or *Sha'arei Dura* as "published works," and, if so, would this negate their open nature? These well-known halakhic compilations do seem to have been created with an audience in mind. They appear to contain many of the trappings of a product intended for other readers, such as titles and introductions. They could thus, perhaps, to some extent, be considered "finished works," in that they usually cover a stated body of contents and have an accessible structure, suggesting that they are more complete than their unknown counterparts. Do these aspects mean that these well-known works were distinct from the other *likutim* of the period, which were characteristically personal?

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[135] Following Petrucci's distinction (see n79 here) between the inorganic, heterogeneous miscellanies, similar to what I call compilations in this chapter, on the one hand, and published anthologies (collections of excerpts written at one point in time with some sort of overarching unifying principle), on the other, we can explain the distinction between real compilations, or *likutim*, and what I call "published *likutim*" (such as *Or zarua* or the *Mordekhai*) in similar terms: the "real" *likutim* lack any sense of stability, unification, or authorship, and are thus miscellanies, whereas the "published *likutim*" are closer to anthologies, in that they do have some unifying principle, are published and transmitted with some degree of stability, and thus can be seen as homogeneous entities. Later in this chapter, however, I will show that the "published *likutim*" are also barely worthy of the label "anthologies" because, even in their published state, they retain too many of the characteristics of the unstable, heterogeneous, and ever-changing compilation to be considered an anthology.

First, I shall consider some of these ways in which works like *Sefer ha-Mordekhai* or *Or zarua* were, perhaps, different from the typical *likut*, such as a distinct publishing moment, a title, an introduction, or a notion of unified authorship. Historians of manuscript have suggested ways of demarcating the moment of publication for medieval manuscripts. For instance, one could note the different stages that precede publication: the creation of a first draft, a working copy, and, finally, a fair copy.[136] We have evidence of something similar for *Or zarua*, namely, parts of the untitled notebook compilations of the author, Rabbi Yizḥak of Vienna, on the one hand, and the finished *likut*, titled *Or zarua*, on the other. Rabbi Yizḥak clearly intended his earlier compilations to be primary repositories, archives with no particular form, which were to provide the basis for more finished and more organized works. Using the earlier notebooks as a basis for collecting material, Rabbi Yizḥak eventually composed *Or zarua*, in which he presented his own interpretations and halakhic conclusions. Notably, the finished product has a title, unlike the earlier versions.[137] The existence of these different drafts could buttress a claim that works such as *Or zarua* were indeed inherently different from the typical ashkenazic *likutim*, since they appear to be finished products of a long editing process. [138]

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[136] See Daniel Hobbins, *Authorship and Publicity before Print: Jean Gerson and the Transformation of Late Medieval Learning* (Philadelphia: University of Pennsylvania Press, 2009), 161.

[137] The same can be said for other such *likutim*, such as the aforementioned *Shibolei ha-leket*. Scholars have found other manuscript collections from the author of *Shibolei ha-leket* that are most likely based on the notebooks of Rabbi Ẓidkiyah himself; they contain a collection of source material later to be worked into a finished compilation (see n114 here).

[138] The author of *Sefer Raviya* may also have used a similar process. There are many references in later halakhic works and compilations to another work from the same author titled *Aviasaf*. According to Aptowitzer, *Aviasaf* was a preliminary compilation including all sorts of halakhic material that the author may have planned to edit and use for a new work. See Aptowitzer, *Sefer mavo RAvYh,* 88 and 126. Aptowitzer suggests that Rabbi Eliezer first collected many of his writings, then arranged them into a larger collection with a high degree of order (cross-references and attempts to place all similar topics together), but nevertheless also many "dis-orders," as Aptowitzer calls them (identical topics discussed in separate places).

UNIT I, CHAPTER 1: THE INHERITED TRADITION

As mentioned, most typical *likutim* of the period did not have titles, or, if they did,

different names were used interchangeably to refer to one and the same *likut*, with no

generally accepted name for the work. By contrast, the titles of the published *likutim*

(*Raviyah*, *Mordekhai*, *Sha'arei Dura*, *Sefer ha-trumah*, and so forth) could be taken as yet

another marker of publication, signifying that these compilations were made for an

audience beyond the scholar's own use. Moreover, some of the published works, such as

*Or zarua*, for instance, had introductions, indicating that the author is addressing an

external reading audience, as opposed to personal *likut*-material. Similarly, the author of

*Sefer ha-trumah* wrote an introduction (in some manuscripts it is found at the end)

explaining the title: "This book is called *Sefer ha-trumah* (offering, contribution, gift)

seeing as its attributes are gifts to schemers;[139] its foundations are to teach shrewdness to

the foolish; if a person comes upon some mistake/lapse in this [the book], he can read and

find his desire...."[140]

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These elements point not only to an overall intention to edit and organize but also to the messy process of creating a larger work out of a disparate collection of writings. Simcha Emanuel, however, has shown that *Aviasaf* is most likely a continuation of the first work, now focusing on the tractates that deal with family and tort law. Emanuel, *Shivrei luḥot*, 86-93.

[139] Proverbs 24:8 ,"Whoever plots evil will be known as a schemer," but also, "its attributes are taken from esteemed predecessors" (Babylonian Talmud, Tractate *Gitin* 67a).

[140] Barukh of Germaiza, *Sefer ha-trumah*, introduction:

זה הספר נקרא ספר התרומה, יען כי מדותיו הם מתרומות בעלי מזמות, קדושי צור שוכן רומה, יסדתיו להורות לפתאים ערמה, אם יקרה לאיש משגה מאומה, בו יקרא וימצא שמה חפצו מאור תעלומה..

Rabbi Benzion Benedict in his book *Merkaz ha-Torah be-Provençe* [the Torah center in Provençe] (Jerusalem: Mosad ha-Rav Kook, 1985) suggests the translation – compared to the Babylonian Talmud, Tractate *Gittin* 67a: אמר ר' שמעון שנו מדותי תרומות מתרומות מדותיו של ר' אקיבע, which means that "t*rumah"* in the title refers to Rabbi Barukh's personal qualities (knowledge), which are taken from those of his esteemed predecessor – most notably Rabbi Yizḥak ben Rav Shmuel or R"Y ha-zaken (the Elder), the famous tosafist.

See also Simḥa Emanuel, "Ve-ish al mekomo mevo'ar shmo: le-toldotav shel R. Barukh ben Yizḥak," [And every man in its place, his name is specified: on the history of Rabbi Barukh ben Yizḥak] *Tarbiẓ* 69 no. 3 (Spring 2000): 423-440.

See also Galinsky, "Rabbis, Readers," 77-78.

A further characteristic of a published work as opposed to a compilation made only for one's personal use is the clear identification of authorship, distinguishing between readers and the scribe himself. The book of *Mordekhai* is known simply by the name of its author, Mordekhai ben Hillel. Emanuel points out that one reason for *Mordekhai*'s popularity is related to the tragedies that befell the Jews in the author's location (including Rabbi Mordekhai ben Hillel himself) at the end of the thirteenth century. *Mordekhai* was considered the most recent and complete repository of German halakha after the destruction of these communities, and the compilation was studied, copied, abridged, and glossed countless times.[141] Thus, a case could be made for the unified sense of authorship that this work exudes.

Should these *likutim*, then, be considered significantly different from their unknown counterparts? Are they less personal and less open because they were published? Perhaps, then, the *likut's* characteristic flexible, heterogeneous approach to halakhic texts should be confined to the private note taking methods of scholars, or considered only as a preparatory stage for creating finished works? If that were so, my case for considering compilations as the salient feature of ashkenazic scholarly culture in this period would be compromised, as these characteristics would be limited to a mere compositional practice rather than typifying a culture of knowledge as a whole. It seems, however, a mistake to draw too sharp a line between these compiling practices and the main ashkenazic works of halakha at the time. Upon closer inspection, even the characteristics such as titles, introductions, and authorship, which can be markers of published works, are not as clear-cut in the case of

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[141] See Emanuel, *Shivrei luḥot*, 9.

*likutim* as we might have expected based on our own contemporary conceptions of what constitutes a finished work, as the following section will argue. In order to understand whether the ashkenazic halakhic compilation was merely a practice of collecting or a broader attitude to knowledge, we must consider these elements of publication from the point of view of manuscript publication, rather than using our own assumptions, which are based on the world of print.

## 7. PERSONAL VERSUS PUBLISHED IN A MANUSCRIPT CULTURE

The concept of publication is never a straightforward notion, even for printed works, as ideas of textual stability, authorial control, and passive readership are, to a certain degree, always constructed, idealized concepts.[142] These idealizations tend to use notions from the world of print as the basis for constructing the paradigm of publication. Ultimately, the realization that such notions are highly idealized and constructed was also brought to bear on print itself (as can be witnessed in Adrian Johns' refutation of Elizabeth Eisenstein's idea of a print revolution). In the case of manuscript publication, however, a much deeper revision of the idea of publishing is needed before this term can meaningfully apply.

Robert K. Root already advanced the models of publication by means of patronage in his 1913 article on Boccaccio and Petrarch, and Chaucer scholars discussed the model of reading out loud as a type of publishing. Other models, such as ecclesiastical licensing for religious works, the *pecia* system of the universities, and commercial reproduction by

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[142] See Roger Chartier, *Inscription and Erasure: Literature and Written Culture from the Eleventh to the Eighteenth Century*, trans. Arthur Goldhammer (Philadelphia: University of Pennsylvania Press, 2007), especially the introduction, "Aesthetic Mystery and the Materialities of the Written," vii-xiii.

artisans for specific clients, can be added to these.[143] More recently, Richard Sharpe studied

the rich material regarding Anselm, archbishop of Canterbury, in an attempt to understand

the meaning of publication in the late eleventh century,[144] and Pascale Bourgain's study of

manuscript circulation of texts contributed to more nuanced understandings of what

determines success for a text and what drives demand.[145] Stephen Nichols, in his

introduction to a volume of *Speculum* devoted to medieval philology, remarked on the

problematic use of terms such as "publication" for medieval works due to their "strongly

marked semantic associations with the lexicon of printing."[146] Thus, defining these works

simply as "published" is imprecise. This section argues that even those works, which, at

first glance, appeared to us as published, finished, closed and public works were, at their

core, private, unfinished, open, and flexible.

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[143] For a discussion of some of these, see Felicity Riddy, "Publication before Print: The case of Julian of Norwich," in *The Uses of Script and Print, 1300-1700*, ed. Julia Crick and Alexandra Walsham (Cambridge: Cambridge University Press, 2004), 29-49, which deals mainly with the ways in which a public was made conscious of the existence of a work in order to create an initial demand. See also the dissertation of Deborah McGrady, "Constructing Authorship in the Late Middle Ages" (PhD diss., University of California, 1997), which considers articulations of the relationship between poet and text through scribes, bookmakers, and patronage. On the *pecia* system, see Graham Pollard, "The Pecia System in the Medieval Universities" in *Medieval Scribes, Manuscripts and Libraries: Essays Presented to N. R. Kerr*, ed. Malcolm B. Parkes and Andrew G. Watson (London: Scolar Press, 1978), 145-161.

[144] Richard Sharpe, "Anselm as Author: Publishing in the late Eleventh Century," *The Journal of Medieval Latin* 19 (2009): 1-87.

[145] Pascale Bourgain, "The Circulation of Texts in Manuscript Culture," in *The Medieval Manuscript Book: Cultural Approaches*, ed. Michael Johnston and Michael Van Dussen (Cambridge, UK: Cambridge University Press, 2015), 140-159.

[146] See Stephen G. Nichols, "Introduction: Philology in a Manuscript Culture," *Speculum* 65 (1990): 1-10, (especially page 6). On the notion of 12th-14th-century authorial participation in the reproduction of their books (a form of publication) and its similarities to notarial practices of drafting, registering, and preserving 'authorized' texts, see Petrucci, "Minute, Autograph, Author's Book," in *Writers and Readers*, 145-168.

Bet-Arié makes similar points for Hebrew manuscripts and warns scholars not to place too much trust in manuscripts as the true witnesses of medieval texts. In "Transmission of Texts by Scribes and Copyists: Unconscious and Critical Interferences," *John Rylands Library Bulletin* 75, no. 3 (1993): 33-51, Bet-Arié uses citations from scholars, scribes, and copyists who express concern about these topics to point out the essential instability of manuscript copies and the lack of authorial control over authorized versions.

Daniel Hobbins attempted to create a more manuscript-appropriate model of publication by coining the terminology of a "series of publishing moments" to describe the process by which Jean Gerson's works were published in the late Middle Ages. He distinguishes between the stages of "initial delivery," "revision by the author," and "participation of others," in editing and adapting the work. Jean Gerson, who Hobbins used as his example, was an exceptional figure, even for the Latin milieu of his time. The massive distribution of his writings and the sense of authorship and control he exerted over his works made it possible for scholars to distinguish between these different publishing moments, such as the "coterie readership" versus the "mass market," the "initial text" versus the "emendations," and the author's own emendations versus the "public participation."

For manuscript *likutim*, it would be pointless to attempt to create such a model of publication, since these elements are hardly applicable to *likutim*: there was not a "mass market" of any kind; the standard copying procedure involved heavy emendation and adaptation; and one cannot pinpoint "authorship" that is distinct from a "readership." In the age of *likutim*, these stages never remain in a temporal sequence, and the stages of "initial publication," "authorial revision," and "participation of others," crisscross back and forth in patterns so complex that they can barely be traced. In the case of *likutim* it is impossible to establish a qualitative difference between a work that circulated only among family and students, on the one hand, and a work that was circulating more broadly, on the other.

Moreover, the form of transmission of many of the published works of ashkenazic halakha testify to the inherent textual openness that characterized Ashkenaz as a whole. The lack of consistency in the dissemination of these more established works questions their stability. Even as they maintained a strong connection to the original compilations from which they were reproduced, copies of *likutim* that became well known rarely remained unchanged. They were treated just as compilers tended to treat all their source material, that is to say, very freely. The process of adding, shortening, summarizing, and glossing the original material as needed created many different 'editions' of the same original *likut*. Thus, while there are some differences between personal compilations on the one hand, and *likutim* that were created for broader use and publication, on the other, in terms of textual stability, there is no clear demarcation between a personal compilation and a published *likut*.

For instance, the case of *Sha'arei Dura*. Most smaller manuals of this kind, called books of *isur ve-heter,* were intended for practical consultation and customized and personalized for different localities and users. For that reason, compilations of this kind showed more variations across copies than any other, and identical copies of such manuals were rare. In the words of Emanuel: "Laws of *isur ve-heter* were decided in Ashkenaz in large part based on local and personal traditions; therefore, the life-span of most of the works on these topics was short."[147] Following generations, in turn, utilized this work for further personalization, adaptation, and compilation. The case of *Sha'arei Dura* was exceptional in that it survived for so long, perhaps because it not only served for a practical

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[147] Emanuel, *Shivrei luḥot*, 238-9.

purpose but also it became the basis for textual scholarship on these topics. However, even *Sha'arei Dura*, which did survive, was copied in such varied and inconsistent ways that even the various printed editions of this work bear little resemblance to one-another.[148] Other works such as *Sefer ha-trumah* likewise circulated in various ways, and, while the work's overall structure usually remained intact, discrepancies, such as sections that are present in some manuscripts but not in others, can be found in many dozens of cases.[149]

Additionally, it is difficult to determine whether a work is transmitted in a sufficiently continuous way to claim that it is one and the same work being disseminated and circulated broadly. *Sha'arei Dura*, for instance, started out as a work for a very close "coterie," as the one-line introduction explains: "So said the author: see, my friends have begged me to write for them a work of *isur ve-heter*, and I will explain it for them in brief, and I will start with..."[150] This work, initially circulated as a personal favor for the author's friends, subsequently became one of the most studied and most frequently printed works of halakha.[151] However, the manuscripts of *Sha'arei Dura* that circulated vary greatly. There was, for example, no consistency regarding the amount of entries; they are divided into anywhere from thirty-four to forty-one sections. Countless rabbis had "their"

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[148] The editor of one contemporary edition calls the first seven printings "seven first editions." See Dvileizky "Introduction," in Yiẓḥak of Düren, *Sha'arei Dura*, ed. David Dvileizky (Bnei-Brak: Elon, 2016), 17. See also Chapter 3 in this dissertation on the transmission of *Sha'arei Dura* throughout the early modern period.

[149] See Friedman, *Sefer ha-trumah*, 8-131 (Chapters 1 and 2).

[150] Yiẓḥak of Düren, *Sha'arei Dura*, introduction: אמר המחבר הנה הפצירוני חבירי לכתוב להם אסור והתר ואפרש להם בקוצר ואתחיל בדין מליחה והדחה בעשר שערים

[151] Rabbi Moshe Isserles in *Torat ḥatat* (Cracow, 1559) describes *Sha'arei Dura* as "a staple and can be found in the hands of every man ... in this most recent generation, when this book has been copied and printed several times because every man desires it ... and that is how the books have fallen into the hands of many, little and great." הוא מורגל ונמצא ביד כל כל אדם...בדור האחרון הזה אשר נעתק ונדפס הספר הזה כמה פעמים כי כל אדם חושק בו...וע"ז נפלו הספרים ביד רבים קטנים וגדולים

manuscript copy of *Sha'arei Dura*. It was based on Rabbi Yiẓḥak of Düren's work together with layers of glosses but often resulted in a different work altogether.[152] Every subsequent scribe made the work his own by redoing it based on his interpretation or on the manuscripts and oral teachings of his rabbis. Rather than circulating broadly, the *likut* went from circulating among a smaller coterie to circulating among a somewhat larger one. By the time the work was circulating broadly enough to be considered "published," it had been emended so often from scribe to scribe that it would be hard to determine whether the published work was the same work as the original, or, for that matter, whether the many copies could be considered the same work at all.

A further example is *Or zarua*, which was edited and re-arranged, abridged and customized on countless occasions. Rabbi Yiẓḥak himself continued adding to and amending the work throughout his life, as new material became available. One of the editors of the most recent version remarks upon the many contradictions and lack of unity in this work, explaining these with the fact that Rabbi Yiẓḥak "did not edit the work in an overall, organized manner."[153] His son, Rabbi Ḥayim, created an abridged version, which, in fact, became the work that was referred to in posterity by the name *Or zarua*. The original work became known as "the large *Or zarua*." Even the title – seemingly such a clear way

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[152]Rabbi Yacov Weil, Rabbi Israel Isserlein, and later Rabbi Shlomo Luria and Rabbi Moshe Isserles were among the many who had "their own" *Sha'arei Dura*, including glosses that students often wrote based on their rabbi's teachings. Some of these evolved into works in their own right (Rabbi Isserlein's *Lamed-vav she'arim* [36 Gates] and Rabbi Isserles' *Torat ḥatat*, for instance), while others remained closer to glosses (Rabbi Luria's complete glosses on *Sha'arei Dura*, which were first printed in the margins of the work in Basel and Lublin in 1599).

[153] Shalom Klein, "Introduction," in *Or zarua im piskei MaharaḤ*, 3 vols., ed. Yacov Farbstein, Shalom Klein, Yair Suzman, et al. (Jerusalem: Makhon Yerushalaim, 2010), 1:16-17. רבינו לא ערך כנראה בצורה כללית ומסודרת את הספר...

of distinguishing between personal compilations and a published, finished product – is thus not fixed. It is also difficult to attribute clear authorship. Rabbi Ḥayim's own son, named Rabbi Yiẓḥak after his grandfather, the first author, also edited the work and added contributions that are included in the body of the work.

Similarly, the *Mordekhai* on *Halakhot ktanot* (Small laws) – the laws of scribes – was not authored by the eponymous Rabbi Mordekhai ben Hillel, but by Rabbi Shmuel of Shlittstadt.[154] Different scribes also changed the order of the material; we have versions, for instance, that do not start with the laws of charity. Thus, although *Mordekhai* is the type of compilation that to some extent attains the continuity and status of a published, finished work, it also undergoes many abridgements and adaptations. The fourteenth-century *Kiẓur Mordekhai* (Abridged Mordekhai) or *Mordechai katan* (Little Mordekhai) by Rabbi Samuel of Shlittstadt is the most famous example of this phenomenon. *Mordekhai* became the basis for glosses and insights of later figures, such as *Hagahot Mordekhai*. Rabbi Shmuel Shlittstadt's and Rabbi Samson of Jerusalem's glosses on the *Mordekhai* are but two examples of this phenomenon, but countless other scholars have "their *Mordekhai*."[155] These become, in a sense, entirely new *likutim*.

Moreover, *Sefer Mordekhai*, ostensibly the product of its author, was, in fact, not issued in its final form by him. Numerous fragments of the book were authored by descendants and students. In the manuscript of the *Mordekhai* that is located in the Bodleian Library, when Mordekhai ben Hillel's name appears in the part covering the talmudic

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[154] For more on this figure, see Reiner, "Ben Ashkenaz li-Yerushalayim," 1-10.
[155] See Reiner, "Ben Ashkenaz li-Yerushalayim," 30.

tractates *Brakhot* through *Bava Kama,* it includes the standard blessing for the living, whereas, in the latter tractates, his name is followed by "of blessed memory," implying that he had died before the completion of the work. Moreover, the compilation was copied and emended in so many different ways that, eventually, two versions became accepted and were treated almost as two different works, the *Mordekhai Rheinus* of the Rhine area, on the one hand, and the *Mordekhai Ostreikh* of the Austrian territories, on the other. Consequently, there is no one "original" *Sefer Mordekhai.*[156] This was common knowledge among scribes and scholars, who did not expect unity or consistency, and rabbis can often be seen to make remarks to that effect. Rabbi Moshe Isserles, for instance, writes in one of his responsa to a student of his not to adapt a law based on the specific formulation found in the Mordekhai:

> In any case, it seems wrong to emend anything because of this as long as you do not find this [formulation] in an old book, because you are familiar with the *Sefer*

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[156] See also the study of Shmuel Kohen on *Mordekhai* and its composition in a series of articles titled "R' Mordekhai ben Hillel Ashkenazi," *Sinai* vols. 9-16: 9(1941-1942): 257-262; 10(1942): 209-216; 11(1942-1943): 260-277; 12(1943): 99-106; 13(1943-1944): 294-308; 14(1944): 314-323; 15(1944-1945): 64-74; 16(1945): 247-255.

Some of his conclusions regarding the multiple authorship and lack of unified composition of *Mordekhai* are usefully summarized in Asher Siev's introduction to *ShUT Sheerit Yosef* (New York: Yeshiva University Press, 1984), 33-37. Siev focuses on the reception of *Mordekhai* among 16th-c. scholars.

Polish scholars who used *Mordekhai* in the 15th and 16th centuries were aware of the variety; they often mention which version of *Mordekhai* they are using and ask colleagues about their copies. Here is one example from the responsa of Rabbi Yosef Kolon (Italy, 16th century): *ShUT MaharYK,* §50 גם מצאתי במרדכי של קרוב הח''ר שמואל מומילאונ''ט וחשבתי שגם במרדכי של מהר''ר משה תמצא כתוב שם, בשלהי פרק כירה (שבת מו:) ''מי יימר דמזדקק לה חכם''

Rabbi Israel Isserlein (15th c., Germany-Austria), wrote in *Trumat ha-deshen,* §96: "Our *Mordekhai* uses a different formulation than yours regarding this legal decision." מרדכי שלנו חלוק בלשון משלכם בפסק זה. In the same work, §186, he emphasizes that, "Our *Mordekhai* does not contain even a hint or reminder of this statement…" במרדכי דילן לית מזה לא רמז ולא רמיזה.

Rabbi Yoel Sirkis (1561 Lublin -1640 Cracow) writes in his glosses on the *Shulḥan Arukh* (*Oraḥ ḥayim*, §682): "However, it is known that many halting formulations can be found in this book because it was copied earlier in different ways, this one lengthens and that one shortens…" מיהו כבר נודע דהרבה לשונות מגומגמים נמצאים בספר זה באשר מועתק מלפנים בכמה פנים זה מאריך וזה מקצר.

Clearly, there was a traditional knowledge among scholars that the *Mordekhai* as it was transmitted to them was not a unified work by one author, and that one should treat the work as such and not rely on specific quotes and individual formulations.

*haMordekhai* and its manner of conversing,[157] because it contains many stuttering formulations since it is compiled and composed from many books, and many glosses and laws ended up inside it mistakenly and abridged, and maybe this is one of them.[158]

It was common knowledge among halakhic scholars that the *Mordekhai* was a *likut* and should thus not be used as a basis for legal interpretations that hinge on specific formulations or linguistic analysis. Some manuscripts of *Ḳiẓur Mordekhai* contain colophons informing the reader that what is unclear here should be checked in other such abridgements.[159]

In sum, it would be a mistake to consider the more famous *likutim* as essentially different from their unknown counterparts. These published works of halakha are not inherently different from the personal *likutim* in terms of structure and contents. They remain structured as compilations rather than as codes. While published *likutim* do sometimes lean toward a certain type of content, often reflected in the title of the *likut*, even these never contain solely one type of halakhic material. Publication did not truly stabilize these works and they continue to circulate in wildly different varieties. One cannot truly distinguish between a published *likut* and a personal one. All the above elements are related, as the openness of the *likutim* invites an approach to text that is fluid, open, and personal. The *likut* style can thus be considered the main characteristic of all ashkenazic

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[157] II Kings 9:11.

[158] Isserles, *ShUT Rema*, §100.5. For more on the correspondent, see Chapter 5 of this dissertation.
מ״מ אין נראה להגיה משום זה דבר אחד כל זמן שלא נמצאהו בספר ישן. כי אתה ידעת את ספר המרדכי ואת שיחו כי לרוב נמצאו בו לשונות מגומגמים להיותו מלוקט ומחובר מספרים רבים, ובאו בתוכו הגהות ודינים רבים שלא במקומן בקצרה ואולי זה אחת מהן.

[159] See Frankfurt am Main, Goethe Universität m.s. Heb qu.(47) of a *Mordechai kaẓar* (digitized link via JNUL) והמגמגם בקיצור זה עיין בקיצורי אחר.

halakhic textual activity in this period, making the paradigm of openness central for an understanding of this scholarly culture.

Scholars interested in studying manuscript publication often adapted their models from the world of print publication to fit the reality of the manuscript. Hobbins, as we have seen, suggested a "series of publishing moments" rather than one clear publishing moment as a model of publication more appropriate for manuscript publication. In outlining his stages of manuscript publication, Hobbins cautions that "we should resist thinking of these three categories as a strict temporal sequence,"[160] nevertheless, he considers this emended model reliable. When applied to *likutim*, this lack of temporal sequence is not merely a caveat – it is a rule. As my analysis of *likutim* regarding the other elements of publication has shown, this statement applies beyond the question of a distinct "publishing moment" to the entire premise of manuscript publication.

*The Medieval Manuscript Book*, a more recent volume of articles, pushes beyond the attempts at revising concepts from print culture for the study of manuscripts, opening with the statement that manuscript culture should be theorized on its own terms, rather than based on the vocabulary of print.[161] This is the approach taken by the current chapter in considering the *likut*. As the analysis in this section has shown, choosing such an approach for our current topic is no coincidence: In fact, the editors of *The Medieval Manuscript*

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[160] Daniel Hobbins, *Authorship and Publicity before Print*, 156.

[161] Johnston and Van Dussen, "Introduction: Manuscripts and Cultural History," in *The Medieval Manuscript Book*, 1-17. Several contributions to this volume are very relevant to the current topic, such as Jeffrey Todd Knight, "Organizing manuscript and print: from *compilatio* to compilation," 77-96, which insists on viewing the medieval works in the context of the other writings that they were compiled with, claiming that the fluid and miscellaneous nature of medieval manuscript culture is essential to understanding its works. Pascale Bourgain, "The Circulation of Texts in Manuscript Culture," 140-160, is likewise a crucial case study of ways in which manuscripts did circulate in a manuscript world.

*Book* state that "Late medieval manuscript culture[162] was inherently miscellaneous, with texts being compiled alongside other texts throughout a manuscript's history."[163] Clearly, compilation, miscellaneous organization, and manuscript culture are deeply intertwined. Therefore, late-medieval ashkenazic *likutim* can only be understood from the point of view of a manuscript culture.[164]

The open structure and personal nature of these works perpetuated the practice by which they were created. Reiner notes this dynamic in the case of *Mordekhai*: "Its compiled nature, its variety in sources in time and authority, and its unclear editing [*nusḥaot*], led to a flexible and free approach toward the book. This approach permitted the penetration of new material into it throughout the years."[165] The *likut* is not simply a scribal form, nor is it limited to a type of work that was prevalent in this period; rather, it is the epitome of an entire scholarly culture. Paul Zumthor's notion of *mouvance*, which he used for his study of medieval poetry, may be the most useful one for our purposes. Zumthor has pointed out that the imperfect means of transmission, the complicated nature and expense of producing a written text, the relative scarcity of the necessary materials, and the absence of mechanical means for reproduction in the Middle Ages led to innumerable minor and major

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[162] They designate this period as roughly 1100-1500. Johnston and Van Dussen, "Introduction: Manuscripts and Cultural History," 2.

[163] Johnston and Van Dussen, "Introduction: manuscripts and cultural history," 4.

[164] The miscellaneous nature of manuscript compilations relates closely to the material specificities of manuscript, as the introduction of Nichols and Wenzel's *The Whole Book* already emphasized. It is nonetheless, possible, of course, to speak of non-miscellaneous manuscripts and, vice-versa, of miscellaneous printed compilations, such as, for instance, in Jeffrey Todd Knight, *Bound to Read: Compilations, Collections, and the making of Renaissance Literature* (Philadelphia: University of Pennsylvania Press, 2013).

[165] See Reiner, "Ben Ashkenaz li-Yerushalayim," 30.

variants that conspired to an "essential instability in medieval texts themselves."[166] This

characteristic, which he called *mouvance*, was a fundamental aspect of medieval textuality,

an essential flexibility that presupposes neither an idea of "the work" as self-contained nor

the "original author" of such a work. It also relates to the lack of clear and distinct titles,

authors, or, for that matter, "publishing moments" for so many medieval texts.[167] This

fundamental flexibility is expressed more strongly in certain types of works than in others;

for *likutim*, it is in many ways its defining characteristic.

## 8. RESPONSA IN THE AGE OF *LIKUTIM*

One must consider the place of responsa in the organization of halakhic knowledge of the

late thirteenth and fourteenth century within the context of *likutim*. Most *likutim* included

responsa; by the same token, compilations consisting primarily of responsa, called "*kivẓei*

*tshuvot*," often included all kinds of non-responsa material. The history of the organization

of responsa is, thus, an integral part of the *likut* tradition. Very few earlier collections of

responsa from the tosafists in the twelfth and early thirteenth century remain. They are so

rare, in fact, that Soloveitchik and Ta-Shma claimed that there was simply no tradition of

preserving these responsa.[168] According to Ta-Shma, the lack of preserved responsa

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[166] Paul Zumthor, *Toward a Medieval Poetics*, trans. Philip Bennett (Minneapolis and Oxford: University of Minnesota Press, 1992), 46.

[167] The antiquarian and bibliographer Ernst Philip Goldschmidt already suggested similar insights when showing the problematic results of trying to catalog medieval works by author or title. See Ernst Philip Goldschmidt, *Medieval texts and Their First Appearance in Print* (London: Oxford University Press, 1943), 86-96. As he concludes on page 116: "What I have tried to demonstrate is that the Middle Ages for various reasons and from various causes did not possess the concept of 'authorship' in exactly the same significance as we have it now…The invention of printing did away with many of the technical causes of anonymity, while the movement of the Renaissance created new ideas of literary fame and intellectual property."

[168] Soloveitchik explains that, in contrast to the sfardic tradition, (and to some extent even compared to the German tradition in Ashkenaz), responsa in France were not a literary genre. "Questions were asked

collections suggests that responsa were viewed as important for the practical purpose of communicating a decision but not worth preserving as precedents. Emanuel, on the other hand, supports Urbach's idea that collections of responsa probably did exist, but they were copied into later *likutim* from the thirteenth and fourteenth centuries, which is the context in which they can now be found.[169] These thirteenth- and fourteenth-century collections "are not simply a collection of responsa, rather, they also contain many fragments from the different works of halakha available to the compilers – parts that are mixed with and inserted between the responsa."[170] In other words, the lack of *Kivzei tshuvot* from the Middle Ages does not stem from the absence of a tradition of preserving responsa; rather it came about because responsa were preserved and transmitted in the same way as all other halakhic material, namely, in compilation form.

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and responses were written, but these creations were seen as *livres des* [sic] *circonstance*." See Haym Soloveitchik, *Halakha, kalkala, ve-dimu'i 'azmi: ha-mashkona'ut bi-yemei ha-beinayim* (Pawnbroking in the Middle Ages: A study in the interrelationship between halakhah, economic activity, and self-image), (Jerusalem: Magnes Press, 1985), 83. He posits that their preoccupation with dialectical hermeneutics closed them off, to some extent, from engaging in other types of halakhic writing, even though they were, of course, aware of responsa from other areas and periods in history and were exposed to these texts. The ashkenazic tradition was one of the study hall, Soloveitchik explains, and not one of responsa, "and when these adjudicators approached the creation of books, these teachings [responsa] did not take a central place in their consciousness." Soloveitchik, *Halakha, kalkala*, 84.

Ta-Shma was of the opinion that the earlier ashkenazic authorities did not preserve their responsa because they did not regard them as normative legal literature as much as they considered it scholarship; therefore, they were interested in the intellectual analysis. Ta-Shma opposed this to Sfarad, where the responsa were written as normative legal decisions and treated as precedent. Ta-Shma attributes a shift in Ashkenaz in the late 13th century, where more responsa were being preserved, to "…a total change in principle regarding the framework of responsa as a normative literary form." See Ta-Shma, *Kneset mehkarim*, 1:121 and 2:173-179. See also Urbach, *Ba'alei ha-tosafot*, 102-104, 250, 316.

[169] Emanuel was particularly convinced of this hypothesis after finding many different manuscripts in which the same responsa were copied and paraphrased in disparate ways and in different locations throughout these manuscripts, without any particular effort to mention explicitly that this was a copy from a reponsum. Many responsa were probably copied in this manner, which means that they were preserved, but difficult to identify as responsa because of the method of copying. See Emanuel, *Shivrei luhot*, 271-272.

[170] Emanuel, *Shivrei luhot*, 37.

Emanuel attributes the tendency of copying other halakhic material within the collections of responsa as,

> stemming from the large size of the books written by the tosafists, on the one hand, and the high price of books, on the other, which limited their dissemination. Scholars could not transcribe an entire copy of these works for themselves and were thus forced to satisfy themselves by copying selected sections from them. The compilers chose the sections that, at the time, seemed to them important, and they also had to estimate which sections would be necessary for their studies in the future.[171]

In other words, collections of responsa resembled other *likutim*, both in the motivation behind them and their attitude to source material. One should not, therefore, necessarily expect that separate collections of responsa exist simply because such separate collections were the norm later on. Emanuel gives an example of the practice of adding responsa to one's compilation; a scholar complained about a colleague from whom he had requested "...your responsa and letters, which I looked forward to seeing,[172] as I wanted to peruse them and compile them in my compilation."[173] To the scholar's chagrin, the hosts refused and "showed them to me on Sabbath, shortly before the meal," which left him with no time to properly study the texts, and with no means of copying them, as writing is forbidden on the Sabbath.[174]

The era of Rabbi Meir of Rothenburg is the beginning of a new chapter in the history of ashkenazic collections of responsa. In the preceding period, only a small amount of responsa from ashkenazic authorities survived at all, not to mention any author-specific collections. Rabbi Meir of Rothenburg and his students did attempt to collect responsa from

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[171] Emanuel, *Shivrei luḥot*, 37.
[172] Ibid., חליתי פניהם להראות לי,
[173] Ibid., לחברם בחיבורי,
[174] See Emanuel, *Shivrei luḥot*, 251. This is also mentioned in Urbach, *Ba'alei ha-tosafot*, 362-363.

their predecessors in special collections containing mainly *tshuvot*. In the words of Ta-

Shma:

> From the end of the thirteenth century, the picture changes. The change can be
> traced to Rabbi Meir of Rothenburg, the foremost authority of thirteenth-century Ashkenaz.
> He painstakingly collected the responsa of authorities of Franco-Germany who preceded
> him and arranged the responsa thus amassed in an archive along with his own responsa,
> which he diligently recorded and organized as well.[175]

Emmanuel explains that from the second half of the thirteenth century onwards,

"there was a concerted effort to collect the responsa of the tosafists and their *psakim*

(halakhic decisions) in special compilations" in Germany. From the types of responsa

collections that Emanuel lists, it becomes clear that these works are an integral part of the

larger phenomenon of *likutim*: "... Some of the compilations that resulted from this are the

*Mordekhai*, *Hagahot Maimoniot*, and several collections of the responsa of *MaharaM of*

*Rothenburg*."[176] These collections do not contain responsa alone; they are the very same

halakhic compilations discussed above.

Emanuel opens his edition of the responsa of Rabbi Rothenburg that all the

manuscript compilations at the basis of his edition, as well as those of all the other

important editions, are not devoted solely to the responsa of Rabbi Rothenburg.[177] In line

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[175] Israel Ta-Shma, "Introduction," to *Mafteaḥ ha-she'elot ve-ha-tshuvot shel ḥakhmei Ashkenaz, Tzarfat ve-Italyah* (Index of the responsa of the sages of Ashkenaz, France, and Italy), ed. Eliav Shoḥetman and Berakhyahu Lifshits (Jerusalem: The Institute for *Mishpat ivri*, 1997), x.

[176] Simcha Emanuel, "Tshuvot MaharaM mi-Rotenburg, Dfus Prag," (The responsa of Rabbi Meir Rothenburg, Prague edition) *Tarbiẕ* 57, no. 4 (1988): 559.

[177] Simḥa Emanuel, "Introduction" in *Tshuvot MaharaM mi-Rothenburg ve-ḥaverav* (The responsa of Rabbi Meir Rothenburg and his circle), ed. Simḥa Emanuel (World Congress of Jewish Studies: Jerusalem, 2012), 16.

כל הקבצים הכלולים במהדורה זו, כמו כל ארבעת הקבצים האחרים של תשובות מהר"ם שעומדים כבר על מדף הספרים,
אינם מוקדשים אך ורק לתורתו של מהר"ם מרוטנבורג. בכולם משולבות גם תשובות רבות שאינן של מהר"ם מרוטנבורג, וכן פסקים
שהועתקו ממגוון רחב של חיבורים שעמדו לפני העורכים של קובצי התשובות. "

with the general characteristics of *likutim*, the collections of Rabbi Rothenburg's responsa do not contain exclusively his own writings. They comprise selections of all material that was available to his students and relatives at the time of editing, including responsa from periods as diverse as the twelfth, thirteenth, and even as early as the eleventh century, but also ranging into the fourteenth century.

A look at one exemplary manuscript from Emanuel's discussion of the different manuscript collections of Rabbi Rothenburg's responsa is sufficient to confirm that these collections of responsa share the characteristics of the other ashkenazic *likutim*. One important manuscript source for Rabbi Rothenburg's responsa was a larger compilation named *Sefer Sinai* (Book of Sinai). This compilation belonged to Rabbi Meir's brother, Rabbi Avraham, and it included all kinds of material. Emanuel describes several manuscript copies of *Sefer Sinai*, amongst others, Ms Berlin.[178] First, we note that the compilation of Rabbi Rothenburg's responsa is part of a larger compilation of material that includes not only his responsa. In fact, the first thirty entries have no connection to him whatsoever and are copied from the responsa and rulings of Rabbi Yiẓḥak the Elder (a tosafist). Additional responsa from a variety of authors are spread throughout the compilation. Rabbi Avraham also included the *shmu'ot* or oral testimonies that were collected by Sa'adya, Rabbi Meir's son-in-law. Some of these testimonies have a connection to Rabbi Rothenburg; others do not. The compilation also includes some of Rabbi Meir's *ḥidushim* (novellae) on tractate *Bava Batra* of the Talmud. There is a table of

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[178] See Emanuel, "Introduction" in *Tshuvot MaharaM*, 28-33.

contents, which is simply a list, without any overall structure.[179] There are also different layers of glosses and comments spread throughout the manuscript. A relatively early source for Rabbi Rothenburg's responsa, this manuscript, nevertheless, displays all the characteristics of *likutim* mentioned earlier. As is to be expected, later compilations that include material from *Sefer Sinai* will cause these "*likut*-characteristics" to increase exponentially, as they copy from this compilation and from others, and edit, select, and summarize in line with the creation of new *likutim*.

Similarly, the manuscript collection that lies at the basis of the most important printed collection of Rabbi Rothenburg's responsa, *ShUT MaharaM Rothenburg* (Prague, 1608), is a compilation that was itself copied from three different earlier manuscript collections, from three different times and scribes. One part was copied by a student of Rabbi Ḥayim Ḥefeẓ-Zahav, who lived in Cologne in the late thirteenth century. Another compilation that becomes part of the manuscript at the basis of the printed book of Rabbi Meir's responsa was edited by someone from the circles of Rabbi Yedidya of Nürnberg, a student of Rabbi Meir of Rothenburg. Yet a third was edited in the second half of the fourteenth century. All of these compilations were themselves assembled and copied from earlier collections of which different manuscript copies still exist. Some of the copyists added marginalia; others reorganized responsa and created their own tables of contents, while later copies sometimes included the marginalia of earlier copies in the body of the work. Rather than being compiled as clearly defined monographs of Rabbi Rothenburg's

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[179] The list contains two sets of numberings: a continuous one for the whole compilation and a separate one for the section of responsa.

responsa, the manuscripts are thus a result of collecting, compiling, and copying, without any organizational distinctions between the different time periods or authors. One generation would keep the copied responsa of the previous generation and add to this the responsa of their own time period. Peers and students then, in turn, copied and combined the text with responses from other times and places. Some of these compilations were passed on as separate booklets[180] onto which new ones were added. Scribes and scholars often copied selections from these, sometimes mixing them with material from other sources.[181] In some cases, responsa preceded, were appended to, or in some other way added to other works by the author.[182]

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[180] *Sing. kuntres*: booklet, quire (see n106 here).

[181] For a description of the second edition of the responsa of Rabbi Meir Rothenburg, see Emanuel, "Tshuvot MaharaM mi-Rotenburg, Dfus Prag," 1 -32.

[182] See Yakov Shmuel Shpigel, *Amudim be-toldot ha-sefer ha-ivri,* vol. 2: *Ktiva ve-ha'ataka* (Chapters in the history of the Jewish book, vol. 2: Writing and transmission) (Ramat Gan: Bar Ilan University Press, 2005), 235, who discusses this phenomenon. He explains, "The location of this section [the responsa] was not set, and it could be anywhere." Spiegel lists examples, including the tosafist Rabbi Yacov Tam, who added his response to the end of his compilation *Sefer ha-yashar* (which, as Rami Reiner and Simḥa Emanuel's studies have shown, was composed like a compilation despite the first impression created by its introduction); Rabbi Avraham ben David (also known as *Ra'avan*), whose responsa are located in two separate places in one volume of his work; and the so-called *Raviya* (Rabbi Eliezer b. Yoel Ha-Levi), who placed them at the beginning of his compilation and then scattered throughout.

See also Emanuel, *Shivrei luḥot*, 135-142, on *Sefer ha-ḥokhma* (Book of wisdom) by Rabbi Barukh of Mainz, which is no longer extant. Emanuel found a collection of more than thirty responsa which probably had their origins in Rabbi Barukh's collection (many authored by him, but others copied from his contemporary, *Ra'avan*). They were hidden in plain sight – in the Prague printing of Rabbi Meir Rothenburg's responsa and in manuscripts that belong to the "family" of the manuscript at the basis of the Prague edition. Responsa were thus inserted in such manuscript compilations in no particular order; an author would even copy his own responsa alongside the responsa of colleagues in his collection.

Israel Ta-Shma also mentions this phenomenon in his introduction to the *Index of Responsa* for Ashkenaz: "Now there were indeed Ashkenazic scholars, mostly in the twelfth century, who collected a florilegium of their responsa – say, in adding a selection of such responsa to other works they authored. Examples include the responsa appended to the *Sefer Or zarua* by R. Yiẓḥak b. Moses of Vienna in the first half of the thirteenth century; the smaller selection appended to R. Eliezer b. Nathan of Mainz' s *Sefer Ra'avan*, from the first half of the twelfth century; and the collection appended to R. Eliezer b. Yoel Ha-Levi's *Sefer Ha Raviya*, from the second half of the twelfth century. But they sought no exposure for their responsa beyond such limited undertakings, and as a result, only a small fraction of their responsa is extant." See Ta-Shma, "Introduction" to *Mafteaḥ ha-she'elot ve-ha-tshuvot*, ix.

Of all the halakhic materials being collected (halakhic opinions and rulings, customs, ordinances, etc.), responsa were the most difficult to organize systematically, to abstract, unify, and arrange into a code. Almost every responsum was – at one point – a letter. These individual letters were crafted, finished texts, which makes it difficult to pull out the individual bits of discrete information that compose it.[183] A responsum is a holistic unit, rather than a modular piece of writing. A respondent pulls together elements from different periods, sources and sections of halakha, depending on the topic, and crafts it into a letter with a salutation, signatures, details regarding the case, etc., as needed. Placing this in an organized code is thus not easy. Responsa, therefore, can be collected and compiled, but not very easily placed within a legal codification. The difficulty inherent in organizing responsa beyond the most basic level of compiling and creating a table of contents makes them a perfect fit for the era of *likutim*, in which the organizational system was sufficiently flexible and tolerant of heterogeneity. This fit between responsa and *likutim* also explains why it is important to examine the genre of responsa as we follow the growing systematization of halakhic knowledge in the following centuries.

## 9. THE MANUSCRIPT *LIKUT* AS A PARADIGM IN ASHKENAZ

Harold Love, in his study of scribal publishing in the seventeenth century, explains the "...root sense...of publication as a movement from a private realm of creativity to a public

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[183] One of the manuscript collections of the responsa of Rabbi Asher ben Yeḥiel that circulated clearly underwent such a process, seeing as the responsa are organized by topic. This did no small violence to the original responsa, which were pulled apart and reorganized in ways that makes the original writings difficult to reconstruct. See Ephraim Elimelech Urbach, "The Responsa of R. Asher b. Yeḥiel in Manuscript and Print," *Shnaton ha mishpat ha-ivri* (1975): 1-153, and specifically page 3.

realm of consumption."[184] It is clear why private is associated with creation, as opposed to public, which relates to consumption, and this is a useful theoretical distinction to make when conceiving of publication. However, such a distinction is not applicable in the case of *likut* culture, where there is no clear moment of publication, and thus no singular clear-cut move from private to public, from production to consumption.[185] In blurring the distinction between private and public, *likutim* also reflect the lack of distinction between producing and consuming, as the *likut* is simultaneously the method of consuming information and the resulting product.

As we have seen, the characteristics of openness and personalization are not a result merely of the *likut's* being a first draft for a more organized finished work. What we perceive as messiness, heterogeneity, and lack of unity are in fact core characteristics of these *likutim*. Even when a *likut* is "published," it remains personal, and even when it is "finished," it remains open. The logic of the *likut* with its flexible, multifarious approach remains. Most bodies of halakhic knowledge from this period in Ashkenaz – whether well-known and oft-used or entirely obscure – were situated somewhere near the "compilation" pole of the code-compilation spectrum, and all shared the characteristics of *likutim*.

The nature of these *likutim* was a result of the combination of specific scholarly practices and particular needs in the environment where they were produced. Creating a *likut* entailed both consuming information and producing material for further use. In one

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[184] Harold Love, *Scribal Publication in Seventeenth-Century England* (Oxford: Clarendon Press, 1993), 36.

[185] This is true even without accounting for theories that oppose this distinction because they posit readership itself as a creative act.

of his responsa, when asked whether students are permitted to write during the intermediate days of the holiday, during which unnecessary forms of labor are prohibited, Rabbi Meir Rothenburg replied that those who do so while studying are permitted to do so, "because their writing is in itself their studying."[186] By writing, the student created the *likut* and "digested" or processed his learning. Our contemporary notion of a work that is a useful search instrument often centers on the opposition between a tool (used to create products) and the product that it creates. We tend to consider the code, which is complete, unified, and thoroughly structured, to be the better tool. This is true, however, when one sharply distinguishes producing from consuming knowledge, whereas the *likutim* discussed here, were simultaneously used for searching and for compiling. In order to be useful, therefore, they needed to collect a large amount of material while at the same time remaining open and heterogeneous. Their openness and flexibility was precisely what made them useful for reading and writing, searching and collecting – all at the same time.

By the same token, the afterlife of a *likut* usually involved a scholar's copying a *likut* in a way that gave preference to his personal needs over respect for the integrity of the *likut* that was being copied. The nature of the *likut* invited this treatment. As Reiner mentions regarding compilations that were based on *Mordekhai*, its loose structure invited the looseness of its future copies: "The imperfect editing and the un-sealed and incomplete character of the book created the possibility in later times for broad omissions, the addition

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[186] *ShuT MaharaM mi-Rothenburg* (Lvov edition), §119: הבחורים הכותבים לעצמם דברים שצריכים ללמודם הוא היתר גמור שכתיבתם זו היא למודם.

of remarks, insights, and later rulings within it."[187] This again underscores the connection between the nature of *likutim* as both a product and a method of consumption and its openness. There is always a gray zone, rather than a sharp distinction between a work that is "published" and a work that is not. Similarly, all types of reading, to some extent, also represent a form of writing, and vice versa. Such distinctions are exceptionally blurred in thirteenth- and fourteenth- century Ashkenaz. In the age of *likutim*, it is almost impossible to tell where the consumption of external knowledge ends and the production of an individual work begins. Writing *likutim* can thus be seen as the embodiment of the active, authorial role of the reader. *Likutim* are seen by some scholars as a sign of passivity and humility, usually, in the opinion of their creators, rightfully so, considering the intellectual decline compared to their predecessors. However, if we think of the connection between reading and writing that Robert Darnton sees highlighted in commonplace books, or of Michel de Certeau's concept of reading as "poaching," which reminds us that reading is never merely passive, we can appreciate the creativity and power inherent in "just" reading or collecting.[188] The personal and open characteristics of the *likut* are thus, not only,

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[187] Reiner, "Ben Ashkenaz li-Yerushalayim," 30. עריכתו הלקויה ואופיו הלא-חתום והלא-שלם של הספר פתחו פתח, בתקופות מאוחרות יותר, להשמטות נרחבות מתוכו ולהוספת הערות, השגות, ופסקים מאוחרים לתוכו.

[188] As Robert Darnton summarized, the interest in readership among certain literary scholars stems from their understanding of "…literature as an activity, the construal of meaning within a system of communication, rather than a canon of texts. Michel de Certeau's notion of "consumer production" and "reading as poaching" in Michel de Certeau, *The Practice of Everyday Life*, trans. Steven Rendall (Berkeley: University of California Press, 1984), xii-xiv, 165-176. Although in our case, there is less of a sense of two disparate camps (those in power on the one hand, the marginal on the other), *likutim* nevertheless highlight the active powers of the reader, who can choose to make what he wishes of the text he is reading and read it in ways not intended by the author. In this case, the reading is not subversive (not illegal poaching), but, rather, "le-*laket*" or "to harvest." In its flexibility, openness to different types of sources, and freedom to select and re-arrange according to personal need, it is still more creative than the image of humility and intellectual decline usually associated with the period and the genre.

On reading and readership, especially on readership as a creative act and the active role of the reader in creating the text's meaning, see, for instance, Robert Darnton, "First Steps Toward a History of Reading,"

essential features of a certain type of literature; they represent practices of organizing, reading, and writing that reflect broader cultural approaches to halakhic knowledge.

An attitude of looseness towards manuscript copying was not merely a practice of copying, it was a dominant cultural characteristic. In a recent introduction to a volume on the pre-print book, the editors explained that "The book is not only a medium for conveying prefabricated narratives and texts… a manuscript book is often instead constitutive of a community's sense of itself; of the narratives, discourses, grammar, and metaphors with which a community will give an account of itself."[189] Something similar can be claimed about Ashkenaz and its compilations. As Yacov Shpigel describes it, studies have shown: "That the sons of Ashkenaz acted with complete freedom when they copied manuscripts, and allowed themselves to change, remove, or add to the source that stood before them,

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in *The Kiss of Lamourette: Reflections in Cultural History* (New York: W.W. Norton & Company, 1990), 154-187; Stanley Fish, "Interpreting the Variorum: Is there a Text in this Class?" *Critical Enquiry* 2.3 (1976): 465-486; Wolfgang Iser, "Interactions between Text and Reader" in *The Reader in the Text: Essays on Audience and Interpretation*, ed. Susan K. Suleiman and Inge Crosman (Princeton, NJ: Princeton University Press, 1980): 106-119; Kevin Sharpe relates the practices of note-taking in commonplace books to "any 'reading'…as an act of interpretation, an act of power 'over' the text…" As such, he considers them a "fissure" between the belief in one shared wisdom and a more skeptical view. Kevin Sharpe, *Reading Revolutions: The Politics of Reading in Early Modern England* (New Haven, Connecticut: Yale University Press, 2000), 190-191.

In Martyn Lyons' words, "Printing thus reduced the participation of the reader in editorial functions. He or she lost the freedom to manipulate and 'signpost' the text. Soon readers had no more to do except make separate notes for personal use. There was a significant change in the relationship between text and notes." See Martyn Lyons, *A History of Reading and Writing in the Western World* (Basingstoke, UK: Palgrave MacMillan, 2010), 37.

Petrucci, *Writers and Readers*, 204, discusses the medieval ecclesiastical culture of continuous "reading-writing."

Darnton, in the *New York Review of Books*, wrote: "Reading and writing were therefore inseparable activities. They belonged to a continuous effort to make sense of things, for the world was full of signs: you could read your way through it; and by keeping an account of your readings, you made a book of your own, one stamped with your personality." Robert Darnton, "Extraordinary Commonplaces," *New York Review of Books*, Dec 21, 2000.

[189] Stephen Kelly and John J Thompson, "Imagined Histories of the Book: Current Paradigms and Future Directions," in *Imagining the Book* (Turnhout: Brepols, 2005), 9.

almost entirely to their heart's desire."[190] This can be observed across the many copies of even the most famous works of ashkenazic halakha.

To summarize: the thirteenth and fourteenth centuries in Ashkenaz, the period that follows the apex of the tosafist age, is characterized by *likutim*. One of the main uses of a *likut* is to manage information. As Rouse succinctly put it, "These [compilations] are works designed to be used, rather than to be read."[191] The *likut* itself functions as a finding aid, and, more often than not in a manuscript age, compiling is also the necessary first step in creating a useable library. The *likut* serves as a mechanism for copying small parts of works and avoiding repetition and as a way of placing all the disparate pieces of knowledge within one large collection. Some historians associate these compilations with a decline in creativity. However, *likutim* allow for another type of creativity, namely, flexibility, adaptation, and customization. The *likut* is more than simply a genre; it is an attitude, a system of producing and consuming knowledge, a way of creating a library, and an organizational method as well.

*Likutim* do not focus on one specific author or contain only one specific type of halakhic material (*mina*, *shmu'ot*, *psak*, *ḥidush*, *tshuva*). Rouse calls tables of contents the "simplest" type of finding aids because they do not change the make-up of the work; they do not create a new unity in which all the parts are rearranged; they simply summarize what is already there. The purpose of the *likut* is to bring together all the different types

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[190] Shpigel, *Amudim*, vol. 1, 108-109. מסקנתם היא שבני אשכנז נהגו חירות גמורה בהיותם מעתיקים כתבי יד, והרשו לעצמם לשנות, לגרוע או להוסיף במקור שעמד לפניהם, כמעט כאוות נפשם.
He relates this cultural tendency to the stricter Ashkenazic prohibition not to leave any (Torah) books uncorrected, claiming that this encouraged a culture of liberal correction throughout.
[191] Rouse, *Authentic Witnesses*, 221.

and varieties of halakhic sources that may be of useful, placing them side by side and mixing different types of text, different authors and authorities, and adapting and summarizing them in one place. Flexibility can be observed, as well, when it comes to unity of halakhic content matter. Some works are called "*psakim*," some "*minhagim,*" and others "*tshuvot*," but, in fact, almost every compilation has miscellaneous content, even if it is named after one type of halakhic writing.

*Likutim* make it possible to unify a body of knowledge without setting it in stone, to navigate its parts without fixing it to a degree that no longer allows for further adaptation. If the idea of publication, of authorship, of a finished work, is never entirely waterproof, especially in the case of manuscript culture, this is true even more so for *likutim*. The basic dynamic applies to most works of halakha,[192] and, indeed, for many forms of reading and writing in general. The word for book or monograph, "*ḥibur*," and the related word for author or creator "*meḥaber*," come from the root of "to connect," (*le-ḥaber*), combining and collecting – in other words, the author always also compiles. The world of *likutim*, however, raises this situation to a new level. Because of practical need and scholarly

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[192]One of the most basic steps required for writing any halakhic work – indeed, for forming any kind of halakhic opinion – is to inquire into the pre-existing source material concerning the halakhic issue at hand. Add to this the fact that the writings of one generation can (and sometimes must) become part of the source material for the next, and it becomes clear that there is no sharp difference between collecting sources, processing them, and creating one's own work; thus, a personal collection or reference work is not so far removed from a creative finished product. On the spectrum between the two, some scholars will eliminate most of the discussion of prior sources and focus on their own approach, while others will primarily collect all of the relevant sources and only hint at their own leanings. For others yet, it is only in the selection and form of organization itself that the scholar's input can be perceived. If we wish to distinguish a self-contained "real work" as opposed to a mere working collection of sources by using such markers as: clear authorship, a thorough structure, a title, an introduction explaining the purpose of the work, and so on, this section has shown that even the best candidates for self-contained "real work" status from ashkenazic manuscript culture fall short on all these characteristics.

practices in the age of *likutim*, this active and personal approach is the most pervasive and basic approach to halakhic knowledge.

Compilations, in this period, were far from perfect systems of knowledge management if we consider them from the perspective of more modern finding aids, which usually resemble codes. They were rarely comprehensive, never fully systematic, and culled from a variety of sources that in its diversity defied meticulous organization. However, when considered as systems of knowledge management broadly speaking, it is precisely this openness that allows for various possibilities. The dynamics of compilation, specifically its openness, flexibility, and tolerance for a certain degree of disorder made it possible to collect without having to unify, to summarize material without the need to make it consistent, to place different types of sources side by side without converting them into the same exact halakhic register; in short, to organize without giving up on the multitude of forms and sources of halakhic knowledge. As the following section will show, this was not merely a method of organization; it reflected an approach to religious law.

## 10. THE *LIKUT* PARADIGM AND ASHKENAZIC APPROACHES TO RELIGIOUS LAW

The material fluidity, the organizational openness, and the personal nature of these compilations in profound ways also reflected ashkenazic halakhic culture's approach to religious law as a whole.[193] Whereas other halakhic cultures display a more strictly textual

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[193] This chapter points out the particular synergy between medieval manuscript technology and this particular halakhic culture. Because of this synergy, I argue, the growth of print as a reproduction technology was so disruptive for this specific halakhic culture. I do not, however, claim any simple cause and effect relationship between the method of organization and transmission and the halakhic approach. At most, I would argue that ashkenazic halakhic culture embraced this form of writing and its material realities because

focus with a preference for homogenous codifications and a centralized, unified legal authority, halakhic culture in Ashkenaz of the late thirteenth to fifteenth centuries relied on oral interpretations of a heterogeneous mixture of texts (some of which were barely "textual" texts – written testimonies of rabbinic behavior or oral transmissions). This approach, which privileged personal transmission and local custom, dovetailed with the limited authority of the textual in ashkenazic halakha.

In Ashkenaz, the text by itself was not sufficient for halakhic decision-making; rather, the personal element of the rabbinic adjudicator and his tradition were crucial. The process of legal adjudication thus did not entail applying general principles to a stable textual canon, such as, for example, the principle to follow the majority of textual opinions (whether a numeric majority or in terms of importance). Rather, a rabbi's own decision, based on his own transmitted laws, his oral and textual heritage, and his traditions of decision-making and hierarchy of sources were what mattered. Reiner describes this ashkenazic approach, which he relates to its fluid textual transmission:

> Among its sources of authority, besides the literary tradition, were local custom, that is, the oral custom of each community, which, in fact, was largely considered to override the literary tradition … the crucial point is that the written text was not necessarily seen as something perfect, authoritative; it generally reflected interpretations and rulings transmitted orally by teachers and heads of *yeshivot*, or written by the latter for *ad hoc* reference, but not as a final, approved source or legal rule. Medieval Ashkenazi culture had definite oral characteristics and its traditions were therefore fluid and limited in authority, both in time and in scope. Those who passed on these traditions never intended to create a

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it reflected their approach to halakha so perfectly (or perhaps that this form of writing flourished because its material and technological elements were not in contradiction with the legal approach).

In his *Inscription and Erasure*, Roger Chartier shows how this applies, in much more conscious choices, to literature, which comes "…to show how certain literary works appropriated objects or practices that belonged to the written culture of their time. The authors of these works transformed the material realities of writing and publication into an aesthetic resource, which they used to achieve poetic, dramatic, or narrative effects. The processes that bestowed existence on writing in its various forms, public or private, ephemeral or durable, thus became the very ground of literary invention." See Chartier, *Inscription and Erasure*, x-xi.

comprehensive, binding legal corpus…. Ashkenazi culture was not based on a fixed text, and it certainly had no authoritative canon.[194]

The ashkenazic halakhic landscape was thus varied, flexible, and ad-hoc, with a high degree of variation across geographic space and in time – much like the *likut* itself. A favored expression used to describe halakhic decision-making in Ashkenaz in this period is "every river runs its own course."[195] This expressed the idea that halakhic differentiation across separate local traditions and personal transmissions (for instance, by lineage)[196] was

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[194] Elhanan Reiner, "The Ashkenazi Élite at the Beginning of the Modern Era: Manuscript versus Printed Book," *Polin* 10 (1997): 91. For other such descriptions, see Yedidya Dinari, *Hakhmei Ashkenaz be-shilhei yemei ha-beinayim* (The sages of Ashkenaz in the late Middle Ages) (Jerusalem: Mosad Bialik, 1984), 93-99; Israel Ta-Shma, *Minhag Ashkenaz ha-kadmon* (The ancient Ashkenazic custom) (Jerusalem: Magnes Press, 1992), 16-17; 22; 26n29; Israel Ta-Shma, *Ha-sifrut ha-parshanit la-talmud* (The literature of talmudic interpretation) (Jerusalem: Magnes Press, 2000), 75; Israel Ta-Shma, *Halakha, minhag u-masoret be-Ashkenaz, 1100-1350* (Halakha, custom and transmission in Ashkenaz, 1100-1350) (Jerusalem: Magnes Press, 1996), 61n11; Eric Zimmer, *Gakhalatan shel ḥakhamim* (The fiery embers of the scholars) (Be'er Sheva: Ben Gurion University Press, 1999), 256; Shlomo Zalman Havlin, "Rabbi Yeḥiel Ashkenazi ve-tshuvotav: ḥakham Ashkenazi be-arẓot ha-islam," (Rabbi Yeḥiel Ashkenazi and his responsa: an Ashkenazic sage in the lands of Islam) *Shalem* 7 (2002): 75-76.

[195] נהרא נהרא ופשטיה, meaning that every river runs its own course, and that this poses no contradiction to the other river. This expression appears twice in tractate *Ḥulin* (18b and 57a) regarding laws of slaughter. For Ashkenaz, see Rabbi Yehuda Mintz, *ShUT MaharY Mintz* , §15, Rabbi Yosef Kolon, *ShUT MahaRY Kolon*, §37, 115, and Rabbi Israel Isserlein, *Trumat ha-deshen*, §19.

This expression is not necessarily a pluralistic statement; see, for instance, in the responsa of Rabbi Moellin, §95, on whether a kind of wild rooster (*Tetrao urogallus* or *Auerhuhn* in German) and hen are kosher. There is a clear preference for the ashkenazic tradition over the sefardic one: "And whoever says that he has a tradition to eat the *Auerhuhn*, one should not rely on him, and even if he stems from a city or state where they do eat it, because our tradition is stronger, as … Rabbi Asher ben Yeḥiel wrote, when he was asked,… and he answered that one should not rely on them, because the tradition of Ashkenaz … is better, because the Torah is bequeathed to them [Ashkenaz] from their fathers; therefore, we privilege our tradition over theirs …. and even if the traditions were equal, can one go and be lenient there where people are stringent and abandon the tradition and customs of our fathers, even if the prohibition is merely rabbinical …? We do not act in this way, even more so if the prohibition is from the Torah, and this is so in the case of … every river and its own course." ומי שאומר שיש לו מסורת לאכון אוירהו״ן אין לסמוך עליו, ואפילו אם הוא מעיר או ממדינה שאוכלין אותו, דהמסורת שלנו שהוא דוכיפת...ומסורת דידן עדיף...שאין לסמוך עליהן דמסורת אשכנז שהוא חסידה עדיף שהתורה ירושה להם מאבותיהם, הלכך ניסמי מסורת אחריני מקמי מסורת דידן....ואפילו היו המסורות שקולות אטו דאיכא למיזל במקום האוסרין אחר המתירין ולעזור המסורה ומנהג אבותנו אפילו באיסור דרבנן כגון...לא עבדינן הכי, כל שכן באיסורא דאורייתא, וכן...נהרא פשטיה.

The importance of tradition is intensified in the case of kosher fowl and birds because their kosher status depends on the existence of a tradition that a particular breed is kosher.

[196] This pluralism in deciding which texts to prefer or which *likut* to privilege can be seen in the responsa of Rabbi Yehuda Mintz, *ShUT MaharY Mintz* , §15, where he mentions the issue of lineage in at least one case. The issue here regarded when extenuating circumstances of a particular case should be taken into account and when not. He answered that there are no fast rules [which he calls *de'ot*, or opinions] when

justified. The personal transmission of every individual tradition played a large role in

halakhic decision-making and thus supported the existence of various incommensurable

ways of interpreting and deciding law. This heterogeneous approach also precluded any

expectation of unifying or universalizing the halakhic textual corpus, as textual authority

was, in any event, not sufficient for religious law. One could not arrive at the correct law

by simply applying principles of adjudication to a body of canonical texts. The decision

about which principle of interpretation to apply to what kind of text in which situation was

a matter of personal transmission. Rabbi Yacov Moellin (ca. 1360 Mainz-1427 Worms),

when asked about using the principle of majority opinion for halakhic decision-making,

answered that such issues require personal instruction and a tradition:

> This is a teaching that has no measure, one cannot teach one rule for this, because
> sometimes we go according to the majority of opinions and sometimes according to the
> most recent opinion, and sometimes according to whoever has the presumption of being
> right, and sometimes according to the plain *sugya* [talmudic discussion], and sometimes
> according to the more stringent interpretation, and sometimes according to the more lenient

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it comes to issues of working with halakhic texts: "…and when it comes to opinions, you know that every
river runs according to its own course, and there where there was no custom or in a new situation, I heard
that Rabbi Moellin of blessed memory, most of his decisions followed the *Agudah*, and I heard that Rabbi
Weil followed the opinion of Rabbi Meir Rothenburg because he is from his lineage, because he is a relative
of his, even though he wrote in his responsa that the custom is according to Rabbi Asher ben Yeḥiel, and the
*Or zarua* wrote that one should follow Raviya because he was a man of action [meaning his rulings came
from actual decisions he made for real cases], and the *Hagahot Maimoniot* wrote, 'we have nothing but the
words of Rabbi Meir Rothenburg, as he was a recent authority and knew all the earlier opinions,' but,
according to that, we should follow the *Ba'al ha-turim*, who was even more recent and knew everyone's
opinions, but some rabbis do not want even to read the *Tur oraḥ ḥayim* [*Ba'al ha-turim's* work], deeming it
for *ba'alei batim* [laymen]; in sum: it is difficult to extract a principle…" ובדבר כפשטי׳ נהרא ידעת הדעות ובענין
שאין בו מנהג ובדבר חדש שמעתי שמהרר״י מולין ס״ל ז״ל רוב פסקיו הלכו אחר האגודה, ושמעתי שמהררי״ו ז״ל הלך אחר דעת
מהר״ם לפי שהיה מתיחס אחריו שהיה קרובו אע״פ שכתב בתשובותיו שהמנהג כהרא״ש, והא״ז כתב שראוי לילך אחר ראבי״ה כי
היה בעל מעשה וההג׳ה במיימ׳ כתב 'אנו אין לנו אלא דברי מהר״ם שהיה אחרון והיה יודע דעת כולם' ולפי״ז היה ראוי לפסוק כבעל
הטורים שהיה אחרון והיה יודע דעת כולם ויש מהרבנים שאינם רוצים אפילו לקרות בטור א״ח ונותנין טעם שהבעלי בתים לומדים
אותו – סוף דבר קשה דעמוד על העיקר אך רחמנא לבא בעי והחכם יתן אל לבו.

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one, and sometimes according to custom. And all such things need a rabbi[197] and a tradition.[198]

It thus becomes clear why the textual corpus of ashkenazic halakha was far from stable. The fluidity of this ashkenazic approach went even further; it did not only justify different parallel strands of transmission, but it also recognized the right of a rabbi to make *ad-hoc* decisions. In Ashkenaz of the *likutim* era, all of halakha was like a *likut*, a living, changing, and personal body of knowledge, which could not be established in a stable, unified, and permanent form. One sixteenth-century rabbi characterized this ashkenazic approach in a manner so reactionary and polemical that it resulted in near caricature: he exclaimed that even one and the same rabbi could not possibly be expected to hold the same opinion about the same case on two consecutive days.[199] The personal element was so much more authoritative than the text that even the very same adjudicator could think differently about the same case from one day to the next. This rabbi implied that, beyond every halakhic tradition consisting of a legitimate stream, like Heraclitus stated (to continue the river idiom), one can never step into the same stream twice; halakha, in the ashkenazic culture, was determined anew by every adjudication at every moment, based on the specific rabbi's personal traditions and texts.

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[197] This expression, that such things "need a rabbi"(צריכה רבה) is taken from tractate *Bava Meẓia* 101a, where it is used to designate law that could be learned only via direct transmission from a rabbi (in that case, Rabbi Yoḥanan) and could not have been achieved by means of reasoning.

[198] Yacov Moellin, *ShUT MaharYL* §171 דזמנין אזלינן בתר מילתא דלית ליה קצבה דלא להודיע כלל על זה, רוב דעות וזמנין בתר בתרא וזמנין בתר חזקת מריה וזמנין בתר סוגיא דעלמא בתר חומרא וזמנין לקולא וזמנין בתר מנהגא וכל כה"ג צריכא רבה וקבלה.

A similar issue, regarding whether a rabbi has the right to make an independent decision that contradicts that of his teacher, is described as follows by Rabbi Israel Isserlein, *Psakim u-ktavim*, §238: "I cannot explain more than this, because these issues require oral teaching from mouth to mouth." ( אין לי לבאר יותר מזה, כי דברים אלו צריכין תלמוד מפה אל פה.)

[199] See Ḥayim ben Beẓalel, *Vikuaḥ mayim ḥayim* (Amsterdam, 1712), 4a. This is discussed at length later on in this dissertation, in chapter three on *Sha'arei Dura*.

This tradition thus found its perfect expression – materially, technologically, and organizationally – in the manuscript compilation. Manuscript transmission, with its "*mouvance,"* allowed for a constantly fluid and personal spread of halakhic texts; compilations, with their open, boundless structure and lack of strict generic principles, made it easier to preserve the heterogeneous nature of ashkenazic halakhic collections. Once a manuscript was no longer the primary form of transmitting halakhic text, this relationship between material, transmission-technology, organization, and halakhic approach, was no longer as synergetic.

## 11.    EPILOGUE: PRINT AND THE END OF THE AGE OF *LIKUTIM*

The personal nature and flexibility that I have characterized as the essence of *likutim* has more affinity with manuscript technology and is, at least in essence (if not always in practice),[200] rather incompatible with print technology. The projected audience of printed works tends to be the opposite of personal; they are more numerous than the author's close circle and often anonymous. Moreover, the relative stability of reproducing a text by means of the printing press compared to a manuscript created by a scribe made printed works less flexible. For this reason, it is crucial to consider the advent of print in Ashkenaz as a technological change that will have profound repercussions, not only on the technical means of (re)production but also on a whole form of knowledge organization, indeed, on

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[200] As Bet Arié points out by contrasting Latin to Hebrew manuscript production in the thirteenth-century, monasteries provided a form of almost mechanical, stable, and centralized reproduction of texts in manuscript form. Conversely, as Adrian Johns has shown, printed works, especially in certain eras, were not nearly as stable as we may imagine. See Adrian Johns, *The Nature of the Book* (Chicago: University of Chicago Press, 1998).

an entire culture of halakhic scholarship. Emanuel describes the procedure of assembling

a collection of halakhic texts before the era of print:

> The assembling of a collection of books, whether small or large, used to be based before the invention of print on a combination of happenstance and personal initiative. There were books that came into one's hands by coincidence – whether by inheritance or by means of an occasional purchase ... but every book lover in the Middle Ages knew that, in order to enlarge his book storehouse, he had to take an active role and copy – either by himself or by means of a paid scribe.[201]

The way in which a scholar acquired his library and archive would change

dramatically with the advent of the printing press. Bet-Arié's findings that most of the

ashkenazic manuscripts were copied for personal use dovetail with this insight, which

highlights the element of copying as part of creating a personalized archive. "From now

on," Emanuel concludes in his chapter on the decline of *likutim*, "the printers are those who

determine which books will be found on the market, and the scholar and learned individual

become passive."[202] This change in needs also leads to a shift in the approach to halakhic

knowledge. *Likutim* continue to be produced and reproduced in later periods. With the

advent of print, older *likutim* are printed and studied, but the practice of compiling such

works ceases to be the main method for consuming and producing halakhic writings.[203]

The works are still canonical, that is, considered authoritative and important, but they are

no longer paradigmatic in that their method of relating to textual material does not dictate

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[201] Emanuel, *Shivrei Luḥot*, 327.
[202] Emanuel, *Shivrei Luḥot*, 327.

בניתוח של אוסף ספרים אם קטן אם גדול מבוססת הייתה קודם להמצאת הדפוס על שילוב בין המקרה ובין היזמה האישית. ישנם ספרים שהגיעו לאדם בדרך מקרה - אם בירושה מאבותיו אם בקנייה מזדמנת ...אך כל חובב ספר בימי הביניים ידע, כי כדי להגדיל את אוצר ספריו צריך הוא לנקוט פעולה אקטיבית ולהעתיק - בעצמו או באמצעות סופר שכיר...מעתה המדפיסים הם שקבעו אילו ספרים יימצאו בשוק הספרים, והלומד והאיש המשכיל הפכו פסיביים."

[203] Emanuel, *Shivrei luḥot*, 12. "This literature of (*gilyonot*) could have flourished more and more, almost infinitely, but the invention of print cut off its wings."

the ways in which future generations relate to these halakhic texts.[204] With the decline of *likutim*, the flexibility and the attitude of freedom to pick and choose, customize and adapt, makes way for a world in which knowledge in general, and halakhic knowledge in particular, becomes more universal and consistent, not only in its contents, but also in its organization. Of course, possibilities for flexibility and mixing remain, but achieving this is less obvious than in the period of *likutim*, when this form of compiling was the regnant and necessary "first step" in acquiring material for scholarship.

Print thus signals the waning of an era no less than the beginning of a new one.[205] Statistics collected by Bet-Arié teach that, from the moment that print was invented, the number of manuscripts that were copied diminished drastically – halting what was until then a continuous rise in the pace of manuscript copying.[206] Emanuel points out that there was a decline not only in the number of copied manuscripts but also in their quality and form. In addition to a quantitative decline in manuscript production, we thus see the old practices of manuscript copying disappear, and with them the practices of creating manuscript *likutim*. Their specific mind-set and attitude to halakhic texts allowed scholars

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[204] I thank Moshe Halbertal for introducing these terms and crystalizing this distinction for me.

[205] Emanuel, *Shivrei luḥot*, 325: "The invention of print in the last third of the fifteenth century brought extreme changes to the ways in which books were preserved. On the one hand, print made it much easier to preserve books. Dozens of works, and later even hundreds and thousands of works, were printed in one go in hundreds of copies, and in doing so the continued existence of these books was assured almost for eternity.... However, it seems that, as much as print has contributed to the preservation of printed books, in the same measure, print also raised the danger that lurks for works that had not yet been printed." Emanuel focuses on lost manuscripts. Before print, the widespread practice of manuscript copying meant that there was a higher chance of a manuscript being copied several times and thus preserved, as any given manuscript had a higher chance of being reproduced by another scribe. In the age of print, manuscript copying was a disappearing practice and whatever was not being printed was more or less condemned to oblivion.

[206] Malachi Bet-Arié, "The Codicological Data-base of the Hebrew Paleography Project: a tool for localising and dating Hebrew medieval manuscripts," in *Hebrew Studies Colloquium*, ed. D.R. Smith, P.S. Salinger (London: British Library Occasional Papers, 1991), 170.

to create their own highly customized archives and anthologies of sources. Manuscript culture remained important for personal use, such as copying works that were not yet printed, writing notes, personal glosses, letters, and manuscripts in preparation for publishing, but the line between personal and public, between notes and published work, becomes steadily more distinct.

Although some continuation of these *likut* attitudes and practices can be observed, especially in the form of glosses[207] and personal notebooks (*pinkasim*),[208] the age of the printed book profoundly changed these practices of collecting, summarizing, and supplementing from generation to generation. The scholar would no longer summarize, omit, and add to the books as he did previously. At times, glosses were incorporated into a book and printed alongside it in later editions, but a printed book could not interact as freely with the handwritten personal glosses that surrounded it. The multiplicity of dissimilar

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[207] In the words of Reiner, on the continuation of the Ashkenazic scribal tradition through the printing of the glosses on the *Shulḥan Arukh*: "The *noseh kelim,* such as *Sefer me'irat enayim, Turei zahav* and *Siftei kohen,* became an integral part of the main text, and the authority of the *Shulḥan arukh* extended not only to the text as composed by Joseph Karo, but to the whole collection of texts that had become part of the canon by the very fact of being printed together with that text, first on the page around the text and later at the end of the volume. I believe that this process was the rule in regard to the acceptance of the printed book among the Ashkenazi intellectual elite: the Ashkenazi halakhic book at the beginning of the modern era retained certain features inherited from the medieval scribal tradition of knowledge transmission. In certain respects it was a kind of printed manuscript, that is, a text which, in the way it took shape, rejected the new communicative values of print culture and created a text with esoteric components, thus protecting its elitist position." See Reiner, "The Ashkenazi Élite," 98.

[208] The *pinkas* – a personal notebook – still exists for the purpose of writing observations, innovations, and glosses, and also for the purpose of copying manuscript elements that do not exist in print, such as books that were not printed or responsa from one's rabbi. In that sense, the logic of *likutim* continues in the *pinkas*. It is, however, far from being the main way in which knowledge is transmitted, acquired, and organized, and it is now eminently personal as opposed to public. In an age of print, the *pinkas* (manuscript, personal, flexible) maintains the logic of the *likut* to some extent.

See Elhanan Reiner, "Darshan noded madpis et sfarav: Perek alum be-toldot ha-tarbut ha-'ivrit be-eropah ba-meah ha-17," (A wandering preacher prints his books: a hidden chapter in Jewish cultural history of 17th-century Europe) in *Ḥut shel ḥen: Festschrift for Ḥava Turniansky*, ed. Israel Bartal et. al (Jerusalem: Zalman Shazar, 2003), 123-157, on traveling preacher/printers as those who print books based on their ever-evolving *pinkasim*, inviting us to think of their rather haphazard *pinkas* as representing a useful logic for collecting and even publishing knowledge.

scribal copies reflecting a variety of interests, uses, and focal topics gradually declined. Printed books, with a fixed order determined by someone other than the scholar himself formed the essential part of a scholar's library.

The printing of halakhic material not only heralds something new, but also marks the end of the era of manuscript *likutim*. The practice of scribal copying was eventually displaced in favor of the printed work, and, with it, the practice of compiling declined. But what did the disappearance of this practice mean for the attitude associated with its openness, and the culture of the scholars who worked with its texts? This dissertation highlights this transition, studying the fifteenth and sixteenth centuries as a period of fundamental change for the organization of halakhic knowledge in Ashkenaz and examining the reconfigurations and adaptations that this engenders. The overarching theme is one of increasing textual universalization and systematization as a result of three factors: the advent of mass printing; the socio-cultural shifts in the ashkenazic communities; and the rising popularity of the code. The latter possesses great advantages – but also poses new problems – regarding the ways in which halakha is studied, determined, and understood. These three phenomena will be the focus of the next three chapters. Subsequently, two chapters will focus more closely on the place of responsa within these reorganizations, from their origins in rabbinic correspondence, through their place in the rabbi's archive, and to their place in published books of responsa. The world of ashkenazic halakha that emerges from this study is one that adapts gradually and unexpectedly – perhaps even violently – to the new organizational situation. Its products in the late sixteenth and seventeenth centuries become, in many ways, the foundations of halakha as

UNIT I, CHAPTER 1: THE INHERITED TRADITION

we understand it even to this day, but, the culture of knowledge that preceded it was almost

entirely obliterated.

# UNIT II
# THE REORGANIZATION OF HALAKHIC KNOWLEDGE
# TECHNOLOGY, ORGANIZATION, COMMUNITY

**THE IMPACT AND LIMITS OF NEW TECHNOLOGIES**
Printing Fifteenth-Century Ashkenazic Responsa in Sixteenth-Century Italy

## 1. INTRODUCTION:
## FROM *LIKUTIM* TO PRINTED WORKS, FROM GERMAN LANDS TO ITALY

Historians have long debated the extent and magnitude of the impact of print. This was done most famously by Elizabeth Eisenstein in her work on the "Print Revolution," in which she claims that the ability of print technology to reproduce identical texts in a fixed manner, thus allowing for an unprecedentedly wide dissemination and readership, fundamentally transformed the European intellectual, religious, and scientific landscape. Many scholars, however, have contested her claim as overly technologically deterministic. Anthony Grafton,[209] Adrian Johns,[210] and numerous others have highlighted the continuities, rather than the breaks, between manuscript culture and print culture. They underscored the many ways in which manuscript technology was equally capable of stable reproduction and dissemination of texts, and, conversely, the manifold ways in which printed texts were unstable.[211] These revisions challenge scholars to create more nuanced

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[209] See the contributions by Anthony Grafton, Adrian Johns, and Elizabeth Eisenstein in the volume "AHR Forum: How Revolutionary Was the Print Revolution?" *American Historical Review* 107 (2002): 84.

[210] Adrian Johns, *The Nature of the Book: Print and Knowledge in the Making* (Chicago: University of Chicago Press, 1998).

[211] Scholars have also pointed out many continuities between manuscripts and printed books where typology, aesthetics, and codicology were concerned, proving the point that these technologies were not considered to be fundamentally different by people at the time. For instance, see Wytze Gs Hellinga, *Copy and Print in the Netherlands* (Amsterdam: North Holland Publishing, 1962); or Konrad Haebler, *The Study of Incunabula* (NY: Grolier Club, 1933), who points out the similarities between early type and handwriting at the time.

For reflections on this in relation to Hebrew manuscripts and early printed works, see, for instance, Bet Aryeh "Ha-zikah she-ben bikurei ha-dfus ha-ivri le-ven kitve-ha-yad" (The connection between early Hebrew print and manuscripts) in *Essays and Studies in Librarianship Presented to Curt David Wormann on his Seventy-fifth Birthday* (Jerusalem: Magnes, 1975). Bet Aryeh points out that, while some elements of print display continuity with the Hebrew manuscript practices that preceded it (mainly graphic elements, such as the similarity of early Hebrew type to Hebrew handwriting styles), other elements (mainly codicological ones) adopt the practices of the non-Jewish surroundings, such as the quires and the methods of keeping track

inquiries into the role of print in the intellectual history of early modern Europe in order to address the specificities of the impact of print and the significance of its limitations.

This chapter seeks to apply such a more nuanced inquiry to Hebrew printing through discussion of the fifteenth-century ashkenazic works of responsa that were printed in Italy in the sixteenth century. I will investigate the changes that occurred when this textual material, which had heretofore circulated only in manuscript, was printed. Although the printing press did not bring about substantive changes solely by means of its new technology, nonetheless, fundamental transformations took place as the result of this shift.

The impact of print was especially profound in the case of Ashkenaz. Prior to the advent of print, the practices of halakhic transmission in Ashkenaz were closely intertwined with manuscript culture, specifically through the semi-miscellaneous compilations known as *likutim*, by which halakhic material was compiled and copied. This was true both at the practical, technical level of material organization and in terms of some of the most significant intellectual characteristics of these works. The basic characteristics of these ashkenazic *likutim* – their flexibility, their local nature, their openness to a variety of source material, and the plethora of personal organizational decisions that every individual compilation reflected – are closely related to the practices by which they were transmitted. As noted in the previous chapter, the development of the printing press led to the end of *likutim* as the standard form of transmitting halakha. Scholars relinquished the habit of copying halakhic textual material in order to create their own compilations; instead, they

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of quires and pages (this may be for technical reasons, as they are printed at non-Jewish presses or by Jewish printers who adopted and learned methods from non-Jewish presses) (see Bet Aryeh, "Ha-zikah," 39).

began to buy printed halakhic works. Consequently, the practices of creating halakhic manuscript compilations were slowly disappearing, and, with them, their characteristic textual approaches. The transition from manuscript to print thus was not merely technical; with the changes in the methods of transmitting knowledge came new agents, new audiences, and new considerations.

Changes in technology would have a significant impact on the ways in which halakhic works were collected, structured, presented, and organized. Print alone was not sufficient, however, to effect these changes. As this chapter will explore, often the editors, printers, and other individuals involved in the printing process were the agents implementing the decisions that transformed this body of literature in keeping with the new technological and intellectual landscape. The first part of this chapter identifies the new textual dynamics displayed in the first two fifteenth-century ashkenazic works of responsa printed in the sixteenth century. Through comparative analysis of the manuscript and printed versions of both *Trumat ha-deshen* (Offering of the ashes) and *ShUT MaharY Kolon* (Responsa of our master Rabbi Yosef Kolon), I show how the process of preparing these works for print transformed them into complete, closed, thoroughly organized, and comprehensive collections of one single category of halakhic material – responsa. The printed works thus became more generalized in their presentation, fundamentally distinguishing the printed book of halakha from manuscript compilations. This analysis emphasizes the transformative impact of print for the ways in which these works were reproduced, reorganized, and presented.

The process of transforming responsa from segments within manuscript

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compilations to independent printed works was neither the automatic outcome nor the inevitable result of the mechanical action of setting a manuscript in print. Rather, creating these works required conscious editorial intervention. Editors such as Rabbi Ḥiya David ben Meir, the editor of the first two works, actively transformed manuscript material into books that fit both the dynamics of printed works and the expectations that readers had for printed books. My analysis of the two works of responsa edited by Rabbi Ḥiya will show that extensive efforts were, in fact, necessary to achieve this result.

Moreover, given the extraordinarily profound gap between the dynamics of halakhic manuscript *likutim* and that of printed works, even an editor's ability actively to create a printed work of responsa from manuscript compilations was not a given. The other works of fifteenth-century ashkenazic responsa printed in sixteenth-century Italy, which are discussed in the second part of this chapter, reflect the limitations of technological change alone. While these works were, indeed, printed, and, as such, display certain characteristics typical of printed works, the state of the materials and their prior manuscript transmission made it nearly impossible to transform them into printed works of responsa in the full sense of the word. Instead, they remained in form and organization identical to manuscript compilations, the only difference being their means of production and acquisition. There was, thus, an inherent dissonance between the nature of ashkenazic halakhic transmission and the characteristics of print-technology. This conflict would make print technology a particularly difficult challenge for ashkenazic scholarly culture.

The early modern period witnessed profound transformations in the world of halakhic scholarship, some of which related to the advent of print. These changes, however,

were not instantaneous, nor were they straightforward. Print created new possibilities for transmitting halakhic knowledge and rendered other practices obsolete. The technological change in production generated new prospects for these works, and the agents involved in producing and transmitting them responded to those opportunities and shaped the literature according to the new dynamics of print culture. These changes were, however, neither immediate nor sufficient to fundamentally alter the organization of halakhic knowledge in Ashkenaz. The extent of editorial intervention necessary to print the books discussed in the first part of this chapter, as well as the organization of the printed works (or lack thereof) discussed in the second part, attest to this fact. As the dissertation will later explore, it was only in conjunction with other social, cultural, communal, and intellectual changes that the organization of halakhic knowledge would eventually shift in more fundamental ways.

## 2. TURNING *LIKUTIM* INTO PRINTABLE WORKS: DANIEL BOMBERG AND ḤIYA BEN DAVID

### a. *Trumat ha-Deshen* (Venice, 1519)

The first work of ashkenazic responsa to be printed was Rabbi Israel ben Petaḥya Isserlein's *Trumat ha-deshen*. Rabbi Isserlein (ca. 1390[212] -1460, Wiener Neustadt) was considered one of the last and greatest rabbis of the ashkenazic tradition as it existed in its original geographical environs. The steady decline and eventual uprooting of ashkenazic communities in the Rhineland and Austria as a result of the expulsions and massacres that followed the Black Death in the mid-fourteenth century led to a break in the continuity of the ashkenazic tradition.[213] The new ashkenazic communities of Italy and, later, Eastern

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[212] His birthplace remains unclear – some claim it was Marburg, others Regensburg, Bavaria.
[213] See chapter 4 in this dissertation.

Europe, maintained a strong sense of identification with their German-ashkenazic predecessors.[214] When the textual products of this ashkenazic tradition were first being printed in Italy, however, not only geographical and chronological distance but also technological change separated them from their previous context. When Rabbi Isserlein died in 1460, the first Hebrew incunabula had not yet been printed. By 1519, when his writings left Bomberg's printing press, Hebrew printing was well underway.[215] The significance of this divide becomes especially clear in comparing the first printed edition of Rabbi Isserlein's responsa to the same responsa as transmitted before print.

The printed *Trumat ha-deshen* [see image 1] makes an immediate impression of being, for a work of ashkenazic responsa, thoroughly edited, very complete, and unprecedentedly well-organized – so much so, in fact, that a tradition developed in Ashkenaz in the sixteenth and seventeenth centuries that the responsa in *Trumat ha-deshen*

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[214] See Moshe Shulvass, "Ashkenazic Jewry in Italy," *YIVO Annual of Jewish Social Science* 7 (1952): 110–131. See the introductory chapter of Gershon D. Hundert, *Jews in Poland-Lithuania in the Eighteenth Century* (LA: University of California Press, 2004): 1-21; see also the prologue by Mordechai Breuer, "The Jewish Middle Ages," in *German-Jewish History in Modern Times*, vol. 1, Tradition and Enlightenment 1600-1780, ed. by Michael A. Meyer, trans. William Templer (New York: Columbia University Press, 1996,7-77).

On Central Europe, see Hillel Kieval, "Bohemia and Moravia" in *YIVO Encyclopedia of the Jews in Eastern Europe*, ed. Gershon Hundert (New Haven: Yale University Press, 2008), 204; Otto Muneles, ed., *the Prague Ghetto in the Renaissance Period* (Prague: State Jewish Museum, 1965); Abraham Stein, *Die Geschichte der Juden in Böhmen* (Brünn: H Rickl Verlag, 1904).

On *minhagim* (customs), see Rachel Zohn Mincer, "Liturgical Minhagim Books: The Increasing Reliance on Written Texts in Late Medieval Ashkenaz" (Ph.D. diss., Jewish Theological Seminary, 2012); and Lucia Raspe, "The Migration of German Jews to Italy and its Impact upon the Legacy of Medieval Ashekenaz," in *European Jewry around 1400: Disruption, Crisis and Resilience*, ed. Lukas Clemens and Christopher Cluse (forthcoming) on the new ashkenazic communities.

[215] On the beginnings of Hebrew printing in Ashkenaz, see: Yeshayahu Sonne, "Tiulim ba-makom she-ha-meẓiut ve-ha-sefer – historia u-bibliografia – noshkim ze et ze*"* (Strolls in the place where reality and the book – history and bibliography – intersect), in *Jubilee Book in Honor of Alexander Marx* (Hebrew) (NY: JTS, 1950), 209-235. See also Avraham M Haberman, *Ha-sefer ha-ivri be-hitpatḥuto* (The Hebrew book and its development) (Jerusalem: Rubin Mas, 1968).

were not based on authentic questions but were actually created by the author.[216] Evidently, *Trumat ha-deshen* did not strike scholars of halakha in the early modern period as a typical work of responsa from fifteenth-century Ashkenaz. Its polished, tightly organized, closed-ended, edited, and complete format aroused suspicion – the printed *Trumat ha-deshen* approached the prototype of a printed book more closely than any other ashkenazic work of responsa that would be printed in that century. Precisely this feature aroused suspicions about its authenticity, suspicions that soon became accepted knowledge.

Before the printing of *Trumat ha-deshen*, Rabbi Isserlein's teachings circulated in several forms. An anonymous student of Rabbi Isserlein recorded one collection, *Psakim u-ktavim* (Rulings and writings). It includes 267 sections, amongst which are many responsa in various states of completeness and editorial intervention. The collection also includes material that is not responsa, such as testimonies regarding Rabbi Isserlein's conduct and instances of oral transmission recorded by this student. For example, the collection includes a record of Rabbi Isserlein's oral transmission of something that he had

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[216] For instances of this tradition, see Rabbi Shabtai Cohen's gloss, *Siftei cohen* on *Yoreh de'ah*, §196:20, and Rabbi David ha-levi Segal's gloss, *Turei zahav* on *Yoreh de'ah*, §328:2; for more examples and a discussion of the halakhic import of such an assertion, see Yedidya Dinari, *Hakhmei Ashkenaz be-shalhei yemei ha-beinaim: Darkeihem ve-kitveihem ba-halakha* (The sages of Ashkenaz at the end of the Middle Ages: Their ways and their writings in halakha) (Jerusalem: Bialik, 1984), 303n223. Dinari attempts to verify whether the responsa were truly invented or authentic (mainly by comparing which responsa in *Trumat ha-deshen* appear in a less edited form in *Psakim u-ktavim* or *Leket yosher*) and concludes that we cannot determine this with certainty. In any event, this tradition that *Trumat ha-deshen* was inauthentic is significant primarily because it emphasizes that *Trumat ha-deshen* indeed appeared out of place compared to other works of responsa from its time and location because the work was so thoroughly edited, organized, and complete. In that sense, the intuitions of those who considered it "invented" by Rabbi Isserlein himself are not incorrect. The basis for the book may have been authentic, but the level of editing was atypical for works from ashkenaz in general, and definitely for the 15th century.

    For more on this question, see this dissertation, chapter 6, section 2a.

    See also Yakov Shmuel Shpigel, *Amudim be-toldot ha-sefer ha-ivri,* vol. 2*: Ktiva ve-ha'ataka* (Chapters in the history of the Jewish book, vol. 2: Writing and transmission) (Ramat Gan: Bar Ilan University Press, 2005), 286.

heard from his own rabbi, Rabbi Nathan Eiger (Eger, ca.1360 – Palestine, ca.1453).[217]

*Psakim u-ktavim* was printed in 1519 together[218] with *Trumat ha-deshen*, despite some

overlap between their respective contents.

The other extant collection from the school of Rabbi Isserlein is *Leket yosher*,

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[217] See Yuval, *Ḥakhamim be-doram* (Jerusalem: Magnes, 1989), 172–194.

[218] The two were definitely printed at the same time; the three copies that I could consult (at the National Library of Israel, at the Center for Jewish History, in YIVO's *Strashun* Collection, and from a private owner, Rabbi Shlomo Gottesman) all have the two works bound together. Of course, books were sold unbound, and they may often have been bought together and then bound as a unit. The Plantijn-Moretus museum has a copy of *Trumat ha-Deshen* alone [shelf mark B.3059(11)], as does Cambridge University Library, where it is bound with an unrelated work that was also printed by Bomberg in the same year, (S817.c.51.1).

The two works have separate title-pages and *Trumat ha-deshen* concludes with its own colophon emphasizing the work's "completion" השלמה (three times), pointing to the separate nature of the works. Moreover, the signatures at the bottom of the leaves, which serve to direct the printers as to the order of the pages, are separate. *Trumat ha-deshen* ends with signature לא, and *Psakim u-ktavim* starts anew, from א, thus also indicating that they were printed as stand-alone works. In addition, the index (*reshimat simanim*) of *Trumat ha-deshen* has its own signatures for the quires and appears in different places in the copies I have seen (in the copy of the NLI, it appears after the title page before *Trumat ha-deshen* proper; in Gottesman's private copy, it appears after the work). The index, too, may have been a stand-alone piece. This is in contrast to the table of contents of *Psakim u-ktavim*, which seems to be part of the work itself, as the signatures continue from *Psakim u-ktavim* itself to the table of contents at the end. It is, perhaps, also significant that Gottesman's copy of *Trumat ha-deshen* is censored throughout, whereas *Psakim u-ktavim* is not, indicating that they were not bound together originally. I thank Rabbi and Malka Gottesman for allowing me to examine their copy and Theodor Dunkelgrün for checking the Antwerp and Cambridge copies for me.

Conrad Gessner's *Pandectum sive Partitionum uniuersalium* (Zurich: Christiphorus Froschoverus, 1548) includes a section titled "De Grammatica Hebraica Chaldaica & Arabica & c.," which is followed by a catalog of the books for sale in Venice by Bomberg with their prices ("Sequuntur libri aliquot hebraici Venetijs uenales, pretio quo singuli uenduntur adscripto monetae Venetae per libras & per solidos"). In that list, "*Pesacim uchtauim*" is listed ("*id est iudicia & epistolae*") as being for sale for 1 lire (among the cheapest works on that page), while *Trumat ha-deshen* is not mentioned, possibly because *Trumat ha-deshen* was sold out but *Psakim u-ktavim* was not. This would mean that not only were they sold separately but also that the former was bought more often than the latter. Clearly, the more edited, organized work that was more "fit for print" was, indeed, bought more often.

I thank Theodor Dunkelgrün for his help in examining this issue. See also Theodor Dunkelgrün, "The Hebrew Library of a Renaissance Humanist, Andreas Masius and the Bibliography to his 'Iosuae Imperatoris Historia' (1574), with a Latin Edition and an Annotated English Translation" in *Studia Rosenthaliana* 42/43 (2010-2011): 197-252 (esp. p. 226 n. 66). See also Aron Freiman, "Daniel Bomberg's Buchverzeichnis" in *Zeitschrift für Hebraïsche Bibliograpie* 10 (1906): 38-42.

Steinschneider's catalog of the Bodleian lists the two separately and adds "*cura Chijja Meir b. David*" for *Trumat ha-deshen* ("*Oblatio cineris*"), but not for *Psakim u-ktavim* ("*Decisiones et curia*"). See Moritz Steinschneider, *Catalogus Librorum Hebraeorum in Bibliotheca Bodleiana* (Berlin: Friedländer, 1852-60) I: columns 1165-1166.

collected by Rabbi Yosef (Yoizel) ben Moshe Ostreicher (1463–1475).[219] *Leket yosher*

contains a similar combination of responsa, *psakim* (rulings), and other halakhic

material;[220] however, this collection is centered mainly on *psakim* and *hanhagot* (customs,

habits), whereas *Psakim u-ktavim* contains mainly responsa. In *Leket yosher*, the collector-

copier Rabbi Yoizel intruded by means of glosses and comments and often inserted himself

into the writings, for instance by mentioning questions that he himself asked Rabbi

Isserlein. He also often mentions the source from which he copied, whereas *Psakim u-*

*ktavim*'s anonymous author almost never does. The collection also includes a few sermons

and *hanhagot* (customs) of a rabbi other than Rabbi Isserlein.[221] *Leket yosher* was not

printed until 1903.[222]

When it comes to manuscripts of *Trumat ha-deshen* itself, there are no extant

manuscripts of *Trumat ha-deshen* resembling the printed book.[223] Edward Fram has

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[219] See Moritz Steinschneider in the catalog of the *Bayerische Staatsbibliothek Hebraïschen Handschriften* (2nd ed., Munich, 1895), 29, for a description of what is possibly an autograph of this collection. On Yoizel Ostreicher, see his introduction in *Leket yosher* as well as the foreword in *Leket yosher*, *Oraḥ Ḥayim* (Jerusalem: Makhon Yerushalaim, 2010), ed. Yoel Katan and Amiḥai Kineret, 18-22. (Future page references to this work refer to this edition unless otherwise specified.)

[220] *Leket yosher* contains a mixture of copied material (such as responsa) and Rabbi Yoizel's own notes, many of them observations. He emphasizes that he learned these while eating at his master's table and even sleeping in his bedroom. When Rabbi Bruna visited Rabbi Isserlein, he declined to lead the grace after the meal, in order to watch Rabbi Isserlein do it and perhaps learn something new (see *Leket yosher*, 65-66). These examples demonstrate the close connection between copying of halakhic material and learning from one's rabbi – not only from his writings but from all of his deeds – internalizing this knowledge and subsequently transmitting it. Copying responsa was but one way of doing so. We also see the social and moral weight associated with copying, to the degree that others tell Rabbi Yoizel that not sharing his copies after Rabbi Isserlein's death constitutes a grave sin.

[221] Rabbi Shlomo Shpira (b. Speyer- d. Breslau 1453), see Yuval, *Ḥakhamim*, 245–256.

[222] *Leket yosher*, ed. Yacov Freiman (Berlin: Itzkovich Press, 1903-4).

[223] The absence of such a manuscript does not necessarily mean that it did not exist, as they may very well have lost track of the manuscript copy used by the printer as soon as the work was printed and it was no longer needed (whereas manuscripts not brought to a printer are more likely to be preserved). See, for instance, what happened to the manuscripts used to print books at Bomberg's press: Avraham Haberman, *Ha-madpis Daniel Bombirgi u-vet dfuso* (The printer Daniel Bomberg and his press) (Safed: Museum for the Art of Printing, 1978), 21.

described three manuscripts containing the same responsa as those included in *Trumat ha-deshen.*[224] Of the three manuscripts, two collections contain the same 354 responsa as the printed work, albeit in different orders. One of these manuscript collections[225] contains a deed of sale, dated 1511, following the question of responsum §281; this means that at least the first part of the collection dates from before 1519, when *Trumat ha-deshen* was printed. This deed of sale is followed by the full response to question §281, along with the remaining seventy-four entries.[226] The collection was written by three scribes and includes a table of contents, which was also penned by multiple scribes. The third manuscript that Fram describes contains only thirteen responsa from *Trumat ha-deshen.*[227]

Several elements make *Trumat ha-deshen* appear far more thoroughly edited than any other collection of responsa from the same place and time. For one, the responsa are very concise and self-contained. Each responsum has its own numbered section; each question is preceded by the word "Question" in larger type; and each response is preceded by the word "Response" in larger type. Almost every response opens with the same formula ("it seems")[228] and concludes with the same formula ("so it seems to me, in my humble

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[224] Dinari seems to think that *Trumat ha-deshen* was printed more or less directly from a manuscript that resembled the printed work. In any event, he does not delve deeply into the topic of the work's form prior to print. See Edward (Yeḥezkel) Fram, "Al seder ha-tshuvot ba-mahadura ha-mudpeset shel sefer Trumat ha-deshen" (On the order of the responsa in the printed edition of *Trumat ha-deshen*), in *Ale sefer* 20 (2008): 81–96, and Pinchas Roth, "Ha-siman he-ḥaser be-sefer Trumat ha-deshen" (The missing entry in the book *Trumat ha-deshen*) in *Ale Sefer* 21 (2010): 179–181. I thank Pinchas for his helpful comments and clarifications.

[225] Jewish Theological Seminary, JTS Ms7148 R1419.

[226] Fram assumes that the remaining responsa were copied on the basis of the printed book. See Fram, "Al seder ha-tshuvot," 82.

[227] Ms Plut. I 8/6 in the *Biblioteca Medicea Laurenziana.*

[228] ויראה  or  יראה לי

opinion").[229] This is not the norm for most other works of responsa, especially in Ashkenaz, where responsa are often only partially copied or merged with other pieces and where several responsum frequently appear under one and the same section number.

The consciously chosen amount of responsa in the collection is yet another characteristic that is atypical of *likut* culture. As mentioned, the work contains 354 responsa,[230] a number that corresponds numerically to the letters in the word "*deshen*," hence the name of the book. This element points to the stable transmission of a closed-ended work of set content, rather than the flexible, open-ended transmission practices of manuscript collections, in which various textual materials from different sources, genres, and authors would be copied in different combinations and orders by each individual scribe.

Moreover, *Trumat ha-deshen* consistently omits the personal names of questioners and subjects in the responsa and replaces them with generic, anonymous names. Contemporary rabbis in *Trumat ha-deshen* are often referred to non-specifically, for

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[229] This also holds true for the JTS manuscript collections, except that "Question" שאלה and "Response" תשובה are sometimes replaced by just the first letters ("ש" and "ת," in larger script), and the concluding formula is usually written in acronym form כי"ל לענ"ד. [see image 2]

[230] The count is not entirely accurate, as two variations of one responsum appear under different section numbers, albeit in slightly different form. The responsa in question are §230 and §236, concerning a document of divorce. The printed edition does mention, at the end of §236, that this response is identical to §230, adding "*ve-ẓarikh iyun*" (and this needs further study), which indicates that the editor, at least, is unsure of why this needed to be copied twice. Nevertheless, he does not remove it, perhaps because he believed there was a reason for including it twice, or perhaps simply because it would mean that the count of 354 would fall short. According to the author of *Leket yosher*, Rabbi Isserlein was aware of the repetition and did not think it needed to be corrected – see Freiman, "Introduction," *Leket yosher Yore de'ah*, Berlin edition, 25. – that the section number in *Leket yosher* is not the same as in the printed *Trumat ha-deshen* (§247, as opposed to §230 or §236), may be further proof that Fram is correct about the existence of manuscript collections that did not resemble the corresponding printed ones. "כתב בספרו שני פעמים תשובה זו (רמז) וידוע לו ולא מחק האחת."

Freiman, the editor of the first edition of *Leket yosher*, seems to see in this statement proof that the questions in *Trumat ha-deshen* were, indeed, real questions, for otherwise, why would the same question appear twice knowingly? Obviously, because it was indeed asked twice! However, even if this were the case, Isserlein would not have needed to copy a similar idea twice in his collection.

example, as "one of the great scholars." Comparison of those responsa to the equivalent

documents as they appear in *Psakim u-ktavim* and in *Leket yosher* shows that the full names

were present in earlier iterations of the correspondence[231] and, thus, were removed for

preparation of *Trumat ha-deshen.*

Beyond the removal of specific names, other elements were also changed, resulting

in creation of a more generic-looking work. Question §143 of *Trumat ha-deshen,* regarding

a formulation in the prayer of *Rosh ha-shana* (the New Year), for instance, is clearly more

edited than the same question in *Psakim u-ktavim.* The question in *Psakim u-ktavim*

includes a part in which the questioner suggests his own theory about the correct prayer,

and the exclamation "and the whole form of the prayer before and after this I desire to

know."[232] The equivalent entry in *Trumat ha-deshen* is devoid of the questioner's

suggestion and of the exclamation. Similarly, in the answer in *Psakim u-ktavim,* Isserlein

mentioned a relevant personal experience (having heard a relative recite the prayer in a

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[231] For example, §204 in the printed edition reads, "And I saw in the responsum of *one of the great ones* who wrote in the name of his rabbi, one of the great ones, that everything which is in the barrel... וראיתי בתשובת אחד מן הגדולים שכתב בשם רבו אחד מן הגדולים, דכל מה שהוא בחבית.

In *Leket yosher*, *Yoreh de'ah, hilkhot yayin nesekh*, §12 (Jerusalem: Makhon Yerushalaim, 2010), 19, this is cited in the name of "השר," which refers to Rabbi Shalom, who wrote *Minhagei MahaRaSH*, אמר מורי, כתב מהרי"ל בשם השר שבחבית קרי הפסד מרובה. This replacing of names can be observed in the manuscript versions of *Trumat ha-deshen* as well as in the printed version. (Compare to the same responsum in Ms JTS R1419, for instance, [the equivalent of §204 in the printed work is §319 in this manuscript,] where it is written the same way as in the printed edition, as "one of the great ones.")

For a theory related to the choice of generic names versus real names in citing rabbinic authorities in *Trumat ha-deshen*, see Naftali Yacov ha-Kohen, *Oẓar ha-gedolim alufei Yacov* (Bnei-Brak: Publisher unknown, 1968), 6: 50.

ועוד בספרי הפוסקים זה דרכו שבכ"מ שמביא סברת ותשובות מאחד מהגדולים שהיו משנות קו"ף ולמעלה (אחרי שנות הגזירות קח וקט) באשכנז ואוסטרייך מביא רק בשם אחד מהגדולים בלי הזכרת שם כמו דעת מהר"ש מוינא ותלמידו מהרי"ל ורבו הקדוש רבי אהרן וכן אפילו למהר"ם הלוי סג"ל...ורק סברות גדולות שהיו קודם שנת קו"ף כמו סברת תלמידו מהר"ם מרוטנבורג ותלמידיהם כמו האגודה וספר הטורים מביאם בשמם וכמו שראה דרכו בספרו וכל זה בספר הפסקים אבל בכתבים ותשובות שם כותב הכל משמם המיוחד בשם אומרו וכיו"ב...

[232] *Psakim u-ktavim,* §117. בראש השנה מלבד עולת החודש וכו' באיזה מקום יש לאומרו...כי כמדומה שאין במקומינו
כמו המנהג שכתוב במנהגי קלויזנע"ר, וכל הנוסח מקודם ועד אחריו חפץ אני לדעת

particular way), which is absent in *Trumat ha-deshen*. These changes have the combined effect of converting *Trumat ha-deshen* from a haphazard, personal compilation into a more structured, edited, and accessible book.

It was thus no coincidence that this work, so unprecedentedly organized, edited, and standardized – and so different from the manuscript context in which responsa were then circulating – was the first ashkenazic work of responsa to come off a printing press.[233] As mentioned, the dividing line between the ashkenazic communities of the German lands and their successors in Italy was also the border separating the pre-print era from the age of print. Ashkenazic responsa were doubly intertwined with manuscript culture. At one level, the connection to manuscript was essential to responsa in general, as the main source of responsa was epistolary, an element of learned rabbinic correspondence that was conducted in manuscript form. The connection to manuscript culture was even stronger for responsa in Ashkenaz than elsewhere, as their practice was mainly to preserve and transmit responsa in *likutim*.[234] The *likutim* in which the ashkenazic responsa circulated prior to print were flexible, loosely organized, open, and varied in their halakhic content. This was related to the production process and the specific uses of manuscript compilations. Personal note-taking practices persisted to some extent in the era of print, by means of the archives

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[233] As for the question, why *Trumat ha-deshen* was, indeed, such a complete, organized collection, even in its manuscript state, Ta-Shma attributes this to the influence of Rabbi Yacov, the son of Rabbi Asher ben Yeḥiel (the 13th-century halakhist known as ROSh*)*, who left Ashkenaz for Spain. Once in Spain, his son organized his father's responsa according to principles, by dividing, editing, and re-arranging, and creating a table of contents. "... from then on," Ta-Shma writes, "the situation changed," and ashkenazic authorities, too, began to organize their responsa collections in this more sfardic style. The example Ta-Shma provides for this change caused by Rabbi Yacov ben Asher– *Trumat ha-deshen* (Ta-Shma, *Kneset meḥkarim: Iyunim ba-sifrut ha-rabanit bi-yemei ha-beinayim* (Collection of studies: Inquiries into the rabbinic literature of the Middle Ages) (Jerusalem: Mosad Bialik, 2004), 121.

[234] See chapter 1 in this dissertation, especially sections 5, 7, 8 there.

and manuscript notebooks (*pinkasim*) that scholars kept, and in the practice of writing manuscript glosses on other books, although these practices declined. The printed book became the primary method of acquiring a collection of halakhic textual material and the main way of creating and publishing a work of halakha. For works previously published in manuscript in more stable and closed-ended form, the variance between manuscript and printed work was, perhaps, somewhat less extreme. Writings that traditionally circulated in manuscript *likutim*, however, displayed more profound differences between their manuscript and print transmission. With this change in technology came a change in the approaches to, and expectations of, a work of halakha. This profound shift helps explain the choice of *Trumat ha-deshen* as the first work of responsa to represent the ashkenazic halakhic legacy.

How much of *Trumat ha-deshen* existed in such an organized, edited, manner before it was printed? It is fairly certain that Rabbi Isserlein already possessed a collection of responsa with many similarities to the printed book. *Leket yosher* and other writings by his students mention a "book" or some other known collection of writings by Rabbi Isserlein, indicating that he did maintain some collection of his own responsa. The introduction to *Leket yosher* includes a detailed listing of the myriad sources (both written and oral) that Rabbi Yoizel consulted. He also lists the various terms used to differentiate the types of source material:

> I created this book and organized it according to the order of the *Arba Turim* ... and everywhere I wrote simply, 'he said,' or 'an occurrence,' or 'one time,' or 'he taught,' [or 'a response'], it was written in his lifetime as he said or as I observed.... But there where I write 'and I remember,' or 'I found,' or 'I copied,' I wrote after his death. And there where

I wrote 'responsa,' it is the responsum as it is written in the book that the *gaon*[235] of blessed memory made....[236]

We thus note a clear reference to "the book" that Rabbi Isserlein "made," his collection of written responsa. Yedidia Dinari also assembled several early mentions of a work or book by Rabbi Isserlein, as opposed to simple citations of knowledge in his name.[237]

Pre-print sources rarely mention the work's title and its connection to the number of responsa. The only references to the title in the printed work are in the colophon and on the title page, not in the work itself. The printed book opens with the following statement on its title page: "The Book *Trumat ha-deshen*. Composed and created by ... Rabbi Israel of blessed memory. Whose name is known in the gates[238] and who is called among the Ashkenazim Our Teacher Rabbi Isserlein of blessed memory...."[239] The significance of the exact number of responsa is stated explicitly in the colophon: "Praise and thanks be to the Master of Reality who strengthened our arms and helped us arrive at the completion of this beautiful work known to Israel[240] and Judah, its name is *Trumat ha-deshen* because the number of its responsa are 354...."[241] As mentioned, two of the extant manuscript

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[235] Gaon translates as an honorific like sage. For an illuminating summary of the evolution of the meaning of *gaon* throughout Jewish history, see Eliyahu Stern, *The Genius*: *Elijah of Vilna and the Making of Modern Judaism* (New Haven: Yale University Press, 2014), 146-153.

[236] חיברתי ספר הזה, וסדרתי אותו על סדר הראבע טורים...וכל היכא שכתבתי בסתם, דרש או מעשה, או פ"א או הורה],[או תשובה], כתבתי בחייו כמו שאמר או כמו שראיתי...אבל היכא שכבתבי וזכרוני, או מצאתי, או העתקתי, כתבתי לאחר מותו. וכל היכא שכתבתי תשובה היא התשובה שכתוב בספר שעשה הגאון ז"ל...

[237] See Dinari, *Hakhme ashkenaz*, 303, for examples.

[238] Proverbs 31:23.

[239] *Trumat ha-deshen*, title page:  ספר תרומת הדשן

חבר ויסד הגאון מהר"ר ישראל זצ"ל. אשר שמו נודע בשערים ונקרא בין האשכנזים מהר"ר איסרלן זצ"ל. אשר הניח אחריו ברכה לזכות הרבים בתשובותיו. ונדפסו ונחקקו על ידי הנעלה המחזיק ידי עושי המלאכה בממונו. הלא שמו נקרא בחוצת דניאל בומבי"רגו מאנוויירשה יצ"ו.

[240] Emphasized because it is also an allusion to the author's first name.

[241] *Trumat ha-deshen*, first ed., colophon:

collections of the responsa contain the requisite amount of sections and a reference to the

title. The only part of these manuscripts that can be reliably dated to before the printed

work, however, is the first part of one manuscript, up to §281, and a reference to the title[242]

is found only at the end of that collection, which could have been completed after 1519.

The second manuscript collection ends with the words, "This book was founded by the

gaon, Our Teacher, Rabbi Isserl"[243] and references the title (*Trumat ha-deshen*) and the

amount of sections, but it could date from a later point – that is, after the work had been

printed, and it does not necessarily mean that the collection was called *Trumat ha-deshen*

before 1519.[244] Another reference to the title and the number of responsa appears in the

introduction to *Leket yosher*, where Rabbi Yoizel describes his work:

> And there where I wrote 'responsa,' it is the responsum as it is written in the book
> that the Gaon of blessed memory made [that was called *Trumat ha-deshen* because it
> contained 354 responsa like the lunar cycle which is 354 days] and everywhere I wrote 'he
> wrote in his book,' and I did not mention the term 'responsum,' it is because I did not know
> at the time that I wrote that law, that it was already written in his book until afterwards,
> when his book was revealed, then I wrote 'it says in his book.'[245]

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שבח והודיה לאדון המציאות אשר אמץ זרועותינו והגיענו להשלמת זה החבור הנאה הנודע בישר"אל וביהודה שמו תרומת הדשן. כי מספר תשובותיו דש"ן. והם דשנים ורעננ' בנויי' על שורש התלמוד ויסוד הפלפול סיני ועוקר הרים כל בר שכל ימצא שם חנינה כי נצח ישר"אל לא ישקר וכל דבריו נערכים ומסוללים שקולי' בכף הצדק ובמאזני המשפט

[242] At the end of JTS Ms7148 R1419 תם ונשלם שבח לאל בורא עולם ית' ויתעלה וסימניו שנ"ד וסימנך דש"ן על כן נקרא תרומת הדשן

[243] See also Fram, "Al Seder," 81n3.
JTS Ms 7149 R1532 ends with: סיימתי ספ' נקר' תרומת הדשן תהלה לאל נותן זכור כל מנחותיך ועולותך ישן [ידשן]

[244] As Fram mentions, whereas the first 280 sections definitely date from before 1511, the next 74 were added later and according to the printed edition. See Fram, "Al Seder," מילא את החסר על סדר התשובות במהדורה המודפסת או כתב יד שהמהדורה המודפסת מבוססת עליו ושלא הגיע לידינו.
There is also a censor's signature at the end of JTS Ms7148 R1419 dated 1598 (Domenico Irosolimitano).

[245] וכל היכא שכתבתי תשובה היא התשובה שכתוב בספר שעשה הגאון ז"ל [שקרא תרומת דשן משום שיש בו שנ"ד תשובות כמו הילוך לבנה שהוא שנ"ד ימים], וכל היכא שכתבתי כתב בספרו ולא כתבתי בלשון תשובה הוא משום שלא ידעתי באותו זמן שכתבתי אותו דין שהיה [אותו דין] כבר כתוב בספרו עד לאח"כ שנגלה הספר שלו, אז כתבתי כתוב בספרו. וכל היכא שכתבתי כתב, פי' שהשיב הגאון ז"ל בכתב לחכמי ישראל, והיכא דאפשר אכתוב שמותם אי"ה ובשאלה ראשונה אכתוב ההתחלה מן הכתב, ובשאלה אחרונה אכתוב סיום הכתב בלשון נאום ישראל, ואם יהיה לי יותר אזי אכתוב יותר

This passage clarifies that Rabbi Yoizel had access to his rabbi's writings before he knew about the collection of responsa that would become the famous book. He apparently became aware of such a book only later, and therefore added "it says in his book" to the entries in his manuscript of *Leket yosher* that corresponded to the book *Trumat ha-deshen*. It is unclear whether, at that point, the number of sections was already 354 and the title already known. The introduction of *Leket yosher* does refer explicitly to the title and the 354 responsa.[246] Yet, in the first printed edition of *Leket yosher*, this line was bracketed, as it was added to the manuscript at a later date. As the author himself stated in the introduction, Rabbi Yoizel continued to edit *Leket yosher* throughout his life. Evidence suggests that the reference to the title was most likely added by Rabbi Yoizel himself, who died before *Trumat ha-deshen* was printed, meaning that he already knew the name of the book.[247] One other pre-print reference to the title is found in a play on words by Rabbi

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[246] The use of 354 as corresponding to the lunar cycle has a precedent in other books. However, it may simply be a convention that someone followed in adding it to the manuscript later. Rabbi Yomtov Lipman Mühlhausen has a similar explanation for the amount of *simanim* in his collection (see Dinari, *Hakhme ashkenaz*, 302n218).

[247] Regarding the brackets in the first printed edition of *Leket yosher* (Berlin, 1903): It is not stated there why it appears in brackets. Freiman relied on a 1494 manuscript. For some reason, he did not think this line was part of the original manuscript of *Leket yosher*. Isserlein and his book are not referred to anywhere by means of the title *Trumat ha-deshen* in the rest of the introduction or in works that appeared before 1519, when *Trumat ha-deshen* was printed. The editor of the *Makhon Yerushalaim* edition makes the following remarks regarding the brackets in Freiman:

בהשוואה לכתה"י התברר, שהסוגריים בספר נבעו בדרך כלל מכך שלעיתים הוסיף המחבר משפטים בגיליון כתה"י כנ"ל, או הוסיף קטע שלם ברווח שבין שני קטעים כך שחלק מהתיבות נכתבו על הגיליון, ודרכו של המהדיר הקודם [פריימן] היתה לסגור בסוגריים כל מה שלא היה כתוב בעמוד עצמו, גם אם מדובר על המשך המשפט של אותה פיסקה. אמנם בכל מהקום שהיתה לענ"ד משמעות לכתיבת תיבות מסויימות ע"י הכותב מאוחר יותר מאשר גוף הספר - ציינו בהערות שתיבות אלו הוכנסו מתוך מה שנוסף בגליון הספר: כך התיבות "כתב בספרו" וכן "כתב" פלוני וכן "תשובה" וכד' בכותרת הפסקאות נכתבו בדרך כלל בגליון כתב היד.
*Leket Yosher,* 26-27.

Steinschneider in *Bayerische Staatsbibliothek München's* catalog of *Hebraïschen Handschriften*, p. 225, mentions that the manuscript of *Leket yosher* was corrected and emended often ("*vielfach corrigirt und erganzt*") and on p. 227, he mentions ink from different times ("*am Rande von frischerer tinte…*"). As Rabbi Yoizel died in 1475, if he added the remark concerning the title, that would mean the book already had this name before it was printed. The manuscript of *Leket yosher* does contain many later marginalia such as "כתוב בספרו" (see Steinschneider, *Bayerische Staatsbibliothek,* 226). Pinchas Roth, who worked with an early

Israel Bruna (ca. 1400–1480). In a responsum, he refers to Rabbi Isserlein's contributions by using the word "*trumot*" (contributions/offerings).[248] With regard to removal of personal names and the more generic phrasings of the responsa themselves, the two complete pre-print manuscripts are identical to the printed ones, which supports the idea that the responsa from *Trumat ha-deshen* had already been prepared in this form by Rabbi Isserlein.[249]

In conclusion, some form of official collection of Rabbi Isserlein's responsa that he himself had already, to some extent, edited, definitely seems to have existed. A connection to the title and the number of entries probably had evolved before the printed work. The existence of such a collection may have been one of the reasons why the publishers chose to print *Trumat ha-deshen* first.[250] However, even for a collection as edited, complete, and easily adaptable to print as *Trumat ha-deshen,* the transition from manuscript to print transmission was not obvious. As *Leket yosher*, *Psakim u-ktavim*, and the variety of

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manuscript of *Leket yosher*, related to me that the comments in brackets were added in the autograph manuscript by Rabbi Yoizel himself.

[248] *ShUT MahaRI Bruna* § 29 / *ShUT MaharY Weil* §164. See also Dinari, *Hakhme Ashkenaz*, 303n221.

שו"ת מהרי"ב כ"ט = שו"ת מהרי"ו קס"ד in

ועוד תמהני על הרב המובהק אשר תרומותיו תרומות

[249] I checked several of these at JTS: For instance, responsum §143 in the printed edition = §201 in the JTS Ms7148 R1419 =§ 242 in JTS Ms7149 R1532; the formulation is identical, omitting the personal names, etc. in comparison to the version in *Psakim u-ktavim* – this from the section that precedes the deed of sale in R1419. Thus, it seems that Rabbi Isserlein himself was the one to edit his responsa in such a way.

[250] Another possible motivation for choosing *Trumat ha-deshen:* Rabbi Isserlein represents the pinnacle of the rabbinic world of the fifteenth century, embodying the transmission from the generations that preceded him. As he is called in *ShUT haBaH* in a responsum of Rabbi Avraham of Brisk: "...we, in our lands, who in all our teachings drink from the wellsprings of the rabbi Rabbi Isserlein of blessed memory, who was from the sons of Ashkenaz, and the last of the last..." (*ShUT haBaH ha-ḥadashot,*§66).

Rabbi Moshe Lima (1604-1658, Poland) writes in his gloss on *Shulḥan Arukh*: "And it is known that our Master Rabbi Israel of blessed memory, the author of *Trumat ha-deshen*, he is the greatest of the *aḥronim* (later ones) and it is from his wellsprings that we drink." (*Ḥelkat meḥokek*, Even ha-ezer, §17:21). Rabbi Isserlein is seen as the figure who brings to the next generation the wealth of all the ashkenazic generations before the libels and persecutions. He is considered the final summation and repository of ashkenazic halakha. Perhaps this reputation played a role in his work being printed first. On the other hand, these 17th-century figures may have held such an image of Isserlein's superiority precisely because his work was printed first (and in the best version).

manuscript collections indicate, before they appeared in print, the responsa had circulated in many other forms besides the author's "official" collection. The printed *Trumat ha-deshen* was the product of extensive editing and re-organizing intended to shape it into a work appropriate for printing.

*Trumat ha-deshen* was edited by Rabbi Ḥiya Meir ben David, a rabbinical scholar and judge in Venice, who also wrote several responsa.[251] Rabbi Ḥiya appears to have been a very active and sensitive editor. In the same year that *Trumat ha-deshen* was printed, he also edited a work called *ShUT ha-Ramban* (the responsa of Naḥmanides), which were, in fact, responsa from Rabbi Shlomo ben Aderet, not, as the title implied, from Naḥmanides. Rabbi Ḥiya was aware of this misattribution, stating on the title page that "every man of knowledge will accept the truth from whoever said it, even if they are not the responsa of Naḥmanides."[252] Rabbi Ḥiya edited many books at Bomberg's press, including tractates of the Talmud. He also collected and printed the decisions of several rabbis regarding an infamous business controversy that took place in Venice in 1506.[253] Rabbi Ḥiya seems to have been an editor who took his work very seriously and was aware that most readers had little appreciation for the difficult task of editing. At the conclusion of a collection of apocryphal talmudic tractates, printed in 1524–1526, Rabbi Ḥiya added an apology for any

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[251] There are several responsa by Rabbi Ḥiya Meir printed in *ShUT Binyamin Ze'ev* (§15, §38, §298, and §391). On Rabbi Ḥiya Meir, see Refael Natan Neta Rabinovitz, "Ma'amar al hadpasat ha-talmud," in *Dikdukei sofrim* (Munich: Huber, 1877), 33–34n41. See also Haberman, *Ha-madpis Daniel Bombirgi*, 16.

[252] וכל איש מדע יקבל האמת ממי שאמרו ואם כי אינם מתשובות הרמב"ן.
In that case, however, Rabbi Ḥiya explains that he was reluctant to interfere too much in terms of editing, as he had only this one manuscript.

[253] For more on the rabbinic involvement in the controversy between the partners Avraham Rafael Finzi and Emmanuel Norzi, see Alexander Marx, "A Jewish Cause Célèbre in Sixteenth-century Italy: the *pesakim* of 1519," in *Abhandlungen zur Erinnerung an Hirsch Peretz Chajes* (Vienna: Alexander Kohut Memorial Foundation, 1933), 149-193.

errors; he also notes, in his own defense: "May any complainer first place his hand before his mouth and inquire into the nature of print and then he will be silent."[254] In *Trumat ha-deshen*, too, a similar statement by Rabbi Ḥiya is printed in the apology: "And he who knows the labor of print and its characteristics will see with his mind's eye that this is as precise and correct as possible, these are the words of ben David, Ḥiya Meir the printer."[255]

Intensely involved in the printing process, Rabbi Ḥiya was highly conscious of the significance and pitfalls of his labor. Nowhere in *Trumat ha-deshen* is his intervention stronger than in arranging the order of the responsa and the creation of the table of contents. As mentioned, in none of the pre-print manuscript collections does the order of responsa resemble that of the printed *Trumat ha-deshen*. Clearly, the responsa circulated in manuscript in various orders, combinations, and forms that differed significantly from the printed work. The order of the responsa is especially important, as the responsa of the printed *Trumat ha-deshen* were organized in a very particular manner. The printed work is preceded by a table of contents (*simanei Trumat ha-deshen*) that reflects the work's internal organization. The responsa in the book are organized topically, under a series of subject

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[254] Tractate *Sofrim* is one of the seven so-called "small tractates" or "external tractates" of the Talmud. It was printed by Bomberg in Venice in 1524–1526 together with *Pirkei avot* and two other "external tractates" (*Smaḥot, Kalah*) וטורח גדול ומשא עצומה היתה עלי בלתי משוערת ליודעי המלאכה כי רבה היא על כן כל מצפצף ישים יד לפה בחקור אחרי טבע הדפוס ואז ידום.

[255] *Trumat ha-deshen*, apology ואני שפל המצב עמוס התלאות קטן שבתלמידים חיא מאיר בכהר"ר דוד זלה"ה שמתי עיני על המלאכה כהוגן ולהסיר מכשול וטעיות כפי האפשרי כאשר תשיג קוצר שכלי ומעוט השגתי ואם באולי ימצא בו איזה שגיאות סהדי במרומים כי לא במרד ולא במעל. והיודע מלאכת הדפוס ואיכתו יראה בעין שכלו היותו מדוייק ומתוקן ככל האפשר אלה הם דברי בן דוד חיא מאיר המדפיס. במצוות ובבית דניאל הנז' פה ווני"ציה.

"...And I, the lowly of stature [*matzav*] and full of hardships, the smallest among the students, Ḥiya Meir son of ... Rabbi David ... have set my eyes on the labor to do it properly and to remove any stumbling block and mistake according to my ability, as my slow mind and limited understanding can grasp and if perhaps there might be found in it some errors, my witnesses are in heaven that it was not done on purpose to mislead. And he who knows the labor of print and its characteristics will see with his mind's eye that this is as precise and correct as possible, these are the words of ben David, Ḥiya the printer."

headers, starting with the laws of the *Shema* prayer, proceeding through the laws of prayers in general, blessings, festivals, and so on, and ending with the laws of testimony. The number of sections under a given subtitle is not consistent: "the laws of being fruitful and multiplying," for instance, contains three sections, while "the laws of *Sukot* and the *Lulav* and Citron" contains twelve. The subject headings roughly resemble the order of the subjects as they appear in Rabbi Yacov ben Asher's (Cologne, ca.1269–Toledo, ca.1343) *Arba Turim* (Four pillars/columns), first printed in Pieve di Sacco, in 1475.[256] *Arba Turim* is a comprehensive collection of practical halakha, while *Trumat ha-deshen*, as a collection of responsa, is much more fragmentary. As a result, most subsections in the *Arba Turim* are not represented by a corresponding subsection in *Trumat ha-deshen*.[257]

Dinari noted that the order in *Trumat ha-deshen* does not perfectly correspond to that of the *Arba Turim*, and he conjectures that the order is a combination of *Arba Turim* and the order of Maimonides' halakhic code *Mishne Torah*.[258] Fram, however, believes that the order of responsa in *Trumat ha-deshen* was created independently by the editor of the printed work. In comparing the order of the two complete manuscript collections of *Trumat ha-deshen* to the printed book [see image 3], it is clear that the printed responsa were organized by going through the order of the manuscript collection and beginning a new

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[256] See Haberman, "Melekhet ha-dfus ha-ivri be reshita" (The labor of print in its beginnings) in *Masekhet sofrim ve-sifrut* (Tractate on authors and literature) (Jerusalem: Rubin Mas, 1976), 277.

This work is a compilation of halakhic summaries, organized into four main books (prayer and holidays; dietary laws; family law; damages and financial law), each organized internally according to smaller topics. See chapter 1 in this dissertation, n65 for more on the organization of *Arba Turim*.

[257] For example, the very first subject header in *Trumat ha-deshen* relates to the *Shema* prayer, while the *Tur* begins with the laws of waking in the morning, ritual handwashing, dressing, etc., and arrives at the *Shema* prayer about sixty subjects later.

[258] In his opinion, Isserlein at times chose to follow the order of yet another book, Maimonides' halakhic code *Mishne Torah* instead of that of *Arba Turim*, thus creating an order that is an amalgam of these two codes.

topic whenever necessary, placing subsequent responsa under existing topics as they were

encountered. Thus, the first responsum in the manuscript,[259] regarding the *Shema* prayer,

became the first item in the first topic with its own subject header, the first responsum in

the manuscript regarding laws of blessings became the first item under that subject header,

and so on.[260] The subject headers were then grouped together by thematic association. The

order of the subject headers often resembles that of *Arba Turim*, which is also organized

by topic. It is not completely identical to the order in *Arba Turim* because Rabbi Ḥiya did

not follow the exact order of any particular work. Instead, he created his own order by

placing related topics alongside each other.[261]

Yoḥanan Treves,[262] who edited the first printed version of Mordekhai ben Hillel's

*Hilkhot shḥita u-bdika* (Laws of slaughter and checking, ca. 1550, Venice), described

publication in his time as follows: "Everyone who has in his hands *megilot starim*[263] brings

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[259] JTS Ms7148 R1419.

[260] See Fram, in *Al seder ha-tshuvot*, appendix 3.

[261] Fram, *Al seder ha-tshuvot*, 84. הארגון מחדש של ספר תרומת הדשן מראה שבתחילת המאה השש-עשרה הרעיון לארגן חומר על פי נושאים כבר הגיע לתודעת משווקי ספרים ורבנים אבל ספר הטור לא היה נקודת המוצא של המחשבה ההלכתית האשכנזית

[262] Yoḥanan Treves (Italy, ca. 1490–1556), see Alexander Marx, "Rav Yosef Ish Arli be-tur moreh ve-ROSh yeshiva be-siena" (Rabbi Yosef d'Arli as a teacher and head of yeshiva in Siena), in *Jubilee Volume in Honor of Levi Ginzburg's Seventieth Birthday* (NY: The American Academy for Jewish Studies, 1946), 271-304.

[263] Regarding the term *megilot starim* referring to personal notes on halakhic matters, see Babylonian Talmud, tractate, *Bava meẓia* 92a, and RaShY there.

See Fishman, *Becoming the People of the Talmud*, 21-22, for a discussion of the *megilot starim* mentioned in the Talmud. She discusses the distinction between "a *syngrama*, an authorized inscription accorded official status, and a *hyponema*, written notes for private use," explaining that, Jews, similarly, "distinguished between texts that were intended for public reading and those that were mere jottings, *aides de memoire*. From the perspective of rabbinic culture, inscriptions in the latter category were 'phantom texts'; these could be seen and silently read, but they merited no particular cultural attention and could not be adduced as sources of authority. Sages of the classical rabbinic period, geonim and medieval scholars, designated inscriptions in this latter category as '*megilot starim,*' 'scrolls to be sequestered' – a term misunderstood by some later researchers."

The meaning of this term in earlier periods partially remains, primarily the personal and non-public aspect. Regardless of the precise meaning of the term in an earlier period, we can argue that this term is taken to mean something slightly different in a new context of writing and textual practices. In addition, the nature

them out to the printers and they are a light to all."[264] *Megilot starim* literally means "hidden

scrolls," but here it was used to denote personal manuscripts. As the term "hidden scrolls"

implies, the ashkenazic halakhic texts were not simply in manuscript in the material sense

(denoted here by the use of "scrolls" rather than "books"); there was an additional aspect

to their use and production, namely that these manuscript compilations were personal

("hidden"), and, consequently, not always obvious candidates for print publication.

The process of bringing ashkenazic halakhic manuscripts to print was, evidently,

not just a technical step; it was part of a complex of changes that affected the practices of

halakhic study in highly significant ways. By being printed, the manuscripts entered a

public realm of readership. Even a skillfully edited manuscript text with concise, clearly

separated sections, such as Rabbi Isserlein's collection of responsa, differed fundamentally

from its printed counterpart. The choice of which work to print first reveals much about

the decision-making process of printers. Moreover, the editor's decision to organize the

work and to include a table of contents indicates some of the more important differences

between manuscript compilations and printed works of halakha. These differences go

beyond reproducing a more edited, clear, concise version of the text. The meticulous

creation of a particular order, points, in the first place, to the expectation that a set group

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of rabbinic Hebrew in this period – especially in flowery prose such as introductions, poems, letters, etc. – will often use terms with similar connotations from traditional sources without intending the precise same definition.

For instance, a letter from 1524 is titled "*Megilat starim*" – see David Avraham and Uri Melamed, "Megilat starim le-Rabbi Avraham ha-levi: Igeret meshiḥit mi-shnat 284," *Shalem* 8 (2009). See also Moshe Isserles, introduction to *Darkhei Moshe* (Jerusalem: Makhon Yerushalaim, 1978), 35.

See the introduction by Shmuel Glick, *Kuntres ha-tshuvot ha-hadash* (The new bibliography of responsa), 6 vols. (Ramat Gan: Bar Ilan University Press, 2006-2009), 1:70n333.

[264] Introduction by Mordekhai ben Hillel, *Shitot u-bdikot*, edited and glossed by Yoḥanan Treves (Venice: Press of Cornelio Adelkind, ca. 1550) כל מי שיש בידו מגילות סתרים יוצאים החוצה אל המדפיסים והיו למאורות

of responsa would be transmitted stably in the very same order, without tampering or personal selection of specific responsa. Similarly, the possibility of searching the work by means of a topically organized finding aid signals accessibility to a wider scholarly public, without requiring prior personal acquaintance with the contents as they had been arranged within a particular compilation. Thanks to the finding aid, simply understanding the topics is thus sufficient for gaining entry into the work. The inclusion of one table of contents also reflects the self-contained and homogenous nature of this printed work; it includes only those texts that can be part of one continuous table of contents; it meant that all the material derived from one author and represented variations of one kind of writing that could be ordered within a continuous organizational scheme. These interventions are a clear reflection of how significantly ashkenazic transmission had evolved over the course of the fifteenth century.

### b. *ShUT MaharY Kolon*

In the same year as *Trumat ha-deshen* was printed, another work of ashkenazic responsa edited by Rabbi Ḥiya left Bomberg's press. This was the collection of responsa from the pen of Rabbi Yosef Kolon (ca. 1418–1483), also known by his acronym "MaharYK" [see image 4]. Rabbi Kolon moved from Chambery, France to Northern Italy,[265] where he taught, adjudicated, and wrote responsa. An analysis of this work provides evidence, from a different angle, of the efforts involved in transforming ashkenazic responsa for print.[266]

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[265] On his life and times, family, works, and method, as well as on the origin of the name "Kolon," which is derived from "Columbo" – Dove (colombe), see Jeffrey Woolf, "The Life and Responsa of Rabbi Joseph Colon b. Salomon Trabotto (Maharik)" (Ph.D. diss., University of Michigan, 1991).

[266] There are striking similarities between the language used in the title page of *Trumat ha-deshen* and that of *ShUT MaharYK* – Rabbi Ḥiya uses identical formulations in some cases. This is not surprising, as he was probably working on both at the same time: At the time when this colophon was being written,

UNIT II, CHAPTER 2: THE IMPACT AND LIMITS OF NEW TECHNOLOGIES

The colophon of *Trumat ha-deshen* concludes with a prayer:

> ... just as we have merited the completion of this respectable and very useful book ... so, too, shall we merit to print many, many more like this. And may He fulfill the idea and will of his highness our master Daniel Bombirgi, whose spirit moved him [Leviticus 35:21], which God placed in his heart. To enter the labor of heaven. To print all the novellae to be found in the disseminations [*nefoẓot*] of Israel with the help of God....[267]

This statement places *Trumat ha-deshen* at the head of a larger project to print more writings that were still in manuscript. The word "*nefoẓot"* hints not only at communities situated throughout the Jewish world but, perhaps, also to the state of the manuscripts themselves. The responsa – spread across different manuscript collections – needed to be assembled and organized before they could be printed.

This is definitely the case for the responsa of Rabbi Kolon. Some of his responsa

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Adar of 1519, the next work to be printed in this project, *ShUT MaharYK,* was already essentially ready, as the latter was finished in Iyar of the same year, barely two months later.

Blessed is the Lord of existence who has not withheld from us today a just teacher who opens our [blind] eyes, leads the people on paved paths with his capacity for analysis and sharpness. He is the *gaon* our master Rabbi Yosef Kolon of blessed memory may he rest in Eden. Who bestowed merit upon the masses with his responsa. And enlightened the eyes of Israel with his novellae. And they have been printed and engraved by the elevated and praised by all, who strengthens the hands of those who do the labor with his possessions. His name is known in the gates, Daniel Bombergi of Anversa and the beginning of this grand labor was in the year 1519 in the great and cheerful city of Venice, which is under the rule of the lord may his honor be elevated.

ברוך אדון המציאות אשר לא השבית לנו היום מורה צדק מפקח עיני עורות מוליך האנשים בדרך סלולה בבקיעותיו ובפלפוליו. ה״ה הגאון מהר״ר יוסף קלון זצ״ל מ״[ע]מנוחתו עדן]

אשר זכה הרבים בתשובותיו. והאיר עיני ישראל בחדושיו. ונדפסו ונחקקו ע״י המרומם ומפואר בפי כל המחזיק ידי עודי המלאכה במאודיו. הלא שמו נודע בשערים דניאל בומברגי מאנוויר״ש והתי׳ הצחלת מלאכה המפואר׳ הזאת בשנת רע״ט לפ״ק בקריה רבת׳ ועליזה ווניזי״יה אשר תחת ממשלת השררה יר״ה.

שבח והודיה לאדון המציאות אשר אמץ זרועותינו והגיענו להשלמת זה החבור הנאה הנודע בישר״אל וביהודה שמו [267] תרומת הדשן. כי מספר תשובותיו דש״ן. והם דשנים ורעננ׳ בנויי׳ על שורש התלמוד ויסוד הפלפול סיני ועוקר הרים כל בר שכל ימצא שם חנינה כי נצח ישר״אל לא ישקר וכל דבריו נערכים ומסוללים שקולי׳ בכף הצדק ובמאזני המשפט איש אלקים נורא הוא מהר״ר איסרלן זלה״ה. ומכתיבת ידו יוכר ויודע טבע מחצבו. ובו ימצא כל איש לעדן את נפשו. ונתפלל לאל יתברך ויתרומם שמו לעד ולנצח נצחים. כי כאשר זכינו להשלמת זה הספר הנכבד רוב התועלת הרשו׳ בכתב אמת כן נזכה להדפיס עוד כהנה וכהנה. וימלא עצת ורצון הנעלה אדונינו דניאל בומביר״ר״גי אשר נדבה רוחו ונתן ה׳ בלבבו. להכנס במלאכת שמים. להדפיס כל החדושים ימצאו בנפוצת? ישראל בעזרת הש״י ובישועתו והיתה השלמת החבור הלזה ביום ו׳ י״ד אייר עט״ר לפ״ק מהאלף הששי. ואני שפל המצב עמוס התלאות קטן שבתלמידים היא מאיר בכהר״ר דוד זלה״ה שמתי עיני על המלאכה לעשותה כהוגן ולהסיר מכשול וטעיות כפי האפשרי כאשר תשיג קוצר שכלי ומעוט השגתי ואם באולי ימתא בו איזה שגיאות סהדי במרומים כי לא במרד ולא במעל. והיודע מלאכת הדפוס ואיכתו יראה בעין שכלו היותו מדייק ומתוקן ככל האפשר אלה הם דברי בן דוד חיא מאיר המדפיס. במצוות ובבית דניאל הנז׳ פה ווני״ציה.

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circulated in manuscript alongside other halakhic material from his school, such as testimonies from his students concerning their rabbi's conduct in ritual and halakhic matters.[268] Yet other responsa appear among the writings of contemporaries, students, and correspondents, such as Rabbi Bruna, Rabbi Yehuda Mintz, themselves authors of responsa that would eventually be printed, and Rabbi Yacov Margaliot, who authored one of the most important ashkenazic *sidrei get* (sing. *seder get*, instructions for writing divorce documents). Many responsa that were omitted in the first printed edition continued to circulate in manuscript and were printed only centuries later, in 1984.[269] The newer publication contains about fifty entries collected from six different previously unprinted manuscripts. Some of these manuscript collections contained mainly responsa; others also contained a variety of halakhic material.[270] One of the manuscript collections[271] contained 127 responsa, of which 83 do not overlap with the previously printed ones. There are signs that this latter collection was some sort of official manuscript, because every responsum contains signatures from two witnesses or a signature from the scribe who copied it. There are also several remarks from the scribe, such as "here it is missing," and "I did not find more."[272] Once again, we see the flexible and undefined way in which the responsa were

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[268] See Woolf, "The Life and Responsa," 239–240; one example is the manuscript *Rashei prakim me-halakhot ve-dinim* by David Modena, a student of Rabbi Kolon. This manuscript collection was evidently copied several times.
A compilation of teachings, testimonies, behaviors, interpretations, etc. that he wrote as a student.

[269] *ShUT haMaharYK ha-ḥadashim*, ed. Eliahu Dov Pines (Jerusalem: *Makhon Yerushalaim*, 1984). See Woolf, "The Life and Responsa," 244–246, and 245n36, concerning individual responsa or groups of responsa mainly from MaharYK found in "various manuscripts containing halakhic miscellany," such as MS *Bibliotheque Nationale* A10H (publ. Pines *Ḥadashim*, no.41), MS Parma 1334/3 (13031), fols. 315–318; *Seder ha-get* and MS Bodley-Oxford, Mich. Add.59 (21870), fols. 174 a–174b; shoresh 39.

[270] See Kolon, MaharYK *Ḥadashim*, ה (introduction).

[271] Ms Parma-Fiero 63, Stern collection.

[272] See Kolon, *MaharYK Ḥadashim*, ה (introduction) and 26.

transmitted in manuscript and the co-existence of responsa with other genres of halakhic material, such as *sidrei get* and custom.

Additionally, there is a manuscript "*mafteaḥ*" (key), a list of short descriptions for 311 responsa, including some of those printed in 1519. The list is dated within forty years of Rabbi Kolon's death and clearly circulated in manuscript, as its multiple manuscript copies attest.[273] The list opens with: "These are the *simanim* (signs, sections) of the questions and responses from our rabbi, the rabbi Yosef Kolon Tarbot, may his memory be a blessing, with the decision in short, without the awesome proofs."[274] Clearly, a large body of halakhic writings from Rabbi Kolon circulated in many different forms and contexts both before and after the printed work.

The fact that Rabbi Ḥiya was a direct student of Rabbi Kolon might suggest that he inherited some form of print-ready manuscript collection of responsa from his master. This was not the case, however, as is made clear by the number of responsa that had circulated in manuscript but were missing from the printed work. Rabbi Ḥiya's tasks in creating the printed work, in fact, included tracking down and collecting the responsa. In the book's introduction, he points out that that many more responsa are known to exist but his attempts to recover them were unsuccessful. Consequently, he explains, the printed work contains only those 195 responses that he managed to assemble:[275] "And it is clear and known that

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Notably, the responsa that do overlap with the printed collection are all from the latter part of the book (root 77 and on).

See Kolon, *MaharYK Ḥadashim,* 26 (introduction). Two of these lists are still extant in manuscript (British Museum and Cambridge – the former is signed by an "Eliezer" in 1517).

[274] See Kolon, *MaharYK Ḥadashim*, 4.

[275] The printed work claims to contain 195 roots, but, in reality, there are only 192. This is because one root is mistakenly labeled with a higher number, which skews the count from that point on.

there are more of his responsa extant. Indeed, we have searched for them north and south

and have not retrieved them. And forth and back, we have chased after them and it has not

succeeded. And those that were to be found with us were printed with the help of Our

Lord....”[276] The colophon of *ShUT MaharYK*, was written by the printers, the brothers

Adelkind.[277] They mention both the challenges Rabbi Ḥiya faced in his editing and the

dearth of good manuscript collections from which to print:

> And the work was completed distilled seven times, purified as in a smithy of silver.
> He removed from it the evil/stones [*even/aven*] of mistakes and the depths of errors, cleared
> of all slag, separated from all waste ... by ... Ḥiya ... and how great were the deeds of Ḥiya....
> And if perhaps there can be found some mistake, it is not proper to blame him. And your
> complaint should not be on him. For the copy from which it was printed was entirely
> defective, and there were not in existence any properly edited books as would be needed
> for this labor. Therefore, he has not withheld from it to correct as much as capable. Also at
> nights his eyes did not see sleep due to the hard work and labor he had in this....[278]

A related form of editing carried out by Rabbi Ḥiya was selecting only his rabbi's

responsa. Unlike the responsa in most ashkenazic compilations, the work arranged by

Rabbi Ḥiya contains only the responsa of Rabbi Kolon himself.[279] The responsa in the

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[276] See Kolon, *ShUT MaharYK* (Venice, 1519), at the end of the table of contents.

וברור וידוע כי יש עוד מתשובותיו בנמצאות. אכן צפון ותימן בקשנו אחריהם ולא השגנום: וקדם ואחור רדפנו להגיעם
ולא עלתה בידינו. ואשר נמצאו תחת ידינו נדפסו בעזרת הש"י ובישועתו.

[277] Concerning them, see Ḥayim Friedberg, *Ha-dfus ha-ivri be-medinot Italya,...me-reshit hitavuto v-hitpatḥuto* (The history of Hebrew printing in the lands of Italy…since its beginnings) (Tel Aviv: Bar-Yuda, 1956) 2nd ed., 60 fnt.1.

[278] ותשלם כל המלאכה מזוקקת שבעתי' צרופה כבמצרף כסף. סוקל מאבן הטעויות ומעמקי מצולת השבושים מושלל
מכל סיג נברר מכל פסולת זורה כבמזרחת הוגה ע"י ה"ה סיני ועוקר הרי' רוחב שכלו ברחב ים הגאון מהר"ר חיא מאיר בכהר"ר דוד
זצ"ל אשר כלה קוצי' מן הכרם ועדר ונכש השדה בלי יעלה עוד קמשוני' והרוללים. וכמה גדולי' מעשה חיא כאשר המופת יוכיח כי
בכל מקו' אשר ידו הגיעה שמה בדק ולא השאיר אחריו חסרות ויעה הגהותיו כל מחסה כזב ושקר. ואם באולי ימצא טעות מה אין
ראוי להאשימו. ולא עליו תלונתיכם. כי ההעתקה אשר ממנה נדפס היתה משובשת בתכלית ולא היו בנמצא ספרי מוגהים כראוי ומוכרח
למלאכה זו. אכן ממנו לא נחסר לתקן ככל מה שאפשר. גם בלילה שינה בעיניו לא ראה מרוב טרדת ועמל היה לו בו. ע"כ ראוי לדונו
לכף זכות וכל אחד יתקן המעוו' אם ימצא. הגם כי ברור לנו כי לא ימצא כי אם מעט מזער. ובאולי השמיטו המדפיסי' הפועלי' או
האומני' איזה אות או החליפו רי"ש בדל"ת או אופכא בזה אין להאשימו וירצה מלפני האל יתברך פעלו וצדקתו תעמוד לעד. והיתה
השלמת הספר יום ד' כ"ב אדר רעט על ידי האחים מזרע ישראל בני ברוך אדי"ל קינ"ד במצות ובבי' אדונינו דניאל בומבירגא
מאננווי"רשה.

As well as two responsa mistakenly attributed to him: root 74 is from *Or zarua*, not from Rabbi Kolon, and root 163 is from Rabbi Weil; see Shpigel, *Amudim*, 246.

printed work are almost always signed "and peace be unto you, from me, Yosef Kolon, son

of our master Rabbi Shlomo," or with some other conclusion such as "and so it seems, in

my humble opinion."[280] Although such signatures were often added later by scribes and

editors, the consistent conclusions in *ShUT MaharYK* are still telling. In typical ashkenazic

collections, the beginning and the end of a responsum were usually not clearly distinct, nor

did all the responsa within a collection stem from one single author, making it almost

impossible to consistently add a distinct opening and the same signature for every

responsum. Thus, even if this was the work of Rabbi Ḥiya and not of Rabbi Kolon, the

presence of the openings and consistent signatures is still remarkable and atypical.

As in his work on *Trumat ha-deshen,* Rabbi Ḥiya took his editing tasks further than

simply polishing the text; he also organized the different segments of responsa. In this case,

he calls the responsa "*shorashim,*" or "roots."[281] He also created a list of *shorashim* for the

printed book, which functioned as the table of contents. He introduced it as follows:

Seeing as these responses to questions, "their measure is longer than the earth and wider than the sea."[282] And in every responsum there are usually included useful issues apart from the one intended in the response originally. Therefore, I have awakened my inquisition and girded my loins. I, the lowly and the smallest among the students, Ḥiya Meir son of his honor the rabbi Rabbi David of blessed and pious memory. And I have inquired into the bottom of the depth of every single response. As much as my limited understanding and little mind permit. And I have made from every response one root on which the main part of the response is built. And the subsections that extend from it and the other laws that are not directly related to the question, I have placed in the book in the most succinct manner. It will be very useful for those perusing and looking in this book. And they will find what they want without hard work and labor. And the Lord, may He be blessed, will save me from errors and show me the wonders of his Torah, Amen, so may be

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[280] On medieval responsa, see Haym Soloveitchik, *ShUT ke-makor histori* (Responsa as a historical source) (Jerusalem: Shazar, 1990), who considers the presence of an opening greeting or a signature to point to minimal tampering with the question by copyists, as the opening greeting and concluding signature would have been the first things to remove.

[281] See Woolf, "The Life and Responsa," 247.

[282] Job 11: 9.

His will.[283]

There does not seem to be any clear source for the order that Rabbi Ḥiya uses to organize the different roots. Related or similar questions are often clustered together – for instance, a succession of roots all related to ritual slaughter,[284] or a certain cluster addressed only textual problems from medieval sources.[285] On the other hand, similar topics that could easily have fit within those groups tend to recur outside of the clusters.[286] Rabbi Ḥiya's remarkable editorial intervention in this case was not displayed in the ordering of the responsa. Rather, Rabbi Ḥiya's main intervention is the decision to call the responsa "roots" and the decision to add a mention of the halakhic distillation of every "root" into both the laws derived from it directly and the more tangential laws that follow from every responsum. Calling the responsa "roots" is a way of presenting the work as more generic and foundational, of highlighting the universal significance of these particular cases and rendering it possible to search the general categories of laws to which the specific responses relate.[287] This intervention takes a random collection of specific responsa – which had

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[283] יען כי אלו אלו תשובות שאלות ארוכי' מארץ מדה ורחבם מני ים. ובכל תשובה ותשובה על הרוב נכלל בהם עניינים מועלים זולת המכוון מאותה התשובה. לכן עוררתי רעיוני ושנסתי את מתני. אני שפל המצב הקטן שבתלמידים חיא מאיר בכהר"ר דוד זצ"ל. וירדתי לסוף עומק דעת כל תשובה ותשובה. כפי קוצר השגתי ומעוט שכלי ועשיתי מכל תשובה שורש אחד אשר עיקר תוכן התשובה בנויה עליו. וסעיפים המסתעפים ממנה ודינים אחרים אשר לא מעניין השאלה. העליתי על ספר בתכלית הקצור. יועיל מאד להוגים ומעייני' בספר הזה. ויושגו מבוקשם זולת יגיע ועמל. והש"י יציני משגיאות ויוריני נפלאות תורתיו אכי"ר.

[284] Kolon, *ShUT MaharYK,* Roots 33–40.

[285] Kolon, *ShUT MaharYK,* Roots 59–62.

[286] Kolon, *ShUT MaharYK,* Root 96, for instance, is also an explanation of a problem from one of the medieval sources discussed in roots 59–62; it could easily have been added there, but, instead, appears separately.

[287] It may be interesting to consider the use of "roots" in some of the legal decisions of sixteenth-century rabbis in Italy such as Rabbi Yeḥiel Nissim da Pisa (ca. 1493-before 1572). In some of their halakhic writings, roots are used in a scholastic manner to set out the basic truths of a halakhic problem before arriving at a solution using logical deduction based on those roots (see Reuven [Robert] Bonfil, *Ha-rabanut be-Italia bi-tkufat ha-renesans* (The rabbinate in Italy during the Renaissance) (Jerusalem: Magnes, 1979), 162-163. Perhaps the decision to call the table of contents "roots" is a way of implying that these responsa can be used as a basis for further halakhic/scholastic reasoning.

started out as halakhic correspondence and continued to be circulated in a variety of manuscript forms and contexts – and highlights its general aspect. The contents are no longer simply a collection of individual cases; rather, they are "roots," precedents for something larger.

As mentioned, a manuscript "*mafteaḥ*" (key) listing 311 brief conclusions drawn from some of Rabbi Kolon's responsa had been circulating in manuscript prior to the printed work. The *mafteaḥ*, too, contains clusters of related topics, but it is, likewise, not consistently organized and topics re-appear independently from similar entries. There are many overlaps between entries in the *mafteaḥ* and items in Rabbi Ḥiya's list of "roots" that form the table of contents of the printed book, and it is informative to compare the two.[288] Several differences appear, such as variations in the order. Apart from a few entries that show up in the same order in both lists, mainly because they are sections of the same question or very closely related,[289] there are few similarities between the ordering of Rabbi Ḥiya's table of contents and that of the *mafteaḥ*. The above-mentioned manuscript of the *mafteaḥ*[290] containing signatures was, if the signatures are to be believed, copied from some original manuscript. Dated 1517, it was thus copied just before the book of responsa was printed. Rabbi Ḥiya and the author of the *mafteaḥ* could very well have been composing their lists at the same time. There is a great difference, however, between creating a list of summaries of a rabbi's decisions and creating a list of the "roots" and "branches" that can

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[288] Many conclusions in the *mafteaḥ* have no equivalent in the printed responsa, but many others do. The number of conclusions – 311 – versus the number of roots – 195 – in the printed responsa should not be too misleading, as often more than one conclusion is derived from one "root."

[289] For example, the equivalents of root 113a and 113b in the table of contents also follow one another in the *mafteaḥ*.

[290] British Museum Ms ADD27129.

be derived from these decisions.

The *mafteaḥ* summarizes decisions made by Rabbi Kolon, and it is meant to be a stand-alone list. Rabbi Ḥiya's table of contents, by contrast, is made to be used together with the book, functioning as search tool and highlighting the general relevance of the collection and the wide range of halakhic topics to which it contributes. The *mafteaḥ* is, in fact, similar to a list of *psakim* or halakhic rulings. Lists of *psakim* are found in many ashkenazic manuscript collections. Their goal is to list the decisions made by an authority. The lists testified that the authority had made a particular decision, without explaining or inquiring into the reasoning. When a number of different laws concerning very different topics are addressed in one responsum, they appear as different subsections of the same "root" in Rabbi Ḥiya's table of contents. This is consistent with their use as a finding aid for the responsa. In the *mafteaḥ*, however, if disparate rulings followed from one responsum, the respective records of these different rulings are often no longer adjacent to each another. They are separated and placed near other entries that cover similar topics. For the use of the *mafteaḥ,* it did not matter whether different decisions were once part of the same responsum. The only relevant issue was the fact that the decisions were Rabbi Kolon's final ruling.

The purpose of the table of "roots" was to extract and highlight the more general laws discussed within the book; thus, its most common formulation is "*u-bo yevo'ar...*" (...and in it will be elucidated...). The *mafteaḥ*'s goal, in contrast, was to provide a paraphrase of Rabbi Kolon's ruling in a certain situation; its most common opening statement is "*be'inyan"* or "*al d'var"* (concerning...), followed by a short description of

the specific case and the basis of the decision. Responsum §13 in the printed work, for instance, regarding a document in which a husband forfeits his right to any of his wife's possessions but comes to regret it after she receives an inheritance, opens with a flowery greeting to Rabbi Gershom Treves, and includes the name of this scholar and relative to whom it is being addressed. The responsum then discusses the case. It ends with personal blessings to the addressee. The description in the *mafteaḥ* corresponding to this decision provides a brief summary of the case and the decision, without any of the reasoning: "Concerning Jacob [generic name], who wrote a document to Rachel [generic name], his wife...," a short description of the issue, and a summary of the decision: "the will of her inheritance is a document of debt and this is included in her possessions, from which he completely forfeited his rights."[291] In Rabbi Ḥiya's table of contents, on the other hand, the response is formulated in more general prescriptive terms: "He who writes a document of forfeiting at the time of marriage also forfeits his rights to the will of her inheritance that the father made for his daughter at the time of marriage...." On the next line of the table of contents (under the same root number), Rabbi Ḥiya adds a further – even more general – conclusion that was mentioned in the process of the responsum itself: "He who says 'my possessions go to so-and-so,' this also includes all documents."[292] [see image 5]

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[291] See "*mafteaḥ*," Kolon, *MaharYK Ḥadashim,* 310n223, (§128).
[292] See *MaharYK Ḥadashim*, 261- 329 for list of simanim.

ברשימת הסימנים של המפתח בכת"י:

סימן קכח - על דבר יעקב שכתב שטר סלוק לרחל אשתו...שטר הירושה הוא שטר חוב והוי בכלל נכסיה ומהם נסתלק
לגמרי.

*MaharYK* (Venice,1519), table of contents:

ברשימת השורשים של הספר הנדפס:

הכותב שטר סילוק בשעת החופה מסולק ג"כ משטר ירוש' שעשה האב לבתו בשעת חופה ובפרט אם כותב בשטר סילוק
אי' לי שום צד זכות בכל נכסי זוגתי ולא בכל מה שיש לה כו'.
האומר נכסי לפלוני גם השטרות בכלל.

Such differences in formulation are consistent throughout the documents. All the *mafteaḥ* entries use a succinct, specific paraphrase that focuses on the final decision, whereas all the "roots" in the table of contents distill and generalize, focusing on the larger laws at play. This accentuates the difference between the purpose of the *mafteaḥ* and Rabbi Ḥiya's list of roots. The *mafteaḥ* was a traditional list of *psakim* that circulated in manuscript; it was meant to be used independently as a record of a rabbi's decisions, thus transforming Rabbi Kolon's responsa into a record of rulings. Rabbi Ḥiya's list, in contrast, served as an accompaniment to the printed work, both as a practical finding aid for it and as a way of emphasizing the general legal applications of the collection of his rabbi's halakhic writings, transforming it from an archive of correspondence into a series of important halakhic principles. The table of contents, comprising the first pages of the printed book, was an effective way to highlight the relevance of the particular responsa for general halakhic study.[293]

Rabbi Ḥiya, in his lament for the lost responsa, acknowledges that the number of responsa included in the printed work is entirely contingent on whatever he could recover. Nevertheless, as a final editorial flourish, he attempts to connect the numerical value of this number to a specific scriptural passage. He does so by means of some mathematical and linguistic gymnastics, connecting the number of roots and subsections that he created in his organization of the work to the word 'entrance': "...the count of the number of roots

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[293] At first blush, it may seem counterintuitive that the finding aid for a specific book is phrased in more general terms than the list of rulings, but this corresponds to the role of the finding aid of making a specific book accessible for a general audience, whereas the list of rulings was a typically ashkenazic halakhic text; a record of actual decisions made by an individual rabbi about a particular case at a specific time.

is one hundred and ninety-five, and its subsections, two hundred and ninety-three. And the sign for the roots with the subsections is 'The *entrance* (*petaḥ* = 488) of Your words gives light; it gives understanding to the simple.'"[294] At the conclusion of the work, Rabbi Ḥiya wrote a short blessing and a prayer to merit printing many more books, followed by a poem honoring Rabbi Kolon. The poem points to a recurring motivation for printing responsa: publishing a printed collection of responsa as a posthumous tribute to the author, usually by his students.[295]

Unlike in the case of *Trumat ha-deshen*, Rabbi Ḥiya did not see any need to re-arrange the roots of Rabbi Kolon's responsa. This would soon change, however. The next edition of *ShUT MaharYK* was printed in Cremona in 1557. The editors rearranged the original table of contents to correspond to the organization of Maimonides' code, the *Mishne Torah*, thereby transforming the table of contents into an index.[296] They included Rabbi Ḥiya's original statement concerning the roots, wherein he explains that he made every responsum into one main root with several branches in order to make it easier to consult. The editors then added their own remarks:

And we, the printers of this awesome work for the second time, having seen the work and labor for he who wants to study when he is looking for any law (*din*) he must look through all the roots and branches one by one from the start until he finds what he

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[294] The verse is from Psalms 119:130. Kolon, *ShUT MaharYK*, end of *simanim*.

תמו סימני התשובות הנערכים מפז. ומניין מספר השרשים קצ"ה וסעיפיהם רצ"ג. וסימן השרשים עם הענפים פת"ח דבריו יאיר מבין פתאים. וברור וידוע כי יש עוד מתשובותיו בנמצאות. אכן צפון ותימן בקשנו אחריהם ולא השגנום: וקדם ואחור רדפנו להגיעם ולא עלתה בידינו. ואשר נמצאו תחת ידינו נדפסו בעזרת הש"י ובישועתו.

[295] The responsa of Rabbi Shlomo Luria in Lublin 1574 were published close to his death. The title page includes an address to his students, encouraging them specifically to buy his book. Several extant copies of the first edition were also bound together with poems eulogizing Rabbi Luria, see chapter 5 in this dissertation.

[296] Jeffrey Woolf relates this to the centrality of Maimonides' code as the main text for halakhic study in Italy at the time: "...it is safe to conclude that the Cremona printers assumed that their potential customers turned first to Maimonides when studying Halacha, and then searched for responsa related on the question before them" (Woolf, "The Life and Responsa," 118).

searches for. Therefore, we copied the roots and branches according to the order of the laws of Maimonides of blessed memory. And every inquirer will find that which he is searching for in its place, with signs for the laws where it belongs....[297]

This modification was not difficult to implement after Rabbi Ḥiya had already abstracted and listed the roots and branches in every response. The decision to choose Maimonides' code as a guiding thread also incidentally highlighted the marked differences between responsa and codes: several of Rabbi Ḥiya's "roots" were impossible to place under any existent category in Maimonides' comprehensive halakhic code, inducing the editors of the Cremona edition to come up with new categories such as *minhagim ve-takanot* (customs and ordinances) and *yishuvim u-pshatim* (justifications and explanations). They had to invent these because customs and ordinances as well as textual and scholarly explanations exemplify areas typical for responsa literature that cannot be found in more generalized legal codes.

One of the most important consequences of a work's appearance in print is, of course, the opportunity to enlarge its circulation and readership. There is anecdotal textual evidence for this in the case of Rabbi Kolon's work: as Rabbi Yeḥiel Ashkenazi of Jerusalem wrote in a responsum from 1565: "...and I will not quote the exact language here, because the responsa of the MaharYK are to be found in the home of every learned person, go read it there, etc., and I swear to the heavens that when I was in the area of Austria about

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[297] *ShUT MaharYK*, Cremona 1557,

ואנחנו המדפיסים זה החבור הנורא הנורא שנית בראותינו היגיעה והעמל  המגיע למעיין ברצותו לחפש איזה דין יצטרך לעיין כל השרשים והענפים אחד לאחד מראש עד ימצא מבוקשו. לכן העתקנו השרשים והענפים על סדר הלכות הרמב"ם ז"ל. וכל מעיין ימצא מבוקשו על דגלו באותות לבית הלכותיו. ותורנו זו הלוח באשר יהיה שמה הרוח ללכת. ואף גם בזאת הקלנו עול המעיין ברצותו למצא איזה דין שאינו מעיקר התשובה באמצעיתה או בסופה האותיות יגידו לו בגליון כי שמה קבענום מסמרות נטועים על דרך א' ב' ג' ד' וכו' כמנין הענפים והסעיפים המסתעפים מן השרש ההוא כאשר סדרם הגאון מהר"ר חייא מאיר ז"ל הנזכר ומקום הניח לנו הגאון להתגדר בו  ולסדר לוח זו אל סדר הנכבד הזה וכי' שכיבינן נפיק לוותן: ירצה על פני ה' פעלינו אכיר"א.

thirty-six years ago, this is the response that they relied on in Austria and Moravia....”[298]

Thus, less than half a century after the book was first printed, it had become so widespread that a scholar in Jerusalem was highly confident that “it can be found in the home of every learned person.” As he was referring to a printed version whose text was thus almost identical throughout the different copies, there was no longer any need, in his opinion, to quote his source verbatim. Instead, he simply instructs the addressee to “go read it there.” Another consequence of the responsa having been published in print, one related to the wider circulation of stable copies, is the fact that the responsa were pre-emptively self-censored. The Cremona edition is the first to be missing a responsum (root 192) that describes the anti-Jewish activities of the Dominican order in Mantua.[299]

The works of Rabbi Isserlein and Rabbi Kolon were printed in the same place and year, as part of the same ashkenazic tradition, but in many ways, they were very different. Rabbi Isserlein’s work was printed more than half a century after his death and in a location far from where he had lived, whereas Rabbi Kolon’s work was printed by one of his immediate students and in the same area where they had been written. Rabbi Isserlein died in Wiener Neustadt, in the region where the ashkenazic halakhists of the late Middle Ages flourished, and he came to be considered the capstone of that generation. Rabbi Kolon,

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[298] ולא אביא לשונותיו [של המהרי״ק] יען כי תשובות מהרי״ק מצויות בבית כל בר בי רב זיל קרי בי' וכו', ומעיד אני לשמים כשהייתי בגליל אושטרייך זה לי כמו לו שנה, שעל זאת התשובה סמכו...”

Published in Simḥa Assaf, “From the Archives of the Jerusalem Library,” in *Minḥa le-David: Jubilee Volume for David Yelin* (Jerusalem: R. Mas, 1935), 233–235. See also, Woolf, “The Life and Responsa,” 249.

Concerning Rabbi Yeḥiel Ashkenazi, see Eliezer Rivlin, *Sefer toldot hakhmei Yerushalaim* (A book of the history of the sages of Jerusalem) (Jerusalem: Salomon Press, 1927-1930), 108.

[299] See Woolf, “The Life and Responsa,” 248n48. See Meir Benayahu, *Ha-dfus ha-ivri be-Kremona* (Hebrew Printing in Cremona) (Jerusalem: Makhon Ben-Ẓvi and Mosad ha-Rav Kook, 1971), 198–199.

although he died only 23 years after Isserlein, was no longer part of the older ashkenazic world; rather, he belonged to the ashkenazic "diaspora" in Italy.[300] In addition to the break that resulted from the physical displacement of Jews and the disruption of functioning communities in the Rhineland, France, and Austria, many other changes impacted halakhic culture. When Rabbi Isserlein died, Hebrew printing was in its infancy, and the first responsa had not yet been printed. Rabbi Kolon, on the other hand, worked in a location where Hebrew printing was already viable. Certain types of works that had previously been less central to the ashkenazic halakhic tradition were becoming more dominant, specifically the genre of codes. The *Arba Turim* was printed in Rabbi Kolon's lifetime, and Woolf notes the "pioneering ubiquity" of references to the *Arba Turim* throughout Rabbi Kolon's responsa.[301]

Notably, both these works of responsa were, for the first time, no longer being copied in the personal context of a scholar's building his own manuscript collection or having it prepared especially for him. Instead, the works were being printed for use by a larger, anonymous audience, who would incorporate the responsa into their own studies in a variety of new ways. This was unprecedented. The emergence of printed works of ashkenazic responsa was both an effect of larger changes in the landscape of the halakhic culture and itself a catalyst for further changes. The extensive editorial efforts required of Rabbi Ḥiya in order to transform these manuscripts into printable works attest to the depth of the changes in question. The remainder of the sixteenth century would see the printing

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[300] On the dynamics of a culture versus its "diaspora" after discontinuity, see chapter 4 in this dissertation.

[301] See Bonfil, *Ha-rabanut*, 15–16; 164–171; Woolf, "The Life and Responsa," 109.

of four other important works of ashkenazic responsa.[302] These works were not edited comprehensively by a figure like Rabbi Ḥiya, and their organization shows that the difference between manuscript transmission and print culture was more than a technical issue.

### 3. CONTINUITIES IN *LIKUT* CULTURE, MANUSCRIPT AND PRINT:
#### a. *ShUT MaharY Weil*

The first two ashkenazic works printed by Bomberg exemplify how printed works of responsa could result in a finished product very distant from the earlier ashkenazic forms of transmitting halakhic texts. The newly printed works were well-organized, thoroughly edited, searchable, standardized works of responsa, with an emphasis on their general use in halakhic study. Other works of ashkenazic responsa that were printed in Italy during the remainder of the century, however, did not follow the prototype of the two works from 1519. For one, the state of the manuscripts of certain older ashkenazic works of responsa hindered this effort. These works had been transmitted for so long, and in ways so incompatible with print, that it would have required immense efforts to fashion them into printable works of responsa that resembled *Trumat ha-deshen*.[303] Most importantly, the non-linear and all but immediate transition attests to the fact that practices of knowledge

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[302] The Cremona edition of Maharam of Rothenburg's responsa is not discussed here. See Emmanuel, "Hashlamot le-tshuvot MaharaM mi-Rothenburg, dfus Kremona" in *Ta-Shma: meḥkarim be-mada'e ha-yehadut le-zikhro shel Yisrael M Ta-Shma,* (Come and hear: studies in Jewish studies in the memory of Israel M. Ta-Shma), 2 vols., ed. Avraham (Rami) Reiner ( Alon Shvut: Herzog College, 2011), 581-599.

[303] On the emerging culture of editing and correcting texts for print, see Anthony Grafton, *The Culture of Correction in Renaissance Europe* (London: British Library, 2011); Martin Lowry, *The World of Aldus Manutius: Business and Scholarship in Renaissance Venice* (Ithaca, NY: Cornell University Press, 1979). See also Yakov Mayer's dissertation (forthcoming) on the efforts to create proper printable editions of Hebrew works, specifically the Jerusalem Talmud.

organization and transmission do not change instantaneously simply because new technologies introduce novel possibilities. As will become clear, many of the deeply entrenched practices surrounding ashkenazic halakhic intellectual culture persisted to some extent in an era of print culture, resulting in printed works of responsa that were far from either well organized or effectively edited books.

*Trumat ha-deshen* and *ShUT MaharYK* were, each in its own way, outliers: the former because its author had already collected and edited the work to an extent that rendered it easier to print, the latter because of its proximity to the time and place of its printing. The other works of responsa that were printed in this period were, in a sense, more representative. Indeed, they exhibit more continuity with the culture of *likutim* than the two initial works would have led one to expect. Thirty years after Bomberg printed *Trumat ha-deshen*, the responsa of Rabbi Yacov Weil were printed. [see image 6] The book was first printed in 1549, in Venice, by Cornelio Adelkind,[304] almost a century after Rabbi Weil's death;[305] it was edited by Rabbi Meshulam Kofman.[306] Rabbi Yacov ben Yehuda Weil, also known by his acronym "MaharY" Weil (1390–1453), was a rabbi in Nuremberg, among other places; he was a descendant of Rabbi Meir of Rothenburg, and a student of Rabbi Yacov Moellin, another author of important responsa. Rabbi Weil's responsa were never collected systematically. Some of his responsa do not appear in the collection of responsa

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[304] Haberman, in "*Melekhet ha-dfus*, explains that Adelkind worked for Bomberg first and then established his own press.

[305] An introduction by Rabbi Dov Be'er Rosenzweig for the Makhon Yerushalaim edition mentions that the first edition was printed in 1523. See Rabbi Dov B. Rosenzweig, "Introduction," in *ShuT MahaRY Weil* (Jerusalem: Makhon Yerushalaim, 2001), 19. I have not found such an edition in the National Library's bibliography of the Hebrew book or in any library catalogs.

[306] Kafman קאפמאן-probably Kaufman, and see Efrayim Zalman Margaliot of Brod, *Ma'a lot ha-yuḥasin*, (Lemberg: Rohatyn, 1900), 3, who mentions Rabbi Meshulam Kaufman of Venice.

named for him, but, instead, appear in the collections of other rabbis, some of whom had

been his close contemporaries such as Rabbi Isserlein, and others born slightly later, such

as Rabbi Israel Bruna (1400–1480), who married into Rabbi Weil's family. Rabbi Bruna

himself also wrote responsa, one of which mentions Rabbi Weil: "...until here is [quoted]

the language of the *gaon* MaharYW Weil in his book which is in the hands of his son, my

father-in-law...."[307] There was, apparently, some sort of "book," a manuscript collection of

Rabbi Weil's responsa, that had been passed on to Rabbi Weil's son. Rabbi Bruna was

evidently copying his quote from this collection.

The differences between the printed responsa of Rabbi Weil and the other two

earlier printed works of responsa become clear when considering the make-up of the work:

whereas *Trumat ha-deshen* is a homogenous collection (*Psakim u-ktavim* was printed as a

separate unit),[308] the responsa of Rabbi Weil were printed as part of a collection comprised

of several disparate parts. The printed book is based on a manuscript collection that

includes 193 responsa, most of which are from Rabbi Weil. In addition to these responsa,

the book also contains many other kinds of halakhic materials that exemplify the various

types of halakhic writings found in ashkenazic manuscript *likutim*.

The last sections of the responsa are not really answers to questions, but rather

"*sdarim*."[309] These *sdarim*, or "arrangements," are basically manuals, each a series of

instructions that lay out a specific religious or legal ritual; they include instructions for a

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[307] In §254 of his own responsa עכ"ל בספרו אשר ביד בנו שארי הח"ר יוזל יצ"ו
[308] See my discussion of this in n217 in the current chapter.
[309] In this case: a *seder ḥalitza, seder pidyon ha-ben, seder get* and a *harsha'a for a get* (an official permit with witnesses from the husband to allow a messenger to deliver the divorce document to his wife instead of the husband).

*seder get* – preparing and delivering a writ of divorce; a *seder tshuva* – a prescription for acts of repentance to atone for a specific misdeed;[310] and a *seder shvu'a d'orayta* – instructions for taking an oath. These types of *sdarim* are often found in manuscript compilations, sometimes alongside responsa, at other times independently. They are not technically responsa, but, in terms of transmission practices, they ended up in the manuscript compilations of students in much the same way, namely, when a student copied written material from his rabbi's archive. These *sdarim* sections of responsa are followed by several pages labeled "sermons" in the header.[311] These were not individually titled as "sermons," as the header suggests, but instead, "Rules of Repentance and the Day of Atonement and Sukot," "Rules of the Day of Atonement," and "Rules of Passover." The period of the High Holidays and the Sabbath before Passover are times when the rabbi would traditionally deliver a sermon that related to the laws of this period; therefore, it stands to reason that these sections were, indeed, originally delivered as sermons about these laws, hence the header. The entire section thus includes three different types of halakhic writing (*sdarim*, responsa, and sermons). It concludes with a short statement: "Completed are the Responses and Questions and Sermons on Holidays of our Master the Rabbi Rabbi Yacov Weil of Blessed Memory."[312]

This part is followed by several pages on the laws of ritual slaughter and the proper way of checking whether meat is kosher. These pages, taken together, make up a manual

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[310] For more on this tradition, see Marcus, *Piety and Society: The Jewish Pietists of Medieval Germany* (Leiden: Brill, 1981).

[311] The section numbers continue from the responsa and are §191, 192, 193.

[312] נשלמו תשובות ושאלות ודרשות מימים טובים של מהר"ר יעקב וייל ז"ל.

of instructions concerning ritual slaughter (*"shḥitot u-bdikot"*),[313] which is separate from the responsa. This manual had been printed independently shortly before the printed responsa (Prague, ca. 1530),[314] and would later be printed again by Adelkind in Venice in 1551, and countless times after that. Versions of this manual had been copied separately in manuscript before the book had been printed, and such copying continued in this manner after 1530. The section numbers here do not continue from the previous section, thereby underscoring the discontinuity from the responsa; it is a separate unit that had been added to them.

This section on slaughter is followed by a collection of "*dinim ve-halakhot*" (rules and laws), a series of succinct laws. They are a miscellany of short statements, in no particular order, concerning highly specific rules, insights, and remarks. For example, a line about salting meat (§41) is followed by a few insights and scholarly remarks regarding a gloss on the Talmud (§42), which, in turn, are followed by a *psak* (ruling) about a marriage, containing a statement about the specifics of the case,[315] a report of Rabbi Weil's decision in the matter, and an extremely short mention of his reasoning. There are about

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[313] See Ta-Shma, "Kavim le-ofyah shel sifrut ha-halakha be-Ashkenaz ba-meah ha-13-14" (Characteristics of halakhic literature in Ashkenaz in the 13th-14th centuries.) in *Alei sefer* 4 (1977): 20-41, where the concept of "professional literature" is explained.

[314] Domb, who wrote the introduction for the Makhon Yerushalaim edition, mentions only Prague 1549. The catalog of the Bibliography of the Hebrew Book (NLI) mentions that there is an earlier copy of the laws of slaughtering by Rabbi Weil; the authors of the catalog know of only one copy, with no title page. According to the colophon, this copy was printed in about 1530 in Prague at the press of Moshe ben Gershom ha-kohen. This copy is at the Bodleian Library, MBI-0201917.

[315] In this case (§45), "There was a woman in Prague whose husband disappeared and no one knew what happened to him and a very young girl, the daughter of Zanvil, spoke innocently how her father Zanvil Sh.r.z̲.z̲.? went with him into the field... (§45)

אשה בפר''אג נאבד בעלה ולא נודע מה היה לו ותנוקת בתו של זנוויל הסיחה לפי תומה איך שאביה זנוויל שרצ''ן הלך עמו על השדה...

מהר''י וייל דינין והלכות

sixty of these "*dinim ve-halakhot*," but none contain lengthy deliberations, explanations, or source material.[316]

In addition to these disparate units of Rabbi Weil's material, which are by no means a homogenous collection of responsa, there are writings from entirely different authors, such as Rabbi Menaḥem of Meresburg[317] and Rabbi Alexander Zuslein Kohen (d.1349). After the conclusion of the "*dinim ve-halakhot*,"[318] a new title follows: "*Ḥidushei aguda*" (Collected novellae). This section is nine pages long and ends with another short concluding statement.[319] Nowhere is it explicitly indicated that these were written not by Rabbi Weil but by Rabbi Kohen. The following section comprises several pages and its headers read: "*Nimukei moreinu ha-Rav Rabbi Menaḥem Merzburk*." It contains almost ninety passages, each starting with the world "*din*" (rule) and dealing mainly with monetary, tax, and court issues.[320] This part, which does not originate from Rabbi Weil, also closes with a short concluding statement.[321]

The printed responsa of Rabbi Weil are more akin to a *likut*, namely, a fairly random collection of several units of halakhic textual material that are not parts of a unified whole. The varied headers throughout the book emphasize this heterogeneity [see image 7]. This is entirely in line with the logic of creating miscellaneous manuscript compilations rather

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[316] With the exception of the very last one, which is slightly longer.

[317] Sometimes called R. Menaḥem *Me'il zedek* or R. Menaḥem Ha-me'ili, Germany, fourteenth century, wrote *Me'il ẓedek*, most of which was lost. The original work contained several hundred sections, most of which were decisions and responsa of other medieval authorities; only a few were penned by R. Menaḥem himself.

[318] ‏סליקו להו דיני מהר״ר יעקב וויילא/‏

[319] The short line ‏סליקו להו חידושי אגודה‏.

[320] One group of these entries is collected under one subtitle (*dinei boshet*), the laws of compensation for shame, but the others do not have any subtitles.

[321] The line ‏ע״כ מנימוקי מה״ר מנחם ממירזבורק ז״ל‏.

than a homogenous book. A compilation was usually passed from teacher to student, from father to son, with new parts added as the transmission continued. Indeed, several scholars, including the editor of the most recent edition of Rabbi Weil's responsa, appear to think that the collection that served as the basis for the Venice edition was, in fact, the manuscript of Rabbi Weil's own notebook or a copy thereof.[322] The textual evidence for this includes Rabbi Israel Bruna's mention of having inherited such a collection, as cited above. That reference, however, indicates only that Rabbi Weil kept a collection of his own responsa, which he passed on to his son. It does not offer information as to whether this collection is similar to the one on which the printed version is based, or whether the other units of the printed book were part of this original manuscript collection. In Rabbi Weil's responsa, however, he mentions "our Master the rabbi Menaḥem of Meresburg, ... And many things and adjudications copied from this book, they are in my possession..."[323] This statement makes it seem likely that the unit containing the texts of Rabbi Menaḥem of Meresburg included in the printed version was already part of the manuscript collection that the printers used and, indeed, dated to the collection of Rabbi Weil himself. [324] Thus, the

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[322] Rabbi Shraga Domb, who edited the *Makhon Yerushalaim* 2001 edition (see above). The introduction of the *Makhon Yerushalaim* edition by Rabbi Rosenzweig assumes that Weil himself collected and organized his work in this way.

[323] Weil §133: הרבה דינים שכתב וחיבר מהם ספר גדול...והרבה דברים ופסקים נעתק מספרו והם בידי

[324] On the other hand, the first editions contain some mistakes and omissions that are not consistent with the manuscript versions, which lead us to wonder whether Adelkind's manuscript was not the original but, instead, a later manuscript copy. For instance, §69 in the first printed edition begins with the words אבן יתר אמנה. פינה. etc., whereas the newer editions (Jerusalem: Makhon Yerushalaim, 2001) contain nine words that precede these, based on another manuscript (Ms Hekhal Shlomo) the editors do not explain anything about this manuscript. Of course, it could be that the words existed in the manuscript, and Adelkind mistakenly omitted them.

Domb, in his introduction to another fifteenth-century work of responsa, seems to assume that the printed responsa of Rabbi Weil do, indeed, reflect his own personal manuscript collection (see Yonatan Shraga Domb, "Introduction," *ShUT MaharY Mintz* [Jerusalem: *Makhon Yerushalaim*, 1991], 33): "Just like his rabbi, [Rabbi] Weil, who copied for himself at the end of his booklet [pinkas] of responsa a collection

printed work is not a compilation created by the printers. In this case, it is not surprising

that the compilation of the different units in the printed book are so reminiscent of practices

that had been typical in creating and transmitting manuscript *likutim* in the time of Rabbi

Weil. The printed book was, it seems, based on this very compilation, and printed in the

form in which it had been found, without much editing. Moreover, the printers did not even

give the book a real title; the name on the title page simply enumerates the three main

components of the book: "Questions and Responsa and Laws of Slaughter and Checking,

which were composed by the great rabbi, Our Master the rabbi Rabbi Yacov Weil of

Blessed Memory, and also Novellae from *Sefer aguda* and the *Nimukim* of our master and

rabbi, Rabbi Menaḥem Meresburg of blessed memory."[325]

In short, the printed book of responsa of Rabbi Weil does not contain purely

responsa, nor does it contain only material from Rabbi Weil. Although this seems strange

for a printed book of responsa, it is very typical for manuscript compilations. The only

aspect that hints at any serious organizational attempt to tie the whole book together and

render it easier to navigate is the index of the printed book. The last fifteen pages of the

printed work contain an index that is organized by topic;[326] it shows where certain laws

from the first part of the book are found, by section number as well as by page. The last

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that he collected from *Sefer ha-aguda* and from *Sefer ha-nimukim* of Rabbi Menachem Meresburg, and for
that reason those collections are found at the end of *ShUT MahaRYW* and in all the printed editions.

[325] Also: big/universal הכולל.

Title page: שאלות ותשובות והלכות שחיטה ובדיקה וחידושי דינין אשר חבר הרב הכולל מהרר' יעקב ווייל ז"ל, ועוד
חידושין מספר אגודה ונימקי מהר"ר מנחם מרזבורק ז"ל

נדפס על יד קורניליייו אדיל קינד בשנת ש"ט לפ"ק פה ויניציאה

[326] "Rules of...": marriage, repentance, levirate marriage, divorce, menstrual impurity and ritual
bath, women, priestly impurity, marital contract and *shiduchin* (matchmaking), rabbinical issues, communal
*takanot* (enactments)*, malshinut* (slander), sabbath, taxes, charity, torts, oaths, documents, inheritance, and
other issues related to death, judges, prohibitions, firstborn, joyful occasions, without any given order.

topic section in this index is entitled "random laws," and mentions the first page number of *Nimukei MaharaM Meresburg* and the *Ḥidushei agada* as well. This is another indication that, if the printers were using a pre-existing index, the works from these different authors had already been bound together in the manuscript collection. The index probably existed in the manuscript collection from which Cornelio Adelkind based the book; nowhere does the first printed edition mention the preparation of this index.

Although the different types of halakhic material (responsa, sermons, manuals, decisions) are separated from one another by concluding statements and opening titles, overall, there is an evident lack of effort to transform this manuscript collection into a work that is clearly defined in terms of subject matter, authorship, and genre. This impression is reinforced by the editorial decision to print these different types of writing in succession in the same book, without removing personal names and other specifics superfluous to future use, and by the fact that three different authors are printed together in the book, without clear indication or editorial explanation as to the reasoning behind this. Other than adding a new title page, which does not even include an original title, and writing a short introduction and a one line colophon to frame the work, there is no editorial intervention with the compilation in its manuscript form. It is, in many ways, a manuscript *likut* printed almost precisely as it was found.

After thanking God for his help in "printing this elevated book from start to finish," [327] the introductionpraises Rabbi Weil's greatness, noting that "the author of *Trumat ha-*

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[327] Weil, *ShUT MaraY Weil*, introduction (at back):

יהי נא חסדך י'י עמנו וישעך תתן לנו, להדפיס הספר הזה המעולה מהחל עד כלה חברו החכם הכולל מהר"ר יעקב איש
תם, על שם מקומו ווי"ל נכתב ונחתם, על דרך שאלות ותשובות אותו חבר, והיטב את כל אשר דבר, מי כהחכם הודיע פשר, בקש

*deshen*, who moves the lips of those slumbering, mentioned him [Rabbi Weil] as a proof [authority] in his responsa very often...”[328]  Although Rabbi Weil was Rabbi Isserlein's senior, it is clear that *Trumat ha-deshen*, which, by the time the work was being printed had already been in print for three decades, was the work with the more widespread reputation.

### b. *ShUT MaharY Mintz*

The continuities between the practices of manuscript and print transmission of halakha are even more pronounced in the case of the responsa of Rabbi Yehuda Mintz. Rabbi Mintz was born in the German lands;[329] he lived for an extraordinarily long time (about one hundred years) and died in Padua in 1509. His responsa were printed together with those of Rabbi Meir Katzenelbogen (known as MaharaM of Padua), who had arranged for their printing. [see image 11] Rabbi Katzenelbogen was a student of Rabbi Mintz and married one of his granddaughters. Rabbi Katzenelbogen explains that even collecting and assembling the materials for the work was not an easy task: "I searched, and I did not find, because several intrigues and adventures have befallen the [writings],[330] since in the year in which our rabbi died, his town, the city of Padua, was looted and the strangers took his

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דברי חפץ וכתו' יושר, אמרות טהורות וצרופות, בעיון דק ובחריפות, ובהדמות מילתא למילתא, רוח מבינתו גילתה, הרבה חדושים
ועניינים אשר לא נודעו מלפנים, הוא היה יחיד בדורו, הוא זיוו הוא הדרו, אזן וחקר ותקן, ישיבות בארץ אשכנז הרביץ ושיכן, וכל
דבריו סולת נקייה, ואין ברוחו רמיה, ובעל תרומת הדשן, אשר דובב שפתי ישן, הביאו לראיה בתשובותיו  לרוב על כל גדותיו ולכן
כל המבקש דבר השם, ועד הנה לא ידע ואשם, אם בספר הזה יהיה בוחר, יהפוך לו אלהים לב אחר, ובקראו בו אז יחרץ ויגיע לו
תענוג נמרץ, ותתענג בדשן נפשו, כאלו נזר אלהיו על ראשו, וכאשר אל ביתו יאספו עיניו לא תחוס על כספו, אך יודה את י"י בתומים,
חבלים נפלו לי בנעימים.

[328] Song of Songs 7:10, meaning here that he makes the preceding generations speak after their death by quoting them. ובעל תרומת הדשן אשר דובב שפתי ישן, הביאו לראיה בתשובותיו לרוב.

[329] It is not known exactly where.

[330] The Siege of Padua, 1519. See Frederick Lewis Taylor, *The Art of War in Italy, 1494-1529* (Westport: Greenwood Press, 1973).

writings and tore and burned them, and only a fraction remained saved."[331] Ultimately, a

brother-in-law of Rabbi Katzenelbogen who was a grandson of Rabbi Mintz, "...checked

in his books here and there and found a few booklets/quires [*kuntresim*] hidden inside the

books spread here and there, until he assembled sixteen *psakim* [decisions, adjudications]

and brought them to me..."[332] Thus, we know that, while Rabbi Mintz kept his own writings

in manuscript, many of them were lost due to social unrest and that the sixteen published

responsa are only a small sample of his oeuvre.[333] It is not clear from the information in

the introduction whether Rabbi Mintz himself chose to save the smaller quires with

manuscript copies of his responsa inside his books or whether his grandson had kept them

in this way. The grandson's need to search for them may indicate that it was Rabbi Mintz

who had preserved his own writings. Perhaps Rabbi Mintz had placed them inside his larger

books, and in this way, the grandson inherited the writings along with parts of his

grandfather's book collection.

The format of some of these responsa suggests that Rabbi Mintz originally copied

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[331] Katzenelbogen, introduction to *ShUT MaharY Mintz u-MaharaM Padua* (Venice: Bragdin, 1553):

יגעתי ולא מצאתי כי עדו עליהם כמה טצדקי? והרפתקי באשר באותה שנה שנפטר רביו היתה קרית פדואה עיר מושבו
לשלל ושלטו ידי זרים בספריו לקרעם ולשרפם ומעט מזער הם אשר נשארו לפליטה ...

[332] Katzenelbogen, Introduction to *ShUT MaharY Mintz u-MaharaM Padua*,

אמנם עתה בזמן קרוב בא אלי גיסי האלוף כמהר"ררי מינץ ס"ל ז"ל י"ץ בן בנו ואמ' איך בדק בספריו אנה ואנה ומצ'
קצת קונטרסי' גנוזים בתוך הספרים אחת הנה ואחת הנה עד שקבץ יחד י"ו פסקים והביא' אלי ....

[333] The sixteen responsa that were published include one concerning inheritances and pledges to charity, several documents of engagements and questions regarding witness statements in these cases, two permissions ("*heter*") for women to remarry shortly after giving birth, a writ to the community of Treviso concerning the collection of funds and building of a synagogue and ritual bath, a response concerning a questionable Torah scroll, the calculation of a bar mitzvah for a leap year, a discussion regarding taking an additional wife in the case of infertility, a discussion concerning marriages of the *anusim* and the question of problematic witnesses, two pieces concerning a levirate marriages with complications, a famous case of *mi'un* (rejection of a betrothal with a minor), a question concerning the rights of a *minyan* (prayer quorum), which includes many smaller unrelated issues, and a discussion concerning the custom of wearing masks on Purim.

them for his personal record. In many cases, he copied the responsa from his correspondence, and included the formal greeting to the person he was addressing, followed by a short recapitulation of the question and Rabbi Mintz's answer to it, and he then closes with his signature.[334] Often, the personal names are preserved; in a few instances, however, the addressees are made anonymous.[335] It is not clear whether the occasional removal of personal details was Rabbi Katzenelbogen's doing, but the fact that this was done inconsistently points to its having been done in the original manuscript copy. Sometimes, Rabbi Mintz's introduction to the responsa explains his motivation for writing them in his records. For instance, he writes: "I said, I shall tell this law so that the later generation shall know for what reason I permitted Rabbi Mordekhai ... to marry a woman who was still breastfeeding...."[336] Or, in another case: "Since Sir Amoẓ the elder ... told me and ordered me in defense of my own honor not to provide any of the wagging tongues with reasons to protest what I ruled regarding the maiden Fiorina Tam,[337] the daughter of Rabbi Isaac of Rovigo...."[338] The responsa are thus copied as a personal record in the interest of posterity, while also providing Rabbi Mintz with the material needed to defend

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[334] See, for example, *ShUT MaharY Mintz*, §8 and many others.

[335] See §6, "Peace unto you rabbi *Ploni Almoni*..." We cannot know, of course, whether this was changed by the editor Rabbi Katzenelbogen or whether this is the way Rabbi Mintz wrote it down for his own record.

[336] There is a halakhically mandated waiting time before a widow with an infant can remarry, in order to ensure that the child is not being neglected. This is specifically related to breastfeeding the child, as the rabbis feared that the new husband would discourage her from continuing to breastfeed her infant, so that she could conceive a child with him. *ShUT MaharY Mintz*, §4: אמרתי אספרה אל חוק למען ידעו דור אחרון מאיזה טעם התרתי לרבי מרדכי פופשטלן לישא אשה מינקת....

[337] ת״ם ?

[338] *ShUT MaharY Mintz*, §3: בהיות שהאדון אמו״ץ הישיש ר״ג קרובי הגאון מוהר״ר ענשכין יצ״ו אמ׳ לי וציווני משו׳ כבודי שלא לתן פתחון פה לבעלי לשון לדבר כי על מה שפסקתני על אודות הבתולה פיורינא ת״מ מת ה׳ר יצחק מרובי״גו יצ״ו...

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his decisions should they be contested.[339]

The table of contents prepared by Rabbi Katzenelbogen, merely a series of short descriptions of the responsa, themselves, does not represent a significant attempt to organize the work.[340] Except for selective editing, Rabbi Katzenelbogen, apparently, limited his work to collecting the few responsa he could find and printing a rudimentary table of contents. The only part of the book that seems to have been edited intensively is the section containing a *seder get* and a *seder ḥaliza*. The book was printed at the Bragdin press, the same press that would eventually print the first edition of Rabbi Yosef Karo's ultimate code of Jewish law, the *Shulḥan Arukh*.[341] The title page here also contains the

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[339] In another case, he opens with harsh words against the sender and then writes, "...and these are the words that were written to me that the excommunicated one mentioned above said to me, 'look, this Rabbi Yehuda Mintz wrote that I transgressed the excommunication of Rabbi Gershom ... and see, this Rabbi Yehuda Mintz himself wrote about Rabbi Elijah Mizrachi that he is a great man in Israel and this same Rabbi Elijah Mizrachi he himself wrote to me that I may take two wives, and showed the response that was sent, and this is the gist of the response..." *ShUT MaharY Mintz*, §10. In this case, we witness the afterlife of an excommunication responsum that is being contested by means of more responsa writing. This is followed by Rabbi Mintz's justification of his decision and concludes: "therefore, I am hereby warning them as much as I can not to transgress the excommunication of the gaon may his memory be a blessing, and I asked the above-mentioned ḥakham Ezra Rosso that he shall tell and announce in public that which I wrote in this explanation that from what is known to him about this, from all of this it is clear...that the above-mentioned Gershon Bonofazzo? is excommunicated..." (*ShUT MaharY Mintz*, §10).

לכן הנני מזהירם כפי הכח הניתן לי שלא ימעלו עוד בחרם הגאון ז"ל ובקשתי הח' עזרא רוש"ו הנ"ל שיאמר ויודיע ברבים אשר כתבתי בזה הדרוש במה שידוע לו על כן מכל הנ"ל דבר פשוט הוט כביעתא  בבותחא גרשון בו"נו פאצ"ו הנ"ל הוא מוחרם ומנודה לשמים...

Rabbi Mintz is unimpressed by the excommunicated man's attempt to defend himself, and he reiterates the excommunication. Here it is obvious that the public announcement is to be carried out orally and in a simplified manner, while the written explanation is kept for the elite, the rabbinical leadership. Rabbi Yehuda Mintz also chooses to keep a copy of this letter for himself. The response in §13 is a letter in which he writes that he received "stacks and stacks of the responsa of most of our brothers and rabbis in the land of Ashkenaz..." regarding a famous and controversial case. He adds his own opinion on the matter.

[340] The poem is introduced by a "Moshe son of the Ḥakham Rabbi Zekharya Kohen of Korfu," an editor (his name appears as the editor on title pages of other books printed in Venice (various printing presses), such as *Perush ha-mishnayot* (Venice, 1548-9) and *Akedat Yizḥak* (Bomberg: Venice, 1547); this is followed by a folio with a poem. ספר אשר בו חן. כבוד וחן ימצא האיש אשר מוצא נותן לכספו צדיק הוא בלב בוחן. and ends with the words: "...a book which contains charm. Honor and charm will find/ the man who gives release (motza) to his money/ he is a righteous man with a discerning heart." Some of the letters are emphasized and spell "Moshe Kohen."

[341] The title-page: פסקים
ושאלות תשובות ספונות וחשובות והם סולת נקייה ובם

words "*shulḥan arukh*," namely, when it mentions the *seder get* and *seder ḥaliẓa* included

in the printed work: "And besides these, a *seder gitin* and *ḥaliẓa*, ready like a set table [*ke-*

*shulḥan arukh*], which was collected and arranged and from it can be learned more good

lessons."[342] The "set table" refers to the process of editing, which not only creates for the

reader a collection of the important sources, but also arranges them in a useful and elegant

manner. Rabbi Katzenelbogen explains this is the introduction:

> I also had a *seder* of *gitin* and *ḥaliẓa*, which I collected from *kuntresim* that were
> from the handwriting of our rabbi of blessed memory and a few things that his son, my
> father-in-law, the *gaon* of blessed memory, added after him. And because the things were
> not organized, because our rabbi wrote them as they occurred, therefore I, their student,
> have arranged the things each one in its place with signs, and I have given them signposts
> so that it will be easy for every teacher/decision-maker to find that which he seeks. And a
> little bit I have also added in a few places...[343]

The folio that follows after the end of Rabbi Yehuda Mintz's responsa[344] contains

a table of contents outlining the *seder get*, which is organized under topics such as "agents,"

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חידושים יפים ממתקים ומחמדים יסדום אבירי

הרועים הגאון מהר"ר יהודה מינץ ז"ל ה'ה

והגאון מהר"ר מאיר מפדוואה ה' יאריך

ימיו בטוב ושנותיו בנעימים. ובלעדי

אלה סדר גיטין וחליצה מוכן

כשלחן ערוך אשר קבצום

וסדרום והוסיפו מדלהון לקח טוב:

the same decorative crowns as on the S*hulḥan Arukh*'s first edition

נדפס במצות האדון משיר אלוויז בראגדין שנת שיג לפ"ק

פה ויניציאה

[342] The title page: ובלעדי אלה סדר גיטין וחליצה מוכן כשלחן ערוך אשר קבצום וסדרום והוסיפו מדלהון לקח טוב
"like a set table...collected and arranged."

The *seder get* and *ḥaliẓa* that Rabbi Katzenelbogen mentions having found and added were described as having been "written in the hand of our rabbi." We see that these writings are Rabbi Yehuda Mintz's own manuscript copies of *sidrei get*, and that they, too, contain copies of other *sidrei get*, such as the one by Rabbi Kolon. These various manuscripts including letters, private records, and compilations were kept by Rabbi Yehuda Mintz.

[343] עוד היה בידי סדר מגיטין וחליצה אשר לקטתי מקונטר' שהיה מכתיב' יד רבינו ז"ל ודברים מעטים שהוסיף בנו חמי הגאון ז"ל אחריו ובהיות שהדברים היו בלתי מסודרי' כי רבינו כתב אותם כפי ההזדמן לכן אני תלמידם סדרתי הדברים איש איש על ידו ואל רגלו בואתות והצבתי להם ציונים למען יקל לכל מורה למצוא את אשר יבקש. ומעט מזער הוספתי גם אני בקצת מקומות. ורבים מן המורים אשר בקשו ממני העתקתם לכן צרפתי אותם עם החבור הזה לאשר בלי ספק רוח חכמים נוחה הימנו.

[344] נשלמו שאלות ותשובות ממה"רר יודא מינץ ס"ל ז"ל

"names," "dates," "how to treat the divorce document," numbering altogether more than a hundred sections. [see image 13] The *seder get* itself follows after this outline; it is based, as mentioned in the quote, on Rabbi Mintz's *seder get*, which Rabbi Katzenelbogen edited, collected, and composed from the former's manuscripts. It is followed by several other such *sdarim* for preparing similar documents related to divorce and marriage.[345] It is significant that these *sdarim* are the main elements that Rabbi Katzenelbogen mentions having edited and prepared thoroughly for the reader's benefit. Although adding such documents to this printed work may seem a novel editorial decision, the practice of "editing" such *sdarim* is, in fact, wholly in line with the traditional practices of writing and transmitting *sidrei get* and other such manuals and model documents. A scholar would typically prepare his own *seder get* based on previous ones by rabbis and predecessors, editing and adapting them in line with his rabbi's remarks, other *sidrei get,* and his own opinions and teachings. In fact, this *seder get* based on rabbi Mintz's *seder get* includes one relatively long section copied from "our rabbi Rabbi Shimshon of blessed memory," which is called a *perush ha-get*, an interpretation of the divorce document.[346] This section, indeed, includes many explanations of words and concepts related to the *get* rather than the more typical instructions. It continues for eight sections, the last of which concludes:

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[345] The *seder ḥaliza* is printed and followed by "the language of my master and father-in-law," that is, the remarks by Rabbi Yehuda Mintz's father-in-law, Rabbi Abraham Mintz, on the seder ḥalitza. The *ktav hashba'at ktuva*, which is signed, "copied letter by letter from the body of a *ktav hashba'at ktuva*, on which is signed my brave [*amiz*]relative the gaon ... Anshin of blessed memory, so states [*neum*] the preoccupied? [*hatarud*] Yuda Mintz." This last document is apparently something that Rabbi Katzenelbogen found among Rabbi Yehuda Mintz's manuscript collection, which the latter copied from yet another relative.

[346] After the first 109 sections, the subtitle reads, "This is the interpretation of a *get* of Rabbi Shimshon of blessed and righteous memory," which contains a slightly longer section. This is followed by another seven sections that seem to belong to the same *seder get*, after which another eight assorted sections appear, bringing the total of entries in this *seder get* to 124.

Until here the explanation of the words of the language of the *get*, things that I have not heard and no man has preceded me to my knowledge in these things. However, the "standing" that it says in the *get*, for instance, "he who is standing, she who is standing," etc. … and other such laws, I have not written, and I will rely on the words of our rabbis and predecessors of blessed memory who have written at length and delved deeply, however, on the formulations of the power of attorney and the formulation "it is puzzling," I have taken to explain them according to my limited understanding, and he who sees it should judge me favorably, because it is not my intention that this is for the sages, only for those smaller than I am, and I ask them to judge me favorably, blessed is the Lord who has given me the privilege to complete this explanation.[347]

Rabbi Shimshon, the author of this part, thus added explanations only to items where he did not find an explanation in the past, whereas he explained that he will "rely on the words of our rabbis and predecessors" for the words that had already been explained to his satisfaction. This *seder get* within a *seder get* (within yet another *seder get* – that we know of, and this probably goes on even further) is followed by several more sections that Rabbi Katzenelbogen added, some of which are cited in the name of an earlier authority, some of which are merely summarized as a short instruction. Section §123, for instance, is, in fact, copied from Rabbi Isserlein's *seder get* and is followed by a passage of critique, which concludes with the following words: "until here the language of my master and father-in-law the *gaon* his honor our master and rabbi, Rabbi AvYa Mintz of blessed memory."[348] Likewise, the next and final section seems to be a copy of a divorce document signed by Rabbi Meir Katzenelbogen himself, with some additional notes, for instance:

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[347] *ShUT MaharY Mintz*, table of contents for the *get*, §116 (end), 48a. עד כה בביאור מלת לשון הגט דברים לא שמעתי ולא קדמני אדם ידעתי לדבר זה. אמנם העמידה הכתוב בגט כגון העומד העומדת כו' ונהרות ומעינות...לא כתבתי ואסמוך על דברי רבותינו קדומנינו ע"ה האריכו והעמיקו. האמנם על לשון היפויים והלשון יש לתמוה נתתי את לבי לבארם כפי קוצר דעתי והרואי' ידני לכף זכות כי אין דעתי לנסות לחכם אלא למי שקטן ממני ומבקש מהם לדונני לזכות ברוך המקום שזיכני לסיים לסיים זה הביאור.

[348] עד כאן הועתק מגוף הכתב של מהר"ר ר' איסרלין ז"ל, followed by ר' איסרלין ז"ל Rabbi Isserlein's words are concluded. על זה הנמצא בסדר מהר"ר איסרלן ז"ל, וגם הכתובה...עכ"ל מורי חמי הגאון כמהר"ר אבי"ה מינץ ז"ל. The acronym AvYa refers to Avraham, the son of Rabbi Yehuda Mintz, who was Rabbi Katzenelbogen's father-in-law.

"On the 2nd of Shvat 1478, I prepared a *get* for Rachel daughter of Yosef, and her father's name was Yos'l as a nickname, but I did not write this, because … although it says in the response of Rabbi Weil that … Also, the scribe, when he wrote, leaned the *alef* of *bearta* on the *bet*, ... and the witnesses did not sign yet, and I arranged it to be scratched and separated, in accordance with the *Tur*…"[349] This last section was thus a copy of a divorce document for his own records, with some notes about his decision-making during that event.

In fact, Rabbi Katzenelbogen's emphasis on his extensive work, editing, and preparations for publication related to a halakhic genre that had traditionally been treated similarly in manuscript culture. Moreover, the main tropes that Rabbi Katzenelbogen mentions as having driven his decision to print his predecessor's work are highly reminiscent of the era of manuscript *likutim*; he explains that he decided to print the work so that it could serve as a substitute for the traditional practice of copying from one's rabbi. In this case, as Rabbi Katzenelbogen explains in the introduction, because so many students wished to copy these documents from his manuscripts, he decided instead to print the writings for them: "And many of the instructors have asked from me a copy of it, therefore I have added them to this work, since there is no doubt that the spirit of the sages will be satisfied with it."[350] [see image 12]

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[349] *ShUT MaharY Mintz, Seder ha-get §124*, 49ab:  ב' שבט רל"ח סדרתי גט לרחל בת יוסף והיה שם אביה
יוסל בכנויו ולא כתבתי הכנוי כי נראה שהוא קצורו של שם...אף כי נמצא בתשובת מהר"י וייל שהמר"י מולין כתב המכונה...מ"מ
תפשתי דברי מהרר"א עיקר. וגם הסופר בכתיבתו סמך א' של בארת לב' שהנקודה של א' נגע בב' והעדים לא חתמו עדיין וסדרתי
לגררו להפרידו כדברי טור...
[350] ורבים מן המורים אשר בקשו ממני העתקתם לכן צרפתי אותם עם החבור הזה לאשר בלי ספק רוח חכמים נוחה הימנו.
ולהיות כי באו בחבור הזה שמות המורים אשר לא נכרו בחוצות לפעמים מסיים בסוף הוראה ז"ך ולפעמים זק באת להודיע שז"ך הוא
זלמן כהן וזק הוא יחס משפחה.
נאם מאיר בכמ"ר יצחק קצנאילבוגן מפדואה

The far more significant part of this printed work in terms of volume is not the responsa of Rabbi Mintz, but, rather, Rabbi Katzenelbogen's own responsa. Rabbi Katzenelbogen presents the responsa of his elder as the more important part of the work, for instance, by placing Rabbi Yehuda Mintz's responsa first, both in the title and in the book itself. The actual proportions, however, suggest something else: sixteen responsa are from Rabbi Yehuda Mintz, whereas Rabbi Katzenelbogen has ninety responsa. Rabbi Katzenelbogen created a separate table of contents for his responsa, and these are organized in a very basic fashion: the first thirty-seven are mainly about issues relating to family law, but no specific subtitle is given to this group.[351] The second part has an explicit subtitle, namely, "monetary laws,"[352] and contains twenty-six responsa. The last part is titled "rest of rules in a mixture"[353] and contains twenty-six responsa. Within this basic division around three themes (family law, monetary law, miscellaneous), the individual responsa are not organized in any way.[354]

Rabbi Katzenelbogen concluded the section of his responsa with a play on words related to the number of responsa, that is, ninety, whose equivalent is the Hebrew letter *ẓadi*.[355] He plays on the sound of *ẓadi*, explaining "and its sections are justice, justice pursue[356] and go after a nice court."[357] Justice is *ẓedek*, similar to the letter, which is

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[351] Divorce, marriage, levirate marriage, a few releases enabling *agunot* (women whose husband disappeared) to marry, and a few questions regarding ritual purity.

[352] דיני ממון

[353] שאר דינים בערבוביא

[354] For example, within the first subsection, there is no attempt to place together all the responsa regarding divorce. These are clustered mainly in the first part of the responsa on women, but other responsa on the topic of divorce appear throughout this subsection.

[355] צ

[356] Deuteronomy 16:20.

[357] The interpretation of this verse in Babylonian Talmud, tractate *Sanhedrin* 32b.

וסימניך צד"ק צדק תרדוף הלך אחר ב"ד יפה

pronounced *zadik*. Both the attempt at partially organizing the work and the wordplay on

the number of sections hint at some awareness of the different nature of the printed work

as opposed to the manuscript compilation. Indeed, this is the first case of a rabbi editing

his own responsa and having the resultant work printed, albeit only as an appendix to the

responsa of his master. Rabbi Katzenelbogen carefully apologized and expressed humility

before his master and his writings, and then explained that his decision was ultimately a

practical one:

> And I thought, what should I do with these, copy them or print them in order to spread them over the whole land? It will befall them as it says concerning the book of Hosea in the first chapter of Batra [Babylonian Talmud, tractate *Bava Batra*14b] – "as it is short, it will get lost," which is why this book [Hosea] is placed outside of its order. Therefore, I have said, the time has come to bring pleasure to the students that I have established, who day in and day out have requested that I copy for them my questions and responses, which I have brought into existence. I said now I will stand up and connect/compose them with the decisions of my master and rabbi – our Rabbi of blessed memory, the above mentioned – and they will be a pair, although my responsa are not similar to those of my rabbi ... and therefore those of our rabbi have no place here, but in any case, as they are few and there is room to fear that they will be lost, I will connect them with those that emanated from me, and my bucket of squash will be a basis for his sharp pepper[358] ... and he will not bear a grudge against me because one is jealous of every man except one's son and student. And I am his student. And considered his son...[359]

Because there were few writings by Rabbi Mintz, printing them alone posed the

risk of their being lost. Considering this, in addition to the fact that Rabbi Katzenelbogen's

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[358] A reference to Babylonian Talmud, tractate *Yoma* 25b טבא חדא פלפלתא חריפא ממלא צנא דקרי: one kernel of sharp pepper is preferable to a bucketful of squash.

[359] חשבתי מה אעשה באלה להעתיקם או להדפיסם להפיצם על פני כל הארץ יקרה להם כאשר אמרו על  הושע בפ"ק דבתרא אייד' דזוטרא מרכס ולזה חברו אותו שלא במקומו בכן אמרתי הגיע' השעה לעשות נחת רוח לתלמידי שהעמדתי אשר יום יום ידרשו ממני להעתיק להם השאלות ותשובות אשר נתהוו על ידי אמרתי עתה אקום ואחבר אותם עם הפסקים של מ"ו רבינו ז"ל הנ"ל ויהיו להם  לצוותי בעלמא עם כי אינם דומים לשל רבינה כי מה לתבן את הבר ונמצא שאות' של רבינו אינ' כאן מקומ' מ"מ מאחר כי מעטים הם ויש לחוש דמרכס' אחברם עם אשר יצאו ממני ויהא צנא מלא קרא בסיס לפלפלא חריפ' כאשר אתאי להתם יפוק לאפי ולא יקפיד עלי כי בכל אדם מתקנא חוץ מבנו ותלמידו. ואנכי תלמידו. וחשוב כבנו. להיותי בעל בת בנו. ובני בנים כבנים ובעל כאשתו.

own students were still asking him to copy his writings for them, he decided to print the two together. In terms of manuscript transmission, it is typical to see a student's responsa alongside those of his own rabbi, and doing so in a personal manuscript compilation did not imply intellectual presumption or arrogance. In the case of print, however, the decision to place one's writings alongside a rabbi's and to publish them together is a statement in itself and thus requires the appropriate apologies. Similarly, the small number of Rabbi Mintz's responsa would not have posed a problem in the case of manuscript transmission, as they would simply have been copied into larger archives and manuscript compilations. The concern that a small, printed, stand-alone booklet was too insignificant to survive was new.

### c.  *ShUT MahaRYL*

The final work to be discussed in this section is older in origin than the others, although it was printed later. The printing of this work takes us away from Venice, westward, to the printing press of Vicenzo Conti in Cremona. [see image 8] The gap between the forming of these manuscripts of responsa and their printing is wider than it was for the other works considered here: about 130 years separate the author's death from the publication of his work in print. As a result, the variance in the continuity of personal connections by which the responsa were passed on from generation to generation is also greater.

Rabbi Yehuda Moellin (1365–1427, also known as MaharYL) constitutes the link connecting the fourteenth-century ashkenazic tradition, which ends with Rabbi Meir of

Rothenburg, to the fifteenth century.[360] From the manuscripts of Rabbi Moellin's responsa,

it is clear that they were transmitted in ways that are typical for *likutim* transmission. First,

the manuscript copies of *ShUT MaharaM mi-Rothenburg* that were owned by Moellin's

students and copied from their rabbi's manuscript often included responsa from Rabbi

Moellin.[361] Moreover, more than ten extant manuscripts of Rabbi Moellin's responsa show

that his responsa were copied alongside others in compiled manuscripts. None of these

manuscripts were strictly copied from one author or one time period,[362] nor are they limited

to one type of halakhic genre.[363]

    Some evidence indicates that Rabbi Moellin had at some point intended to collect

his own responsa. Someone who presented himself as Rabbi Moellin's personal scribe

described some of the practices surrounding the responsa. This scribe claims that "...his

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[360] In fact, Simcha Emmanuel believes that the manuscript compilation that formed the basis for the Prague edition of Rabbi Meir Rothenburg's responsa belonged to Rabbi Moellin himself, who was possibly also its last editor (Simḥa Emmanuel, "Tshuvot MaharaM mi-Rotenburg, dfus Prague" (The responsa of Rabbi Meir Rothenburg, Prague edition), *Tarbiẓ* 57, no. 4 (1988): 35.

[361] Emmanuel, "Tshuvot MaharaM…dfus Prague," 35.

[362] Some of these manuscripts include several responses from Rabbi Moellin alongside Rabbi Meir Rothenburg's responses, (Mantua Ms33) or MaharYL's responsa together with one from Rabbi Shalom of Neustadt, MaharYL's most important teacher. In other manuscript collections, we see MaharYL's responses alongside those of Rabbi Yacov Weil (Hekḥal Shlomo Ms3) and Rabbi Israel Isserlein, both of whom were more or less contemporaries of Rabbi Moellin. In the case of one manuscript, we see mainly the responsa of Rabbi Elḥanan "Ḥonlein" Katz (?), followed by a few responsa from MaharYL (Oxford Ms.). Differences in the versions show that the various manuscripts containing responsa from Rabbi Moellin were not all copied from the same manuscript source, and there are many differences as to which responsa are included in the different manuscripts.

[363] One manuscript, for instance, contains mainly customs of the MaharYL, known to us from the printed *Minhagei MaharYL*, with some of his responsa thrown in (Frankfurt Ms8.84). Other collections include an anonymous *seder get* followed by responsa of Rabbi Moellin. For a description of the manuscript versions, see Yiẓḥak Akiva Saẓ, "Introduction," *ShUT MaharYL* (Jerusalem: Makhon Yerushalaim, 1980), 12-17. Moreover, responsa from MaharYL are found in various important ashkenazic compilations such as *Customs of Rabbi Isaac of Tyrnau*, ed. Shlomo Spitzer (Jerusalem: Makhon Yerushalaim, 1979); *Leket yosher* of Yosef ben Moshe Ostreicher (1423–1488), and *Sefer ha-egor*, by Rabbi Yacov Landau (Naples, 1490). These transmission practices continue the pattern of students copying responsa from their teachers alongside earlier responsa and later ones, and alongside other halakhic material, thus adding onto the compilations from previous generations.

pure mouth MahaRY SeGaL agreed with me, at the time, in the summer of 1427, that he

wanted to allow me to copy for him all his responsa that he wrote from the first day that he

started teaching halakha ... to copy for him one compilation of his responses."[364] This was,

to some extent, easier to do in this case, because Rabbi Moellin kept all of his responsa. As

he apparently had nearly indecipherable handwriting, he would usually keep his own

responses and send his questioners a clearer copy from his scribe's hand: "and he sent every

time the copy, and the original he would keep, so that a full chest had already

accumulated."[365] [see image 9] The plan to collect all the responsa seems not to have come

to fruition; after his death, his sons divided the responsa among themselves. The scribe

tried, in vain, to collect everything, but ultimately compiled only a small selection, namely,

160 responses of Rabbi Moellin. In addition to copies of responsa, the collection also

contains testimonies of things that Rabbi Moellin had witnessed, for example, a *heter*

(permission, release) that one of his rabbis, Rabbi Hillel of Erfurt, had provided in relation

to a case of levirate marriage.[366] Other materials were copied along with parts from *Sefer*

*MaharYL*. *Sefer MaharYL* was written by a student of Rabbi Moellin, Rabbi Zalman of

Sankt Goar, and it contains descriptions of conduct, teachings, and customs from his rabbi,

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[364] שאעתיק לו חיבור אחד מתשובותיו – it seems as if the scribe was allowed to copy one for himself as well.

This introduction is copied in Yuval, *Hakhamim be-doram: ha-manhigut ha-ruḥanit shel yehudei Germania be-shilhei yemei ha-beinaim* (Sages in their generation: The spiritual leadership of German Jewry at the end of the Middle Ages) (Jerusalem: Magnes, 1989), 111-113. (He mentions that it was first published in *ha-mazkir* 9 [1869]: 23.)

[365] See Dinari, *Hakhme Ashkenaz*, 278n117. See also *Minhagei MaharYL* (Cremona, 1558), 105b, at the end of the laws of mixtures.

[366] Yuval, *Hakhamim*, 157-166. On *Sefer MaharYL* and its manuscript transmission see Yisrael Peles, *Sefer MaharYL (=Minhagei MaharYL) al pi kitvei ha-yad ha-otografi'im shelo, ve-yiḥudo ke-ḥibur "merube arikhot"* (The Book MaharYL [=the Customs of MaharYL] based on his autograph manuscripts and its specificity as a "multi-edited" composition) (Ph.D. diss., Bar Ilan University, 2005).

arranged according to the months of the year. It was printed in Savionetta a few months

before the publication of Rabbi Moellin's responsa.[367]

No known manuscript exactly resembles the printed version, although some extant

manuscript collections that contain responsa by Rabbi Moellin have a similar order.[368]

Rabbi Moellin's responsa have been found across many manuscript collections, often with

responsa from other rabbis, and sometimes with other responsa of his that did not make it

into the printed version. The responsa in the printed book are not organized by topic, and,

most likely, they represent a collection of a few smaller compendia of responsa that, in

some cases, were organized around the different correspondents. This is evident from the

fact that the sections are often clustered around the same recipients. For instance, §1–2 are

to one person, §3–36 are to Rabbi Moellin's brother, §37–40 to yet another person, and so

forth.[369] [see image 10]

The first printed edition contains many errors and omissions. The editors of a

twentieth-century edition of Rabbi Moellin's responsa found more than 200 responsa that

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[367] In *Sefer MaharYL*, the author laments the fact that he did not ask more questions of his rabbi when he still could and considers this a failure of his (ואוי לעונות שלא שאלתי ממנו בחייו כל דבר ודבר...' p. 95). It is not only that collections of responsa often contain other halakhic materials, or that responsa can be found within manuscript collections that are focused on another type of halakha. Rather, manuscript collections often cannot be categorically identified as containing one type of halakhic writing. The organizing principle of such collections is often simply that of a personal *pinkas* or notebook in which a student copied his teacher's responsa. In some cases, such as *Leket yosher* or *Sefer MaharYL*, the collection is a personal one that is part of a student's apprenticeship and is centered around the student's rabbi. Parts of these collections, too, were then copied by other students. Other items of interest that might be copied alongside the material could include responsa from earlier generations, other materials from the rabbi, such as his *seder get* or manual for slaughtering, customs, and teachings of the rabbi, and also writings from other authorities. Other students would then copy from or "inherit" these collections and add their own material.

[368] Saz, "Introduction," *ShUT MaharYL*, 13; see discussion of manuscript collections above.

[369] Dinari, *Hakhme*, 259, also seems to agree with this. The editors of the *Makhon Yerushalaim* edition (see "Introduction," *ShUT MaharYL*, 13) also remark that, although the manuscript collections are all written according to the German-ashkenazic *ktiv maleh*, the printed book uses the more recent *ktiv ḥaser*. The editor, however, occasionally forgot to change the form of writing.

were not part of the first printed work.[370] A printed halakhic work from 1547 – before *ShUT MaharYL* was printed – refers to Rabbi Moellin's responsa by means of section numbers (*simanim*), which indicates that the organization of the sections in the first edition was preceded by a similar organization in some of the manuscripts.[371] Personal names and other details were not removed. The title page contains a decorative border with references to Rome, such as a double-headed eagle and the inscription S.P.Q.R.[372] A poem encouraging potential buyers to spend their money on this important work follows it.[373] The table of contents is preceded by the following rhymed statement: "Here in this written table you can understand the place of the vision. The signs of the teachings to satisfy those who desire to search quickly."[374] The table of contents is, as the book advertises, indeed a helpful finding aid, but it is also quite simplistic, offering merely a briefly annotated list of the sections, without further meaningful reorganization.

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[370] The new edition of *ShUT MaharYL* (Jerusalem: Makhon Yerushalaim, 1977) contains 211 responsa from various manuscript sources not included in the first editions.

[371] Rabbi Izaak Stein, *Biur* on *Sefer miẓvot gadol asher ḥiber Rabenu Moshe mi-Coucy. Nidpas shenit…im biur MaharR Isaac Stein u-biurei MaharR Elyah Mizraḥi* (Venice: Bomberg, 1547).

[372] An acronym for "*Senatus Populusque Romanis*," or "The Senate and the People of Rome," a reference to the government of the ancient Roman Republic.

The text reads: "Book of Questions and Responses composed by the great *gaon*, the head of the diaspora, our master Rabbi Yacov SeGaL, may his soul be shrouded in the shroud of the living, Amen, may it be His will."

ספר שאלות ותשובות חברם הגאון המופלא ריש גלותא מהרר יעקב סגל תהא נשמתו צרורה בצרור החיים אמן כן יהי רצון

[373] Title page:

קדמו שרים אחר בוגנים? הודו לרכב בערבות

אצל מן רוחו על ישרא"ל להיות גשם נדבות.

נביא לבב חכמה ברוך שגמלנו טובות:

חבר ספר אמרו שפר שאילות ותשובות:

ערך כסף להן ראוי להביא' כתורמלו מוזהבו:

הלא הוא הגאון מהר"ר יעקב סגל:

The title page concludes with: "And the whole work was completed on Friday the fifteenth of Elul 1556, here in the holy community of Cremona, which is under the rule of our master the King Phillipo, may his honor be exalted and his kingdom be elevated, printed by Vicinzo Conto with much inquiry [?], May God merit him to print and make many more books infinitely [Ecclesiastes 12:12]. Let the favor of the Lord our God shine upon us; establish for us the work of our hands [Psalms 90:17], Amen, may it be His will."

[374] הנה בהלוח הנרשם תשכיל לדעת מציאות החזון. סימני הדרוש להפיק רצון אשר יתאווה לחפש בחפזון

A quick search in the National Library's manuscript catalog lists numerous extant manuscripts of Rabbi Moellin's responsa, not just from the fifteenth but also from the sixteenth and seventeenth centuries. The responsa apparently went through many manuscript copies and renditions and existed in manifold contexts and versions; this explains the editors' difficulty in finding a way effectively to edit the book. Moreover, it shows that the responsa continued to be transmitted in manuscript long after the printed edition of the book. Vicento Conti's press also printed the second edition of Rabbi Kolon's responsa (1557),[375] in which the roots created by Rabbi Ḥiya were reshuffled according to Maimonides' *Mishne Torah*. In both cases, Conti did not invest much effort in terms of editing and organizing.

The case of these printed works of responsa makes clear that, after Rabbi Ḥiya's work at Bomberg's press, there were few attempts to print ashkenazic works of responsa as independent, homogenous, self-contained, and efficiently organized volumes that contained only one author's responsa under one title. In part, this may have been a question of effort; *Trumat ha-deshen* was the only work that the author himself had already edited in significant ways that rendered the manuscript especially appropriate for print publication. Given the state of Rabbi Moellin's responsa in manuscript and then in print,

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[375] He also printed the responsa of Rabbi Nissim of Gerondi (1557 in two editions), along with a number of other works that deal with halakha in some form or another. Friedberg relates this to the burning of the Talmud in Italy a few years earlier and the ban on printing new volumes of the Talmud (Friedberg, *Toldot ha-dfus ha-ivri be-Italya*, 81):

כי רבבות ספרים עברים הועלו במדינה על המוקדה, ..., שקצפו של האפיפיור אך ורק על התלמוד בלבד יצא...לא הפליאו פקידיו העושים רצונו בין התלמוד ובין הספרים העברים האחרים...נתרוקנו בתי ''עם הספר'' שבאיטליה מספריהם...ובפרט אחרי פתיחת בית-אולפנא, הישיבה הרמה...שעמדה תחת הנהלת הרב יוסף אוטולינגי...במטרתו להחזיר עטרה ליושנה, ובגלל כל זאת הכרע קונטי לפתוח מוסדו על יסוד רחב, במצאו השעה מוכשרת, למלא באופן חלקי משאלות לבות רצונם של הדורשים ולרוות צמאון הכמהין לדבר ה' ולספק צרכי בני הישיבה.

clearly much additional effort in collecting, selecting, editing, and organizing the work would have been necessary before it could be published in a way that resembled *Trumat ha-deshen*. The organization of Rabbi Moellin's responsa according to correspondents, an organization that most likely stemmed not from any conscious decision of the printers but simply from the way that the manuscripts had been collected, returns us to the origins of responsa in correspondence. Responsa were, in the first place, a part of learned correspondence. Their later transmission was part of the world of ashkenazic intellectual culture, which centered on manuscript *likutim* and their personal, flexible, and open-ended nature.

## 4. CONCLUSION: THE LIMITS OF TECHNOLOGICAL CHANGE

The complex and particularly slow and protracted way in which responsa entered the world of print highlights the immensity of the changes and challenges that ashkenazic halakhic scholarly culture faced in the age of the printed book. In his bibliography of responsa, Shmuel Glick notes that, in comparison to other genres of Jewish writing, the body of printed responsa literature was quite small before the eighteenth century.[376] This was in part because so few works of responsa were suited for printing. The practices of knowledge organization in the ashkenazic world meant that responsa were usually preserved in *likutim*, not in individual collections of responsa. They were unorganized and barely edited, and usually were collected alongside various other halakhic texts. Moreover, because responsa were transmitted in loose compilations, just like other ashkenazic halakhic texts, every

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[376] See Glick, "Introduction" in Glick ed., *Kuntres*, 69.

manuscript collection of responsa was different, especially as to who compiled it and for what purpose. This may explain why it appears that so few works of responsa were printed – there were, in fact, very few "works" of responsa.

Yosef Shlomo Delmedigo (1591–1655), in a letter in which he chastises an editor for wanting to print his writings, mentions the writing practices of his predecessors. The letter is reprinted in the introduction to Delemedigo's *Novlot ḥokhma* (Basilea, 1629–1631). In it, Delmedigo explains that his father, his grandfather, and their predecessors did not leave structured and complete textual works behind: "Only the *psakim* [rulings] and responsa that they answered, and the disputes and *pilpulim* [casuistic interpretations] that passed between them ... and those too, are spread, one here and one there, because they did not intend to collect and print them."[377] In short, there was not a strong culture of creating homogenous, unified, halakhic works in Ashkenaz; consequently, few textual materials from this culture were "print-ready."

The piecemeal and indirect trajectory of responsa from manuscripts to printed books described in this chapter reflects a more nuanced interpretation of the question of

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[377] Yosef Shlomo, Delmedigo, *Novlot ḥokhma*, "Foreword" (Part of *Ta'alumot ḥokhma*) (Basilea, 1629-1631).

This quote is part of the foreword included by the editor of *Novlot ḥokhma* , Shmuel Ashkenazi, who decided to publish Yashar Delmedigo's writings without asking for permission. Having discovered this, Yashar wrote him a letter of denunciation, which Ashkenazi includes in the foreword. In this letter, Yashar expresses some of his misgivings about printing works of Jewish knowledge (both mystical and otherwise). In response to Ashkenazi's surprise that Yashar was unwilling to publish his writings, Yashar mentions that his father, his grandfather, and many other great rabbis and predecessors had not left behind complete writings:

ועל מה שכתב ותמית עלי שאיני מדפיס אי זה ספר כו', גם אני היתי תמה על כמה גדולים ובפרט על רבותי אבותי שלמדתי אצלם...שכל ימיהם למדו ולמדו ולא הניחו אחריהם רושם מחכמתם הנפלאה רק הפסקים והתשובות שהשיבו והויכוחים ופלפולים שעברו ביניהם...וגם הם מפוזרים א' הנה וא' הנה כי לא כוונו לקבצם ולהדפיסם

See also, Isaac Barzilay, *Yosef Shlomo (Yashar) Delmedigo: His Life, Works and Times* (Leiden: Brill, 1974).

the primacy of technology versus intellectual culture and social scholarly practices. Printing a work, as opposed to copying parts of it into manuscript compilations, automatically situates it in a different register, with new possibilities and limitations. Rabbi Ḥiya's treatment of *Trumat ha-deshen* and *ShUT MaharYK*, especially his efforts to fashion them into homogenous, organized books that would be searchable for general scholarly purposes, reflects these possibilities. This transformation, however, required no small amount of editorial efforts, even in the exceptional case of the manuscript material found by Rabbi Ḥiya, and all the more so for the other works discussed.

Later printers, it appears, did not follow in Rabbi Ḥiya's footsteps. They did not create works that were self-contained, finite, homogenous, edited, well-organized, and generalized. Editorial practice, to some extent, replicated the practices of the scribes of halakhic manuscript compilations – sometimes very literally so, such as when tables of contents, combinations of material, and other elements are taken wholesale from their manuscript predecessors. At other times, continuities can be found in the editors' approach to printing responsa. These would include a lack of distinction between different authors and types of halakhic material, the decision to print one's own writings together with those of a predecessor, and explaining as merely alternative to making their own the reason for printing a work as merely offering students an alternative to their making manuscript copies of their teachers' notes. Printing was not the most natural technology for reproducing and circulating these works of responsa, which were traditionally transmitted in more personal, flexible, and varied ways. This immense distinction cannot be bridged purely by means of production technology, nor even by active editorial intervention.

Moreover, the standards and practices of editorial intervention were not a given, emerging 'as-is,' together with the printing press; rather, the culture of preparing works for print was itself a product of cultural developments. Or, as Martin Lowry put it regarding the expectations of editorship in Renaissance Italy, "the easy attitudes of the manuscript age died a hard death."[378] The dynamics of a work's printing, in and of itself, have an important impact on how responsa are transmitted. However, as shown by, on the one hand, Rabbi Ḥiya's extensive editorial efforts to produce the works discussed in the first part of this chapter, and, on the other hand, the lack of change as concerns the books discussed in the second part, print, though a significant factor, is not a sufficient explanation for the changes that would eventually occur. In the sixteenth century, great shifts would take place in the ways in which halakhic material was written, transmitted, and studied. Much of this was due to print technology and how it radically transformed the reach and form of the written text. These changes, however, occurred in tandem with other important developments in Jewish society and intellectual culture. The combination of these factors resulted in fundamental shifts in the culture of halakhic scholarship. Eventually, halakhic scholarly practices would change to such an extent that the genre of responsa would need to be reinvented; this process, however, was much slower and more complex, as the next chapters will explore.

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[378] Lowry, *Aldus Manutius*, 227.

IMAGE 1.
*Trumat haDeshen*
Venice, 1519 (Bomberg)

IMAGE 2.
A page in *Trumat ha-Deshen*, comparing MS 7148 R1419, JTS and Venice, 1519. The clear division between question and response is visible in both.

Table of Contents Ms7148 R1419 JTS and Venice, 1519
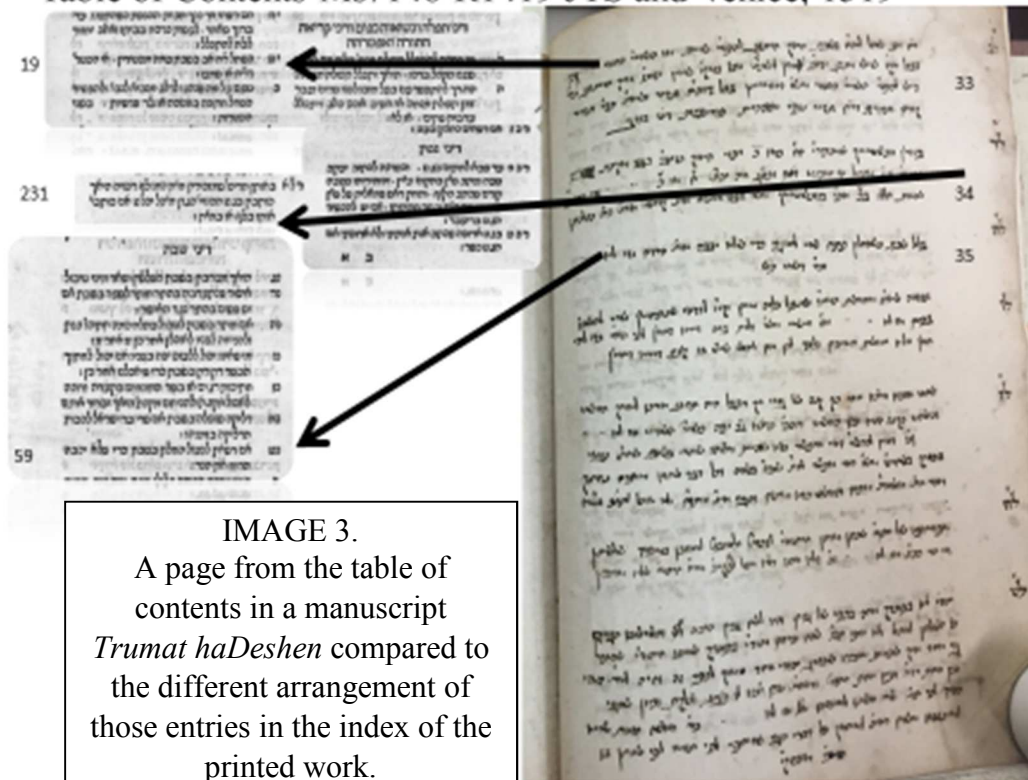


IMAGE 3.
A page from the table of contents in a manuscript *Trumat haDeshen* compared to the different arrangement of those entries in the index of the printed work.

IMAGE 4.
Title page of Responsa of
Rabbi Yosef Kolon
Venice, 1519 (Bomberg)

כי אלו תשובות שאלות ארוכ' מארץ מדה ורחבם מני ים · ובכל תשובה ותשובה על הרוב
כלל בהם ענינים מועלים זולת הכוון מאותה התשובה · לכן עוררתי רעיוני וחשבתי
את מתני · אני מפל המזב הקטן מבתלמידים חיא מאיר בכהר''ר דוד זצ''ל · וירדתי לסוף
עומק דעת כל תשובה ותשובה · כפי קוצר השבתי ומעוט שכלי · ועשיתי מכל תשובה מורם אחד אשר עיקר
תוכן התשובה בבניה עליו · וסעיפים התמסתעפים ממנה ודינים אחרים אשר לא מפכיח השאלה · העליתי על
ספר בתכלית הקצור · יועיל מאד להוגים ועיינים בספר הזה · ויזנבו מבוקפס זולת יגע ועמל · והסי וכילני
מסגיאות ויירוני כפלאות תורתיו אכ''ר :

שורש א | כלה גרם אגרם אתל' כופח אותן מיעקרו ממקומו'

שורש יג
הכותב שטר סילוק לאשתו בשעת החופה מסולק נס
כן מטטר ירוט עשה האב לבתו בשעת חופה וכפרט
אם כותב בשטר סילוק אי' לי שום כר זכות בכל נכסי
זונתי ולא בכל מה שיש לה כו' :
האומר נכסי לפלוני נם הסטרות בכלל :

**קכח** על דבר יעקב שכתב שטר סלוק לרחל אשתו על כל נכסיה על המוחזק
ועל הראוי, והיה לה שטר ירושה שכתב לה אביה, וכשנפלה לה הירושה טען
יעקב שלא נסתלק אלא מהנכסים שהיו לה בשעת חופה מוסף על נדונייתה. —
שטר הירושה הוא שטר חוב והוי בכלל נכסיה ומהם נסתלק לגמרי.

IMAGE 5.

Comparison of a *shoresh* (root 13) of the repsonsa of Rabbi Kolon in the printed work's table of contents to an equivalent entry (#128) in the *mafteaḥ* of Rabbi Kolon's decisions.

IMAGE 6.

Title page of Responsa of Rabbi Yacov Weil

Venice, 1549 (Adelkind)

שאלות ותשובות

הלכות שחיטה ובדיקה וחידושי דינין אשר חבר
הרב הכולל מהר"ר יעקב וויל ז"ל ועוד
חידושין מספר אגודה ונימוקי
מהר"ר מנחם מרובורק ז"ל

נדפס על יד קורנילייו אדיל קינד בשנת שט לפק

וניציאה

202
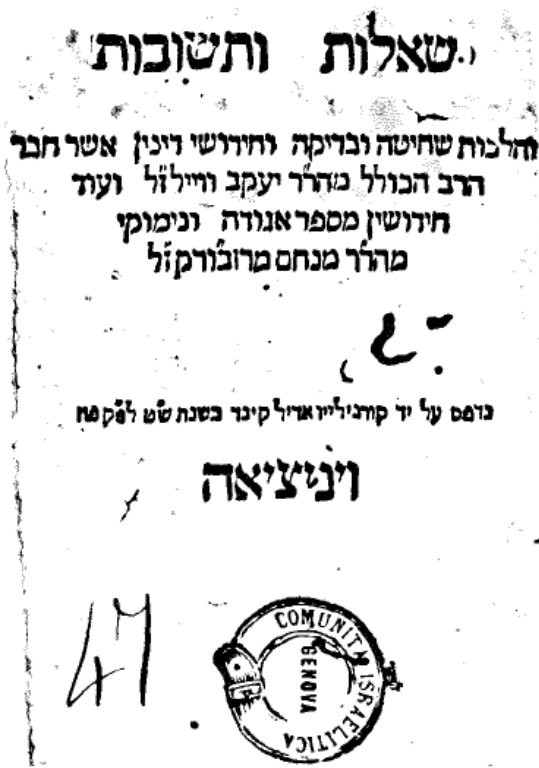
IMAGE 7.

Headers from Printed Responsa of Rabbi Jacob Weil



הלכות שחיטה ממהר"ר יעקב וייל

שאלות ותשובות

הלכות בדיקות ממהר"ר יעקב וייל

דרשות

By Rabbi Alexander Zuslein

חידושי אגודה

בבא קמא

דיני גט
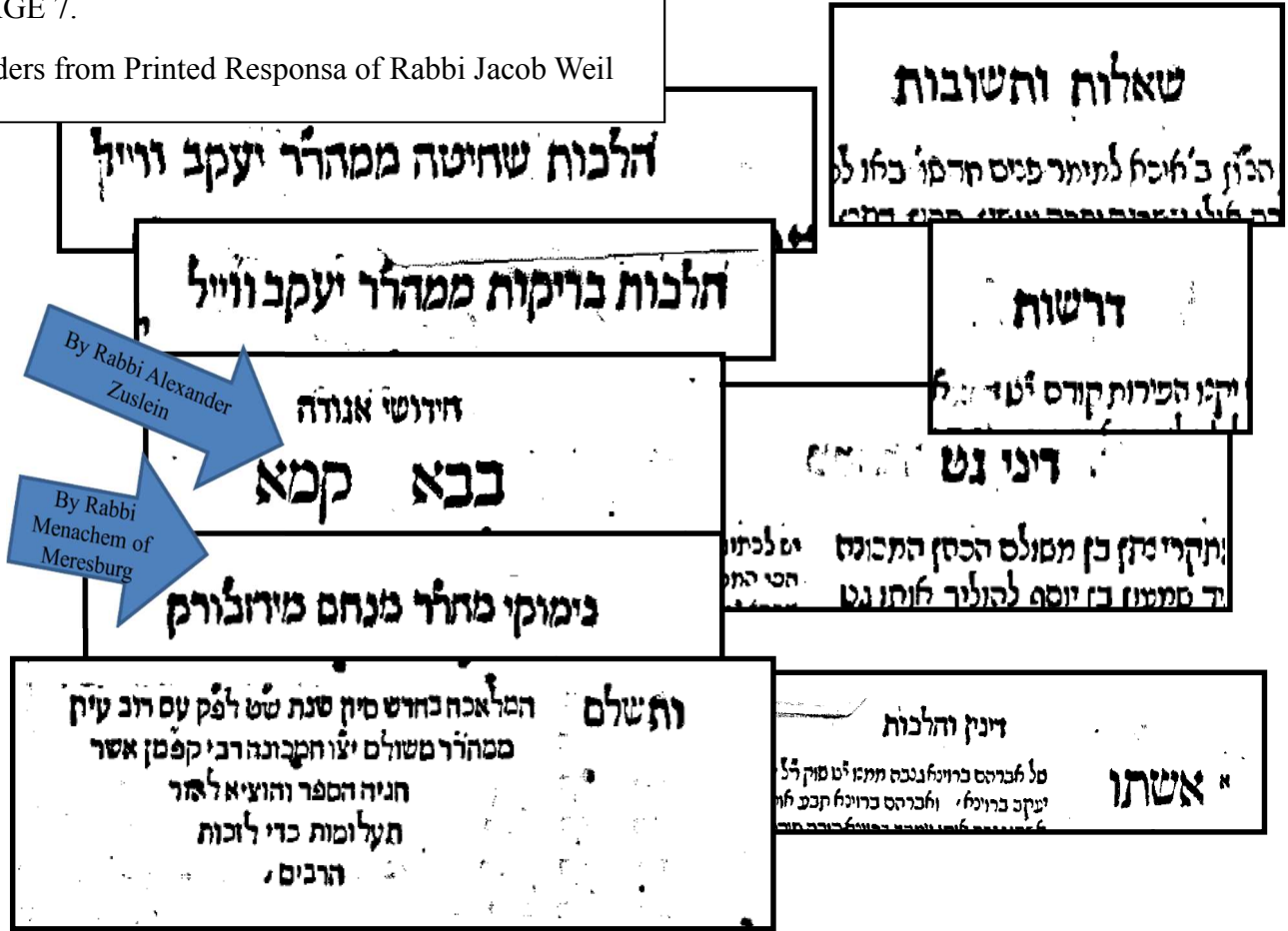
By Rabbi Menachem of Meresburg

נימוקי מהר"ר מנחם מירזבורק

ותשלם

דינין והלכות

א אשתו
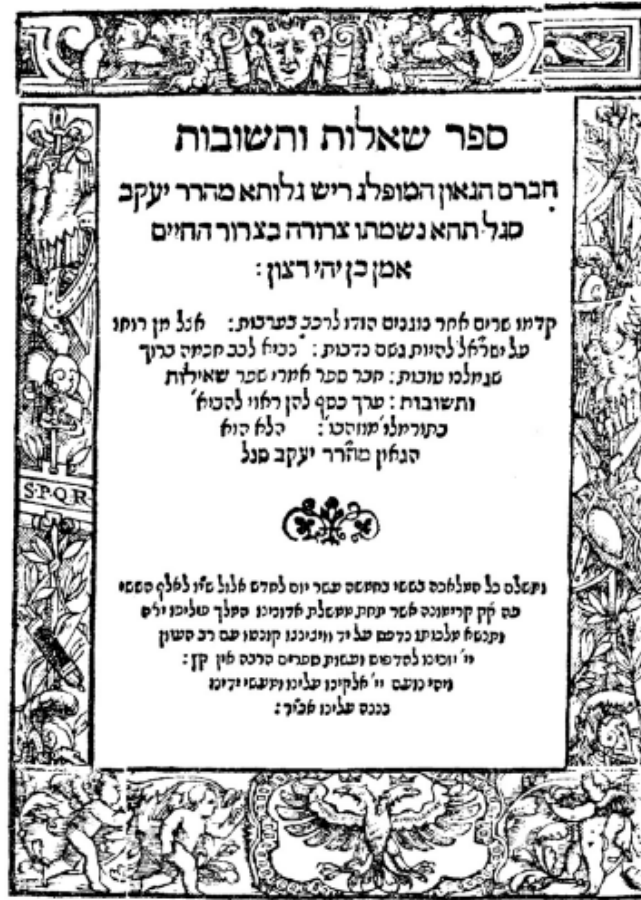
IMAGE 8.
Title page of Responsa of Rabbi Yacov Moellin

הלכות איסור והיתר

אסורות: ואם נכנסם חתיכה בחלב ניים בחותם חתיכה עצמה סכננעת בחלב ב כנד סחלב
או טריי בחלייה בטריה ריציים יקלב ייך אעגין ליון נקן רטעגדחלב וחלייה חולתי

סן נהנהות · ומימי לא שמעתי שהוא בעצמו לא קיבר שום חיבר מסום פיסק ואתילו
שחיטות ובדיקות לא קיבר כים נדולים · אמנם כל סתשובות שהוא סטיב על פסוסאל
לו היו לו עדיין מופקדים אנלו מיום סיסב נראה אם' אלו להעתיקס לו לסיות חיבור
מפואר ונכעות סוטרף לו סטעת כאסר נתנקם ליסינס סל מעלם וסמו בניו חילקו אותם
באינרות · וסיו מם סהיו וסי לך שחיטות ובדיקות סחיבר מה'ר יעקב ווזלא סהיס תלמיד
מונסק סל מסרימנל ובמקנ'מקומות אנ'יס נסן מקנת חידחפים ססמעתי ממסריזסנל :

עם יחזורין בי טים מין י ין ייין סרקר ין ייה ווי ין י זיין י
כוסב בכל ממסלתו ססוחטין אחר סחיטות מסקינן סארוכ'בסנהות' · והנוטל קבלה
לסחוט סיה מגריך ללמוד אותן ססחיטות · וכן הסדיקות סל סני קרומ' דנם ארוכם
סן נהנהות · ומימי לא שמעתי שהוא בעצמו לא קיבר סום חיבר מסום פיסק ואתילו
סחיטות ובדיקות לא קיבר כים נדולים · אמנם כל סתשובות סהוא סטיב על פסוסאל
לו היו לו עדיין מופקדים אנלו מיום סיסב נראה אם' אלו להעתיקס לו לסיות חיבור
מפואר ונכעות סוטרף לו סטעת כאסר נתנקם ליסינס סל מעלם וסמו בניו חילקו אותם
באינרות · וסיו מם סהיו וסי לך שחיטות ובדיקות סחיבר מה'ר יעקב ווזלא סהיס תלמיד
מונסק סל מסרימנל ובמקנ'מקומות אנ'יס נסן מקנת חידחפים ססמעתי ממסריזסנל :

הלכות שחיטות

מסקינן    דסחיטוה מן סנואר סולכתא נמירא לס ·    נקרא דסחטו
        למאי אתא דלא לסגויא ניסטורא ·    ניסטורא פרסי סני



IMAGE 9.

Detail from Customs of Rabbi Yacov Moellin

Cremona, 1558

IMAGE 10.
A manuscript of the responsa of Rabbi Moellin, including a description that describes entries in relation to correspondence, suggesting this was the organizing logic for some of the responsa.

Mantua ms. 33 sec.XV(1432)
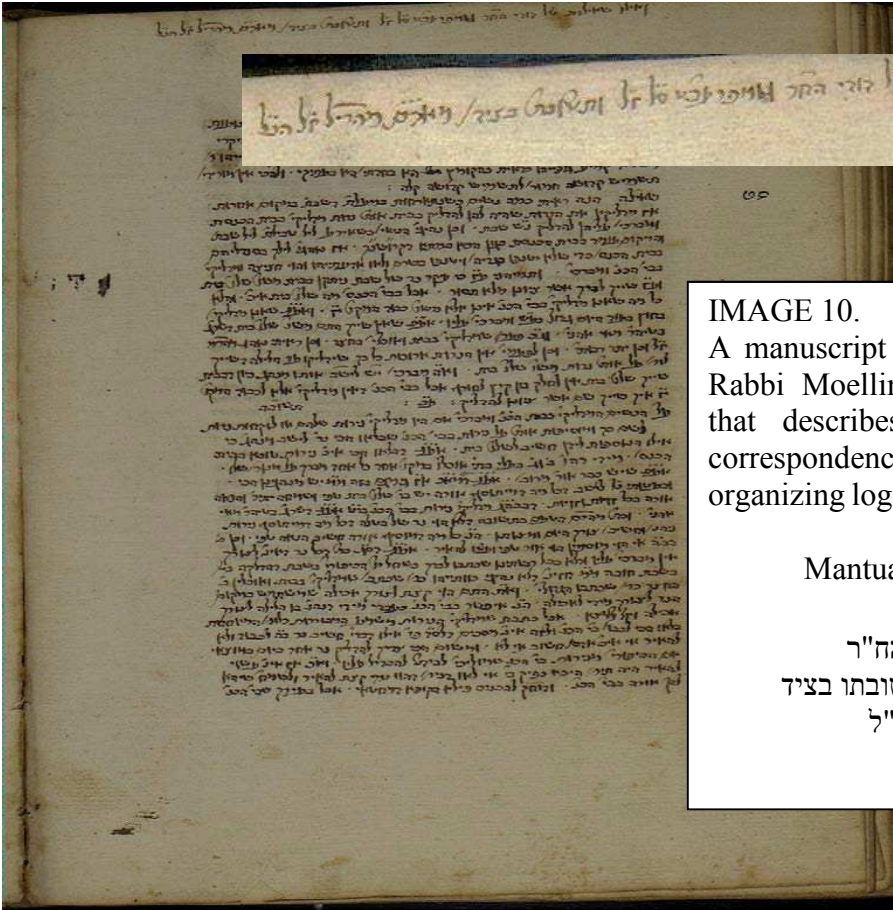
ואילו שאילת של דודי הח"ר
גומפרעכט ס"ל ז"ל ותשובתו בציד
מאד"ם מהרי"ל ז"ל הנ"ל

IMAGE 11.

Title page of Responsa of Rabbi Yehuda Mintz.

Venice, 1553 (Bragdin)

הא לכם זרע לצדקה פסקים

ושאלות תשובות ספונות וחשובות והם סולת נקייה ובם
חידושים יפים ממתקים ומחמרים יסרום אבירי
הרועים הגאון מהר״ר יהודה מינץ זל ה״ה ׃
והגאון מה״רר מאיר מפרוואה ה׳ יאריך
ימיו בטוב ושנותיו בנעימים ׃ ובלעדי
אלה סדר גיטין וחליצה מוכן
כשלחן ערוך אשר קבצום
וסדרום והוסיפו מדלהון לקח טוב ׃

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פה ויניציאה

בהיות

כי שלמים וכן רבים זרזוני להוציא לאור עולם הפסקים אשר
פסק הגאון מ'ה'רבינו יהוד' מינץ ז'ל ונאכני הצעיר תלמידו וחתן
בנו ז'ל ינעתי ולא מצאתיכי ערו עליהם כמה טנדקי והרפתקי
באשר ראוה אנה שנאמר רבינו היתה חרום פדואה עיר מושבנו לגלל ושלטו ידי זרים

כמה'דרר אבריהס מינץ ס'ל ז'ל היה מצטער על אלה אמנס עתה בזמן קריוב כא אלי נסי
האלוף כמה'דרי מינץ ס'ל י'ץ כן כמו ואמ' איך בדק כספריו אכה ואנה ומצ קנת קונטרסי
נגנזים כתוך הספרים אחת הנה ואחת הנה עד שקבן יחד י'ו פסקים והביאם אלי חשבתי
מה אעשה באלה להענתיקס או להדפיסס להפיגס על פני כל הארץ יקרה להס כאש אמרו
על חושע כפ'ק דבתרא אייר'דזוטרא מרכם ולזה חכרו אותו שלא במקומו ככן אמרתי
הנעי הסעה לעשו' כחת רוח לתלמידי שהעמרתי אשר יום יוס ידרשו ממני להעתיק להס
השאלות ותשובות אשר כתבתו על ידי אמרתי עתה אקום ואחבר אותס עם הפסקים של
מ'ו רבינו ז'ל הכ'ל ויהיו להס לטות' כעלמא עם כי אינס רומי'לגל רבינו כי מה לתבן את

סבר ונמצא שמות של רבינו חיןכאן מקום מ קמחחר כי מעטים הסוים נחותו ר מו כן
אחכרס עם אשר יצאו מימני ויהאגנא ויהאגנא מלא קריא כתים לפלפלא חריפ'וכאש אתאי להתם
יפוק לאפי ולא יקפיד עלי כי ככל אדם מתקנא חוץ מבנו ותלמידו ונאכנית תל'מידו וחשוב
כבני לחיותי כעל כת כנו ובני כנו כבנים כבני '

עוד היה כדי סדר מבוטין וחלינה אשר לקטתי מקטתי מקונטר' שהיה מכתיב' יד רבינו
ז'ל ורכרים מעטים שהוסיף כנו חמי הגאון ז'ל אחריו וכהיות שהדברים היו
בלתי מסודרים כי רממ כתב אותם כפי שהזדמן לכן אני תלמידו סדרתי הדברים איש
איש על ידו ועל דנלו כאותיות והככתי להס ניומים למען יקל לכל מורה למצא את אשר
יבקש ' ומעט מזער הוספתי גם אני בקתתמקונמות ' ורכים מן המורים אשר בקשו
ממני העתקתם לכן טרפתי אותם עם החתור הזה לאשר בלי ספק רוח חכמי' כוח'היימני
ולהיותי כי כאו בחתור הזה שמות המורים אשר לא נכרו כחונות לפעמים מסיים כסוף
הוראה זך ולפעמים זק כאתי להודיע סזך הוא ולמן כהן ' וזק הוא יחם מספחה נאם
מאיר ככמר ינחק ז'ל קנצנאילנכונן ' מפרואה

IMAGE 12.

Detail from the introduction to ShUT MaharY Mintz by Rabbi Katzenelbogen of Padua

UNIT II. CHAPTER 2: IMAGES

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סימנים מסדר הגט

כ כ אסיים לכתוב אי"ה בס"ד כמוף שמות

דיני שליחות

ימיו בטוב ושנותיו בנעימים · ובלעדי
אלה סדר גיטין וחליצה מוכן
כשלחן ערוך אשר קבצום
וסדרום והוסיפו מדלהון לקח טוב ;

עוד

כבגו' להיותי בעל כתכמ' ובני בנים כבבים · ובעג כאשתו '
היה כדי סדר מגוטין וחליצה אשר לקטתי מקונטר' שהיה מכתיב' יד רבימ
ז'ל ודכרים מעטים שהוסיף בנו חמי הגאון ז'ל אחריו ובהיות שהדברים היו
בלתי מסודרים כי רבימכתב אותם כפי שהזדמן לכן אני תלמירם סדרתי הדברים איש
איש על ידו ועל רגלו כאותיות והבכתי להם כיומים למענ יקל לכל מורה למנא את אשר
יבקש · ומעט מזער הוספתי גם אני כקשתמקונמות · ורכים מן המורים אשר בקשו
ממני העתקתם לכן טרפתי אותם עם החבור הזה לאשר בלי ספק רוח חכמי' כנח הימנני
ולהיותכי כאו בחטר הזה שמות המורים אשר לא נכרו בחוטות לפעמים מפיים כסוף
הוראה זך ולפעמים זק כתתי להוריע שך הוא זלומ כטן · ונז הוא יחם מספחה נאם
מאיר בכמר ינחק ז'ל קנצאילנבוגן · מפרואה

דיני שמות

## NEW WORKS, NEW PARADIGMS
### The Disappearance of *Sha'arei Dura*

### 1. INTRODUCTION

This chapter will investigate the challenge that Ashkenazic scholarly culture in the sixteenth century faced as a result of the ascendancy of novel forms of organization. Although the question of organization may seem trivial, changes in organization, in fact, fundamentally confronted traditional rabbinical scholarship in Ashkenaz, which, as the previous chapters have shown, followed idiosyncratic and deeply rooted practices. The localized, personal, and eclectic approach to the organization of halakhic texts was at the heart of ashkenazic approaches to tradition, authority, religious law, and acceptable modes of reasoning. These practices, however, proved incompatible with the introduction of print technology and were influenced by the appearance of newer, more compatible organizational paradigms. My study reveals how organizational changes in halakhic scholarship affected this ashkenazic intellectual culture as a whole. It sheds light on the way that halakha began to resemble its current model and provides a close look at the process by which the ordering of knowledge shapes its contents.

My work focuses on this organizational shift in sixteenth-century Poland, the center of ashkenazic halakhic scholarship in the coming century and a half. Continued persecutions, disasters, and expulsions, climaxing in the upheavals surrounding the wars of religion, led Jews to migrate in greater numbers from Western Europe to Eastern Europe. Rabbi Yacov Pollak (late fifteenth century) and his student, Rabbi Shalom Shakhna (d. 1558) are considered the forefathers of the Polish halakhists.[379]

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[379] See Elhanan Reiner, "Asher kol gdolei ha-areẓ ha-zot hem talmidav: R Yacov Polak, rishon ve-ROSh le-ḥakhmei Cracow" (Of which all the greats of this land are students: R Yacov Polak, the first

Rabbi Shlomo Luria in Lublin and Rabbi Moshe Isserles in Cracow, were the two main pillars of sixteenth-century ashkenazic scholarship at its apex, and their approaches to the changing landscape lie at the center of this study.

Rabbi Luria and Rabbi Isserles both considered themselves the continuation of an older ashkenazic heritage. Despite conscious affirmations of continuity, these heirs of the medieval ashkenazic communities of the Rhineland indisputably faced a new, different situation. The geographical, economic, communal, legal, and political conditions of the Jews in Eastern Europe had changed immeasurably compared to those of their Western predecessors.[380] Print technology was, at this point, a well-established part of the world of Jewish scholarship. Most of the basic works of halakha, such as the Talmud; the *Arba Turim* (Four pillars/columns) by Rabbi Yacov, the son of Rabbi Asher ben Yeḥiel (also known as *ROSh*); Maimonides' *Mishne Torah*; the work of Rabbi Yiẓḥak Al'Fasi, and many others, existed in print. Print enabled Ashkenazic

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and the head of the sages of Cracow) in *Kroke - Kazimierz - Cracow, studies in the history of Cracow* Jewry, ed. Elhanan Reiner (Tel-Aviv: Tel-Aviv University, 2001): 43-68.

See Elhanan Reiner, "Tmurot be-yeshivot Polin ve-Ashkenaz ba-meot ha-16 ve-ha-17 ve-ha-vikuaḥ al ha-pilpul" (Transformations in the Polish and Ashkenazic Yeshivot during the Sixteenth and Seventeenth Centuries and the Dispute over *Pilpul*) in *Ke-minhag Ashkenaz ve-Polin*: *Sefer yovel le-Chone Shmeruk* (According to the Custom of Ashkenaz and Poland: Studies in Honor of Chone Shmeruk), ed. Israel Bartal, Ḥava Turniansky, and Ezra Mendelsohn (Jerusalem: Zalman Shazar Press, 1993), 48-50.

[380] See Ḥayim Hillel Ben Sasson, *Hagut ve-Hanhaga* (Theory and Practice) (Jerusalem: Bialik, 1959), esp. 55-75; Gershon David Hundert, "Some Basic Characteristics of the Jewish Experience in Poland," *Polin* 1 (1986): 28; Adam Teller, "Telling the Difference: Some Comparative Perspectives on the Jews' Legal Status in the Polish-Lithuanian Commonwealth and the Holy Roman Empire," *Polin* 22 (2009): 109-141; on internal governance, *Pinkas Va'ad Arba Araẓot* (The *Pinkas* of the Council of the Four Lands), ed. Israel Heilprin (Jerusalem: Mosad Bialik, 1945); on cultural life, Israel Heilprin, *Bet Israel be-Polin* (The House of Israel in Poland)*,* vol. 1 (Jerusalem, 1948) and Majer Bałaban, *Toldot ha-yehudim be-Ḳraḳov uve-Ḳaz'imaiz, 1304-1868* (The History of the Jews in Cracow and Kazimirsz 1304-1868) (Jerusalem: Magnes, 2002); on socio-cultural and intellectual life, Elhanan Reiner, "The Attitude of Ashkenazi Society to the New Science in the Sixteenth Century," in *Science in Context*, vol. 10, no. 4 (1997): 589-603; idem, "The Ashkenazi Élite at the Beginning of the Modern Era: Manuscript versus Printed Book," in *Polin*: *Studies in Polish Jewry* 10 (1997): 85-98; idem, "Aliyat ha-kehila ha-gedola: Al Shorshe ha-kehila hayehudit ha-ironit be-Polin ba-et ha-ḥadasha ha-mukdemet" ("The Rise of the Big Community: On the Roots of the Jewish Community in Poland in the Early Modern Period") in *Gal-ed* 20 (2006): 13-37; Chaim Tchernowitz, *Toldot ha-poskim* (The History of the Jewish Codes)*,* vol. 3 (New York, 1946-1947); and Edward Fram, *Ideals Face Reality: Jewish Law and Life in Poland, 1550-1655*. (Cincinnati: HUC Press, 1997).

scholars to become acquainted with a host of previously unfamiliar works, thus adding

to their intellectual canon, as Elhanan Reiner has shown.[381] Likewise, Reiner pointed to

significant changes in the curriculum of the yeshiva [382] and the methods of Talmudic

study.[383] These changes, together with the new demographic and communal situation,

also affected the position of the rabbi and his role. [384]

Print was a central catalyst for another change: the adoption of a new

organizational paradigm for halakhic texts. Ashkenazic scholarly practices were, like

most other halakhic traditions, centered on textual interpretation. The earliest

ashkenazic scholars of Eastern Europe, however, opposed the publication of halakhic

texts. There are no surviving writings from Rabbi Pollak, and hardly any written

halakhic works from Rabbi Shakhna. This near absence of published writings[385] is not

accidental. Rabbi Shakhna's son explained that his father consciously refused to write

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[381] Reiner refers mainly to works from the medieval Sfardic tradition that were printed in the first half of the 16th century, such as the works of Rabbi Yiẓḥak Abravanel, Rabbi Yiẓḥak Arama, Rabbi David Kimhi, Rabbi Yosef Albo, Gersonides, Rabbi Bahya ibn Pakuda, etc., which deal with biblical exegesis and philosophy (Elhanan Reiner, "Tmurot ,"589-603.)

[382] Elhanan Reiner, "Yashan mipnei ḥadash – Al Tmurot be-tochnei limmud be-yeshivot Polin ba-meah ha-16 ve-yeshivato shel Rema be-Krakow" (The Old because of the New – On changes in the lesson plans of the Polish *yeshivot* in the 16th century and Rabbi Isserles' *yeshiva* in Cracow.) in *Zekhor davar le-avdekha: Asufat ma'amarim le-zekher Dov Rappel,* (Essays in Honor of Dov Rappel) ed. Shmuel Glick (Jerusalem and Bar-Ilan, 2007), 183-206. He discusses the study of astronomy, genealogy (*Sefer yuḥasin*, Book of heritage) metaphysics, mysticism (*Zohar*) and philosophy (*Moreh nevukhim*, Guide for the perplexed) as part of the curriculum in the yeshiva of Rabbi Moshe Isserles; see Elhanan Reiner, "En ẓarikh shum yehudi lilmod davar rak ha-Talmud levado" (A Jew does not need to study anything other than the Talmud). in *Ta-Shma* vol. 2, ed. Rami Reiner (Herzog College: Alon Shvut, 2012): 705-746, on *Vikuaḥ Pozna,* (the Posen dispute) and the exchange between Rabbis Luria and Isserles in their reponsa (printed in *ShUT Rema* 5-7§).

[383] See Reiner, "Tmurot," 9-80, about the change in place, form, and status of the *pilpul* method in the Ashkenazic yeshivot of the 16th and 17th century in comparison to their predecessors.

[384] See Jacob Katz, "le-Toldot ha-Rabanut be-motẓa'ei Yemei ha-Beinaim" (On the history of the rabbinate at the end of the Middle Ages) in *Sefer Zikharon le Binjamim de-Paris* (*Essays in Memory of Benjamin de-Paris*), (Tel Aviv, 1969):247-260; and Reiner, "Tmurot," on the community rabbi vs the head of the *yeshiva*; Reiner, "Aliyat ha-kehila," links the rise of large urban communities with a diversified economy to new halakhic approaches, chiefly those of Rabbi Isserles and *Torat ḥatat*.

[385] Some of his *psakim* (halakhic decisions) did circulate in manuscript, as mentioned by rabbis Luria (§21) and Isserles (§30) in their responsa. Examples of surviving manuscripts are located in the National Library of Israel, the Bodleian, and Columbia libraries (copies of individual "*psakim*" mainly touch on issues of marital status).

down any of his halakhic decisions,[386] in keeping with his own teacher's tradition: "...

the *gaon* our Master Rabbi Pollak also did not produce any books nor would he [they]

copy in their home any responsa that these *geonim* sent to a distance…"[387] Evidently,

Rabbi Pollak did not even keep a copy of the responsa that he sent to others. Rabbi

Ḥayim ben Beẓalel, the brother of Rabbi Loew ben Beẓalel, the so-called "Maharal of

Prague," provides a similar rationale for Rabbi Shakhna's lack of written works.[388] The

founders of the Ashkenazic tradition in Eastern Europe thus appear to have had a

negative, even hostile, approach, to the publication of written halakhic texts. As a result,

they continued to rely on personal manuscript compilations even as printed works were

gaining dominance.

As mentioned in my discussion of manuscript *likutim* and the first attempts to

print ashkenazic responsa,[389] some types of halakhic writing are more amenable than

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[386] His son claimed that the reasoning behind this was to uphold the principle of *hilkheta ke-batrai* (the law is like the latter authorities), and he feared that leaving behind writings would prevent future generations from making their own halakhic decisions. On the meaning of this formula, see Meir Rafeld, "The Halakha Follows the Later Sages," in *Sidra: A Journal for the Study of Rabbinic Literature* (1992): 119-140; Israel Ta-Shma. "Hilkhata ke-batrai, Beḥinot histori'ot shel Klal Mishpati," (The law is like the later authorities: historical aspects og a legal principle.) in *Shenaton ha-mishpat ha-ivri: Annual of the Institute for Research in Jewish Law* (1979): 405-423; Israel I. Yuval, "Rishonim and Aḥaronim, *Antiqui et Moderni*: Periodization and Self-Awareness in Ashkenaz" in *Zion* 57, no. 4 (1992): 369-394, and many others.

[387] In mid-sentence, he switches to plural and goes from discussing only Rabbi Pollak to talking about both his father and Rabbi Pollak. I adapted the sentence for readability. (see *ShUT Rema* §25) וכן קבלתי הלכה למעשה מאדוני מורי אבי הגאון רבן ומאורן של כל בני הגולה מהר״ר שלום המכונה שכנ״ו זקצ״ל ה״ה הכ״מ אשר העמיד תלמידים הרבה מסוף העולם ועד סופו מפיו חיים ומימיו שותים. וחי נפשי עולמים דזמנין סגיאין בקשתי עם הרבה לומדים ממנו שיעשה פוסק ותשובתו היתה מחמת רוב חסידותו וענותנותו אשר היה ענו יותר מכל האדם אשר על פני האדמה. ואמר יודע אני דשוב לא יפסקו כ״א כאשר אכתוב מטעם דהלכה כבתרא, ואין רצוני שיסמכו העולם עלי, ר״ל כגון היכא דאיכא פלוגתא ביני רבוותא והוא יכריע או לפעמים יחלוק ואין לדיין כי אם מה שעיניו רואות לכן יעשה כל אחד כפי הוראת שעה כאשר עם לבבו. ומה״ט לא עשה נמי רבו הגאון מהרי״ף [הר׳ יעקב פולאק] שום ספר גם שום תשובה ששלחו למרחוק לא העתיקו בביתם אלו הגאונים מה״ט אף כי היה נחשב בעיניהם כיוהרא…

[388] *Vikuaḥ mayim Ḥayim*, 2 §2 (Amsterdam, 1712). [see this chapter, n457] ולזה מנעו הראשונים מלחבר שום ספר מיוחד על דיני איסור והיתר לקבוע המנהג והלכה לרבי׳ מכל זה התימה ופלא מן הרב המופלא בדורו החסיד הגאון מהר״ר משה איס״רלש ז״ל אשר חיבר ספר מיוחד על דיני איסור והיתר וקראו תורת חטאת ולא שת לבו לכל הדברים האלה שכתבתי. ובלתי ספק לא הי׳ נעלם ממנו ג״כ כי בעת שלמדנו יחד בשיבת הגאון המופל׳ מהר״ר שכנא ז״ל ושמענו מפיו השערים מדורא אנחנו תלמידיו הפצרנו בו פעמים הרבה שיראה לחבר וללקט יחד כל דיני איסור והיתר בסדר נכון ואמר נואש לסברינו ואין ספק שאינו אלא מטעם שכתבנו.

[389] See chapter 2 in this dissertation.

are others to print's more public and stable transmission. For example, independent works, comprehensive treatises, complete codifications, or commentaries dealing with a specific, defined text possess a rather stable structure and order that facilitates transforming them into a printed work. Print technology privileges textual stability, consistency, and broad dissemination to an anonymous readership, traits that were antithetical to the localized, personal, dynamic, and flexible ashkenazic textual culture. The ashkenazic scholarly culture's preferred mode of writing – the personal compilation, with its layers of glosses and ever-changing eclectic contents – was far more compatible with manuscript than with print. In manuscript culture, a multidirectional dynamic can easily exist between the texts under consideration and the writings of the scholar studying those texts, allowing, for more flexibility, variation, and personal input. This profound incompatibility caused difficulties in printing older ashkenazic works, as discussed in the previous chapter. More significantly, ashkenazic scholars living in the age of these changes faced the challenge of studying, teaching, and transmitting their halakhic knowledge in this transformed world.

This chapter will follow the sixteenth-century fate of one work, the *Sha'arei Dura*, a prototype of traditional ashkenazic halakha, as scholars attempted to contend with a changing culture of knowledge. The *Sha'arei Dura*'s incompatibility with print, combined with the growing dominance of the *Shulḥan Arukh* and its much more compatible alternative organizational scheme caused the former work – and, more importantly, its organizational paradigm – to disappear. This work, by Rabbi Yosef Karo (Toledo 1488-Safed 1575), printed in 1565 in Venice, is a codification of the whole body of Jewish Law applicable in the post-Temple period. The code is built on

the basis of three authoritative works, all of them authored in a sfardic context,[390] and

its organizational scheme presents the strongest alternative, and therefore the greatest

challenge, to traditional ashkenazic forms of organizing halakhic texts. I shall consider

differing ways in which the cultural leaders of ashkenazic scholarship in the period,

Rabbi Isserles and Rabbi Luria, dealt with the tensions between the old and new

paradigms of knowledge organization. Finally, the case study illustrates the profound

effects of changes in textual form and organization on halakhic knowledge itself. The

question of ordering knowledge was not just technical; it reflected deep-held attitudes

about religious law and the legitimate ways of working with authoritative traditions.

## 2.   THE FIRST HEBREW BOOK PRINTED IN POLAND: *SHA'AREI DURA*

*Sha'arei Dura* (The gates of Düren),[391] the first Hebrew book to be printed in Poland,

offers the best opportunity to study the challenges that traditional ashkenazic scholarly

practices and its organizational paradigms had to face in the sixteenth century. Written

by Yiẓhak ben Meir of Düren, an older contemporary and disciple of Rabbi Meir of

Rothenburg, who lived in the thirteenth century,[392] *Sha'arei Dura* was a compilation,

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[390] These three-authoritative works are: Maimonides' *Mishne Tora*, Rabbi Alfasi's summaries of the Talmud, and Rabbi Asher ben Yeḥiel's laws. Two out of three figures are sfardic. While the latter authority was, in fact, an Ashkenazic *figure*, Rabbi Karo used his law as it appeared in the *work Arba Turim* codified by his son Rabbi Yacov ben Asher, who lived and wrote in Spain. The *Shulḥan Arukh* is often described as a condensation of Rabbi Karo's earlier work, *Bet Yosef*. The latter consisted of long glosses on the 14th-c *Arba Turim*, where Rabbi Karo added a lot of sources, many of them Ashkenazic. The Ashkenazic sources are presented to a much lesser extent in *Shulḥan Arukh*. As a recent dissertation by Tirẓa Kelman [forthcoming] has set out to prove, although the *Shulḥan Arukh* uses material from *Bet* Yosef, Rabbi Karo's gloss on *Arba Turim*; *Shulḥan Arukh* is much more similar to *Arba Turim* than it is to *Bet Yosef* in terms of its contents and organization Thus, *Shulḥan Arukh* is not really a condensation of the *Bet Yosef*, which is how it is often presented. Therefore, the ashkenazic sources represented so strongly in *Bet Yosef* do not come across as strongly in his *Shulḥan Arukh*.

[391] Düren is a town in North-Rhine Westphalia, near Aachen and Cologne.

[392] See Jacob Freimann, "Das *Sefer Amarkal al Hilkhot Yayin Nesakh*" in *Festschrift zum Siebzigsten Geburtsage David Hoffmann's. Gewidmet von Freunden und Schülern*, 3 vols., ed. Shimon Eppenstein, Meir Hildesheimer, Joseph Wohlgemuth (Berlin: Louis Lamm, 1914), 421-422n4. Freimann believed that *Sha'arei Dura* is from the 14th century.

as was typical for its time and place.[393] One can even term it a prototype of this type of

halakhic transmission.[394] It focuses on the laws of *isur ve-heter* (prohibition and

permission), as the laws of kosher foods are sometimes called. The first sections of the

work, named "gates," deal with the process of salting meat to drain it of blood.

Subsequent sections deal with kosher eggs, mixtures of milk with meat, and other such

laws, sometimes followed by a section on laws of menstrual purity.

*Sha'arei Dura* represents a personal manuscript compilation "*par excellence.*" It

contains quotes and paraphrases from many earlier ashkenazic sources, in large part

from *Sefer ha-trumah* (Book of the offering) by the thirteenth-century Rabbi Yiẓḥak of

Germaiza, which was, in turn, also a compilation of earlier ashkenazic sources, making

it a compilation of compilations. In addition to the central ashkenazic sources from the

twelfth and thirteenth century, such as Rabbenu Tam, Rabbi Eliezer ben Yoel ha-Levi,

Rabbi Moshe of Coucy, Rabbi Meir of Rothenburg, and occasional references to

eleventh-century ashkenazic authorities such as Rabbenu Gershom, *Sha'arei Dura*

often cites "our custom" as an authoritative source, with no further identifying details.

Israel Ta-Shma summarized this as follows: "…the custom of the rabbis of the author,

and most often 'the general custom' (*minhag ha-olam*) …is mentioned tens of times in

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Rabbi Yeshaya Nathan Freilich, who published *Sha'arei Dura ha-shalem* (Complete *Sha'arei Dura*), ed. Yeshaya Nathan Freilich (Varnow, 1940-1), disagreed, claiming that Rabbi Yiẓḥak must have lived in the mid-13th century.

Others still believed that he lived in the mid-14th century; see Yisrael Elfenbein's introduction to *Minhagim yeshanim mi-Dura: minhagim shel kol ha-shana me-Ashkenaz mi-me'ah ha-13* (Old customs from Düren: customs of the entire year from Ashkenaz in the 1300s), ed. Yisrael Elfenbein (New York, 1948), especially 132-134, and see Israel Ta-Shma, "Al sefer isur ve-heter shel Rabenu Yeruḥam ve-al R' Yiẓḥak mi-Dura," (On the book of prohibition and permission of Rabenu Yeruḥam and on Rabbi Yiẓḥak of Düren) *Sinai* 64 (1969): 254-257.

[393] Especially among the subgenre of compilations that were narrowly focused on particular topics, usually practical ones. See Israel Ta-Shma, "Al Sefer isur ve-heter," 254-257.

[394] See Ta-Shma, "Kavim le-ofyah shel sifrut ha-halakha be-Ashkenaz ba-meah ha-13-14," (Characteristics of the halakhic literature in Ashkenaz in the 13th-14th centuries.) *Alei sefer* 4 (1977): 20-41; he explains the concept of "Professional Literature" and the centrality of *Sha'arei Dura*.

the work in different ways, and they always outdo all the other considerations.[395]

*Sha'arei Dura* opens with a short introduction: "So said the author: see, my friends have begged me to write for them a work of *isur ve-heter* and I will explain it to them in brief, and I will start with the laws of salting and rinsing in ten sections."[396] This indicates that the author originally wrote down the compilation for personal acquaintances. Personal connections between relatives, teachers, students, and colleagues were the main channel for copying and transmitting halakhic writings in the German lands of medieval Ashkenaz, a fact that influenced the form and content of the writings.

The work contains many layers, including earlier sources that Rabbi Yizḥak incorporated when he compiled his work and later glosses that were added throughout the ages. Some sources were contemporaries of the author;[397] in some cases, scribes added fragments copied from other compilations such as *Mordekhai* and *Or zarua*. Others were glosses and commentaries written specifically about *Sha'arei Dura*, which were frequently copied together with the work itself. Rabbi Israel Isserlein, the author of *Trumat ha-deshen*,[398] wrote glosses on the margins of his *Sha'arei Dura*, which were copied and studied as an integral part of the work. Every serious scholar of halakha in Ashkenaz had "his" own *Sha'arei Dura*, to which he added personal observations,

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[395] Ta-Shma, "Kavim le-ofyah," 30. גורם אחד ישנו, העולה בחשיבותו על כח סמכותם של חכמי המאה ה-  ה-, 12, והוא: מנהג רבותיו של המחבר וביותר "מנהג העולם". מושגים אלו נזכרים בספר, בסגנונות שונים, עשרות פעמים והם מכריעים בו תמיד את כל יתר השיקולים האחרים.

[396] *Sha'arei Dura*: אמר המחבר הנה הפצירוני חביריי לכתוב להם אסור והתר ואפרש להם בקוצר ואתחיל בדין מליחה והדחה בעשר שערים

[397] For instance, Rabbi Yizḥak Troshin, a student of the tosafist Rabbenu Pereẓ and a contemporary of Rabbi Yizḥak; see *Sha'arei Dura*, edited by David Dvileiẓky (Bnei-Brak: Elon, 2016), 4n32.

[398] He also wrote *Lamed-vav she'arim* (36 Gates), his own work on *isur ve-ḥeter*. Some manuscripts refer to it as 32 gates or other numbers; the exact chronology and relationship between the glosses and this work is unknown.

teachings from his rabbi, additional sources, and glosses. Many of these eventually became part of the body of the work for the students who copied their texts together with the glosses.

In true *likut* fashion, *Sha'arei Dura* contains, in addition to an eclectic variety of authors and opinions, an assortment of genres and types of halakhic text. Throughout the glosses, we find responsa, testimonies, explications of actual occurrences, and sections that straddle the border between halakhic adjudication (*psikah*) and custom (*minhag*), such as Rabbi Israel Isserlein's frequent statement, "this is our custom" (*hakhi nahug*), which designates his halakhic endorsement. The mode of organizing halakhic knowledge that can be found in *Sha'arei Dura* is typical of Ashkenaz in the post-tosafist period. *Sha'arei Dura* was one of the most popular and oft-copied halakhic writings in Ashkenaz, as the countless later interpretations and glosses based on it attest. Ta-Shma mentions the existence of more than fifty surviving copies of the manuscript dating back to the period before it was printed – additional proof of its popularity.[399] He also states the importance of *Sha'arei Dura* as a "literary model for the continuation of works in the field of halakhic ruling in Ashkenaz." It was a model, he explained, in several ways, "in its spirit, its style, its authoritative sources...."[400] The work became representative of the most common form of ashkenazic halakhic writing until the sixteenth century and its characteristics are typical of the ashkenazic scholarly culture and its practices as a whole; multiple layers, unstable, flexible contents, personal transmission, and eclectic sources. It also represents a specific paradigm of textual

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[399] See ibid., 34.

[400] See Ta-Shma, "Kavim le-ofyah," 35, השפיע רבות גם כדוגמה ספרותית להמשך היצירה בתחום הפסיקה באשכנז. וזאת - בכמה וכמה מובנים: ברוחו, בסגנונו, במקורותיו הסמכותיים ובראש ובראשונה - בעידוד היצירה המקצועית בתחום הפסיקה....

organization; in contrast to codes, which organized texts in a complete, comprehensive,

stable and streamlined structure, *Sha'arei Dura* was compiled in an incomplete, partial,

erratic, and uneven manner.

A comparison of the *Sha'arei Dura* to a similar section in the much more

codified *Arba Turim*, composed by Rabbi Yacov ben Asher in fourteenth-century

Spain, highlights the difference between the organizations of halakhic knowledge in

codes versus personal compilations. The laws of salting, which occupy the first part of

*Sha'arei Dura* can be found in *Arba Turim*, volume (or *tur*) *Yoreh de'ah* (Teaches

knowledge).*[401]* *Arba Turim* begins with a discussion of the principle – the general

prohibition of blood, followed by "the order of salting," which enumerates the steps of

salting in the correct order (what to do before salting, what kind of salt to use, etc.),

then proceeds to the first rinsing, the salting, the second rinsing.[402] Only after listing

the steps does it discuss possible mistakes, such as what happens if you forget the first

rinsing. Compare this to *Sha'arei Dura*, where, instead of starting with the first step of

salting meat, i.e., rinsing it prior to salting it, the work opens with a case in which

someone forgot the second rinsing of the meat.[403] Other instances also exemplify the

rather haphazard order of the laws. Whereas *Arba Turim* provides a complete,

comprehensive, and structured rendition of the laws with a conclusion, *Sha'arei Dura*'s

discussion is partial and piecemeal, mentioning aspects of one subject in multiple

places, and providing different opinions without reaching a conclusion. The division

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[401] Around §69.

[402] See appended table for a graphic representation of this.

[403] The attempts of subsequent generations of scholars to interpret and explain this strange order sometimes even led to practical halakhic repercussions. See Dvileizky "Introduction," in Düren, *Sha'arei Dura*, ed. Dvileizky, 2n14, showing that Rabbi Yosef Kremniz, in his *Biur* (Commentary) *on Sha'arei Dura* (§ 2-3), based a halakhic decision on the order of some of the sections. For instance, Rabbi Kremniz bases a halakhic conclusion on the fact that *Sha'arei Dura* dealt first with soaked meat and only subsequently with meat that was not soaked.

into sections itself is erratic and inconsistent. Discarding the initial structural division of ten "gates," the remainder of the work consists of a succession of sections with no overarching structure. The work contains many lacunae; it cannot be considered complete in the sense of covering every relevant aspect of the subject at hand. Its main form of copying is a collage of quotations and paraphrases, as opposed to the streamlined summaries of the codes. Often, the final halakhic conclusion is neither stated outright nor clearly summarized nor differentiated from the various compiled opinions.

These features grew exponentially as the work was copied and recopied. Ashkenazic scholars did not attach importance to faithfully retaining a semblance to the hypothetical "original" form of organization, and there are almost as many ways of dividing the work as there are manuscripts. Rabbi David Dvileiẓky, who recently published an important edition of *Sha'arei Dura*, has counted variations of between zero and forty subsections in different copies of the work.[404] The different layers of glosses on the work are similarly jumbled, with no clear division between the body of the text and its glosses. It is difficult to arrange the glosses by author or to distinguish them chronologically. This disorder also makes it harder to determine the ultimate halakhic outcome among the layers and fragments of occasionally conflicting sources.

The *Arba Turim* circulated in relatively stable manuscript form well before its printing, and later print transmission resembled its earlier manuscript transmission.[405] The *Sha'arei Dura*, on the other hand, displayed lack of stability, structure, and unity

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[404] See *Sha'arei Dura*, ed. Dvileiẓky, 3; see all the footnotes on that page for examples.

[405] See Yehuda Galitsky, "*Arba Turim* ve-ha sifrut ha-hilkhatit be-Sfarad ba-me'ah ha-14" (The Four Columns and the halakhic literature in Sfarad in the 14th century) (Ph.D. Diss, Bar Ilan University, 1999).

even in its printed life. Ashkenazic scholarly culture continued to treat the printed *Sha'arei Dura* as it had related to the work in manuscript form. Rather than becoming more stable in printed form, the structure and method of transmission of the first printed editions of *Sha'arei Dura* reflect everything that is typical of ashkenazic halakhic scholarly culture. First, the multiplicity of manuscript editions meant that there was no single authoritative manuscript of the "real" *Sha'arei Dura* from which to print the work; indeed, most of the manuscript versions never made it into print.[406] In fact, Dvileizky considers the first seven printings of *Sha'arei Dura* in the sixteenth-century as seven first editions[407] because their contents and structure were so varied. The glosses were not consistently parsed, and the ultimate halakhic conclusion was unclear. This comparison also shows that the influence of technologies on transmission is not absolute and that an entire scholarly culture and its practices do not change automatically as a result of new methods of reproduction. On the one hand, practices which were particularly suited to manuscript technology and manuscript culture continued to some extent even in print, and, on the other hand, other scholarly cultures created and reproduced codified texts in stable forms even without print. The bad fit of print technology with ashkenazic scholarly culture, however, led to problematic results, and the future of this traditional approach was tenuous.[408] The scholarly practices of

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[406] See Dvileizky, "Introduction," in Düren, *Sha'arei Dura*, 8, where we have glosses from Isserlein's 36 *she'arim* that quote *Sha'arei Dura* but cannot be located in the printed *Sha'arei Dura* because they are from glosses on *Sha'arei Dura* (or from compilations that added quotes from other works onto the copy of *Sha'arei Dura* that Isserlein had in his possession but are not in the "standard" version).

[407] See Dvileizky, "Introduction," in Düren, *Sha'arei Dura*, 17. אבל בספרנו אינו כן, כנראה מפאת ריבוי כתבי היד שהיו מצוים בכל עיר ועיר, השתמשו המדפיסים שאחרי הדפוס הראשון גם [או רק] בכתבי יד ולא השליכו את יהבם על אותו דפוס ראשון. ובזה זכינו לכמה 'דפוסים ראשונים'.

[408] Elhanan Reiner's description of an episode in 1540 illustrates both sides of this argument. Plans were made to print the copy of the *Arba Turim* that had belonged to Rabbi Avraham ben Avigdor, a famed rabbi from Prague. In true ashkenazic fashion, this copy was buried in layers of glosses, some compiled by this rabbi from earlier sources, some written down from his teachers, and some his own

halakhists still entailed mainly oral discussion, personal manuscript notes, and epistolary correspondence. The lacunae, the layers of glosses, the variety among the many versions, the multiple opinions, and the personal versions of different scholars, and incompleteness all reflect the way in which they studied halakha, transmitted it, and put it into writing.

The profound incongruity between the new technology and the paradigms it favored and the traditional scholarly practices of this culture and its paradigms defined the scholarship developing in Ashkenaz during the age of print. Print heightened some of the differences between private and published, flexible and stable, unfinished and complete that were barely noticeable in ashkenazic pre-print textual culture. Different processes of production and distribution and profoundly distinct material circumstances and technological methods now determined the structure of the scholar's manuscripts on the one hand and the books being published, on the other. Likewise, the chronology and process of printing were very different from that of manuscript copying. Whereas manuscript copies were created individually and could be copied in distinct ways at different points in time, printing a work resulted in multiple near-identical copies emerging from one source at one point in time. Whereas an author can insert changes

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thoughts and insights. The Shaḥor printing press in Lublin (See Ḥayim Dov Friedberg, *History of Hebrew Typography in Poland*, 2nd ed. [Tel Aviv, 1950], 45-46) refused to include these layers of glosses in their printed version of the *Arba Turim*. Instead, they chose to use the basic text of the *Arba Turim* from this manuscript. Adding only two very simple additions, they printed the text in a "clean" manner, without any of the – in the publishers' words – "superfluous" and "confusing glosses." The letter of rejection, written to a relative of the rabbi who provided the full manuscript, was printed at the end of the printed volumes. An attempt, in the same year, to print Rabbi Avraham's *Arba Turim* along with all its manuscript glosses faltered, and the press discontinued work on it after printing only one out of the four volumes.

On the one hand, we see that Ashkenazic practices of writing personal layers of glosses were applied even to printed codified works. On the other hand, technically, it was possible to print a work organized according to the Ashkenazic style such as Rabbi Avraham's glosses in the *Arba Turim*. In practice, however, it was not a natural fit, the results were unsatisfying, and the project failed. See Reiner, *Al shtei hadpasot shel sefer ha-Turim be-shnat 300 be-Prag* (On two printings of the *Turim* in Prague, 1540) (unpublished: based on lectures at Princeton, 2016).

and corrections into successive copies of a manuscript,[409] introducing changes to a printed work requires printing a new edition. This drove a wedge between personal writing and standardized publication, making it difficult to continue earlier, more flexible and eclectic practices.

Most importantly, print technology privileged more structured, complete, and stable paradigms for organizing texts. The proponents of the threatened forms of scholarship had to fight back, adapt, or fade into oblivion, as we can see in the case of *Sha'arei Dura*. *Sha'arei Dura* was printed seven times in the sixteenth century, which befits its central place in the world of ashkenazic halakha. After the sixteenth century, however, it was printed only once in the seventeenth century, once in the eighteenth, and once in the nineteenth century. The laws of *isur ve-heter* discussed in the work did not disappear; they were reordered according to other paradigms of knowledge. However, this transfer to a different organizational framework caused profound changes, both at the level of individual laws and at the level of the halakhic approach as a whole, because the paradigms of organization relate to the very foundations of the scholars' approach to their texts. I shall describe and analyze this phenomenon in the subsequent sections, as I consider the printing, evolution, and the eventual disappearance of *Sha'arei Dura* and its organization model in the sixteenth century. The story of *Sha'arei Dura* is important not only in and of itself, but also because it exemplifies the process that took place when print technology and the forms of organization that it privileged came to dominate the world of halakhic scholarship in Ashkenaz.

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[409] See Israel Ta-Shma, "The 'Open' Book in Medieval Hebrew literature: the Problem of Authorized Editions," in Bulletin of the John Rylands University Library 75.3 (1993) 17-24.

### 3. RABBI SHLOMO LURIA'S *ISUR VE-HETER* : NEW METHODS, TRADITIONAL PRACTICES

Rabbi Shlomo Luria represents a unique model for dealing with the challenge to ashkenazic knowledge-practices.[410] Rabbi Luria and Rabbi Isserles both considered themselves faithful descendants of the ashkenazic tradition and both traced their roots back to the giants of medieval Ashkenaz. However, they did so in significantly different ways. *Sefer yuḥasin*, a work written by Avraham Zacut, which dealt with astronomy, history, and genealogy, was printed in Cracow in 1579 with new glosses by Rabbi Isserles. In those glosses, he built upon the line of ashkenazic scholarship that already existed in the genealogy of the book's earlier version. By adding his direct Polish predecessors, Rabbi Pollak and Rabbi Shalom Shakhna, to the traditional ashkenazic lineage, Rabbi Isserles effectively positioned his Polish predecessors and himself as the direct continuation of the medieval ashkenazic tradition. [411] This Polish élite, which had

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[410] Rabbi Shlomo Luria was born in first decade of the sixteenth century. The exact trajectory of Rabbi Luria's travels and practice as a rabbi is unknown, but he spent some time in the area of Lithuania and then crossed the border westward into Poland (Ostrog). Later, he became the rabbi and head of the yeshiva in Lublin, where he died in 1574. The historian Meir Rafeld, in "*Ha-MaharShaL ve Yam shel Shlomo*" (Rabbi Shlomo Luria and the *Sea of Shlomo*) (Ph.D. diss., Bar Ilan University: Ramat Gan, 1991), describes Rabbi Luria as standing, "between two chapters in history: between the closing period of the Ashkenazic *minhag*-literature and its consequences – which shows clear signs of being sealed in the transition from the fifteenth to the sixteenth centuries – on the one hand, and, on the other, the great revolution in the history of halakha that took place at the end of the sixteenth century: the composition of the Bet Yosef."

The period in question did, indeed, constitute an era of significant transition between two important chapters in the history of Jewish texts. As we have shown, these changes are not simply a matter of one halakhic genre declining in favor of another one on the rise, as the above quote would have it. Rather, the shifts entail deeper and broader metamorphoses in the field of technology, scholarly culture, and the organization of knowledge. The category of literature designated by Rafeld as "*minhag* literature" should be broadened to include not only works that deal with custom but also the plethora of halakhic textual material that was transmitted in manuscript *likutim*. This included custom but also responsa, *psakim* (rulings), professional literature, *sdarim* (manuals), *takanot*, (community decisions or decrees) testimonies, glosses, and so forth. The shift to the *Bet Yosef*, as Rafeld puts it, represents the more general transition from manuscript *likutim* to printed codes, most notably the *Shulḥan Arukh*.

[411] The "*Seder dorot*" (Order of generations) is a genealogical chain that is part of *Sefer yuḥasin* (Book of heritage) by Avraham Zacut, which deals mainly with astronomy. It is based on the 18th chapter of the late fourteenth-century work *Yesod olam* (Foundation of the world) written by a student of Rabbi

its roots in medieval Ashkenaz, at the same time, represented a new, local iteration of that tradition.

Rabbi Luria also affirmed a chain of transmission centered mainly on ashkenazic figures. In one of his works, he wrote that he relied on the opinion of "RaShY, the lineage of my father's house."[412] By contrast, he did not continue the chain until his time. More importantly, his connection to RaShY did not pass via Rabbi Pollak and Rabbi Shakhna, [413] but via Rabbi Yizḥak Kloiber, his maternal grandfather, whom he identified as his primary teacher. [414] Rabbi Luria belonged to the same family as the Maharal of Prague, a clan that traced its roots back not to Poland but to the old ashkenazic communities of the Rhineland. Similarly to ashkenazic Jewry as a whole at the time, this internal Western élite was steadily moving eastward, first via places such

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Asher ben Yeḥiel, which itself is based on *Sefer ha-kabala* (Book of tradition) by Rabbi David ibn Daud, a Spanish author from the 12th century. The first printed edition of *Sefer yuḥasin* (Constantinople, 1566), contained only the 18th chapter of *Yesod olam*, without glosses. On the study of this work among Polish rabbis, see Elhanan Reiner, "Yashan mipnei ḥadash" and David Fishman, "Rabbi Moshe Isserles and the Study of Science among Polish Jews" in *Science in Context* 10 (1997): 571-588.

[412] In Luria, *Yam shel Shlomo* tractate *Yevamot*, ch. 4 §33, he writes ...ועל רש"י יחוס בית אבי סמכתי – and on [the opinion of] RaShY, the lineage of my father's house, I relied…." In reality, he was related to RaShY via his mother, whose father, Rabbi Yitzchak Kloiber, was an important rabbi in Posen and descended from Rashi. 'My father's house' is an idiom (it need not mean father necessarily).

[413] See *ShUT MaharShaL*, §29, where he provides a long chain of transmission with several back tracks and parallel chains that, he explains, he is copying from a list that he found. (It is not completely linear; Rabbi Luria himself is copying and compiling from a number of genealogical lists or the list from which Rabbi Luria is copying was itself a composite.) Yakov Mayer pointed out to me that this chain of transmission has clear predecessors, for instance, in Oxford MS847; Rabbi Luria t thus did not compose it from scratch. The introduction to his answer to the following responsum supports this view: "Question. Can our teacher show us the order of the genealogy of the *geonim* who composed works? Response. The order of the genealogy, I do not have a definite transmission regarding this, but every person reading from the books of the adjudicators, by their habitual statements and disagreements and actions can distinguish a little bit regarding the order of their generations. I will copy for you what I found copied...." שאלה יורינו מורינו סדר היחס בין הגאונים המחברים ספרים. תשובה סדר היחס אין לי קבלה מוחלטת אלא כל אדם הקורא בספרי הפוסקים מתוך ההרגל של דבריהם ומחלוקותם ע"י מעשים יכיר קצת סדר תולדותם אכן אעתיק לך מה שמצאתי הועתק...

See also the genealogy of MaharShaL's family added to the second edition of *ShUT Maharshal* (Fjorda, 1768).

[414] See Meir Rafeld, "R Yizḥak Kloiber: hanhagotav, morashto, umesaviv lahen," (Rabbi Yizḥak Kloiber: customs, legacy, and surroundings) in *Netiv Meir* (2013), 259-281; and Simḥa Assaf, *"Mashehu le-toldot MaharShaL"* (Something on the history of Rabbi Shlomo Luria) in *Festschrift for Levi Ginsburg's 70th Birthday* (NY: The American Academy of Jewish Studies, 1946), 45-63. See also Rafeld, "Ha-MaharShaL," 25, 28, 32 n 25.

as Prague and Posen, and, ultimately, further east to Cracow and Lublin, where they were, in a sense, newcomers. Their self-image, however, was that of an ashkenazic élite with an older pedigree than that of the relatively new "homegrown" Polish rabbis.[415] Members of these two élites studied together, married one another, and continued creating a shared ashkenazic culture. At the same time, they were acutely aware of the internal rivalries and distinctions separating them, especially with regard to the practices and traditions of studying and determining halakha.[416]

Rabbi Luria and Rabbi Isserles thus lived in the same region, worked in the same sphere, and were related by marriage. Whereas Rabbi Isserles identified with the new élite of local Polish origin, Rabbi Luria regarded himself as part of an older ashkenazic élite, as can also be seen in his practices of knowledge transmission. Rabbi Luria mentioned Rabbi Kloiber's responsa in the following words: "see in the responsum of my master, my grandfather, the *gaon*, our teacher the rabbi Yiẓḥak… they are in the hands of my uncle ... in manuscript, and mine burned, due to our many

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[415] For a study of the connection between Rabbi Luria and the family of the Maharal of Prague, and an inquiry into the significance of this older élite and their claim to supremacy in the Ashkenazic sphere based on their pure, ancient lineage, see Reiner, "Yiḥus ve-hoẓa'at shem ra: MaharaL, Mishpaḥat Beẓalel ve-parashat ha-Nadler,*"* (Heritage and slander: Rabbi Loew, the Beẓalel family, and the "Nadler" episode) in *MaharaL: Akdamot* (Rabbi Loew ben Beẓalel: Prologomena), ed. Elhanan Reiner (Jerusalem: Zalman Shazar*,* 2015).

[416] Several studies relate this above-mentioned claim of supremacy to some of the new developments in halakhic study and decision-making in the 16th and 17th centuries, including the printing of Rabbi Isserles' *Torat ḥatat* and the critique thereof by Rabbi Ḥayim of Friedberg in *Vikuaḥ mayim Ḥayim*. See Reiner in "Aliyat ha-kehila," where Reiner makes this connection, and his "The Ashkenazi Élite at the Beginning of the Modern Era: Manuscript vs printed Book," in *Polin* 10 (1997): 85-98. See also Eric Zimmer in *Gakhalatan shel hakhamim* (The fiery embers of the scholars.) Jerusalem: Bialik, 1999) and, for example, in idem, "The 16th Century Rabbis of Germany and their Attitudes towards Contemporaries beyond their Borders," in *Proceedings of the World Congress of Jewish Studies* (1985) 129, on the rivalry between German-ashkenazic rabbis and Polish-ashkenazic rabbis. Although the former group often learned from the latter, they defended their primacy when it came to halakhic decision-making and customs, "a right that was transmitted from the beginning of the settlement [of Jews] in the Rhineland" (133). Zimmer quotes Rabbi Ḥayim of Friedberg as a representative of the older Ashkenazic élite. He opposed Rabbi Isserles' privileging of Polish rulings and customs in some of his halakhic decisions and customs, saying "If the rabbi [Isserles] did not want to give up his custom in favor of the custom of the Holy Land, then, a fortiori, the sons of Ashkenaz should not give up their customs in favor of the custom of Poland" (ibid.).

sins...."[417] We thus know that Rabbi Kloiber wrote responsa and that his close relatives and students copied them (hence the fact that both Rabbi Luria and his uncle own a collection). Rabbi Luria's remarks provide the only source of our knowledge about the existence of these responsa, which were never widely circulated or printed. We note the pattern of personal transmission of manuscripts by means of copying, from rabbi to student, (grand)father to son.

Rabbi Luria also emphasized, via Rabbi Kloiber, his connection to the great ashkenazic figures from the previous century: "My great father-in-law, our teacher, the rabbi Rabbi Klonimus … who received from … Rabbi Daniel, who was a brilliant student and served our teacher, the rabbi Rabbi Isserl', the author of *Trumat ha-deshen*, and saw his conduct."[418] Rabbi Luria mentions the personal transmission of knowledge from Rabbi Isserlein and Rabbi Daniel's opportunity to witness the rabbi's actions. Sometimes, Rabbi Luria himself also refers to practices he witnessed in his father-in-law's presence as a basis for his own decisions; his father-in-law's connection to Rabbi Isserlein played a crucial role in this process.[419] Textual study of manuscripts alongside oral transmission and experienced behavior were part of Rabbi Luria's scholarly culture.[420]

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[417] See Luria, *Yam shel Shlomo* on Tractate *Yevamot* ch. 12.18 ועיין בתשובת אא"ז הגאון מוהר"ר יצחק
...זצ"ל בסימן סה, המה תחת יד דודי התורני מוהר"ר יצחק נר"ו בכתיבת יד ואצלי נשרף בעו"ה

[418] *ShUT MaharShaL* (§98) ח"צ סי' ל"מהרש ת"שו - הגדול מהחסיד שקיבל ל"ז קלונימוס מוהר"ר הגדול חמי
.מהר"ר דניאל שהיה תלמיד מובהק ושימש מהר"ר איסרל בעל תרומות הדשן וראה הנהגתו

[419] See Rafeld, "*Ha-MaharShaL*," 30, also on p. 30-31, regarding the identity of R. Klonimus.

[420] See also Gliksberg and Kassirer, "Halakha." They also discuss the differences in halakhic approach and they attempt to tie them to "meta-halakhic" differences between the schools (they consider Rabbi Ḥayim to subscribe to the same "meta-halakhic" – that is, philosophical/theological ideas *about* halakha – convictions as his brother, the Maharal). They also minimize the difference between the two groups, to some extent; see p. 168, the claim that Rema is, in fact, not so different from Rabbi Ḥayim, and that Rabbi Isserles' point was precisely to allow more freedom to future *poskim*.
In fact, they are equating leniency with freedom and flexibility. But leniency and universalization are separate issues; if Rabbi Isserles universalizes the lenient approach, it does not reinforce the earlier (stringent) customs, but, rather, eliminates them, which reduces flexibility to some degree. If later *poskim* want to be more stringent, they may do so according to Rabbi Isserles, but it will not be *le-halakha*

Rabbi Luria was acutely aware of the consequences of print, and he sought innovative ways to respond to the new situation. He wrote about the danger of the Torah "becoming not like two Torahs, but rather like 613 Torahs[421] because of the proliferation of books, and he saw the need for greater unification and universalization. On the other hand, he was wary of losing the individualized and personal nature of halakha as transmitted in pre-print Ashkenaz.[422] Rabbi Luria saw danger in putting too great trust in written books, complaining that his contemporaries "prefer learning from books to learning from people," a preference that he considered misguided: "and such is the bad thing that is before them, whatever is written in a book they believe, and if a living person is shouting that this is not the law…they will not pay heed to his words."[423]

Rabbi Luria was very concerned with correcting and emending texts and highly conscious of the faulty state of printed works. Although he also corrected manuscripts, he understood that mistakes in printed works were more dangerous because they were

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(required by halakha), and thus not enjoy the legal force of halakha. Thus, separating *minhag* from *halakha* does not necessarily give the Ashkenazic custom more freedom but, rather, reduces it to something additional, not inherent to halakha.

[421] There are two versions of Rabbi Luria's introduction to *Yam shel Shlomo*, which include his fascinating analysis of the change in the world of halakhic learning-practices in sixteenth-century Eastern Europe. One of these versions was printed with tractate *Ḥulin* and the other with tractate *Bava Kama*. The introductions deal with the Talmud's discussion of the results of the disputes between Hillel and Shamai's students. The introduction to *Ḥulin* is the only one that includes references to Rabbi Karo's introduction to *Bet Yosef*. See Luria, *Yam shel Shlomo* on tractate *Ḥulin,* introduction: והתור' לא נעשית כשתי תורות אלא כתרי"ג תורות מרוב ריבוי החלוקות; for more on the different introductions, see Edward Fram, "Chapter Two: A Difficult Beginning" in his forthcoming book [no title yet].

[422] See also in Rafeld, "*Ha-MaharShaL*," 138, where he quotes Rabbi Luria's approach to halakha, emphasizing the more individualized conception rather than the idea of a universalized halakha, Rabbi Luria's explanation that, at Mount Sinai, every person received the Torah through "his own channel." This is akin to Rabbi Ḥayim's approach in the introduction to *Vikuaḥ*, where he compares the multitude of every person's halakhic traditions to the differences in personal taste in food and the uniqueness of each person's facial features. Rabbi Luria also considers the plurality of traditions to be essential to halakha.

[423] See Luria, *Yam shel Shlomo* on tractate *Ḥulin,*. כ בספרו שכך הלכ' והנה שגו בזה מאחר שראו שכ"כ אמרו כ"כ הקאר"ו להדיא, כי כך העניין הרע אשר לפניהם, מה שכ' בספר יאמינו, אם יעמוד א' חי וצוח ככרוכיא שאין הדין כן בראיות גמורות או אפי' בקבלה, לא יחושו לדבריו כאשר כתבתי בהקדמ' ראשונה, ובפרט האידנא שבעו"ה הנסמכים מרובים והלומדים מועטים...

disseminated faster and more broadly and because readers tended to trust printed works more than manuscripts. He collected and consulted printed and manuscript copies of texts, often juxtaposing and comparing several copies. In many ways, he treated the printed text as another (often inferior and suspect) version among the manuscript variants, rather than considering printed books as an ultimate text that replaced the others. Rabbi Luria criticized scholars who placed excessive trust in printed books and failed to correct them. He chastised Rabbi Karo, the author of the *Shulḥan Arukh,* who "did not have before him books with glosses [edited books] and copied them in their incorrect form as found in print, and sometimes he built a big foundation on this mistake."[424] Elsewhere he wrote: "... Karo gave a forced interpretation to reconcile it, because he did not know that it is a talmudic source, as it is found in [properly] corrected books."[425] Similarly, in his glosses on *Sha'arei Dura*, Rabbi Luria dismissed an idea suggested by Rabbi Isserles, which the latter had based on a gloss in a new edition of a book.[426] Rabbi Luria explained that his younger colleague found the source, "and said 'everything I find, I believe,' without examining the source carefully." [427] Elsewhere, he complains, "I had to explain this at length for my students because they already found the words of Rabbi Isaac Stein in a book with an iron pen [i. e., a printed work], and it is hard for them to separate from this."[428] Rabbi Luria was thus very conscious

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[424] Luria, *Yam shel Shlomo, Ḥulin,* 2nd introduction

[425] Luria, *Yam shel Shlomo, Gitin*, ch. 4 §65 והקארו דחק ליישב בכדי ולא ידע דש"ס הוא, כאשר נמצא בספרים מדוייקים

[426] He called this "a new *Isur ve-heter ha-arokh*" and "the new gloss," which, in my opinion, refers to the fact that this he saw this gloss in print. More on this new *Isur ve-heter ha-arokh* in the case study.

[427] See *Ateret Shlomo* (Crown of Shlomo)on *Sha'arei Dura.* ואל תשגיח בדברי מהר"ם בספר תורת חטאת שכתב שאין לחלק בין כלי מתכות לכלי חרס ודלא כמהרי"ח. חוץ לכבודו בא להקל על מהרי"ח שהיה בעל הורא' משום שמצא כן בא"ו הארוך, ואמר על כל מה שמצא אני מאמין ולא ירד לדקדק לעומק בעניין ע"כ אין לסמוך עליו כלל להקל ש"ל:

[428] Luria, *Amudei Shlomo*, (Pillars of Shlomo) *Esseh* (Positive Commandment) 50 §3.

of the pitfalls of print and the false confidence that printed works inspire in their readership.

Notwithstanding these suspicions, Rabbi Luria was clearly preparing his own works for eventual printing. He was not principally opposed to print publication and viewed print technology as merely another means for reproducing texts that had the unfortunate effect of producing false expectations among lesser scholars. Unlike those he accused of believing anything they encountered in print, he considered the correcting of texts as part of his scholarly role.[429] While acknowledging that print technology presented new challenges and dangers, he nevertheless expected scholarly practices to continue as before. Although cognizant of a new technology for copying and disseminating knowledge, he did not believe that it required a reconceptualization of the scholarly practices of his entire culture.

The publication history of Rabbi Luria's works shows that, in many ways, he did not adapt his scholarly practices to the changes, leading to unfortunate results.[430]

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Rabbi Yiẓḥak Isaac Stein (ca. Nürnberg 1430- Regensburg1495). His *Bi'urim* (Commentaries) on Rabbi Moshe of Coucy's 13th-c *Sefer Miẓvot Katan (Small Book of Commandments)* were printed together with that work in Venice in 1547 by Bomberg.

הוצרכתי להאריך בעבור התלמידים לפי שמצאו דברי מהר"ר איזיק שטיין כבר בעט של עופרת בספר וקשה להם לפרוש מאתו

[429] Concerning a responsum from Ravia: "תשובות אלו העתקתי מס' ראבי"ה והתשובות היו בלתי מתוקנות see "...לרוב טעויות, לפי שבאו מסופר אל סופר, ובעזרת הא-ל יגעתי ומצאתי לתקנם על מכונם לפי הירושלמי שהיה לפניהם Assaf, "Mashehu," 57. *Sefer Mitzvot Gadol (Large Book of Commandments)*, Talmud, Maimonides, Rabbi Asher ben Yeḥiel and other *rishonim*, Rabbi Luria mentions having different versions, printed ones and manuscript ones.

[430] None of Rabbi Luria's works were printed during his lifetime, although many of his writings were preserved, including his responsa, the writings of *Yam shel Shlomo*, a prayer book he composed with emendations and notations about his customs regarding the liturgy, his glosses on *Sha'arei Dura*, and many other works. Some of his students used and copied parts of their rabbi's work on the Bible into their own writings, which appeared in print before the first printing of Rabbi Luria's own work on the subject. For example, Rabbi Yitzchak Kohen's *Kiẓur ha-mizraḥi*, (Abridgement of the *Mizraḥi*) was printed in 1604, before the printing of Rabbi Luria's own work (named *Yeriyot Shlomo*, 1609) (Curtains of Solomon, after Song of Songs 1:5). The latter work contained only some of the glosses – those not printed in the student's work (see Assaf, "Mashehu," 62-63). Although Rabbi Luria referred to *Yam shel Shlomo* in terms that suggest a finished work ("ḥiburi ha-gadol..."), at his death, both *Yam shel Shlomo* and even his responsa remained, to some extent, unfinished. Their publication history reflects this: *Yam shel Shlomo* ended up being printed in various volumes and editions, with several different introductions, and ultimately, many of the tractates were lost. Rabbi Luria's responsa were, similarly, a work in progress

Instead of definitively completing and then publishing specific works, he continued to write and accumulate writings and glosses in his archive throughout his life. This did not preclude publication in the traditional way, as he expected that the relevant scholars and students in his circles would copy from his manuscript archives as necessary. In one instance, Rabbi Luria expresses shock at the fact that Rabbi Isserles criticized him without having consulted his writings on an issue, although none of the relevant writings had been printed at the time.[431] Rabbi Luria expected his colleagues to consult unpublished personal manuscripts. Indeed, in one responsum, Rabbi Isserles seems to mention keeping, and periodically adding to, all the manuscript copies of Rabbi Luria's writings.[432] In a similar vein, Rabbi Luria's own archive appears to have been accessible to scholars who wished to copy from his writings, even after his death, as Rabbi Shmuel of Böhm, who published Rabbi Luria's *Ḥokhmat Shlomo* (Wisdom of Shlomo) mentions in the introduction.[433] Rabbi Luria's practices of writing and transmitting

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until almost up to his death. Partly, this is because he continued to receive new questions throughout his life; the last responsum in Rabbi Luria's *ShUT* is the one with the latest date, 1572, two years before his death. Rabbi Luria clearly thought about publishing the work as a whole but did not succeed in doing so. It was printed by Klonimus, son of Mordekhai Yaffe, and his sons Yosef and Ḥayim in Lublin. The work of printing begun on the 19th of the month of Av 1574, less than a year after his death, and was completed in 1575. My chapter on *likutim* mentions the close connection between the "publishing moment" that separates a private work from a published one and the question of when and whether a work is complete. In the tradition of manuscript compilation, however, both the boundary between private and published and the point at which a work becomes "complete" is blurred. Rabbi Luria himself never conclusively crossed the boundary between private and published, between archive and completed work.

[431] MaharaShaL, *Yam shel Shlomo*, tractate *Ḥulin*, Ch. 1 §29.

ושאלתי את פיו איך עלה על דעתך להשיג עלי ולא עיינת בהגהתי באו"ה שלי גם לא ראית בספרי הגדול בפ"ק דחולין ולא ידעת שורש דברי

See also MaharShaL on *Sha'arei Dura*, gate 4§8.

שוב ראיתי במה שרצה מהר"ם להשיב עלי בספר תורת חטאת שלו לאסור לא נמלח גבי מולייתא דגבי' וכתב להוציא מלבו של חכם כו' חוץ לכבודו לא עיין בהגהתי ולא בספרי אלא שהציץ מן החרכי' ולא ראה יה והארכתי בספרי בפרק פ"ק דחולין ושם הראיתי לך טעותיו עיין שם.

*Yam shel Shlomo* on tractate *Ḥulin* was first printed in Cracow, 1733-5.

[432] Isserles, *ShUT Rema* §132.10. In *ShUT Rema,* ed. Siev, 515n34 – Siev suggests that this is the source of the major dispute between the two rabbis.

[433] Rabbi Shmuel of Böhm, *Ḥokhmat Shlomo*, first ed.

אם המעיין מתקשה באיזה ענין בדבר הלכה שלא יוכל לירד לעומקו הן מחמת שגיאה או חומר הענין יוכל לשלוח על ידי איש מוקדם או הוא בעצמו כאשר הוא מורגל ותדיר שנוסעים ליריד לובלין, ושמה יוכל לראות בגוף הגמרות של הגאון ז"ל אשר הם ...ביד בנו האלוף הר"ר יחיאל יצ"ו, או יכתוב לבנו דבר הקשה והוא ישיב לו תשובה

scholarship represent the continuity of ashkenazic practices, and they were deeply tied

to the tradition of *likutim*.

Lest Rabbi Luria come across as a staunch traditionalist, it should be stated that

he was innovative and daring in many ways: The scholarship and scope of Rabbi

Luria's magnum opus, a work of interpretation, commentary, and halakhic decision-

making based on the Talmud, [434] titled *Yam shel Shlomo*, was most revolutionary.[435]

This work is filled with innovative insights and interpretations that follow the order of

the talmudic tractates and *sugyot.* It relied on the halakhic authority of the talmudic

sources rather than on the compilations of his more immediate predecessors. His

methods of textual interpretation were inspired by the distant tosafists, who focused on

evaluating the talmudic discussions directly. This approach enabled him to be far more

liberal with the tradition of halakhic texts that had accumulated between the Talmudic

period and the time that he expressed his opinion. Such an approach was highly

innovative for his age, as was the decision to create a work that covered the entire

Talmud. This project can be considered Rabbi Luria's own attempt at rescuing

ashkenazic halakhic tradition. His decision to return to the Talmud was atypical, and

his insistence on correct halakhic analytic reasoning over mere transmission as the true

source of halakhic authority was innovative. Similarly, his preoccupation with

correcting and emending texts is an attempt at preserving older traditions,[436] which is,

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For full discussion and translation of these quotes, see chapter 6 in this dissertation.

[434] See the discussion in the first chapter (The Inherited Tradition) regarding the Talmud as organized more like a compilation and less like a code. Significantly, *Yam shel Shlomo* was organized according to the Talmud rather than any of the codes.

[435] See Meir Rafeld's dissertation, which studies the work at length. Rafeld, "*Ha-MaharShaL*."

[436] Rabbi Luria possessed an impressive manuscript collection, especially of Ashkenazic manuscripts. See Assaf, "Mashehu,"60. וכן היה בידו שפע של מקורות מהוראותיהם של חכמי אשכנז במאה הי"ד והט"ו, שכמה מהם לא הגיעו אלינו דרך צנורות אחרים, בצורת ילקוטים שונים, הלכות שחיטות אשכנזים, הלכות בדיקות אשכנזים, הלכות בדיקות ישנות, תיקוני גיטין לרוב, וכן ספרי מנהגים מרובים. היו בידו כמה קובצי תשובות מראשוני חכמי צרפת ואשכנז, או ספרי לקוטים שהובאו בהם דברי הראשונים ותשובותיהם.

at the same time, exceptional and original.

Whereas *Yam shel Shlomo* displays most solidly the originality of Rabbi Luria's scholarship, his treatment of *Sha'arei Dura* provides a clear example of his perpetuation of traditional organizational paradigms and scholarly practices. Rabbi Luria's work on *Sha'arei Dura*, in comparison to that of Rabbi Isserles, demonstrates continuity versus change in learned practices. Unlike Rabbi Isserles, who wrote *Torat hatat*, a stand-alone work on the basis of *Sha'arei Dura,* Rabbi Luria created a typically ashkenazic product – a personal compilation of paraphrases and summaries from the work. Rabbi Luria used the basic text of the printed *Sha'arei Dura* (Cracow, 1534), while editing, selecting, correcting, and adding text and glosses – both older ones and his own insights – on the basis of other editions, manuscript copies, and additional textual sources.[437] He did not even give the work a title, and it was referred to in typical ashkenazic fashion as "The *Sha'arei Dura* of Rabbi Luria," or "Rabbi Luria's *Isur ve-heter,*" long before being printed under titles invented by its publishers. [438] Numerous rabbinic references to it indicate that it was known, consulted, and quoted long before being printed.[439]

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Rabbi Luria recommended examining different variants of texts. He was conscious of the failings of printed works and continued to emend them. He did so not only by means of comparison and bibliographical tools, but also by using his scholarly prowess to determine the correct version of a text. Rabbi Shmuel of Böhm, the editor and publisher of some of Rabbi Luria's works, mentioned in the introduction to *Ḥokhmat Shlomo* that Rabbi Luria "…did not avoid emending copies/made every effort to attain *[lehassig]* copies of the Talmud with RaShY and Tosafot from old parchment, and according to them and the *poskim* Alfasi, Maimonides, *Sefer miẓvot gadol and Sefer miẓvot katan* and the *Arba Turim* and the *Arukh* and the responsa of earlier and latter authorities, in their paths did he step and emend, and every mistake he corrected" ( In Rabbi Shmuel of Böhm, intro *Ḥokhmat Shlomo* first ed.).

זה מעשהו הגדול אשר עשה, לא הניח מלהשיג גמרות רש"י ותוספות של קלף ישנים, ועל פיהם ועל פי הפוסקים רב אלפס ורמב"ם סמ"ג וסמ"ק ובעל הטורים ובעל הערוך ותשובות ראשונים ואחרונים בעקבותיהם דרך והגיה וכל מעוות התקין"

[437]See *Sha'arei Dura*, ed. Dvileiẓky, 2:7. Based on the quotes, he shows that Cracow, 1534 was the printed edition used by Rabbi Luria as his basis. However, Rabbi Luria also had several manuscripts and he copied texts into the glosses, some of which are unknown to us from any other source, for example a responsum from Rabbi Isserlein that cannot be found in any of the latter's collections of responsa.

[438] One of his students, Rabbi Eliyahu Loenz, printed the work in Basel in 1599 under the title *Mekhonot Shlomo* (Bases of Shlomo, after II Kings 27:16). It was printed in the same year in Lublin by Rabbi Yossi ben Rabbi Yehuda under the title *Ateret Shlomo* (Crown of Shlomo).

[439] See Dvileiẓky, ed. *Sha'arei Dura*, 2:7.

Rabbi Luria thus continued to work in his habitual manner, disregarding the limitations of these practices in the face of the new technology and the order it privileged and expecting scholars to continue relating to his writings in the traditional way. Print technology, in his eyes, signified only a technical novelty rather than the initial upheaval of his scholarly culture. Although his innovations in content and approach may have been an attempt at defending traditional ashkenazic practices, it did not include an adaptation of the forms and order of his writings to the deeper changes that were looming. This omission would prove fatal, because it disregarded the replacement of traditional paradigms of organizing knowledge with foreign ones. Whereas new technologies could be disregarded as superficial, the shift in organizational paradigm that it inaugurated was much harder to ignore. Rabbi Moshe Isserles' work *Torat ḥatat* (Cracow: Prostiẓ, 1570) is the first step towards the reorganization of *Sha'arei Dura*'s halakhic texts in this changed culture. His approaches, and the reactions it evoked, are a microcosm of both the potential and the threat inherent in this shift and the attempts to deal with it.

## 4.  BEGINNINGS OF CHANGE: RABBI ISSERLES AND *TORAT ḤATAT*

In 1570, Rabbi Moshe Isserles,[440] by then a significant rabbi in Cracow,[441] published a work entitled *Torat ḥatat*.[442] The work relates directly to *Sha'arei Dura* and attempts

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[440] On Rabbi Isserles, see Tchernowitz, *Toldot ha-poskim*; Yona Ben Sasson, *Mishnato ha-iyyunit shel ha-Rema* (The Philosophical System of Rabbi Moshe Isserles) (Jerusalem, 1984); Elhanan Reiner, "The Ashkenazi Élite at the Beginning of the Modern Era: Manuscript versus Printed Book," *Polin*: *Studies in Polish Jewry* 10 (1997): 85-98; Asher Siev, *Rema* (NY, 1972).

[441] See Siev, *Rema*, 20 n53 there regarding Rabbi Isserles' tenure as Rabbi of Cracow.

[442] Rabbi Isserles mentions the *Shulḥan Arukh* in his work on the sections corresponding with the laws discussed in *Torat ḥatat*. This means that it must have been finished after 1565, when the latter work was printed. Rabbi Eliezer Galinsky, who edited the most recent edition, thinks that the work must have been ready for print in 1567-8 at the latest (see Isserles, *Torat ḥatat*, ed. Eliezer Galinsky [Jerusalem: Mosad Ha-Rav Kook, 2015], Introduction, 24-25).

to present the laws discussed in the former work in a clearer manner. The novelty of *Torat ḥatat*, Elhanan Reiner has explained, was its appearance in print, because it encouraged a transition from orality to textuality.[443] Reiner emphasized the newfound accessibility of this work to a less élite audience, and the shift from local customs of small "holy communities" to large Jewish communities, which fed into more lenient interpretations of local custom. Printed texts, accessible to all and detached from rabbinic authority, fundamentally uprooted traditional ashkenazic halakha. Building upon these insights, I will focus on the transition from manuscripts to printed text more specifically (rather than on orality to textuality in the broader sense), while framing the polemic that *Torat ḥatat* evoked as a clash of paradigms of knowledge organization and the meanings that these paradigms held.

In addition to the novelty of appearing in print, one of *Torat ḥatat*'s main innovations was its organization. The book, which was printed separately rather than as a gloss, transformed *Sha'arei Dura* into a more streamlined and complete work. In the introduction to *Torat ḥatat,* organization is mentioned several times. Rabbi Isserles explains that he intended to organize and create a "*seder*,"[444] literally meaning both "order" and step-by-step manual, of the laws of *isur ve-heter*. Both meanings of *seder* connote the addition of greater structure to the entity. This ordering was necessary, he explained, because the accumulated glosses, the lack of clear conclusions, and the habit of generations of glossators to select, copy and comment upon what they personally found relevant, rather than to provide a complete and comprehensive work for an

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[443] Reiner, "The Ashkenazi Élite,"; See also Gliksberg and Kassirer, "Halakha and Meta-Halakha," 157-191.

[444] See Isserles, *Torat ḥatat*, introduction, for mentions of "*seder*" אברך את ה'...לסדר סדר איסור והיתר על הדינים המבוארים בשערי דורא

anonymous reader, rendered the work unsystematic and confusing, and thus inaccessible, or "sealed and hidden," in Rabbi Isserles' words. Subsequent glosses only complicated matters by adding layers that were not clearly identified or differentiated from one-another, often resulting in seemingly contradictory claims: "This one says one thing, and that one says the opposite."[445] Instead of writing yet another gloss, Rabbi Isserles thus created a new work based on the older one, which was more organized than its predecessors.

*Torat ḥatat*'s introduction shows clearly that Rabbi Isserles, as Rabbi Luria, was highly conscious of the dangers of printing a halakhic work rather than copying it in manuscript. One reason that he proposed for the need to write *Torat ḥatat* was the fact that *Sha'arei Dura* "can be found in everyone's hand."[446] He emphasized that the problems with *Sha'arei Dura* caused confusion, "all the more so now in this most recent generation, when this book has been copied and printed several times, because every man wants it...."[447] As a result of print dissemination, "... the books fell into the hands of many great people and little men." This ever-growing audience then created their own glosses of the work, "and they made for them interpretations[448] ... and additions ... they hang empty things onto the book, every man does what seems right in his own eyes in his own book, and who will contradict him?!"[449] Without the individual contacts

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[445] Isserles, *Torat ḥatat*, introduction: באשר הגאון בעל שערי דורא תקנו לדורו שהיו גדולים וחכמים והיו קיצר דבריו מספיק להם ולא כתב על ספרו רק דברים שהיו מחודשים בעיניו או דברים הצריכין בדורו ולכן כתב רק מקצת דיני איסור והיתר וקצת טריפות בקצתו תראה, והנה בעונות בדורות האלו האחרונים דבריו סתומים וחתומים היו כלא היו עד שבשביל זה קמו האחרונים ז"ל ובראשם הגאון מהרא"י ז"ל וסדרו עליו דברים בהגהותיהם כדי להורות לדורות כיצד ינהגו אך שעל ידי זה חזרו דבריהם כמתנגדים זה לזה. זה אמר בכה וזה אמר בכה

[446] Isserles, *Torat ḥatat*, introduction : באשר כי הוא מורגל ונמצא ביד כל אדם

[447] Isserles, *Torat ḥatat*, introduction: כ"ש עכשיו בדור האחרון הזה אשר נעתק ונדפס הספר הזה כמה פעמים כי כל אדם חושק בו

[448] Jeremiah 7:13 - note the reference to idol worship.

[449] Isserles, *Torat ḥatat*, introduction: ועי"ז נפלו הספרים ההם ביד רבים קטנים וגדולים עשו להם כוונים וביאורים שונים הזמן כלה ודבריהם אינם כלים באשר עשו לספר הנזכר פירושים ותוספות גם קפצו התלמידים רבים ותלו בו בוקי סריקו איש הישר בעיניו יעשה בספרו ומי ימחה בידו

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between scholars that were inherent in personal manuscript copies, anyone could write mistaken interpretations justifying his own faulty opinions. Just as Rabbi Luria, Rabbi Isserles feared the faulty interpretations that would result from this broad and unsupervised dissemination of texts. The likelihood that these new, misguided interpretations, in turn, might be printed only amplified the risk, as the errors would also be disseminated. Moreover, their words would be taken seriously once printed; "... afterwards, these books and those words are printed, and he who sees them says that they were all given at Mount Sinai and he rules according to them, and they prohibit and permit against the Torah and the halakha."[450]

Unlike his colleague, however, Rabbi Isserles' emphasized not the danger of learning from books rather than people but the risk that every reader would write his own ideas and glosses in his own copy, and "in his own book, who will contradict him?!"[451] Rabbi Isserles contended, however, that traditional efforts to clarify the text by adding to the layers of glosses were ultimately unsuccessful and -- in the age of print – even served to heighten the confusion, "and thus the rulings of the sages who meant to help ended up only harming."[452] Rabbi Isserles advocated a new approach that would provide a printed, authoritative, and universalized form of this body of texts. In *Torat ḥatat*, Rabbi Isserles streamlined, unified, and summarized *Sha'arei Dura*. Realizing that most people now had the printed edition of *Sha'arei Dura* and would continue to utilize it, in his own work, Rabbi Isserles therefore followed the order and division of sections as found in the printed *Sha'arei Dura*, starting with the Venice edition of the

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[450] Isserles, *Torat ḥatat*, introduction: ואח"כ הספרים והדברים ההם נדפסים והרואה אותם אומר שכולם מסיני נאמרו

[451] Isserles, *Torat ḥatat*, introduction: איש הישר בעיניו יעשה בספרו ומי ימחה בידו

[452] Isserles, *Torat ḥatat*, introduction ואח"כ הספרים והדברים ההם נדפסים והרואה אותם אומר שכולם מסיני נאמרו ופוסק אחריהם נמצא אוסר ומתיר שלא כתורה וכהלכה ותקנת החכמים שכוונו להועיל לקצר ולברר הם קלקלהו

work[453] "I saw that it was good to arrange a good order in all the laws of *isur ve-heter* that are found in *Sha'arei Dura* and to write them according to the order of its sections...."[454]

Although Rabbi Isserles kept the same order as the *Sha'arei Dura*, his approach diverged from the classical glosses on *Sha'arei Dura* in fundamental ways: Instead of copying or paraphrasing the text and then glossing and adding to it, he created a new text, streamlining the contradictions, simplifying the many opinions, clarifying, and providing conclusions. In the introduction, he explained that he would present his work "in a succinct manner ... so that it will be easy to understand for every man, small and great." Moreover, he added clear conclusions to all the laws "according to the latest authorities of blessed memory, whom we have the custom to follow."[455]

The main inspiration behind Rabbi Isserles' *Torat ḥatat* was clearly Rabbi Yosef Karo's *Shulḥan Arukh*, which was becoming increasingly popular. Rabbi Karo, "whose books already spread throughout the whole House of Israel,"[456] was based in Safed and, belonging to the sfardic diaspora, did not follow the ashkenazic tradition. Considering it important to reinforce knowledge of the ashkenazic tradition among the non-elite scholarly population, Rabbi Isserles therefore offered his own streamlined,

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[453] The manuscripts of *Sha'arei Dura* are divided into from about 30 to 40 sections; the second printed edition (Venice, 1547-8) is the first to use sections that start with the first "gate" and run straight through to the end (not beginning a new count after the end of the ten "gates"), 96 sections altogether (plus 32 on *niddah*). Rema used this division of the printed edition, consciously made to complement the printed *Sha'arei Dura*. We also know from several remarks that Venice 1548 was indeed the edition he used (see Dvileiẓky, "Introduction," Düren, *Sha'arei Dura*, ed. Dvileiẓky 22n124, for the page-number of a section that corresponds to this).

[454] Isserles, *Torat ḥatat*, intro: וראיתי כי טוב הוא לסדר סדור נכון בכל דיני איסור והיתר הנמצאים בשערי דורא ולכתוב אותן על פי סדר סימניו שבשערי דורא

[455] Ibid. כדי שיהא נקל להבין לכל אדם קטן וגדול שם הוא ולכתוב שם כל חילוקי בדרך קצר ולא בפלפול ארוך... הדינים הנמצאים בשאר פוסקים השייכים לדין ודין שנמצאו בש"ד: גם לכתוב הסכמת ההלכה בכל דין ודין ע"פ דעת האחרונים ז"ל אשר אנו נוהגים אחריהם.

[456] Ibid. הרב הגדול מו' יוסף קארו זצ"ל אשר כבר נתפשטו ספריו בכל ישראל ואם יפסוק אדם אחר דבריו בפרט בדיני איסור והיתר אשר יסד בשלחן ערוך שלו יסתור כל מנהגי' שנוהגים בהם במדינות אלו

clear alternative to the newly popular, accessible *Shulḥan Arukh*. Rabbi Isserles was preserving and conserving ashkenazic law by adapting it to some extent to the dominant organizational paradigms of his age. His reworking of the organization of the laws to fit the new paradigms led to more unification and universalization of halakha for the ashkenazic realm, eliminating the localized personal mode of teaching for the sake of a clearer, more unified, and more accessible halakhic corpus.[457] The resistance that *Torat ḥatat* encountered reveals the extent of the change.

## 5. RESISTANCE: RABBI ḤAYIM BEN BEẒALEL AND *VIKUAḤ MAYIM ḤAYIM*

*Torat ḥatat* evoked significant controversy. Rabbi Ḥayim ben Beẓalel of Friedberg (Posen ca. 1520 - Friedberg 1588), wrote *Vikuaḥ mayim Ḥayim* (Dispute of the living waters), a polemical work opposing *Torat ḥatat*.[458] Countless glosses, summaries, and other kinds of works had been written on *Sha'arei Dura*. What was it about *Torat ḥatat* that upset him? Rabbi Ḥayim's polemical publication was aimed precisely against Rabbi Isserles' concessions to this foreign organizational paradigm and the threat that it posed to traditional ashkenazic organization. Reiner discusses the threats that print technology proper posed by making halakhic writings available to a much wider audience. I will focus on Ḥayim ben Beẓalel's reaction to organizational elements: flexibility versus structure, complete versus open works, modular versus holistic

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[457] He adds a caveat, that –of course – this was meant only for the masses who were tempted by the ease of the *Shulḥan Arukh*, and that learned people were invited to use his work merely as a springboard for discussing their own opinions (ibid.). והנה לא אומר לאחרים קבלו שהם רשאים ולא אני כל שכן לגדולים מערכי באשר יש בידם מאזני השכל יודעים להכריע בכל דבר ולא ס ד ר ת י ה ס ד ו ר הזה רק לקטנים ממני ולהעיר לב המעיינים שידעו להזהר ובכל דבר כתבתי טעמי ונימוקי עמי והוריתי מקום אשר מתוכו הוצאתי הדין ההוא והרוצה לסמוך והנה כללתי .עלי יבא ויסמוך והרוצה לחלוק מי ימחה בידו ואחד המרבה ואחד הממעיט ובלבד שיכוון לבו לשמים ויהיה מתון בדין הדינים בקצרה בסוף דרך סימנים ומאן דאמר סימנים לאו דאורייתא יראה אח''כ ויברר לנפשו אחת מן הדרכים הנ''ל

[458] It was published in reaction to the printing of *Torat ḥatat* in 1559 but not printed until 1712 in Amsterdam. Rabbi Ḥayim himself refers to his writing as "this letter" וראיתי לקרות שם האגרת הלז מים חיים כי זאת תורת חטאת להיות עץ ארז ואזוב יחד באגודה אחת (intro., part 3).

arrangements, and personal versus universal writings. This will show that the traditional ashkenazic way of organizing texts reflected an ideology of knowledge and a particular religious-intellectual approach.

Rabbi Ḥayim's issues with *Torat ḥatat* relate to questions of organization and traditional knowledge practices. After stating that his own rabbi, Rabbi Shakhna, never wrote down his teachings, Rabbi Ḥayim presented his own manuscripts as an example of permissible writing practices: "And see, there is another straight path before each man, and that is that everyone is permitted to compile and compose together every novel thing that he finds in the words of the older halakhic decision-makers (*poskim*) and to write them in a good order so that it may be there for him in case of forgetfulness, so common now because of the preoccupations of our times."[459]

Rabbi Ḥayim explicitly legitimized the practice of creating compilations by handcopying and collecting older texts. This was harmless, comparable to taking old coins and placing them together in a way of one's choice – for example, putting all the similar coins in one pile.[460] However, a person who writes down halakha in a new way is like someone who has lost access to the source of precious metals and shaves off and melts down old coins in order to create new, inferior ones.[461] Copying fragments and noting them down in a one's own compilation was acceptable, but synthesizing, streamlining and creating new entities from the earlier text was a practice which, to Rabbi Ḥayim, was "not a constructive labor at all, merely the destruction of the old,

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[459] See *Vikuaḥ*, 4a (Amsterdam, 1712) כל כל ביד נתונה שהרשות והוא איש כל לפני הישר דרך עוד יש והנה
השכחה כנגד לו שיעמוד כדי נכון בסדר ולכתבם הקדמוני' הפוסקי' בדברי שימצא חידוש דבר כל יחד ולחבר ללקט שיראה אדם
הזמן טרדת מפני עכשיו המצויה.

[460] Ibid. כל ומניח אותם ומסדר הרבה ישנות מטבעות לו לאסוף שטורח כמי אלא שאינו לפי קפידא שום בזה ואין
יערכם לא אשר הקדמונים חכמים דברי אליו מאסף זה אדם כך סגולה. לו להיות אליו אותם ואוצר לה הדומה המטבע אל המטבע
וזהב כסף כל.

[461] Ibid.

good coins."[462] Rabbi Ḥayim related his preference for personal manuscript compilations to a refusal to circulate halakhic writings, highlighting the personal nature of halakhic texts of this sort. *Sha'arei Dura* itself, indeed, any ashkenazic work of *isur ve-heter*, Rabbi Ḥayim insisted, was written with the same intention of showing it only to a small circle of colleagues and friends:

I, too, some sixteen years ago, decided to collect all the laws of *isur ve-heter* from the books of the *poskim* ... it was hidden with me, sealed in my treasure chest. And the students who were in my house at the time stole it from me and copied it secretly. And when I was made aware of this, I took that copy from their hands, with fury and anger, because I composed it only for me and for myself, to be a support to me and aid against forgetfulness, but not for someone else to rely upon.[463]

Moreover, Rabbi Ḥayim argued that the personal nature of the work was the reason for its many lacunae, inconsistencies, and ostensibly random progression, which were deliberately vague, since "… he [Rabbi Yizḥak of Düren] wished merely to uncover one hands-breath and then to cover two."[464] The work was written in an inaccessible manner by design, Rabbi Ḥayim claimed, in order to prevent the uninitiated from using it.[465] For that very reason, Rabbi Ḥayim continued, the glosses

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[462] Ibid. כ"כ יש להם קרקע אא"כ יכולין לעשות מלאכתם שאינם מטבעות עושי האומנים אל דומי' הספרים מחברי והנה
אשר משם מוצא הכסף. אבל אם תם מוצא הכסף ההוא, צריכים הם ליקח המטבעות הישנות ולעשות במקומם מטבעות חדשות
גרועות ורעועות. שאין זה מלאכת מחשבת רק איבוד מטבעות הישנות הטובות. וכל עוד שיגרעו ויפתחו החדשות ישובחו הישנות.
כך הגאונים מחברי הספרים הראשונים היו יושבים על מעיינות חכמה מרחבי ים התלמוד...בזמנינו זה כבר נסתמו מעיינות החכמה
ואע"פכ רוצים להודיע טבעם בעולם ע"י הספרים שחברו. עד שלפעמים אינם מחדשי' כלום רק מקצרים דברי הראשונים ואוספי'
יחד במקום אחד כל דעות הקדמונים ומסדרים אותו בסדר הנכון בעיניהם.

[463] Ibid. וזה לי ג"כ כמו ט"ז שנים שנתתי אל לבי גם אני ללקט כל דיני או"ה מספרי הפוסקים א' הנה וא' הנה
וסדרתי אותם בסדר נכון והיו לאחדים בידי בתכלית הקצו'. הלא הוא כמוס עמדי חתום באוצרותי. והבחורים שהיו אז בביתי
גנבו אותו ממני ועמדו והעתיקו אותו בסתר. וכאשר נודע לי לקחתי מידם אותו ההעתק באף ובחימה. כי לא חברתיו רק לי לעצמי
להיות לי לעזר ולהועיל נגד השכחה ולא שיסמוך עליו אדם אחר Rabbi Ḥayim tells a very similar story about Rabbi
Shalom Shakhna, where the students begged him for his writings, but he refused to let them compose a book from them, as mentioned at the start of this chapter.

[464] Ibid. גם השערים שכתב ר"י מדורא לא כתבם רק לתלמידיו כמו שכתב בתחילת דבריו ומה שהיה מקצר בהם אין
הטעם כמו שכתב הרב ז"ל לפי שלא כתב רק הדברים שהיו מחודשים בעיניו או הדברים שהיו צריכים לבני דורו שהרי מבואר
נגלה שאינו כדבריו רק הטעם שלא רצה לגלות רק טפה וכסות טפחיים ולהודיע כי לא על ספרו לבדו יחיה האדם כי אף על כל
מוצא פי שאר הספרים יחיה האדם.

[465] Moreover, his explanation that the confusing and incomplete nature of *Sha'arei Dura* stems from the author's desire to address only a limited audience of insiders returns to the theme of personal connections and inner circles. The use of the expression "to uncover one hands-breath and cover two" has associations to intimacy, emphasizing the private nature of halakhic writings (Babylonian Talmud, Tractate *Nedarim* 20b - to uncover a hands-breadth and cover it, etc.).

were so difficult to translate into practical halakhic conclusions. The glossators did not intend to solve the inconsistencies, to streamline or clarify the work; they intentionally perpetuated the same logic of transmission as the *Sha'arei Dura* itself.

Beyond favoring the ashkenazic practice of writing personal compilations over publishing codified works; Rabbi Ḥayim emphasized the religious view of knowledge and transmission that went along with it, revealing strong ideas about the personal, individual, and local nature of halakha. In the introduction, he commented that, just as human beings have different facial features, countenances, and different personal tastes, the halakhic decisions of different traditions will vary, and it would be morally wrong to expect everyone to conform to the same halakha. Permitting something that was prohibited in another scholar's individual tradition is compared to forcing a person to eat something that he personally cannot stomach, "which will damage him as though it were poisonous."[466]

Rabbi Ḥayim insisted that not only did halakha not have to be uniform for all people but also a scholar did not have to hold consistent opinions over a period of time. "Also, the opinion of one person is not always the same, and perhaps his mind is tending not to rule in a case as he ruled yesterday, and there is nothing wrong or lacking with this, to say that this makes the Torah into two Torahs, God forbid. On the contrary, this is the way of the Torah and these and those are the words of the living God."[467] It is common knowledge, Rabbi Ḥayim wrote, that a person likes only food he prepares for himself and is uninterested in eating at the "set table" (lit. *shulḥan arukh*) of others.[468]

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[466] See *Vikuaḥ*, 1b כדרך שאנו רואים ג"כ לפעמים שנפשו של אדם קצה בשום מאכל שאפילו הוא מתוקן ומקובל טוב אם יאכלנו בעל כרחו יזיק לו כאלו היה דבר ארסיי.

[467] Babylonian Talmud, tractate *Eruvin* 13b.

[468] See *Vikuaḥ*, 1b. כך הדבר בהוראת איסור והיתר...כמו שלא יערב לו לאדם רק המאכל שיתקן לו הוא עצמו כפי אשר תאוה נפשו לאכול ואינו רוצה כלל להיות מצפה על שלחן חבירו, כך לא יערב לו הוראות זולתו אא"כ יסכים דעתו

This is a clear reference to the *Shulḥan Arukh*, which, as a universal codification, represents the antithesis of Rabbi Ḥayim's idea of halakha.

Rabbi Ḥayim was willing to overlook Rabbi Karo's approach in the *Shulḥan Arukh*. Considering his non-ashkenazic origins, the work could simply be attributed to a separate culture of organizing halakhic texts. Rabbi Ḥayim expressed incredulity, however, at the fact that Rabbi Isserles, a scion of the ashkenazic tradition, who learned from Rabbi Shakhna together with him and no doubt remembered their rabbi's refusal to write such a work for his students, could create a halakhic book based on the outrageous assumption that halakha is universal: "It is a riddle and mystery to me how the great rabbi in his generation … Rabbi Moshe Isserles, wrote a specific book on the laws of *isur ve-heter* and called it *Torat ḥatat*, without heeding any of the things I wrote here." [469]

The streamlining of *Sha'arei Dura* into a unified work of halakha and the attempt to simplify its multiplicity and arrive at universal conclusions is thus closely related to broader approaches and beliefs. In another patent reference to Rabbi Karo, Rabbi Ḥayim objected to a statement from the introduction to *Bet Yosef*, where the author complained that, due to the proliferation of halakhic texts, the Torah was

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עליו. וכ"ש שאינו רוצה להיות מצפה על ספרי המחברים האחרונים שאין דעתו סומך עליהם ולהיות מצפה על שלחן ערוך שלהם. ולזה מנעו הראשונים מלחבר שום ספר מיוחד על דיני או"ה לקבוע המנהג והלכה לרבים

[469] See *Vikuaḥ*, 2 §2: "And for this reason the earlier authorities avoided composing any specific book on the laws *of isur ve-heter* (forbidden food) to set fast the halakha for the many. Because of all this, it is surprising and shocking that the great rabbi in his generation, the pious gaon, our master the rabbi Rabbi Moshe Isserles, who composed a specific book concerning the laws of *isur ve-heter* and called it *Torat ḥatat*….When we studied together in the yeshiva of the great gaon, our master the rabbi, Rabbi Shalom Shakhna of blessed memory, and heard from his mouth the *Sha'arim of Dura*, we, his students, begged him repeatedly to compose and compile together all the laws of *isur ve-heter* in a correct order, and he refused our request, no doubt for the reason I've mentioned" (note the orality implied in "when we heard from his mouth the *Sha'arim of Dura*").

מכל זה התימה ופלא מן הרב המופלא בדורו החסיד הגאון מהר"ר משה איס"רלש ז"ל אשר חיבר introduction ,*Vikuaḥ* see והיתר וקראו תורת חטאת ולא שת לבו לכל הדברים האלה, ספר מיוחד על דיני איסור

beginning to seem not like two Torahs,[470] but – worse – like a multitude of Torahs. This was, in Rabbi Karo's opinion, the reason why his code was so desperately needed. Rabbi Ḥayim, in contrast, did not see any problem with such multiplicity; to use parlance from digital technology, it was not a bug, but a feature of the system, not something to be overcome, but a dynamic to be perpetuated.

This mode of organizing was thus far from a default; Rabbi Ḥayim presented it as a deeply entrenched scholarly practice with profound ideological meaning. *Sha'arei Dura* was incomplete because it was but one part of a larger world of study, it was eclectic and inconsistent because it was not meant to be published independently, but used personally. The entire enterprise of *Torat hatat* was therefore wrongheaded: "I have no doubt," Rabbi Ḥayim wrote: "…that the earlier authorities also had the capacity to compile specific books that include all the laws of *Isur ve-heter* and to remove the stumbling block, as this rabbi [Isserles] did, and even more than he did." Rabbi Isserles should not think that he is the first authority capable of creating a clearer *Sha'arei Dura*. His predecessors, however, "… did not consider this a removal of the stumbling blocks but, on the contrary, the source of much stumbling, as I have explained ... therefore, they relied on the glosses...." It was preferable to retain the halakhic text with its contradictions that arose as a result of the many layers of different glosses than to synthesize or introduce organizational interventions.[471]

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[470] See introduction to *Bet Yosef*; Rabbi Karo wrote that, because of the long duration of the diaspora, the halakha has been "emptied from vessel to vessel" רוקנו מכלי אל כלי so often as to result in a situation where "the Torah is not only turned into two Torahs, but into a multitude of Torahs because of the many books in existence that explain its laws and rules." כי לא נעשית התורה כב' תורות אלא כתורות אין מספר, לסבת רוב הספרים הנמצאים בביאור משפטיה ודיניה. The origins of this phrase are in the Babylonian Talmud, Tractate *Sanhedrin* 88: "Ever since the students of Hillel and Shamai multiplied, who did not do their full service as students, the disagreements have multiplied in Israel and the Torah has become like two Torahs."

[471] See *Vikuaḥ*, 1b. ואין ספק אצלי שגם לראשונים היה לב לחבר ספרים מיוחדים הכוללים כל דיני או"ה ולהסיר המכשלה כמו שעשה רב ז"ל ויותר ממנו. אבל לא חשבו זה להסרת המכשול רק לגורם מכשול כאשר בארתי....לכך היו סומכים

Rabbi Ḥayim viewed Rabbi Isserles' work in unifying the disparate, personal patchwork of transmissions in the spirit of the *Shulḥan Arukh*, instead of simply adding glosses as ashkenazic scholars had done for centuries, as not merely writing a different kind of book, but as betraying the entire ashkenazic approach to halakha. Moreover, printing *Torat hatat* instead of copying it in manuscript rendered the work inexcusably public and accessible. "And therefore, it appears that the Rabbi [Isserles] has not done well by placing in his book all the issues of the teachings of *isur ve-heter* in the open and public for any reader, and even worse, that he has added short signs to them and printed them..."[472] The betrayal targeted the entire scholarly culture in the transition from personal manuscript compilations to something more akin to a code – a complete, unified, conclusive, and public work aimed at an impersonal, universal audience. This, however, was only the first step. More radical reorganizations were yet to come.

### 6. ORDER AND REASONING: CUSTOM AND COMPILATIONS vs CALCULUS AND CODES

The more drastic change took place when Rabbi Isserles moved the locus of his scholarship on *isur ve-heter* away from the framework of *Sha'arei Dura* entirely and arranged his writings according to the *Shulḥan Arukh*. He did this in stages, first by his glosses *Darkhei Moshe* (Ways of Moshe), which were originally created for the *Arba Turim*. The *Arba Turim*, which presented a comprehensive code of all areas of Jewish

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על ההגהות....ואם לפעמים יבואו בהגהות ב' דברים המתנגדי' זה לזה ואי אפשר שיהיו שניהם ע"פ הלכה. זה היה יותר טוב בעיניהם ממה שיכריעו...ולכך ראו להניח שני הדעות לפני הרב המורה והוא יבחר כאשר יורו לו מן השמים. כי אליו נתנה התורה רשות להורות כי אין מכריחים את האדם לקבל דעתו כי דידני או"ה אינו כשאר איסורי' כמו שכתבתי לעיל.

[472] Ibid.

גם דעתו של אדם אינו שוה עליו בכל עת ובאולי לא היה דעתו נוטה להורות בה כמו שהורה בה אתמול ואין בזה שום השתנות או חסרון לומר שנעשית התורה ע"יי כב' תורות חלילה- אלא אדרבה, כך דרכה של תורה ואלו ואלו דברי אלקים חיים. ולפי זה נמצא כי לא יפה כיון הרב ז"ל מה שנתן בספר כל ענייני הוראת או"ה גלוי ומפורסם לכל קורא בספר ויותר מזה מה שהוסיף לתת בהם עוד סימנים קצרים ונתנם בדפוס....

law, was divided into four volumes. In the process of working on *Darkei Moshe*, Rabbi

Isserles was confronted with Rabbi Karo's *Bet Yosef*, which was likewise a gloss on the

*Arba Turim* and very similar to Rabbi Isserles' work. Rabbi Karo used *Arba Turim* as

the basis for his code, which he divided into corresponding volumes by the same name.

*Yoreh de'ah*, the volume on *isur ve-heter*, was printed in 1550-1551. Since *Bet Yosef*

had already begun to be printed before Rabbi Isserles finished his gloss, he turned his

own work into glosses on Rabbi Karo's gloss. [473]  The following stage were his glosses

on *Shulḥan Arukh*, which Rabbi Isserles called the *Mapah*, the proverbial tablecloth for

Rabbi Karo's "set table."[474] The division and organization of all the above works thus

basically follows the same structure, since they are all either glosses of the *Arba Turim*,

summaries thereof, or glosses of those summaries.

Any given section of the *Shulḥan Arukh* breaks down a larger legal topic into

its constituent subsections. On every such subsection, Rabbi Karo combines the

opinions of Rabbi Asher ben Yeḥiel from his son's *Arba Turim*, Maimonides'

codification of Jewish law, *Mishne Torah*, and Rabbi Yizhak Alfasi's summary of the

laws in the Talmud, often adding other material. Rabbi Karo then determines the law

based on these. Rabbi Isserles added his glosses where he considered it necessary.

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[473] Rabbi Isserles wrote that he had started writing his gloss directly on the *Arba Turim*, but he changed it to a gloss on *Bet Yosef* once he was made aware of the latter work, as there was so much overlap. From his wordplay on the book of Esther in the introduction, it appears that he was made aware of Rabbi Karo's volume with the laws of *isur ve-heter* just as he began to write his own volume on these laws:  ובהגיע טור אסתר ר "ל איסור והיתר, והתחלתי הלחות הלחות חלה, אחזני פלצות ולבשני חלחלה, בשמעי...וחיבר ספר בית יוסף... "And when the turn of Esther came…" [Esther 2:15] is misspelled as "when the *Tur* of Esther," "the volume of *Arba Turim* dealing with *isur ve-heter* came.

See introduction in Isserles, *Darkhei Moshe ha-shalem*, vol. Ḥoshen mishpat, ed. Ḥayim Shlomo Rozenthal (Jerusalem: Makhon Yerushalaim, 1979), 36.
First printed in Sulzbach, 1692 – only one volume, and an abridged version on *Arba Turim* in Berlin, 1702 (many of Rabbi Isserles' glosses from *Darkhei Moshe* were mentioned in the gloss of his student, Rabbi Yehoshua Falk, the author of the gloss *Meirat einayim* (Enlightening the eyes), first printed with *Arba Turim* and *Bet Yosef* (Lublin, 1635-38).

[474] The first volume was printed in Cracow, 1571. In Cracow, 1578-1580 all four volumes were printed.

Sometimes the glosses affirm the law; at other times, they note distinctions between the law and ashkenazic opinions, and then provide a legal conclusion. Rabbi Karo included many sources from *Sha'arei Dura* in his *Bet Yosef*.[475] Rabbi Isserles' *Darkhei Moshe* inserted much additional material from *Sha'arei Dura* and other related ashkenazic works. As a result, *Sha'arei Dura* was, in fact, represented quite seriously in *Shulḥan Arukh*. Although these writings used sources from *Sha'arei Dura*, their organizational scheme followed the order of the *Arba Turim*. Whereas in *Torat ḥatat*, Rabbi Isserles followed the order of the sections in *Sha'arei Dura*, thus preserving the connection to the older work, his glosses in *Darkhei Moshe* and *Mapah* completely followed the order of the *Arba Turim* and *Shulḥan Arukh*.

Rather than adding all the sections of *Sha'arei Dura* into the other code as one big cluster, Rabbi Karo and Rabbi Isserles took *Sha'arei Dura* apart and integrated its parts into the *Arba Turim*. Moreover, the individual sections as they appear in *Sha'arei Dura* were not kept intact. Instead, components from the sections were separated and placed in their relevant places in the code. The entire volume *Yoreh de'ah* of *Bet Yosef* contains almost seventy entries from *Sha'arei Dura*, a relatively large amount to import from one source. They are, however, spread out over twenty-four different sections of *Yoreh de'ah*, adopting the order of the code. Even within individual sections of *Bet Yosef* that featured many entries from *Sha'arei Dura*, the parts were all woven into different places of that section, thus losing their original form. Section 69, the part that deals with salting meat, for instance, includes more than seventeen entries that have

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[475] See also Dvileiẓky, "Introduction," Düren, *Sha'arei Dura*, ed. Dvileiẓky, 18n107, which shows that both Rabbi Karo and Rabbi Isserles had ms. copies of *Sha'arei Dura* when writing, but Rabbi Karo probably did not have the laws of *niddah* because he does not mention them in *Bet Yosef*; Rabbi Isserles, however, did, and he mentions it repeatedly. The first printing of the laws of *niddah* was in Venice, 1548; by then Rabbi Karo had finished with *Bet Yosef* on *niddah*.

their source in *Sha'arei Dura*, but they appear in ten different subsections of §69, based on their place according to the *Arba Turim*, not their original order. Rabbi Isserles added more than 160 entries from *Sha'arei Dura*, but because the gloss was following a codified work, these entries were separated and rearranged according the order of the code.[476]

This kind of reorganization ultimately destroyed *Sha'arei Dura*. With *Torat ḥatat*, Rabbi Isserles had already taken the *Sha'arei Dura* one step away from being a compilation by homogenizing and summarizing it and resolving internal contradictions, thus creating a more stable and universally applicable work. When *Torat ḥatat'*s contents were adapted to the *Shulḥan Arukh*, which was published with *Mapah* toward the end of the sixteenth century, the traditional corpus was effectively transformed into a codification. Placing these glosses in the order of a code rather than a compilation challenged the ashkenazic halakhic culture, jolting approaches to authority, law, and tradition, and opening new possibilities of reasoning with halakhic texts.

The differences between the organization of the laws of *isur ve-heter* in *Sha'arei Dura* as opposed to *Arba Turim* are a result of the quintessentially different paradigms of compilations versus codifications. Whereas compilations are eclectic and personal, codes are structured and universal. The sections in *Arba Turim* that deal with *isur ve-heter* are comprehensive, complete, and ordered according to a rational and continuous scheme. Every law is located only in the appropriate place. Similarly, *Shulḥan Arukh*'s

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[476] Rabbi Isserles mentioned in his introduction to *Darkhei Moshe* that he was working on the section of *Isur ve-heter* of *Darkhei Moshe* that was meant to be a gloss on the *Arba Turim*, when he heard about the existence of the *Bet Yosef* and decided to transform his work into a gloss on the latter work. Presumably, prior to this decision, his glosses followed the order of the *Arba Turim* and thus were already ordered according to a code; the *Isur ve-heter* sections were the first ones that he started writing directly as a gloss on the *Bet Yosef*.

organizational scheme was highly structured, with a comprehensive ordering of all the parts of the laws within a rational overarching order. *Sha'arei Dura*, conversely, contained an eclectic combination of sources presented in layered, complex sections that followed one another haphazardly; it included lacunae and sometimes reiterations and overlaps, and neglected to present any final conclusions. On the one hand, the *Shulḥan Arukh* sought to define the main legal conclusion universally by combining and weighing all the opinions and subsequently assigning an appropriate place to any deviations, such as local variations, added stringencies, or reasons for leniency. The *Sha'arei Dura*, on the other hand, which did not aspire to present the law universally, transmitted specific traditions.

The transition entailed reorganizing and subdividing contents of sections from the unstructured *Sha'arei Dura* and placing them in new locations alongside the relevant parts of parallel traditions in *Shulḥan Arukh*. An analysis and comparison of parallel opinions in each section led to the determination of the basic law; at the same time, local deviations or specific stringencies were pointed out. No longer was Rabbi Isserles merely summarizing the conclusions internally, as they emerged from the various sources of *Sha'arei Dura*; he was also integrating these conclusions with those of other traditions and subjecting them to a new organizational paradigm.

Clearly, these distinctions between compilations and codifications are not merely technical varieties of organizing halakhic texts. Organizational practices developed as intimate components embedded in the practices of scholarly cultures in general, and thus they came to represent paradigms of knowledge that reflected deep-seated conceptions of the nature of religious law and the legitimate forms of applying reason to these texts. The undetermined, varied, and personal structure of ashkenazic

manuscript compilations were part and parcel of their mode of studying and determining halakha. The culture of compilations typically follows a reasoning of custom. This approach is flexible in allowing for a multiplicity of localized traditions and ever-shifting texts, but it is more limited, as it lacks the idea of a universal backdrop for halakha where opinions can be weighed against one another and combined. Compilations assess a certain action by whether or not it is backed by a relevant tradition, and it is futile to attempt to overturn or oppose a tradition based on sources and reasoning from outside that particular chain of transmission. Codifications, on the other hand, with their more unified, standardized, and structured mode of organization, reinforced a conception of halakha in which every part of a law has a place relative to the law as a whole and relative to any parallel traditions, from which the conclusion can be drawn. The resulting standard law, applied to all the users of the code, and any additions, deviations, or other opinions were presented as addenda, which were not part of the central body of the code. We can term this the reasoning of codifications, which allows for a kind of halakhic calculus.

This halakhic calculus was precisely the mode of reasoning that Rabbi Isserles famously introduced into the ashkenazic environment. He would determine the basic law apart from the ashkenazic tradition and then conclude how much of the additional traditions were obligatory, permitted, or prohibited, based on a range of considerations. He would weigh such factors as whether the source of a halakha was talmudic or merely a later authority, whether the prohibition was unanimous or if some authorities permitted it, whether it was the minimal requirement or an additional stringency, or whether the situation entailed great monetary loss or was urgent for some other reason. This form of reasoning could be applied to halakhic sources no matter how they are

organized, but it was more easily defensible in the context of a code, which breaks down individual halakhic traditions into modular units, separating and arranging data according to an overall organizational scheme. Smaller excerpts from various traditions thus appear next to one another rather than in their original context, facilitating halakhic reasoning that compares and combines these traditions.

Rabbi Ḥayim's polemic illustrates how alien this mode of reasoning was to ashkenazic halakhic scholarship. He repeatedly criticizes Rabbi Isserles' attempts to permit things that were customarily prohibited,[477] concluding: "Even there where we accept the words of the Rabbi [Isserles], we accept it only in the realm of halakha but not in the realm of custom."[478] Although some of Rabbi Isserles' arguments were acceptable as pure halakhic reasoning, Rabbi Ḥayim drew the line at accepting such ideas where they touched upon custom. This was not an argument for the separation of custom from halakha. On the contrary, it was an argument for the inextricable place of custom as part of halakha. The reasoning of compilations involved a notion of legal authority that viewed law and custom as interconnected. As was noted in the introduction, the ever recurring "and this is the custom," in *Sha'arei Dura*'s many glosses, in fact, sealed the *law* for its successors. The statement that something is "the

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[477] The work circulated in manuscript close to the publication of *Torat ḥatat*, but it was not printed until 1712. The author called it an "epistle" אגרת and gave it its title. The question of how representative this mode of halakhic (un)reasoning is, is not entirely clear. This is the only programmatic statement of this kind. By definition, the more ad-hoc, personal mode of halakhic decision making will leave less textual traces because it is not an a-textual mode. Moshe-Duvid Chechik is preparing an article in which three 16th-century halakhic disagreements between Rabbi Yosef Katz and Rabbi Eliezer of Egypt illustrate these opposing traditions. The former figure, a relative of Rabbis Isserles and Luria, represents the traditional ashkenazic ad-hoc tradition described by Rabbi Ḥayim. It is mainly expressed by a reluctance to engage in all but the simplest halakhic reasoning; Rabbi Katz only checks whether there is a tradition or not and will not dare decide anything if such a tradition cannot be found. I thank Moshe-Duvid for sharing his draft with me.

[478] *Vikuaḥ*, Intro., §10, עַל כֵּן אֲנִי אוֹמֵר כִּי אֲפִילוּ בִּמְקוֹם שֶׁנְּקַבֵּל דִּבְרֵי הָרַב לֹא נְקַבְּלֵם רַק בְּתוֹרַת הֲלָכָה לֹא בְּתוֹרַת הַמִּנְהָג.

custom," far from implying that it was an extra-halakhic customary addition, meant precisely that there was no room for negotiation.

Rabbi Isserles, in contrast, explained that he would be lenient where "it is completely permissible *according to halakha*, *except* that the later authorities were stringent,"[479] clearly designating halakha as one thing and decisions of later authorities as something entirely different and not universally binding. Rabbi Isserles did not invent his form of reasoning; similar ones appear throughout the halakhic tradition.[480] When he apologized for sometimes loosening stringencies, he pointed to both "later authorities and earlier ones who acted thus."[481]Although aware that this approach had precedents, Rabbi Ḥayim considered it unacceptable within the ashkenazic scholarly tradition in his day and age. In Rabbi Ḥayim's opinion, rabbinical decisions concerning stringency or leniency rested entirely on the custom received from predecessors:

> That which he [Rabbi Isserles] wrote, that this we find also among earlier and later authorities that they were lenient when necessary, this does not mean that one can be lenient in every instance because the rabbi did not write a blanket statement that this is a principle.... In that case, we cannot learn [that one may be lenient] from the earlier authorities; for perhaps they only said it there where they said it, but there where they did not say it, they did not say it.[482]

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[479] *Torat ḥatat*, intro (emphasis added). והנה אתנצל עצמי בדבר אחד שלא יחשדני...לפעמים כתבתי להקל בהפסד מרובה...והוא מטעם כי באותן המקומות היה נ"ל כי היתר גמור אליבא דהלכתא רק שהאחרונים ה חמירו

[480] Numerous examples of such "halakhic calculus" can be found, starting in the Talmud: for instance, tractate *Brachot* 9a, which presents a more stringent and a less stringent opinion, followed by the statement that one may rely on the more lenient opinion in case of emergency, or the one mentioned in *Vikuaḥ mayim Ḥayim* in tractate *Niddah* 7b, where the more lenient opinion (of Rabbi Eliezer) is proclaimed: "Rabbi Eliezer is good enough to be relied upon in a time of need." Other principles abound, for example שבות דשבות במקום מצוה או כבוד שבת או צער..., the principle that something will be permitted on the Sabbath if it contains the combination of two elements that are prohibited only rabbinically – as opposed to scripturally – provided that it is an emergency, crucial for the honor of the Sabbath, or necessary for performing a mitzvah, etc.

[481] See *Torat ḥatat*, intro, והנה אתנצל עצמי בדבר אחד שלא יחשדני המעיין והוא כי לפעמים כתבתי להקל בהפסד מרובה או לעני בדבר חשוב או לכבוד שבת ...וכן מצינו בקמאי ובתראי דעבדי הכי.

[482] *Vikuaḥ*, introduction, §11: ומה שכתב שכן מצינו ג"כ בקדמאי ובתראי שהקילו מפני הצורך, לא מפני זה נאמר שיש להקל בכל מקום. שהרי לא כתב הרב בסתם 'כלל הדבר כל מקום שהחמירו בו האחרונים ולא הראשונים יש להקל'. אם כן, גם מדברי הראשונים אין ללמוד, דשמא היכי דאיתמר איתמר, והיכא דלא איתמר, לא איתמר.

Rabbi Ḥayim's view created a situation in which it was almost impossible to overturn halakha determined by custom. He claimed that, even if a stringent approach was instituted knowingly and explicitly because of a temporary lack of practical information, the decision would remain in place forever, even after the lack of information was remedied.[483] He also insisted that exceptions to a stringent tradition, for instance in the case of great monetary loss, could only be instated by the exact same person who instituted the stringency, because only "the mouth who prohibits is the mouth who permits."[484] Similarly, he rejected Rabbi Isserles' argument that one could rely on earlier alternative opinions to be lenient in cases of great monetary loss, contending that those cases did not constitute sufficient precedent for Rabbi Isserles to rule similarly:[485] Their predecessors' decisions applied in their time and place, to the specified degree of monetary loss. As the earlier generations, being pious and much less pampered, probably had higher standards of what constituted "great monetary loss,"[486] Rabbi Ḥayim concluded, they would not have considered Rabbi Isserles' idea of loss sufficiently serious to warrant leniency. Rabbi Ḥayim opposed the possibility of distinguishing halakha from custom; custom was not a separate category; it was the tradition of how scholars were expected to work with halakha, and it left very little room for creating new structures. This is directly opposed to Rabbi Isserles' method of halakhic reasoning, evaluating the halakha separately to determine a "base-line," and

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[483] *Vikuaḥ*, introduction, §12.... מה שמנעו עצמם מכי שלא ידעו הלכה חשיב מנהג. אם כן ה"נ הואיל ומודה שנהגו בו איסור עד היום הזה יש לחוש שחכם אחד קדמון הנהגי להם איסור בדבר ולפחות נהגו בו איסור משום שלא נתברר להם הלכה וזה חשיב מנהג'

[484] See *Vikuaḥ*, introduction, §11. וכתבו גם כן שיש להקל במקום הדחק כי הפה שאסור הוא הפה שהתיר. וכן כל מה שהחמיר הרב המחבר או שאר חכמי דורינו אין בידינו לבטל או אפילו להטיל תנאי בסברתם ולהקל במקום שאמרו האחרונים להחמיר, אפילו בדבר שהיה היתר גמור לבני דורות הראשונים כבר נתחזק הדבר אצלם בודאי איסור כמו שאבאר.

[485] See also Gliksberg and Cassirer, "Halakha and Meta-Halakha," 163-168 on this issue.

[486] *Vikuaḥ*, introduction, §11. לפי שהיו ואפשר ג"כ דטעם הפסד מרובה לא היה שייך רק לדורות הראשונים. יראי חטא ולא היה חסים על ממונם במקום חשש איסור אם לא בהפסד מרובה מאד. אבל עכשיו יש לחוש שאם נתיר הפסד מרובה יבואו להקל אף בהפסד מועט וחששה כזו מצינו הרבה בספר הזה

thus designating the custom as separate from the basic halakha.

In the introduction to *Vikuaḥ mayim Ḥayim*, Rabbi Ḥayim warned: "There are teachers who are presumptuous and want to introduce many steps in the laws of *isur ve-heter*." Those who want to divide the law into many little steps: "… say that everything is according to how that rule or reason is mentioned ... and it seems that this is also the opinion of the Rabbi [Isserles] ... and I have already explained that we do not have the right to distinguish between the different halakhic authorities based on our personal reasoning."[487] Rabbi Isserles' method of reasoning is, in essence, modular. Instead of upholding every traditional transmission wholesale, he separates them into their parts, comparing all the corresponding modules from parallel traditions to determine the halakha, dividing preferred from required, stringency from basic law. He assigns places to the parts that do not fit into the basic halakha by designating different gradations; certain stringencies should be followed unless it is an emergency, while other stringencies are entirely optional, and so on. In addition to being modular, this mode of reasoning is also universal in its aspirations, attempting to combine all the parts of all the different traditions into one larger scheme and defining their relations to one another. The idea of halakha as universal and the modular approach of reasoning was anathema to Rabbi Ḥayim's view. One received certain traditions as a holistic unit, and that was how they remained. The combination of terms "merely" and "a custom," as Rabbi Isserles formulated it,[488] was oxymoronic to him. The fragmentation of the

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[487] *Vikuaḥ*, introduction, §12. ‏ויש מורים זחוחי דעת שרוצים לעשות מדרגות מדרגות בדיני איסור והיתר.‏ ‏ואומרים שהכל לפי מה שמוזכר הדין או סברא ההיא אם בגמרא אם בדברי הפוסקים הקדמונים אם בדברי הפוסקים אחרונים כך‏ ‏יש להקל או להחמיר. ולכאורה נראה שגם דעת הרב כן...וכבר כתבתי שאין בידינו לעשות הפרש בין דברי הפוסקים מסברת‏ ‏נפשינו‏

[488] See, for instance: Isserles, *Torat ḥatat*, §3.1, Galinsky, ed. 11: "and there, too, it is merely a custom.…" ‏וגם שם אינו אלא מנהג‏

general halakhic tradition, followed by the reorganization of the fragments alongside their equivalents from other traditions within a complete and comprehensive scheme allowed Rabbi Isserles to engage in the type of "halakhic calculus" that Rabbi Ḥayim so vehemently opposed.

The traditional ashkenazic approach was facing a challenge not simply from an external work that represented a different stream of halakha, but, rather, from a radically different organizational paradigm and the reasoning method that it invited. With Rabbi Isserles' gloss, this paradigm was no longer an external challenge; it invaded the ashkenazic milieu. Technology reinforced these changes: Printing a code further stabilizes its text, and the need to plan and complete a work before being able successfully to print it as a whole precludes flexibility and encourages systematization. It also served further to universalize halakha by expanding the code's potential audience,[489] the clear organizational structure making it more accessible to audiences who did not receive these laws via personal instruction.

It is clear which form of organization was victorious. As mentioned earlier, *Sha'arei Dura* went from being printed seven times in the sixteenth century[490] to being

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[489] See Davis, "The Reception."

[490] In the16th c: **1**) Cracow, 1534 (Helitz); **2**) Venice, 1547-8 (Franzoni): title page: אמר המגיה...הקרה ה' לפני טופסי' למיניהם שנים. אח' מקלף ישן נושן ועבר בתוכו אחד מהחשובים הקדמונים תקנו בכל מיני נוי ותיקוני' והאחר מצאתי ביד אחד מתלמידי...ר'[שלום] שכנא [ב''ר יוסף מלובלין] הוגה בכתב ידו...וגם הוספתי הגהות....ואולם באותן שנתייחסו אל הגאון מהר''ר ישראל אשכנזי הנקרא ר' איסרלן ז''ל לא שלחתי ידי [לשנות] ...ועוד חיפשתי...אחר כל דין...מקומו בתלמוד או בשאר פוסקי'...מקבלת רבותיו. ועוד דפסנו בסוף הספר כללי קצרי' נכלל בהם...כונת השער כולו **3**)Constantinople, 1553-4 (Heliz), NLI Bibl. index remarks that this is a printed form of another ms. and very different from the Venice version (1547-8); it was printed by one of the Heliz brothers; see Dvileizky, "Introduction," Düren, *Sha'arei Dura*, ed. Dvileizky, ed. 13-14 on the different nature of this edition.; **4**) Venice, 1563-4 (Eliano) includes some glosses of Rabbi Luria but partial and anonymous; **5**) Lublin, 1574-5 (Klonimus b Mordekhai Jaffe) added R Natan Shpira, *Mevo She'arim,* (Entrance to the gates); **6**) Basel, 1599 (Conrad Waldekilch), full glosses of Rabbi Luria, intro. by R Eliyahu Loenz; he calls these *Mekhonot Shlomo*); and **7**) Lublin, 1599.

printed only once in the seventeenth[491] and once more in the eighteenth century.[492] Evidently, subsequent generations, even in Ashkenaz, continued to study the *Sha'arei Dura*'s laws of *isur ve-heter*; they did so, however, not in the context of personal manuscript copies of one of the many versions of the *Sha'arei Dura* nor on the margins of one of the several printed editions of that book. Instead, they studied these laws on the margins of the *Shulḥan Arukh*.

To name several important examples: Rabbi Yehoshua Falk (1555-1614), a student of Rabbi Isserles and Rabbi Luria, published his glosses on both *Tur* and *Bet Yosef* (titled *Drisha* and *Prisha*, Interpretation and commentary), and on *Shulḥan Arukh* (*Sefer meirat einayim*, book that enlightens the eyes). Many of Rabbi Isserles' glosses from *Darkhei Moshe* were first published via Rabbi Falk's gloss, which was printed before *Darkhei Moshe*. The gloss of Rabbi Yoel Sirkis (1561-1640), known as the *Bayit ḥadash* (New home), includes considerable discussion of the laws of *isur ve-heter*, but it was written and printed as a gloss on the *Arba Turim*, and not on *Sha'arei Dura*. His son-in-law, Rabbi David Ha-Levi (1586-1667), wrote his gloss, named *Turei zahav* (Golden pillars), on the *Shulḥan Arukh* (tractate *Yoreh de'ah*, which was published in 1646; the rest followed considerably after his death.)[493] Rabbi Shabtai ben Meir ha-Kohen (1621-1662), married to a great-granddaughter of Rabbi Isserles, wrote his gloss, *Siftei Kohen* (Lips of the priest), on the volume *Yoreh de'ah* of the *Shulḥan Arukh*

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[491] Prague, 1609, *Biur al sefer Sha'arei Dura* (Commentary on the book *Sha'arei Dura* Yosef son of Moshe of Kremnitz).

[492] Jessnitz, 1724 (glosses attributed to Rabbi Mordekhai Yaffe) – two different title pages, see Magda Bendowska, "The 480th Anniversary of Printing the First Jewish Book in Poland" (May 2014, on the website of the Jewish Historical Institute, http://www.jhi.pl/en/blog/2014-05-05-the-480th-anniversary-of-printing-the-first-jewish-book-in-poland). In the 19th c, Zaslaw, 1806; and in the 20th, Varnow, 1940-1 (with R, Freilich's *Sha'arei bina*, Gates of wisdom).

[493] His glosses on *Oraḥ ḥayim* (Way of life) were first printed in *Shulḥan Arukh* (Amsterdam, 1692) printed by Shabbetai Bas.

(it was printed in Cracow, 1646), not on *Sha'arei Dura*. Rabbi Mordekhai Yaffe (c.1530-1612), who studied with Rabbi Isserles, wrote his magnum opus, *Levush* (Garment), on the *Shulḥan Arukh* and *Bet Yosef*; although he did write glosses on *Sha'arei Dura*, he is known for the former work, not the glosses.[494]

What is the significance of the disappearance of *Sha'arei Dura*? Rabbi Isserles' decision to deviate from the tradition of *Sha'arei Dura* by writing *Torat ḥatat*, and, to a much greater degree, his eventual integration of the contents of *Sha'arei Dura* into a codified work, introduced a form of reasoning alien to the typical ashkenazic mode that prevailed in the centuries preceding the *Mapah*. His approach implied the existence of a larger order of halakha within which all the variations have their designated place alongside others and can be calculated as components of a whole. Conclusions that were harder to defend within the old ashkenazic system appeared far more obvious and defensible in the new scheme of things. The contents of *Sha'arei Dura* remained, albeit deeply embedded in hundreds of entries within the structure of the codes. Although the contents survived, the organizational tradition and transmission practices attached to the work did not. An entire culture of study and its specific practices, from its practices of writing and copying to its approaches to religious law and legitimate modes of interpretation, receded. The following case study will trace this transformation in legal reasoning from the organizational paradigm of the compilation to a new organizational pattern.

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[494] Rabbi Yaffe did write a gloss on *Sha'arei Dura*, the source of the glosses that were added to the only 17th-century printing of *Sha'arei Dura*. Not surprisingly, he was a student of Rabbi Luria and, like his teacher, identified with the traditional Ashkenazic camp against the Polish newcomers regarding some of the other battles that raged in his time over the correct practices of study, notably the controversy surrounding the casuistic method called *pilpul*. See Elhanan Reiner, "*Tmurot be-yeshivot Polin*," 60-66. See Lawrence Kaplan, "Rabbi Mordekhai Jaffe and the Evolution of Jewish Culture in Poland in the Sixteenth Century" in *Jewish Thought in the Sixteenth Century*, ed. Bernard Cooperman (Cambridge Mass.: Harvard University Press, 1983), 282-266.

### 7.   CASE STUDY: COOKING vs PRESERVING AND NULLIFICATION IN SIXTY

This case study will consider a set of laws on prohibited meat and its interpretation in *Sha'arei Dura*, and then compare the very same laws in their codified form, as they appear in the *Shulḥan Arukh*. It will show how Rabbi Isserles' attempt at arriving at a more lenient decision regarding meat in certain circumstances evoked considerable opposition from Rabbi Luria – and required serious justification –whereas the next generation of Ashkenazic scholars, even as they were conscious of the contested nature of his decision, accepted Rabbi Isserles' decision in the framework of the code. This illustrates the profound and revolutionary significance of introducing new organizational paradigms into an established scholarly culture and delineates the transition from the medieval ashkenazic world of halakha to the early modern one.

Jewish law prohibits the consumption of blood. Therefore, meat must be rinsed, salted, and then rinsed again before consumption, in order to draw out the blood. [495] If meat is accidentally cooked without salting, opinions differ as to what may be done with it. If the ratio of the prohibited substance (blood) to the permissible substance (whatever it was cooking in) is 1:60, the prohibited substance can be nullified in relation to the permitted one. This is called *bitul be-shishim* or "nullification in sixty." If the quantity of blood is unknown, as in this case, when the blood was still absorbed in the meat before cooking, some authorities will assume that the entire volume of the piece of meat was filled with prohibited blood. Thus, a permissible substance sixty times the volume of the entire piece of meat is required in order to nullify the prohibition. If these

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[495] This is based on the verse in Genesis 9:4, Leviticus 3:17, 7:26-27, and 17:10-12. The blood that remains within the meat called *dam ha-evarim* (blood of the limbs) is not prohibited, only blood that will eventually be drawn out by heating, preserving, salting, roasting, etc.

proportions are present, several authorities, including the Rabbi Asher ben Yeḥiel (or *ROSh*, the father of the fourteenth-century author of *Arba Turim* and the main authority behind the work), permit the entire contents of the dish, including the problematic piece of meat. Others will permit the rest of the contents, but prohibit the problematic piece of meat, "because it has cooked with its blood," and is prohibited for consumption even after "nullification in sixty." In *Sha'arei Dura*, gate two, section two, this is summarized as follows: "...if there is sixty [times the amount], the stew is permitted, however the piece in question is prohibited, as it is cooked in its blood. And there were those who (would have) wanted to permit the piece in question itself.... However, we have the custom to prohibit the piece in question even when there is sixty [times the amount] to nullify it.[496]" Thus, while some traditions permitted the piece of meat, *Sha'arei Dura* concludes that "we have the custom to prohibit."

Generally, prohibited substances "travel" from one body to another by means of heat. Therefore, for instance, if something prohibited is cooked in a pot, the prohibited substance transfers into that pot, which itself becomes unfit for use. Although high temperature is the main form of this transfer, other methods (such as high pressure or acidic substances) may have the same effect. In one case in the Talmud,[497] preserving, too, is compared to cooking, even though no heat is involved. Therefore, one opinion equated preserving with cooking for its (li)ability to transfer prohibited substances from one body to another.

The section of *Sha'arei Dura* adjacent to the one about unsalted meat that was cooked discusses a related question: the law concerning an unsalted piece of meat that

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[496] *Sha'arei Dura*, gate 2 §2.
[497] The Babylonian Talmud tractate *Avodah Zarah,* 33a discusses the use of wine carafes previously used by idolaters.

was left soaking in liquid for more than a period called "*me-et-le-et*" (literally, "from one point in time to the same point in time" [the following day]; twenty-four hours).[498] This soaking renders it "preserved," leading to the following issue: If a piece of meat that was not yet salted, and is thus still filled with prohibited blood, was left to soak for twenty-four hours, the sufficient time to consider it "preserved," is it as though it was cooked in its own blood, and thus prohibited? Moreover, will the principles of "nullifying in sixty" be identical to those for cooked prohibitions, meaning that even if the proportions of prohibited (meat) to permissible substance (soaking water) were favorable,[499] the piece of meat itself would remain prohibited? Following the above conclusion in *Sha'arei Dura* that, "we have the custom to prohibit the piece in question even when there is sixty to annul it," this is indeed the law, and *Sha'arei Dura* prohibits unsalted meat that was left to soak, no matter the proportions.[500]

Surprisingly, Rabbi Isserles, in *Torat ḥatat*, does not arrive at this conclusion.[501] He permits the piece of soaked meat by means of nullification in sixty without any caveats or reservations: "And in any event it seems that the piece itself is also permitted when there is sixty ... and he who is lenient does not transgress [lit. "lose out"]."[502] An inquiry into the reasons for Rabbi Isserles' conclusion leads us back to the previous section, where the bloody meat was cooked, rather than soaked. *Sha'arei Dura* mentioned that some scholars, including *ROSh*, wished to permit the meat by

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[498] There is an opinion that for cold, bland foods this should be three days, not twenty-four hours. See Mordekhai ben Hillel, *Mordekhai* tractate *Beiẓah ch. 2 (Yom Tov) §674*, but not the Ashkenazic tradition via Rabbi Meir Rothenburg.

[499] If the soaking liquid plus any other permissible pieces in the liquid are 60:1 to the volume of the piece.

[500] *Sha'arei Dura* §3.3, Dvileiẓky, ed. 14-15, "Meat that was soaking in water and remained in the water for a full day, our rabbis prohibit it..." בשר ששרו במים ונשתהה במים מעת לעת, רבותינו אוסרין...

[501] *Torat ḥatat* §3.1 ומ"מ נראה דאותה חתיכה ג"כ שרי...כשיש ס' וכדברי מהר"ם

[502] "Does not lose out," in the sense that it is not considered a transgression or a sin (*Sha'arei Dura* §3.3, Dvileiẓky, ed. pp.14-15) ומ"מ נראה דאותה חתיכה גם כן שרי כשיש שישים

nullification, but the work unequivocally concluded that "we have the custom to prohibit" the piece of meat itself, no matter the proportions. The corresponding passage in *Torat ḥatat*, however, contains an unexpected addition: First, Rabbi Isserles summarized the accepted law as reflected in *Sha'arei Dura* and the dominant ashkenazic tradition: "...and if there is [a 60:1 ratio of other substances to meat], the stew is permitted, but the piece in question is prohibited, as it cooked in its blood, and this is the custom."[503] Then Rabbi Isserles adds: "However, the *Bet Yosef* wrote … that if it is on the eve of the Sabbath, one should be lenient concerning this, and … adjudicated plainly that also the piece in question is permitted provided there is sixty."[504] Rabbi Isserles cites *Bet Yosef*, a gloss on a codification by a contemporary rabbi from Safed, and an exotic source in the cultural context of *Sha'arei Dura,* for which the main sources were medieval and ashkenazic.[505] Furthermore, Rabbi Isserles did not merely mention this alternative source; he took the opinions into account in his adjudication: "Therefore, it seems that if it is a time of emergency (*sha'at ha-d'ḥak*), or if there is risk of a great loss, and provided there is [a ratio of] sixty in the stew in relation to the piece, one should be lenient, seeing as ROSh[506] agreed with the words of those who permitted even the piece in question, he is worthy of relying on in the time

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[503] Isserles, *Torat ḥatat* §2.1 כתב ש"ד בשר שהודח ולא נמלח ושמוהו בקדירה צריך ששים כנגד כל החתיכה...ואם יש ששים התבשיל מותר אבל אותה חתיכה אסורה שנתבשלה בדמה, והכי נהוג וכמ"ש מהרא"י בהג' ש"ד וכ"כ או"ה וכן פסק בהגה"ת מיימון בשם סמ"ק.

[504] Isserles, *Torat ḥatat* § 2.1 מיהו, כתב ב"י בשם א"ה דאם הוא בע"ש יש להקל בדבר ובש"ע פסק סתם דגם אותה חתיכה מותר בדאיכא ס', לכן נראה אם הי' שעת הדחק או במקום הפסד מרובה ויש ששים בתבשיל נגד החתיכה יש להקל מאחר שהרא"ש הסכים לדברי המתירים אף אותה חתיכה, כדאי הוא לסמוך עליו בשעת הדחק או במקום הפסד מרובה.

[505] *Orḥat Ḥayim*, a Provençal 13ᵗʰ-c *likut*, can be considered "traditional" and thus Ashkenazic and tosafist in origins (although it is less prominent in the German tradition represented in *Sha'arei Dura*), but Rabbi Isserles cited it by way of *Bet Yosef.* It does not come up in *Sha'arei Dura*'s glosses.

[506] Rabbi Asher ben Yeḥiel in *Piskei ha-ROSh* (Laws of Rabbi Asher) in *Ḥulin* and as paraphrased in the *Arba Turim* by his son.

of emergency or if there is risk of a great loss."[507]

Rabbi Isserles permits the piece of meat that was cooked with its own blood, something that *Sha'arei Dura* unequivocally prohibited, attenuating the transgression somewhat by adding that this should only be done in the case of an emergency. In the subsequent section, however, regarding meat that was *soaking* in its own blood for a long period of time, Rabbi Isserles goes a step further and permits the nullification in sixty of the piece of meat without any caveats or reservations: "…the piece itself is also permitted when there is sixty ... and he who is lenient does not transgress."[508]

As we can see, Rabbi Isserles was of the opinion that there was enough halakhic justification to permit even the piece of meat that was cooked. As he could not oppose the decision of *Sha'arei Dura*, however, he permitted it only in cases of emergency. He went a step further regarding meat that was soaked, concluding that nullification permitted the piece unequivocally. The inconsistency between his above-mentioned stance on cooked meat and his opinion on soaked meat was glaringly apparent. Aware of the need to explain himself, Rabbi Isserles did so immediately after concluding that the soaked meat should be allowed:

> And although preserving is equated to cooking, and in the case of cooking we are stringent to prohibit the piece itself, as we saw above, in any case it does not seem to me that he who is lenient here [for preserving] transgresses, because we do not say that preserving is considered cooking for absolutely everything ... and even there [for cooking], it is merely a custom to prohibit the piece in question, and thus one should not be stringent in cases like this....[509]

Rabbi Isserles' approach is double-pronged: First, he argues that soaking and

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[507] Isserles, *Torat Ḥatat* §2.1 כתב ש״ד בשר שהודח ולא נמלח ושמוהו בקדירה צריך ששים כנגד כל החתיכה...ואם יש ששים התבשיל מותר ואבל אותה חתיכה אסורה...והכי נהוג...מיהו כתב ב״י בשם א״ח דאם הוא בע״ש יש להקל בדבר

[508] *Sha'arei Dura* §3.3, Dvileiẓky, ed. pp.14-15. ומ״מ נראה דאותב חתיכה גם כן שרי כשיש שישים

[509] Isserles, *Torat ḥatat* §3.1 ואע״ג דכבוש כמבושל ובמבושל מחמירינן לאסור אותה חתיכה כדלעיל מ״מ נראה דהמיקל בכאן לא הפסיד דלא אמרינן כבוש כמבושל לכל דבר רק שבולע ומפליט אבל אינו מבלבל טעם החתיכה כמו ברוטב וגם שם אינו מנהג לאסור אותה חתיכה ולכן אין להחמיר בכה״ג וכן הוא בהג״ה ש״ד וכן נ״ל.

cooking are not completely similar, and therefore not everything that applies to cooking will automatically apply to soaking. He combines this with a second argument, which is a foundation for the first, namely, that even the prohibition on the cooked meat is not absolute, "it is *merely a custom* to prohibit the piece in question." Combining the two prongs, he concludes that one could permit the piece of meat in the case of *soaking* although, barring an emergency, it remains prohibited if *cooked*.

Rabbi Isserles' first step, – the distinction between cooking and soaking – was achieved by means of two supports: an argument about the nature of cooking versus soaking, and an authoritative source. He argued that cooking and soaking are dissimilar in the degree to which these methods cause blood to circulate and be absorbed throughout the meat, because cooking causes the blood to be absorbed much more intensely than soaking. Therefore, one should be less strict about meat that was soaked with blood than about meat that was cooked with blood. This argument was not waterproof. Beyond this analysis, he also presents a source quoted in *Isur ve-heter ha-arokh*, another traditional Ashkenazic compilation of the laws of kosher foods. The source implied that a medieval Ashkenazic authority, Rabbi Meir Rothenburg, was more lenient with soaking than with cooking.[510] His second step was to claim that the entire basis for stringency, even for cooking, was but a custom, and therefore leniency is warranted. Based on his distinction between cooking and soaking, he applies the

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[510] In some places, this is attributed to other (older) medieval Ashkenazic figures. The rationale was that, as the blood that was drawn out was annulled in the water, it could do no further harm if it returned and was absorbed into the meat. Any blood that remained in the meat would be removed by subsequent salting.

וכתב עוד באסור והיתר הארוך (כלל ב דין ה) "הא דאסרינן בשר ששהה מע"ל במים השיב  *Torat Hatat § 3.1* מוהר"ם דהיינו דווקא כשיש שם מעט מים והרבה בשר דאין ששים במים ובבשר לבטל הדם עכ"ל מוהר"ם...ומכל מקום נראה דאותה חתיכה גם כן שרי כשיש ששים וכדברי מהר"ם.

A similar gloss is also found in the glosses on *Sha'arei Dura* in this section (§3), in Dvileizky ed., 15 הר"ם אומר מה שאוסרים רבותינו הבשר ששהה במים היינו דוקא בבשר הרבה שאין במים כנגד כל החתיכות, אבל אם יש ששים במים כנגד כל החתיכות אז...ולא דמי לחתיכה דלעיל בשער ב' דאסור...

leniency unevenly; he suggests leniency for cooking only in cases of emergency, whereas for soaking, the less extreme method, one could always be lenient.

Unlike Rabbi Ḥayim ben Beẓalel, Rabbi Luria did not write a polemical work against *Torat ḥatat*. Among his own glosses on *Sha'arei Dura*, which remained in manuscript until 1599, there are, however, a handful of critical remarks regarding some of Rabbi Isserles' halakhic conclusions in *Torat ḥatat*. The remarks are quite harsh and often dismissive: "Do not pay heed to...,"[511] is a recurring expression when Rabbi Luria introduces the opinions of his younger colleague, Rabbi Isserles. Rabbi Luria sharply disagreed with Rabbi Isserles' interpretation of nullification of soaked blood: "Rabbi Moshe wrote … that 'he who is lenient does not transgress,'… Do not rely on him to permit a prohibition!"[512]

Rabbi Luria would have none of Rabbi Isserles' argument, on all counts. He expressed his disagreement in his glosses on *Sha'arei Dura*.[513] Rabbi Luria copied

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[511] ...ב תשגיח אל see Rabbi Luria's glosses in *Sha'arei Dura Mekhonot Shlomo* (Basel, 1599); all examples here are excerpts in which he addresses Rabbi Isserles – these are relatively minor remarks alongside broader discussions.

שער ראשון א. בשר שנמלח וכבר הודח...ואח"כ הניחו אותו לבשל בלא הדחה. ואל תשגיח בת"ח שכתב מהר"ם ואל תשגיח כלל בת"ח שכתב ....... .. שער רביעי ו. במה שכתב מהר"ם בת"ח שלו לאסור מיד, עיין בספרי פכ"ה ע"ה...

...שאפי' שהה שיעור מליחה ודעתו נוט' להתיר עד י"ב שעות והכל הבל ורעיון רוח. ש"ל...

ט. אפ"ה בעי ג' פעמים הדחה מן הדם בצלייה כמו במליחה אך אין המנהג כן להדיח ג' פעמים כי עם [!] פעם אחת ואל תשגיח בחדשי' לבקרי' במה שכתב מהר"ם בת"ח שלו כי כתב מנהגים מעצמו בכמה מקומות אשר לא יישרו ש"ל.

...שער שביעי יא. ומה שטעה מר"ם ורצה לתרץ...

דיני ביצים: ומהר"ם כתב בת"ח להקל כדברי המרדכי כבי טעם וראייה ואם היה אומר קבלה היא בידו החרשתי אלא...ש"ל.

דיני ביטול בשר בחלב : ורוב גוברים דמהר"ם בת"ח שלו שחולק על שניהן[א"ז ומהרא"י] וז"ל... עכ"ל ולא דבר נכונה כי לא נהגו לחוש אלא .... ש"ל

[512] Ibid.,. [רמ"א] שוב מצאתי שמהר"ם ז"ל כתב בתורת חטאת שלו שהמיקל לא הפסיד וסמך על הג"ה זו ורצה לחלק בין שרייה לבישול דלא ממש כבישול דמי בלא ראייה אל תסמוך עליו להתיר איסור.

[513] Only those with access to his manuscripts would have known initially about Rabbi Luria's comments in tractate *Ḥulin* of *Yam shel Shlomo* that address Rabbi Isserles, as those, like his glosses on *Sha'arei Dura*, were printed much later. As we have shown in the section on his scholarly practices, however, the people with access to his manuscript were not a negligible group. See *Yam shel Shlomo*, *Ḥulin*, ch. 8, §90 – his remark concerning Rabbi Isserles here is similar but not identical to those in his *Sha'arei Dura* glosses. The additional reasoning here includes some added sources (some of which work against Rabbi Luria's argument, but he dismisses them). The general argument is the same: 1. cooking in blood is prohibited; 2. when the proportions are favorable, our custom is to permit the liquid but

*Sha'arei Dura*'s basic text, but the glosses were his personal selection from older manuscripts, together with his remarks, usually signed with his initials "Sh. L." In the section on meat with blood that was left to soak, Rabbi Luria chooses to copy the source used by Rabbi Isserles in the name of Rabbi Rothenburg to support distinguishing soaking from cooking. Rabbi Luria introduces the quotation as something he "found in a *new Isur ve-heter*,"[514] and he ends the quotation, adding "till here the words of the

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continue to prohibit the piece itself; 3. preserving is equivalent to cooking-> so all the same customs and stringencies should apply.

צ. דין בשר ששרוי במים כ"ד שעות, חשוב כנתבשל בדמו ואסור אפי' לצלייה בפחות מכ"ד שעות אינו נאסר
פסק, כתב במקצת ש"ד אם שכח בשר בשריית מים מן כל הלילה יש מפטפטין לאוסרו,...אך לא שמעתי מרבותינו שהיו
אוסרים וגם אני אין נוהג בה איסור בדיעבד, אפילו אם שהה כל הלילה וגם מעת לעת איני אוסרו ע"כ במקצת שערי דורא (סימן
ג'). מצאתי בנוסחא אחרת, וז"ל בשר ששרה במים, ונשתהא מע"ל רבותינו אוסרים אותו...דלא שייך חידוש כ"א גבי בשר
בחלב, דאי תרו ליה כולא יומא בחלבא שרי וכו' [פסחים מ"ד: שם מדובר בזה ששרוי בבשר וחלב חידוש שמותר - כלומר שבכל
חומר אחר אסור] אבל גבי דם לא...היינו מדאורייתא, דכבוש הרי הוא כמבושל ומשום הכי אין להתיר בצלייה, ואף שנמצא כתוב (הג"שד סי' ג' אות ה')
שמהר"ם (מרוטנבורג) התיר...וכ"כ מהרא"י בשערי' שלו...עוד מ"כ בהג"ה חדשה (שם אות ג') בשם מהר"ם (מרוטנבורג)
ז"ל...אבל אם יש ס' במים נגד כל החתיכות אז הדם שיצא בטל במים כבר ואם חוזר ונבלע בבשר אינו מזיק...ואומר אני שאל
תשגיח בזה, מאחר דשרייתה הוא כבישול, א"כ הוה כנתבשלה בדמה ואין חילוק בין זה לחתיכה שנתבשלה בלא מליחה
שוב מצאתי שמהר"ר משה ז"ל כתב בתורת חטאת שלו (כלל ג' דין א') שהמקיל לא הפסיד, וסמך על הג"ה זו, ורצה
לחלק בין שרייה לבישול דלא ממש כבישול דמי, בלי ראייה, אל תסמוך עליו להתיר, אף שמהר"ם כתב להתיר, לא משגחינן
ביה, כי אפשר מהר"ם (מרוטנבורג, בהג"ה של איסור והיתר הארוך החדש) היה סובר אף בבשר שנתבשל בלי מליחה החתיכה
עצמה מותרת, כמו שכתב הרא"ש תלמידו (סימן מ"ה), ובודאי ממנו קבל, אבל אנו דקיימא לן דאסור בבישול ה"ה הכא בשרייה,
ובפרט שכתב המרדכי (סי' תש"ז) וז"ל: דכבוש כמבושל, וחמור יותר מרותח דצלי, כי הטעם מתפשט בכולו כבישול, אלמא
שאין לחלק בהם.

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[514] It is not entirely clear what Rabbi Luria means by this "new *Isur ve-heter*." The term "*Isur ve-heter*" could be the title of a specific work, such as *Isur ve-heter ha-arokh*, but it was also a generic way of referring to all works on the laws of slaughter and salting, including *Sha'arei Dura*. The "new gloss" in question already existed in the earliest printed *Sha'arei Dura* (it opens with the words הר"ם אומר or הר"י אומר) as well as in the earliest printed *Isur ve-heter ha-arokh* (Ferrara, 1555). In *Sha'arei Dura* (Venice, 1547-8), which Rabbi Isserles used as his base-text for *Torat ḥatat*, the line in question exists, but it is said in the name of Rabbi 'I' instead of Rabbi 'M,' for Meir Rothenburg. This may refer to Rabbi Israel Isserlein, the 15ᵗʰ-century compiler of most of the glosses on *Sha'arei Dura* featured in the printed editions. In any case, Rabbi Isserles was consulting not only the printed edition and some of the manuscripts must have said "Rabbi M," because this is the version in other printed editions.

There is a strong case to make that the "new gloss" in question came from the glosses on *Sha'arei Dura* and not the *Isur ve-heter ha-arokh* because, although all instances preserve the gist of Rabbi Isserles' point, the gloss in *Sha'arei Dura* includes the line ולא דמי לחתיכה דלעיל בשער ב' דאסור (and this is distinct from the piece of meat above which is prohibited), which expresses the point Rabbi Isserles was trying to make more precisely.

This line cannot be found in *Isur ve-heter ha-arokh* (Ferrara, 1555), which was the printed *Isur ve-heter* used by Rabbi Isserles (in a responsum [§132] he writes that he did not yet have a printed *Isur ve-heter ha-arokh* when he was assembling his own glosses *on Isur ve-heter*. When he was assembling his own glosses, he was using only manuscript copies. He may still have consulted the book prior to printing *Torat ḥatat* in 1570).

Rabbi Israel Isserlein's *Lamed-Vav she'arim* (36 gates), in which this 15ᵗʰ-century Rabbi summarizes similar laws, does not contain this gloss. As Dvileiẓky has shown, *Lamed-Vav she'arim* was

*new* gloss."[515] This designation of the source as "new" perhaps implies that he encountered it in printed books rather than in his old manuscripts, thus already rendering it suspect. He then remarks that Rabbi Isserles used this source as support: "…I found that our master, the Rabbi Moshe wrote in his *Torat ḥatat* that 'he who is lenient does not transgress,' and for this he relied on this gloss... Do not rely on him to permit a prohibition!"[516] Thus, the source is discredited and Rabbi Isserles' opinion is somewhat weakened.

He then attacks Rabbi Isserles' analytical attempt to distinguish between cooking and soaking, writing: "And again, I found that our master, the Rabbi Moshe … wanted to distinguish between soaking and cooking with a 'gut-analysis,' saying that it is not truly akin to cooking, without any proof. Do not rely on him to permit a prohibition!"[517] Rabbi Luria dismissed Rabbi Isserles' explanation, terming it a *svarat keres*, literally, an analysis "from his stomach," an expression denoting a baseless and sloppy piece of inquiry.[518] The first prong of Rabbi Isserles' argument, his attempt to present cooking and soaking as fundamentally different, is hanging by a thread.

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a compilation where Rabbi Isserlein barely added any of his own opinions (this he did in his glosses of *Sha'arei Dura* which, as mentioned, became part of the standard printed glosses of this work) and only copied from older sources. A source resembling this one can be found there, meaning that it dates back to before Rabbi Isserlein's time and that he regarded it as authentic. However, that source does not contain the quote that Rabbi Luria designates as "new" here, lending credence to my claim that by "new" he might mean "printed."

The "new gloss" may have been from somewhere else as well. *Bet Yosef* cites it via *Mordekhai* in the name of other medieval Ashkenazic authorities.

[515] See Luria, *Sha'arei Dura* §3, or *Isur ve-heter shel MaharShaL* in *Sha'arei Dura*, Dvileizky, ed. 2: 8 (emphasis added). ויש מתירין כו'. ואנן לא נהיגינן כך דהא כתב מהרא"י דחשוב כמבושל וק"ל. ובאיסור והיתר חדש מצאתי הג"ה וז"ל...עכ"ל ההגה החדשה

[516] Ibid. [רמ"א] שוב מצאתי שמהר"ם ז"ל כתב בתורת חטאת שלו שהמיקל לא הפסיד וסמך על הג"ה זו ורצה לחלק בין שרייה לבישול בסברת הכרס דלא ממש כבישול דמי בלא ראייה אל תסמוך עליו להתיר איסור.

[517] Ibid.

[518] Rabbi Isserles claimed that cooking caused the prohibited substance to be absorbed throughout the whole piece, whereas soaking did not. See *Torat ḥatat§* 3.1 דלא אמרינן כבוש כמבושל ולכל Rabbi Luria refers to this argument in his glosses *Sha'arei Dura* (*Mekhonot Shlomo*, Basel ed., 1599, 5b) דבר רק שבולע ומפליט אבל אינו מבלבל טעם החתיכה כמו ברוטב...ורצה לחלק בין שרייה לבישול בסברת הכרס דלא ממש כבישול דמי בלא ראייה

As a fatal blow, Rabbi Luria zeroed in on the inconsistency in Rabbi Isserles' application of leniency. In the case of cooking, Rabbi Isserles permitted the piece only in extenuating circumstances, whereas for soaking, he allowed the piece unequivocally. Rabbi Luria wrote: "And I say, do not pay heed to this, because it permits a prohibition to the people of Israel, because there is no distinction between soaking and cooking in any way, and since the piece of meat was prohibited *above*, because it cooked in its blood, this is the law *here, too*, and so it is. Sh.L."[519]

Rabbi Luria could see no good reason to distinguish between cooking and soaking, and considered Rabbi Isserles' two-part conclusion, being lenient in once case and less so in the other, faulty. This inconsistency led to the next question; where did Rabbi Isserles derive his permission to be lenient at all? The second prong of Rabbi Isserles' argument was that even the more serious prohibition of refusing to nullify meat that was cooked with blood was "merely a custom," thus warranting leniency. In saying, "and even there [for cooking], it is merely a custom," Rabbi Isserles meant that he saw no strong halakhic basis to prohibit the meat given the necessary ratio, even when it was cooked in its own blood, as this was in accordance with the opinion of many other traditions, including Rabbi Asher ben Yeḥiel. Given the existence of a strong basis to permit it, the *Sha'arei Dura*'s decision to prohibit the meat struck him as a stringency that exceeded basic halakha, and thus was "merely a custom." Rabbi Isserles wrote

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In his glosses on *Sha'arei Dura* (*Mekhonot Shlomo*), 5b, Rabbi Luria adduced proof from elsewhere (*Mordekhai*) that soaking is considered more intense than cooking. He brings this as proof against Rabbi Isserles' attempt to distinguish the two and classify soaking or preserving as less severe. ובפרט שכתב המרדכ"י כבוש כמבושל וחמור מרותח דצלי כי הטעם מתפשט בכולו כמבושל אלמא שאין לחלק ביניהם שלמה לוריא:

[519] *Sha'arei Dura* (*Mekhonot Shlomo*) §2:3, 5b(emphasis added): ואומר אני אל תשגיח בה כי היא מתרת איסור לישראל שאין חילוק בין שרייה לבישול בשום אופן ומאחר דאסרינן לעיל החתיכה לפי שנתבשלה בדמה ה"ה הכא וק"ל ש"ל.

specifically that, if necessary, "*ROSh* is worthy of relying on" [520] to permit the piece of meat cooked in its blood.

Rabbi Luria's vehement rejection of this part of the argument is closely linked with his approach to halakhic texts and their transmission. He knew, of course, that Rabbi Asher ben Yeḥiel held this opinion; it is stated very clearly both in Rabbi Asher's own *Piskei ha-ROSh*, and in his name in his son's *Arba Turim*. Rabbi Luria, however, dismisses these authorities by a counterintuitive move: he reads the lenient opinion of *ROSh* together with the lenient passage from the "new" *Isur ve-heter ha-arokh* regarding soaked meat and turns *ROSh's* opinion into a more lenient approach than even Rabbi Isserles wished to claim: Rabbi Luria suggests that, for all we know, Rabbi Meir of Rothenburg (cited in the "new" *Isur ve-heter ha-arokh*) may have been lenient about the cooked meat. This makes perfect sense, he explains, as *ROSh*, who was explicitly lenient about cooked meat, was a student of Rabbi Rothenburg. He thus adds a second important thirteenth-century rabbi on the side of leniency. If anything, this appears like an argument in Rabbi Isserles favor! For Rabbi Luria, however, this was the perfect way of silencing Rabbi Isserles' claim. He could do so because of their opposing approaches to halakhic reasoning, especially where custom is invoked.

For Rabbi Isserles, the existence of more lenient opinions outside of *Sha'arei Dura* invited him to combine those external lenient opinions with other factors in order to permit leniency even within his own, more stringent tradition. As he wrote, "Even there [in the case of cooking], it is merely a custom to prohibit the piece in question, and therefore one should not be stringent in cases such as this one [soaking]."[521] Thus,

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[520] *Torat ḥatat* §2.1 יש להקל מאחר שהרא"ש הסכים לדברי המתירין אף אותה חתיכה כדאי הוא לסמוך עליו בשעת הדחק או במקום הפסד מרובה.

[521] *Torat ḥatat,§ 3.1*, וגם שם אינו אלא מנהג

even if he would not go so far as to oppose *Sha'arei Dura*'s prohibition head-on, he felt free to permit it in a slightly different permutation, in a case of emergency or in a section slightly further removed. His approach was modular, separating the various elements of halakhic traditions that had been transmitted as homogenous compounds, and combining pieces from different traditions, together with circumstantial factors, to reach a new conclusion. Rabbi Isserles justifies this approach: "...because in those cases it seemed to me that it is entirely permissible according to halakha, except that the later authorities were stringent."[522]

Rabbi Luria, for his part, rejected this calculus of adjudication, regarding the combining of opinions across different traditions as a fallacy. If the tradition dictated stringency regarding cooked meat, and the talmudic principle claimed that "preserved is equated to cooked," there should be no distinctions between anything that was cooked and any equivalent to it. Despite the distinguished pedigree of the lenient source, Rabbi Luria considered it irrelevant to his own (and Rabbi Isserles') tradition, which derived from *Sha'arei Dura*. If *Sha'arei Dura* was stringent regarding the piece of meat when it was cooked with its blood, he wrote, one ought to be equally stringent when it came to soaking meat in its blood, as soaking was equated to cooking. What Isserles meant by "merely a custom" was that the base-line law was to be lenient, as the many other traditions prove. For Rabbi Luria, this knowledge meant nothing. *Sha'arei Dura*'s conclusion that "we have the custom to prohibit it"[523] was final.

*Vikuaḥ mayim Ḥayim* opposed the position that halakha and custom could be

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[522] *Torat ḥatat*, introduction (emphasis added). והנה אתנצל עצמי בדבר אחד שלא יחשדני...לפעמים כתבתי להקל בהפסד מרובה...והוא מטעם כי באותן המקומות היה נ"ל כי היתר גמור אליבא דהלכתא רק שהאחרונים החמירו

[523] *Sha'arei Dura*, §2, in Dvileizky, ed.,12 אמנם אנו נוהגים לאסור

"divided into steps" and gradations by disentangling and separating its components. The fragmentation of the general halakhic tradition, followed by the organization of the fragments alongside their equivalents from other traditions allowed Rabbi Isserles to engage in the type of "halakhic calculus" that Rabbi Ḥayim so vehemently opposed. In the argument about soaking versus cooking, Rabbi Isserles considered that finding alternative traditions that permitted nullifying the blood in cooked meat was one step in his favor. For Rabbi Luria, the fact that this was a lenient, but separate, tradition, meant that it was irrelevant.

Ultimately, Rabbi Isserles' approach prevailed, but, as both *Torat ḥatat* and Rabbi Luria's gloss show, this victory was not yet obvious in the 1570s. Rabbi Isserles had to argue and fight to defend his position. The way in which Rabbi Isserles' view gained the upper hand becomes clear through a comparison of his intense defense of his view in *Torat ḥatat*, which we discussed here, to his argument once these laws were transferred to the *Shulḥan Arukh*. This victory was achieved as part of the broader transition of the scholarly culture to a new organizational field, namely, the *Shulḥan Arukh*. By the end of the sixteenth century, the laws of *Sha'arei Dura* were already embedded in the *Shulḥan Arukh*, according to the order of the latter. Once *Shulḥan Arukh* had replaced the *Sha'arei Dura* as the textual locus for the discussion of these laws, Rabbi Isserles' approach appeared more reasonable than those of Rabbi Luria and Rabbi Ḥayim. To show the mechanics of how the problem disappears, let us return to the most problematic point of Rabbi Isserles' argument: the uneven application of leniency in the case of soaking, but not in the case of cooking.

The structure of a code favors precisely the kind of reasoning used by Rabbi Isserles to permit the soaked meat, but dismissed by Rabbi Luria because the lenient

source belonged to a separate transmission. In this particular case, the separate transmission was even an ashkenazic one, rooted as it was in Rabbi Asher ben Yeḥiel and Rabbi Rothenburg's opinions, but Rabbi Luria still opposed mixing this with their own transmission, sealed as it was with "and this is the custom." Rabbi Isserles did not abandon the idea of an ashkenazic tradition or oppose it head on, accepting the ashkenazic stringency on forbidding the piece of meat if it was cooked. Although he argued for permitting the piece even in that case, he did not consider himself at liberty to permit it. In his view, however, this limitation applied only to the specific case in which the custom was mentioned, but it did not prevent him from permitting the meat in other permutations. The new category of soaking provided the opportunity for him to explain why one should be lenient.

In *Torat ḥatat*, Rabbi Isserles had to invest considerable effort in justifying his modular approach to custom, which is precisely the very point where Rabbi Luria confronted him. Rabbi Luria demolished Rabbi Isserles' argument, writing that it was completely faulty to separate these two cases, which were part of the same amalgam, "…since the piece is prohibited *above* ... this, too, is the law *here* ...."[524] How could Rabbi Isserles claim one thing in one section and another thing in the very next section?! The *Sha'arei Dura,* representing one holistic tradition, made the two sub-laws almost undistinguishable, and Rabbi Luria easily dismissed Rabbi Isserles' less than strong attempt to claim that soaking and cooking were somehow different in nature, deeming it a "*svarat-keres*." However, this contention carried a lot less weight in a different format.

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[524] *Sha'arei Dura,* (*Mekhonot Shlomo*) §2:3, 5b.  אבל אנו דק"ל לאיסור התם – הכא נמי, גבי שרייה.

The laws of cooking and soaking meat in its own blood were discussed in successive paragraphs of a larger discussion in *Sha'arei Dura*, making them harder to separate; Rabbi Luria's rhetoric highlights this ("above ... here"). In the *Shulḥan Arukh*, the law about cooking unsalted meat appears ten subsections away from the discussion of unsalted meat that was soaked, with a host of other topics discussed in between.[525] The *Shulḥan Arukh* deals with soaking many sections and pages later, in §105 on forbidden admixtures, where the case of meat soaking in its own blood is not even mentioned explicitly [see table]. Moreover, the authority of *Sha'arei Dura* diminishes once it is embedded within a much wider range of sources. The traditions of *Sha'arei Dura* transmitted by Rabbi Isserles literally and figuratively shrank in proportion to the main text of the *Shulḥan Arukh*, as his glosses were rendered in smaller type and surrounded by alternative opinions [see table]. What had been the major authority for the ashkenazic halakhic tradition of these laws, in the form of Rabbi Isserles' gloss on *Shulḥan Arukh*, suddenly became one small opinion in a sea of authorities permitting the piece of meat. The organizational act of fragmenting and embedding the laws of *Sha'arei Dura* within a new code thus weakened its hold.

In addition, Rabbi Isserles inserted the ashkenazic traditions into the *Shulḥan Arukh* not by copying and compiling fragments, but by summarizing and concluding. This act of turning heterogeneous opinions into a homogeneous whole was similar to what he had done in *Torat ḥatat*, but to a much higher degree, because it incorporated alternative halakhic traditions. Constricted in *Torat ḥatat* by having to follow *Sha'arei Dura*'s order and its explicit wording, Rabbi Isserles had to present the possibility for

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[525] The laws about cooking unsalted meat are discussed in §69:11, whereas the law about unsalted meat that was soaked for twenty-four hours is mentioned only briefly in Rabbi Isserles' glosses on §69:1.

leniency in the case of unsalted meat as his own opinion: "we have the custom to prohibit…[526] However … it seems to me that if it was a time of dire need or great monetary loss ... one should be lenient"[527] [see table]. Moreover, he faced heavy criticism for suggesting it.

In *Shulḥan Arukh*, on the other hand, Rabbi Isserles summarized the law, streamlining it with the other opinions of that code, which made his interventions almost invisible.[528] In *Shulḥan Arukh*, this very same law is introduced not in *Sha'arei Dura*'s terms, but, instead, with the words of Rabbi Karo: "Meat that was cooked without having been salted, it is necessary for the stew to have sixty times the volume of the meat, and then everything is permitted."[529] As mentioned, this was *ROSh*'s opinion, and it appears as the main opinion in the *Shulḥan Arukh*, which relied to a large extent on the *Arba Turim*, written by Rabbi Asher's son. The gloss of Rabbi Isserles follows in much smaller type, presenting the more stringent ashkenazic tradition of *Sha'arei Dura*: "…there are those who prohibit... and this is the custom *where it is not very urgent*, for example for Sabbath or in honor of guests, in which cases one should rely on those who are lenient."[530] Instead of presenting the *Sha'arei Dura* first as the main authority, and then proposing his own suggestion for leniency separately, as he had done in *Torat ḥatat*, Rabbi Isserles merged his own view on the issue with the general summary and concluded, "this is the custom where it is not very urgent" [see

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[526] *Sha'arei Dura*, §2.

[527] *Torat ḥatat,* §2:1 ...בשר ששהה במי שרייי'...רבותי אוסרי' והכי נהוג. ...מ"מ נראה דהמיקל בכאן לא הפסיד

[528] Rabbi Isserles similarly summarized according to the *Arba Turim* and *Bet Yosef* rather than according to the *Sha'arei Dura* in his glosses on those works. Nonetheless, the *Shulḥan Arukh* is the strongest example of streamlining and summarizing rather than paraphrasing and copying.

[529] *Shulḥan Arukh, Yoreh de'ah*, §69:11, בשר שנתבשל בלא מליחה צריך שיהיה בתבשיל ששים כנגד אותו בשר ואז הכל מותר

[530] *Shulḥan Arukh,* Yoreh de'ah *Mapah*, §69:11 (emphasis added), ויש אוסרים אותה חתיכה אפילו בדאיכא ס' נגד החתיכה...והכי נהוג אם לא לצורך כגון לכבוד שבת או לכבוד אורחים דאז יש לסמוך אדברי המקילין

table].

The same dynamic plays out even more strongly in the discussion of unsalted meat that was left to soak. In *Torat ḥatat*, when Rabbi Isserles was still working within the confines of *Sha'arei Dura*, he ventured merely: "... and even though preserved is like cooked and in the case of cooked one is stringent to prohibit the piece in question as mentioned above, in any case, it seems that whoever is lenient does not lose out."[531] In the *Shulḥan Arukh*, he did not need first to present *Sha'arei Dura* and then phrase his suggestion so hesitantly. The only place where the *Shulḥan Arukh* specifically touches upon this issue is in §69:15, "Meat that is dirty with blood and was soaked in water ... there are those who prohibit it ... unless there is sixty in the liquid versus it [the piece]."[532] In the *Shulḥan Arukh*, there was no opinion at all prohibiting the piece itself. In his glosses, Rabbi Isserles simply did not mention the prohibiting tradition of *Sha'arei Dura*, thus circumventing the need for him to explain his argument in favor of leniency. By not bringing up the issue that evoked Rabbi Luria's censure, the entire issue was effaced from the *Shulḥan Arukh* [see table].

This omission, or rather, this act of "glossing over," was noticed by one of the Ashkenazic scholars of the next generation, Rabbi David Ha-Levi, author of the *Turei zahav*. He reintroduces it into the discussion in his gloss on the *Shulḥan Arukh*, writing: "This implies that [nullification in] sixty does function here; previously, in subsection §69.11, Rabbi Isserles concluded that there are those who prohibit the piece itself – and shouldn't it be the case that here, since it is preserved [by soaking], then it is as though

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[531] *Torat ḥatat* §3:1.
[532] *Shulḥan Arukh, Yoreh de'ah* §69:15, בשר המלוכלך בדמים שנשרה במים מע"ל יש אוסרים לאכלו כי אם צלי אא"כ יש במים ס' כנגדו (רמא: עיין ס"ק נ"ו) ויש אוסרים אפילו לצלי והכי נהוג

it were cooked...?!”[533] Rabbi Ha-Levi then provided the necessary background information, explaining that Rabbi Isserles addressed this issue in *Torat ḥatat*, where he claimed that cooking and soaking were profoundly distinct. The *Turei zahav* also mentioned Rabbi Luria's rejection of Rabbi Isserles without providing any convincing defense of Rabbi Isserles. Although it would seem that Rabbi Isserles' opinion was not accepted even in the new configuration, the conclusion in *Turei zahav* sides with Rabbi Isserles: “And it seems that we should rely on the ruling of Rabbi Isserles to be lenient in this.”[534] The paradigm had fully shifted and Rabbi Isserles won the day.

Rabbi Isserles' *Mapah* was his attempt at preserving the traditional ashkenazic halakhic rulings, previously transmitted by means of personal manuscript compilations or *likutim*. The religious beliefs, learned practices, and the overarching halakhic approach that these compilations reflected, however, are obliterated when inserted into the code. Rabbi Luria, perhaps underestimating the immense advantage that print technology gave to codification, continued to work on his own project to rescue ashkenazic halakha, while his scholarly practices remained unchanged. His opposition to Rabbi Isserles was registered in his glosses, the so-called “*Isur ve-heter* of Rabbi Luria,” a typical personal compilation copied among students and colleagues. Rabbi

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[533] Rabbi David ha-Levi's glosses on the *Yoreh de'ah* were the only ones printed during the author's lifetime (Lublin, 1646); they are considered “the part of the *TaZ* [*Turei zahav*] that is most important and popular with scholars,” and it is with this part that “he achieved eternal fame in the field of halakhic literature and teaching” (Rabbi Y.L. Ha-Kohen Maimon, “H*a-Shulḥan Arukh ve-nose'i keilav*” (The Shulḥan Arukh and its glosses) in *Rabbi Yosef Karo: Kovez* (Rabbi Yosef Karo: Compilation), ed. Yiẓhak Refael [Jerusalem: Mosad ha-Rav Kook, 1969], 55). Concerning the printing of Rabbi David ha-Levi's glosses, see Tchernowitz, *Toldot ha-poskim*, 3:138-158, as well as Elon, *Mishpat Ivri* (Jewish Law) (Jerusalem: Magnes, 1978), 2: 1187 and articles by Rabbi Maimon and Rabbi Reuven Margaliot in *Rabbi Yosef Karo: Kovez*, 42-63 ; 89-100.
*Shulḥan Arukh, Yoreh de'ah* §69:15 Taz,

ד"ה: אא"כ יש במים ס' כנגדו. הא דמהני כאן ס' ולעיל סעיף י"א מסיק רמ"א דיש אוסרין אותה חתיכה, והלא כאן
..דהוא כבוש הרי הוא כמבושל דלעיל חילק רמ"א בת"ח דמ"מ לא הוי ממש שרייה כבישול ורש"יל חולק ע"ז

[534] *Shulḥan Arukh Yoreh de'ah,* §69:15 Taz,

דלעיל חילק רמ"א בת"ח דמ"מ לא הוי ממש שרייה כבישול ורש"יל חולק ע"ז...ונראה דיש לסמוך להקל כפסק רמ"א בזה

Ḥayim ben Beẓalel provides the most explicit expression of this fear of the threat of codification. The target of *Vikuaḥ mayim Ḥayim* was not just *Torat ḥatat* but the organizational threat inherent in a printed code, which privileged a different kind of halakhic logic.

### 8.  THE DISAPPEARANCE OF *SHA'AREI DURA*: THE NEW ORDER OF HALAKHIC BOOKS

Rabbi Isserles' many leniencies were noted by Chayim Tchernowitz,[535] the first historian to devote considerable attention to the *Shulḥan Arukh* as a chapter in Jewish intellectual history. Tchernowitz, however, limited the issue of Rabbi Isserles' halakhic leniency to musings about his personality, reiterating time and again that, for Rabbi Isserles, "the force of leniency was preferable,"[536] and that he was very considerate of "life" and of "changes in life,"[537] in contrast to the difficult and unpopular Rabbi Luria.[538] Yona Ben-Sasson made an attempt to reconstruct Rabbi Isserles' worldview, mainly on the basis of the latter's mystical work *Torat ha-olah* (Law of the offering). He links Rabbi Isserles' understanding of concepts such as the universe and the commandments to his practical halakhic decisions, [539] wondering, "What impression does the thought of Rema [Rabbi Isserles] make on the foundations of his halakhic

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[535] He expressed surprise at the traditional image of Rabbi Isserles as a stringent figure: "This is wondrous, why was Rema considered stringent among us, while, in reality, it is only thanks to him that we arrived at great leniencies…!?" (Tchernowitz, *Toldot ha-poskim,* 3: 67).

[536] כוחא דהיתרא עדיף A talmudic expression that appears, for instance. in Tractate *Brachot* 60a.

[537] See, for instance, Tchernowitz, *Toldot ha-poskim,* 3: 67, where he notes: ועוד הרבה היתרים הניח לנו הרמ"א בהלכות שבת ובשארי הלכות, שערכן רב ביחס אל החיים...ובכלל היה הרמ"א משים לב הרבה להשתנות החיים, לשנות בשביל זה את ההלכה.

[538] תקיפות דעתו...לא היה מקובל ומרוצה על בני דורו...גם תלמידיו 3:87 *Tchernowitz, Toldot ha-poskim,* מרדו בו...etc.

[539] He recognizes that synthesizing a rabbi's philosophical ideas with his halakhic decisions is problematic and that it can be understood only by means of "analysis and induction" (Ben-Sasson, *Mishnato*, 252-4).

system?"[540] He concludes that the principle of leniency "… teaches us about the attention to the ethical element of caring about the unfortunate one who is suffering."[541]

In his foundational article on the urban community in Poland, Elhanan Reiner considers Rabbi Isserles' decision-making a reflection of communal change – the new Jewish community's immense growth and its transition from a monolithic economy to a multi-tiered one required new legal tools. Rabbi Isserles carefully used concepts such as 'great loss' to adapt the halakha to the changed situation without defying or changing the halakhic canon outright. The change in question was not merely socio-economic. As the size, occupational makeup, and legal status of the communities changed, "…the community lost its sacral status. … it was, instead, understood as, first and foremost, a social and economic entity. As a result, the ashkenazic zealotry for custom and tradition consistently disintegrated in the sixteenth century...."[542] Reiner attributes Rabbi Isserles' revolutionary decisions to this shift; he was the first influential rabbi to subscribe to this new understanding of a community and adjust his halakhic thought accordingly, and "… behind his decisions there is also a new approach to the notion of 'community' and of the ashkenazic-Polish environment in which he functioned."[543]

Tchernowitz's characterization of Rabbi Isserles as someone who preferred "life" and the power of leniency, and Reiner's insight that the social and economic

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[540] He writes as follows: "'great loss' – a principle of leniency. In many of the decisions of the Rema, the tendency to be lenient can clearly be distinguished, especially in consideration of the privations of man and his needs …. As a philosophical source for this principle of adjudication – and other instances of leniency – we can use the consideration Rema took for the fate of man in his philosophy of ethics" (ibid, 252).

[541] Ibid, 272-3 ניתן להביא להם אסמכתאות מתחום העיון: ...ואילו ההתחשבות ב'הפסד מרובה' מלמדת על החשבה הסובל של האלמנט המוסרי של דאגה לנפסד

[542] Elhanan Reiner, "Aliyat ha-kehila ha-gedola: Al shorshe ha-kehila hayehudit ha-ironit be-Polin ba-et ha-ḥadasha ha-mukdemet" (The rise of the big community: On the roots of the Jewish community in Poland in the early modern period"), *Gal-ed* 20 (2006), 30.

[543] Ibid, 30-1.

reality on the ground may have influenced the conceptions behind his decision-making are both important points. Even Ben-Sasson's attempt to connect this to ethics may be defensible. These explanations go a long way in explaining why Rabbi Isserles may have wanted to be lenient. However, we need to consider an element beyond his philosophy or personality in order to gain an understanding of why and how he succeeded in boldly carrying out his vision and why his opinion was accepted – that is, the organization of knowledge, the changing paradigms of organizing halakhic texts, and, as a result, the field of interpretational possibilities within which the halakhist operated. He was not the first to consider monetary damage, but he was the first in his tradition operating in a new halakhic playing field with a new culture of knowledge that he helped create. This new organizational field allowed him to be lenient where predecessors would be hard-pressed to do the same – indeed where he, himself, faced forceful opposition.

Some technologies are a better fit for certain organizational models and thereby privilege certain cultures of knowledge, whereas others better fit a different model. These variations are not immutable, and they are often minor; a scholarly culture can often adapt to changes without any profound impact on its intellectual practices and conceptual world. In some cases, however, a technology is so antithetical to the entire scholarly culture and its practices of transmission and organization that transmission according to these practices becomes almost untenable, and change becomes inevitable. Ashkenaz in the early modern period was such a case. Compilations embodied their study methods throughout the post-tosafist period – textually, materially, and in their form of reasoning. Rabbi Shlomo Luria continued to use compilatory practices throughout his life and, although his *Yam shel Shlomo* can be seen as his own attempt

to rescue ashkenazic halakha by reorganization, in his glosses on *Sha'arei Dura* we see that, at the level of adjudication concerning *isur ve-heter*, his approach was traditional and his logic was holistic. Perhaps his failure to adapt to print-practices caused *Yam shel Shlomo* never to achieve the effect he hoped it would. Moreover, a much more print-appropriate alternative paradigm, the code, was already waiting in the wings and starting to take over.

Print favored codification rather than compilation primarily because it facilitated textual stability and dissemination to an impersonal audience. Print also introduced the printed codes from other traditions into the ashkenazic realm. These two elements reinforced one another. By the end of the sixteenth century, the clash between the old and new methods of text production and the different paradigms of organization that each reflected, reached a point where the format that had characterized scholarly culture in Ashkenaz ever since the fourteenth century had, for the most part, become obsolete. As I have pointed out, *Sha'arei Dura* was printed often in the sixteenth century, but the challenges of printing such an individualized and flexible work are reflected in the state of the different editions. By the end of the century, when Rabbi Isserles had adopted and adapted the *Shulḥan Arukh* for Ashkenaz, printed codes dominated the ashkenazic landscape. At that point, printing of *Sha'arei Dura* basically ceased. While its laws were preserved in the glosses, they were sublimated into the *Shulḥan Arukh* and its codification. As a result, everything that *Sha'arei Dura* used to represent wound up disappearing, together with the work itself.

Rabbi Yeshaya Horowitz,[544] who was born in the mid-sixteenth century,

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[544] ca. 1555-1630, also known as the *ShLA* (the acronym for his *Sh*nei *L*uhot h*A*-brit),.

describes the conflict between Rabbi Luria and Rabbi Isserles, and the latter's victory, as caused by divine intervention: "every one of them composed and arranged an *Isur ve-heter*, and sometimes they disagree. And the nature of the *gaon* Rabbi Isserles of blessed memory has been broadcast, so that we follow his opinion, and certainly he merited this from heaven, just like the law was adjudicated according to Bet Hillel[545] even though Bet Shamai was more astute."[546]

Rabbi Horowitz emphasizes that not only was Rabbi Luria the superior intellect, but also he had the last word, thus according him the status of the "*batra'i,*" the later authority: "Thus was the story: students of …Rabbi Luria … copied his *Isur ve-heter* and brought it to Rabbi Isserles when he wrote his *Torat ḥatat* … and then *Torat ḥatat* came into the hands of Rabbi Luria, and he wrote what he wrote in his *Isur ve-heter*. It follows from here that Rabbi Luria is the *batra'i*…."[547] Although Rabbi Luria had the last word in the realm of manuscript copies and glosses, Rabbi Horowitz concludes, "In any event, I already said that in the diasporas of Israel it already had been spread that outside the land of Israel, in the kingdom of Poland and Bohemia and Moravia and Germany, one adjudicates according to Rabbi Isserles."[548] Rabbi Horowitz's implied

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[545] Babylonian Talmud, tractate *Yevamot* 14a. Bet (the house of) Hillel and Beit (the house of) Shamai are two schools of interpretation in the talmudic tradition from the first century CE, each named after its leader, Hillel and Shamai. The former is usually characterized as a figure who is more tolerant and considerate of human needs, whereas the latter rabbi is seen as a harsher, more intellectual and religiously zealous figure who tends to be more stringent. The Talmudic decision was that one should follow Bet Hillel, although some maintained that in some messianic future, this will be reversed.

[546] Yeshaya Horowitz, *Shnei Luḥot ha-brit* (Two tablets of the covenant) (Amsterdam, 1698), 74b. (3rd ed.) כל אחד מהם חיבר וסידר איסור והיתר וכמה פעמים הם מחולקים. וכבר יצא טבעו של הגאון מהרמ"א ז"ל See לילך אחריו ולפסוק כמוהו ובודאי מן השמים זכה לזה כמו שנפסק הלכתא כבית הלל אף על גב דבית שמאי הוי חריפי. introduction to *Torat ha-olah*, (Tel-Aviv: Yeshivat ḥidushei ha-Rim,1992).

[547] Horowitz, *Shnei Luḥot ha-brit* 74b איסור העתיקו ז"ל מהרש"ל הגאון של תלמידים :המעשה היה כן כי והיתר שלו והביאו אותו ליד מהרמ"א ז"ל כשחיבר התורת חטאת, על כן הביא כמה פעמים איסור והיתר של הגאון מהרש"ל ז"ל ומשיב עליו ואחר כך בא התורת חטאת ליד הגאון מהרש"ל ז"ל וכתב מהרש"ל ז"ל באיסור והיתר שלו מה שכתב. נמצא שזה הגאון מהרש"ל ז"ל הוא בתראי.

[548] Horowitz, *Shnei Luḥot ha-brit* 74b אבל כבר אמרתי שכבר נתפשט בתפוצת ישראל שבחוצה לארץ במלכות פולנייא ופיהם ומעהרין ואשכנז לפסוק כהגאון מהרמ"א ז"ל.

statement that Rabbi Isserles' opinion was in fact inferior was obscured by his conclusion that this must have been decreed by God. However, Rabbi Horowitz still recommended that people adopt Rabbi Luria's more stringent opinions, "… it is appropriate for every person to rule in his own home[549] and sanctify himself and be stringent to prohibit for himself everything that either of them prohibits, even if he is lenient towards others in halakhic decision, he should be stringent for himself according to custom."[550]

Even while advocating for the stricter interpretation, he relegates these not to basic required halakha adjudicated for everyone, but to a supererogatory stringent field, which every individual is free to take or leave "according to custom." Thus, even for those who maintained strong connections to the ashkenazic traditions and encouraged the adoption of its stringent opinions, the paradigm shift in which custom was separated from the legal realm had prevailed.

Rabbi Horowitz resorts to a *deus ex machina* to justify Rabbi Isserles' unwarranted victory, attributing it to divine intervention, "merited from heaven." This revolution would never have come about if it were not for the combination of several cultural, social, and intellectual changes. These changes were the perfect accomplice to the paradigm of the code: Rabbi Horowitz uses the expression "*yaẓa tiv'o*," 'meaning, "the nature of the *gaon* Rabbi Isserles of blessed memory has been broadcast." The word *tiv'o*, (from *teva,* nature) means "his nature has come out,"[551] but also connotes

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[549] Esther 1:22.

[550] Horowitz, *Shnei Luḥot*, 74b אבל מ"מ ראוי להיות כל איש שורר בביתו להתקדש ולהחמיר לאסור לעצמו הן מה שאוסר זה והן מה שאוסר אף שמיקל לאחריני בהוראה לפי המנהג יחמיר לעצמו.

[551] Babylonian Talmud, tractate *Avodah Zarah* 2b in the sense of being known and 52b in the sense of coins. Some also relate this reference to coins to the Hebrew expression "*monitin,"* which means a reputation, and to its relation to coins (from the Greek *moneta*).

coins that are circulated widely (*matbe'ah – tivo)* and therefore accepted as standardized currency. Perhaps, via this mention of coining or embossing (*tvi'yah*) something that circulates broadly in a standardized manner, it is not a stretch to say that Rabbi Isserles' battle was won by means of imprinting and disseminating his writings and that the *deus*, here, is, in fact, the *machina.*

## 9.    APPENDIX: TABLE

The appended table shows the implications of a shift in organizational paradigm from an eclectic, heterogeneous, personal, and idiosyncratically organized compilation of holistic units to a modular, complete, comprehensive, and streamlined organizational paradigm. The two successive sections (§2.1 and §3.1) dealing, respectively, with cooking and soaking, in *Sha'arei Dura* were the loci for Rabbi Isserles argument in *Torat ḥatat* and, as the order remained the same, it can also easily be identified as the locus for Rabbi Luria's attack. Long explanations are necessary for Rabbi Isserles to distinguish the two sections and defend his point.

In the order of the *Arba Turim*, which determined the sequence in *Shulḥan Arukh*, these sources appear only briefly, one of them not at all (§2 is in §69 and §3 only in the glosses). In the *Shulḥan Arukh*, the part that was *Sha'arei Dura* §2 appears in §69.1, and *Sha'arei Dura* §3 simply disappears (only the lenient opinion is mentioned in §69.15, the stringent opinion of *Sha'arei Dura is* nowhere to be found ). A later glossator (*) notices this, and adds a remark about the omission in the module where, logically, the opinion should have appeared (§69.15).

Furthermore, comparing the corresponding sections in *Sha'arei Dura*, *Torat ḥatat*, and the *Shulḥan Arukh*, it becomes clear how the phraseology of summary rather than paraphrase allows Rabbi Isserles to present the Ashkenazic sources in a way that already embodies his own conclusions, thus "it is *prohibited, but … it seems to me* that in a case of emergency … one should be lenient" becomes simply:  "there are those who prohibit…and so is the custom *unless there is* an urgent need…."

| Arba Turim: Yore de'ah | Bet Yosef (Karo's gloss): ... | Darkhei Moshe (Isserles' gloss) | Shulhan Arukh (Karo) Mapah (Isserles) | Sha'arei Dura | Luria | Torat hatat (Isserles) |
|---|---|---|---|---|---|---|
| §1 Laws of slaughter … | ... | | §1 Laws of slaughter … | §1 First Gate (1). Meat that was rinsed and salted and then cooked without second rinsing | Glosses on §1 | §1 Principle and section 1: On the laws of meat that was salted and not rinsed after the salting, and it includes 7 sub-laws: |
| §66 What kind of blood is prohibited … §67 What kind of blood is not prohibited … §68 Chickens and Geese… 283 | ... | | §66 Things that are prohibited due to blood… 1. animal blood 2. blood in eggs 3... … §67… §68… | §2 Second Gate (2). Meat not salted and cooked: we need 60:1 in proportion to the whole piece, for we do not know the amount of blood. If there is 60:1, the stew is permitted. The piece itself is prohibited, since it cooked in its own blood. Some wanted to permit the piece itself after it was annulled 60:1, But we have the custom to prohibit. | Glosses on §2 | §2 Principle and section 2: On the law of meat that was rinsed and not salted, and it includes 5 sub-laws: 1. paraphrases Sha'arei Dura (piece itself is prohibited even with 60:1) However, Bet Yosef wrote… Orhot Hayim, if it is Erev Shabbat, one should be lenient, and Shulhan Arukh simply permits the piece when there is 60:1. Conclusion: it seems to me that in a case of emergency or great loss when there is 60:1, one should be lenient, seeing as ROSh agreed to the words of those who permit even the piece itself, and he is worthy of relying upon |

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| §69 The Order of Salting<br>What is the order of salting? First, one rinses the meat…<br>. | §69<br><br>"First, one rinses.." glosses | | glosses | §69 The laws of salting and rinsing: And in it are 21 subsections §69.1 One must rinse the meat before salting…<br>Gloss and if he did not do this… | . (3) Meat with its blood that soaked in water for 24 hours, our rabbis prohibit it. If it soaked only for less time, one does not prohibit. And there are those who permit to fire-roast it even if it soaked for 24 hours. | 3. "Meat that has soaked…"<br><br>There are those who permit, but we do not have this custom, since [R' Isserlein] wrote that it is considered like cooked. Mentions same "new" *Isur ve-heter (arokh)* Concludes: do not pay heed to this! There is no distinction between soaking and cooking in any way and the piece itself is prohibited above, when cooked, so too is the law here. Critque of *Torat ḥatat*: he said that who is lenient does not lose out, and relied on this gloss *Isur* | §3 Principle and section 3:<br>On the law of meat that remained in its soaking water for 24 hours and it includes 2 sub-laws:<br>1. Meat with its blood that soaked in water for 24 hours, our rabbis prohibit it, and thus is the custom.<br>So, too writes R'Isserlein in a gloss that the custom is to prohibit…<br>…and he wrote there that if it remained for 24hours it is prohibited even if one fire-roasts it.<br>Quotes "new" *Isur ve-heter ha-arokh:* The case when one prohibits meat that soaked in water for 24 hours, R' Meir [Rothenburg] says that that is only when there is a lot of meat and no proportion "in the water and the meat to annul the blood," implying that one needs 60:1 of water to blood, not 60:1 against the whole piece …like in the case of cooking…. |

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| | | | | | veHeter(Arokh) and wanted to distinguish soaking and cooking with bad analysis without any proofs – do not rely on him to permit a prohibition! Addresses R' Meir's opinion in new" *Isur ve-heter ha-arokh* : | R' Isserles remarks: This is wrong, since it soaked for 24 hours and we prohibit it because "preserved is like cooked", thus one needs 60:1 for the entire piece. However, the piece will be permitted when there is 60:1 like the words of R' Meir. R' Isserles explains: although "preserving is like cooking" and with cooking we are stringent to prohibit the piece, as we saw above, in any case, here one can be lenient, because: a) "Preserving is like cooking" is not absolute; it functions differently for soaking and for cooking. b) Moreover, for cooking, too, it is but a custom to prohibit the piece itself. Conclusion: one should not be so stringent, the soaked piece is permitted if there is 60:1. 2. … |
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| And if he forgot to rinse first, and immediately salts… | "And if he forgot…" glosses … | Glosses… | §69.2 If he salted and did not rinse before… Gloss: and so we have the custom even if… | .(4) The *Geonim* wrote that all meat that remained for three days… | "Irrelevant! R' Meir may have permitted it even in when cooked, like ROSh his student, | … |
| And he can use either fine salt or coarse…. | "And he can use…" glosses… | Glosses... | §69.3 One should not use very fine salt or very coarse salt… | §3 The third gate .(5) A piece of meat that was not rinsed first and then salted is prohibited…. | However: we, who hold as law that it is prohibited above, so, too, here, for soaking. | … |
| And it is not necessary to salt the piece from both sides…. | | Glosses… | §69.4 One should spread salt all over… Gloss: And there are those who prohibit even… §69.5 After he has salted… | §4 The fourth Gate .(6) A piece that was not salted and fell… .(7) And sometimes… | Glosses… | §4 Principle and section 4: Regarding the laws of meat that remained for three days… it includes 9 sub-laws. 1. Meat that remained… 9…. |
| And the amount of time it must stay in the salt… 286 | "And the amount of time…" glosses … | Glosses … | §69.6 The amount of time that it must stay with salt… Gloss: and one can rely on this if it has already been done… | .(8) If he forgot the meat… | Glosses… | |

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| And after having stayed the required amount of time, he should rinse it…and before he places it in a vessel, he should take off the salt… | "And after…" glosses "And before…" glosses… | Glosses… | §69.7 Before he places the meat in a vessel… Gloss: and there are those who say that one must rinse… | §5 Gate Five .(9) Meat that is being fire-roasted need not be salted at all… .(10) I heard that Raavan… | Glosses… | §5 Principle and section 5… |
| However, whether he used coarse or fine salt, if he did not take it off… | "However,…" glosses... | Glosses… | §69.8 If he did not take off… Gloss: and even if the water is a little bit… | §7 Seventh Gate .(11) It is prohibited to salt meat in a vessel… .(12) And if… .(13) And if… | Glosses… | … |

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| And if the meat was cooked without the rinsing that succeeds salting, there must be 60:1 in the pot in proportion to the salt…<br><br>288 | "And if the meat was cooked…" glosses<br>And it says…<br>And the *Egor* wrote…<br>It says in the writings of…<br>The *Egor* wrote…<br>glosses<br>… | Glosses… | §69.9 Meat that was salted and cooked without rinsing it again, there must be 60:1 to the salt present.<br>Gloss: And the whole pot can be joined to the 60, and if there is as much in the stew as the size of the piece, then it is all allowed…<br>§69.10 A non-Jew who works in a Jewish home…<br>Gloss: and even one…. | .(14) And when one rinses the meat in a vessel… | Glosses… | |

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| Meat that was cooked without salting, there must be 60:1 in the pot to annul all the meat, and then everything is permitted. There are those who say the stew is permitted but the piece of meat is prohibited and there are those who permit, and to this my father ROSh agreed.<br><br>289 | Meat that was cooked without salting… Paraphrases *Tur*: those who prohibit the piece, those who permit…and this makes sense. Presents added sources (some R' Isserles then mentions in *Torat ḥatat*): *Hagahot Maimon* concluded that our custom is to prohibit. *Orhot Ḥayim* on Erev Shabbat they allowed for two reasons…*Mordekhai*…for meat it is permitted, but with chicken… | Glosses… …60:1 must be in proportion to the whole piece… but, one can learn from here that even though we usually have the custom to be stringent on other days of the week and prohibit the piece, Erev Shabbat when it is urgent, one should permit the piece and rely on those who permit… | §69.11 Meat that has been cooked without salting, there must be 60:1 in the stew in proportion to the piece of meat, and then it is all permitted. Gloss: And there are those who prohibit the piece of meat itself even when there is 60:1 in proportion to it…and so is the custom unless there is an urgent need for example to honor the Sabbath or guests, in which case one should rely on the words of those who are lenient…and if it was salted… | §8 Eighth Gate .(15) One must first rinse the meat…. §9 Ninth Gate .(16) The world wonders, how come that people had the custom to salt several times in vessels… .(17) This is the source for the custom to be lenient with the presses of non-Jews… .(18) And the skewer on which one has roasted… .(19) And one should also refrain from stabbing the knife… | Glosses… | §8 Principle and section 8…. |

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| The Geonim wrote: meat that sat for 3 days…<br><br>290 | The Geonim wrote…*RibaSh* wrote…*Trumat ha-deshen* …The *Egor* …It says in the writings…It says…The *Egor* wrote, meat that has stayed in water a whole day … but less than a whole day is permitted... R' Yeruḥam wrote: meat that is filthy with its blood and soaked for a whole day in water, I have a tradition that it is prohibited since it resembles cooking, as it says 'preserving is like cooking' ….And it says in *Sha'arei Dura*, meat that soaked, those prohibiting are more than those who permit … and so we have the custom…<br>some permit to fire-roast it… in the glosses on the *She'arim* he wrote: R'Meir says our rabbis prohibited the meat when there was a lot of meat and thus there was not 60:1 in the stew against it, but if there is | Glosses, on Bet Yosef's R' Yeruḥam wrote, R' Isserles discusses *Isur ve-heter ha-rokh* who thinks that here one does not need 60:1 against the piece like in cooked, rather 60:1 of water:blood suffices. R' Isserles writes: his words are not right, since it soaked for 24 hours, it is preserved, like cooked, therefore we do need 60:1 (water: meat) for the whole piece, just like a piece of meat | §69.12 Meat that sat for three… §69.13 And if they soaked it in water in those three days… §69.14 Water that stayed for three days without salting… §69.15 Water that is filthy with its blood that soaked in water for 24 hours, there are those who prohibit to eat it unless it is fire-roasted, except if there is 60:1 of water in proportion to the piece of meat. Gloss: …and there are those who prohibit it even for fire roasted, and this is the custom. | §10 Tenth Gate .(20) If he salted a prohibited carcass… .(21) And since our saltings are done… .(22) But raw meat… .(23) But it is warm since it was cooked or roasted… .(24) Abaye said… .(25) And if the liver is stuck… .(26) And if the poultry was roasted… | Glosses… | |

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| | 60:1,the is blood nullified…. | that was <span style="background-color:red">cooked</span> without salting… | * Turei Zahav: | | |
| We only salt in a vessel with holes…. | We only salt… …glosses… | Glosses… | §69.15 One only salts in a vessel with holes… Gloss: and a sheet… | Laws of the Heart .(27) … .(28)… | Glosses… |
| ..I found written in a letter, after it stayed… End of §69 | ... I found written glosses…And that which it says…glosses… End of §69 | … Glosses… | .... §69.21 … End of §69 | … .(96) .... End of Laws | Glosses… |
| §70 One salts many pieces on top of one another… | One salts...glosses | Glosses... | | §1 The Laws of Menstrual Impurity | Glosses… |

## COMMUNITY, CONTINUITY, TRADITION AND SCHOLARSHIP
### Reconstructing Tradition in Ashkenazic Halakha

## 1. INTRODUCTION:
## COMMUNAL RUPTURE AND SCHOLARLY CULTURE IN ASHKENAZ

The previous two chapters studied the effects of extra-textual elements in the history of knowledge – one technological, one organizational (print-reproduction and codification respectively) – on halakhic culture in Ashkenaz. The current chapter examines another extra-textual aspect: the scholarly culture of the rabbis who studied and interpreted these texts, and the relationship between this culture and the scholars' religious community. The communal rupture and subsequent reconstruction of Ashkenaz in the sixteenth century enables us to consider the community's function in the formation of knowledge.

Ashkenaz is an overarching term for the communities located in the geographical area of the Rhineland.[552] It can also be considered a term demarcating shared physical

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[552] See Hirsch Jacob Zimmels, *Ashkenazim and Sephardim: Their Relations, Differences, and Problems as Reflected in the Rabbinical Responsa* (NJ: Ktav Publishing House, 1976). See Talya Fishman, "Framing Ashkenaz: Cultural Landmarks of Medieval Northern European Societies," in *Becoming the People of the Talmud: Oral Torah as a Written tradition in Medieval Jewish Cultures* (Philadelphia: University of Pennsylvania Press, 2011), 91-120.

On the origins of the name "Ashkenaz," see Shmuel Krauss, "Ha-shemot Ashkenaz ve-Sfarad" (The names Ashkenaz and Sfarad), in *Tarbiz* no.3 vol.4 v (1932): 423-435.

For a general and cultural description of medieval Ashkenaz, see Avraham Grossman, *Hakhmei Ashkenaz ha-rishonim* (The early sages of Ashkenaz) (Jerusalem: Hebrew University Magnes Press, 2001), and *Ḥakhmei Tsarfat ha-rishonim* (The early sages of France) (Jerusalem: Hebrew University Magnes Press, 1995).

See also Ephraim Kanarfogel, *Peering Through the Lattices: Mystical, Magical and Pietist Dimensions in the Tosafist Period* (Detroit: Wayne State University Press, 2000).

For a definition of Ashkenaz linked to its linguistic characteristics (Yiddish), see Max Weinreich, *History of the Yiddish Language,* vol. 1, ed. Paul Glasser, trans. Shlomo Noble (New Haven and London: Yale University Press, 2008), especially his distinction of Ashkenaz I (origins, German Ashkenaz) and Ashkenaz II (later migrations, Eastern Europe) in the first chapter, "Yiddish and Ashkenaz: The Object of Study and the Approach," 1-45. Lucia Raspe's more recent suggestion of Northern Italy as Ashkenaz I ½ (as it is positioned between Ashkenaz I and II, both on the geographical scale from west to east and chronologically) can be added to this (See Lucia Raspe, "The Migration of German Jews into Italyand its Impact upon the Legacy of Medieval Ashkenaz," in *European Jewry around 1400: Disruption, Crisis, and Resilience*, ed. Lukas Clemens and Christoph Cluse [forthcoming]).

origins, geographic and genetic, rather than current dwellings, thus functioning as a term

that is local but also implies movement from place to place. Beyond shared geographic and

genetic origins, "Ashkenaz" implies a community in the sense of a broad shared common

culture, including a shared language, customs, foods, liturgy, beliefs, folklore, rites, and so

forth. More specifically, it refers to a shared *religious* culture through which all the above

elements find expression.[553] This chapter will focus on one aspect of the religious culture

of Ashkenaz, namely, its halakhic culture and its intersection with the scholarly culture of

its halakhists.

The general image of Ashkenaz in the twelfth, thirteenth, and first half of the

fourteenth centuries conveys a (relative) sense of continuity despite the relocation of

centers and the rise and fall of local communities.[554] Between the end of the thirteenth

century and the middle of the fourteenth, several waves of persecutions and expulsions

drove Jews out of the German and French centers; by the end of the fifteenth century, there

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See Ivan Marcus, *Piety and Society: The Jewish Pietists of Medieval Germany* (Leiden: Brill, 1981), for an anthropological approach to ashkenazi culture.

The idea of Ashkenaz as a genetic community has introduced some attempts at DNA-based definitions of Ashkenaz, most notoriously those testing the so-called "Khazar hypothesis" of Ashkenazic Jews (See Shaul Stampfer, "Did the Khazars convert to Judaism?" *Jewish Social Studies: History, Culture, Society* 19, no. 3 (2013): 1-27, for a summary and critique).

[553] Or, to take Clifford Geertz's broad-ranging and profound definition of culture and its significance: "Believeing, with Max Weber, that man is an animal suspended in webs of significance that he himself has spun, I take culture to be those webs."; "The culture concept to which I adhere…denotes an historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic forms by means of which men communicate, perpetuate, and develop their knowledge about and attitudes towards life." Clifford Geertz, *The Interpretation of Cultures* (London: Hutchinson, 1975), 5;89. This chapter will be looking, primarily, at ashkenazic scholarly culture, their knowledge about and attitudes towards religious law, and how these are expressed both in the legal texts they interpret and transmit, and in the communities for whom they interpret these laws.

[554] See, for instance, Simcha Emmanuel, on the fall of the Rhineland in the third decade of the 13th century, as its scholars moved eastward to Austria and Bohemia, and the subsequent revival of scholarship in the German Lands with Rabbi Meir Rothenburg. Simcha Emmanuel, *Ḥakhmei Germania ba-meah ha-shlosh-esre: Reẓef o mashber? (The sages of Germany in the 13th century: Continuity or crisis?) Tarbiẓ* 82 vol.4 (2014):549-567.

were few Jewish communities left in Ashkenaz.[555] By the sixteenth century, no ashkenazic

communities remained in their original locations. This was a rupture, not merely another

wave of suffering within a continuous community. In new locations, numerous ashkenazic

Jewish communities came into being, first in Northern Italy, in Central Europe, and later

in Poland-Lithuania.[556] Thus, Ashkenaz, now unified by origins rather than location

continued in these communities, which proclaimed themselves ashkenazic and regarded

themselves as the loyal descendants of their Western predecessors.

Significant differences in addition to their new location distinguished these

ashkenazic communities: their legal status, their demographics and make-up, and their

economic profile differed.[557] Profound differences in religious culture, too, were

noticeable.[558] Changes occurred not only at the physical and practical level of the

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[555] For a mapping of these processes, see Michael Toch, "The Formation of a Diaspora: The Settlement of Jews in the Medieval German *Reich*" *Ashkenas* 7 (1997): 55-78.

[556] See Moshe Shulvass, "Ashkenazic Jewry in Italy," YIVO *Annual of Jewish Social Science* 7 (1952): 110–131. See the introductory chapter of Gershon D. Hundert, *Jews in Poland-Lithuania in the Eighteenth Century* (LA: University of California Press, 2004): 1-21; see also the prologue by Mordechai Breuer, "The Jewish Middle Ages," in *German-Jewish History in Modern Times*: vol. 1, Tradition and Enlightenment 1600-1780, ed. by Michael A. Meyer, trans. William Templer, (New York: Columbia University Press, 1996), 7-77.

On Central Europe, see Hillel Kieval, "Bohemia and Moravia" in *YIVO Encyclopedia of the Jews in Eastern Europe*, ed. Gershon Hundert (New Haven: Yale University Press, 2008), 204; Otto Muneles, ed. *the Prague Ghetto in the Renaissance Period* (Prague: State Jewish Museum, 1965); Abraham Stein, *Die Geschichte der Juden in Böhmen* (Brünn: H Rickl Verlag, 1904).

[557] On the university in Cracow and its centrality as a capital of learning, see Paul Knoll, *A Pearl of Powerful Learning: the University of Cracow in the Fifteenth Century* (Leiden: Brill, 2016). On Poland and its economic flourishing in this period, especially on Cracow see Francis W. Carter's geographic-economic study, *Trade and urban development in Poland: An economic geography of Cracow, from its origins to 1795* (Cambridge, UK: Cambridge University Press, 1994). On the outsize role of Jews in Cracow's economy, see, for instance, the data on p.71, on the ethnic structure of Cracow (as early as the 14th century, Jews were the third largest population group after Poles and Germans). Pages 28-29 show a sampling from customs registers, in which Jewish traders and merchants are strongly represented.

[558] On differences between Ashkenaz in Eastern Europe as compared to its previous location, see many of the references cited in the previous chapter, including Ḥayim Hillel Ben Sasson, *Hagut ve-hanhaga* (Theory and Practice) (Jerusalem: Bialik, 1959), esp. 55-75; Gershon David Hundert, "Some Basic Characteristics of the Jewish Experience in Poland," *Polin* 1 (1986): 28; Adam Teller, "Telling the Difference: Some Comparative Perspectives on the Jews' Legal Status in the Polish-Lithuanian

surroundings that affected ashkenazic religious life; religious culture was also affected in intellectual realms, including the scholarly culture. Scholarly culture includes a practical aspect, on the one hand, which involves the technical sides of scholarship, its material tools and trappings. On the other hand, scholarly culture has a more theoretical-intellectual aspect, that is, the accepted manner of dealing with knowledge and working with one's intellectual sources. This latter aspect is a scholarly culture's tradition, which encompasses ideas about methods, practices, and attitudes that govern a discipline; every scholarly discipline, whether religious, legal, scientific, or otherwise, has its own tradition. Such scholarly traditions cannot be reduced to specific rules or methods; they include more amorphous components such as attitudes, mores and ethics, hierarchies of authority and sources of knowledge, and other elements that cannot be pinpointed or distilled – sometimes barely even formulated – and emerge from the scholarly culture as a whole.[559]

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Commonwealth and the Holy Roman Empire," *Polin* 22 (2009): 109-141; on internal governance, *Pinkas Va'ad Arba Araẕot* (The *Pinkas* of the Council of the Four Lands), ed. Israel Heilprin (Jerusalem: Mosad Bialik, 1945); on cultural life, Israel Heilprin, *Bet Israel be-Polin* (The House of Israel in Poland)*,* vol. 1 (Jerusalem: Histadrut Publishing,1948) and Majer Bałaban, *Toldot ha-yehudim be-Krakov uve-Kaz'imaiz, 1304-1868* (The history of the Jews in Cracow and Kazimirsz 1304-1868) (Jerusalem: Magnes, 2002); on socio-cultural and intellectual life, Elhanan Reiner, "The Attitude of Ashkenazi Society to the New Science in the Sixteenth Century," *Science in Context,* 10, no. 4 (1997): 589-603; idem, "The Ashkenazi Élite at the Beginning of the Modern Era: Manuscript versus Printed Book," *Polin*: *Studies in Polish Jewry* 10 (1997): 85-98; idem, "Aliyat ha-kehila ha-gedola: Al shorshe ha-kehila hayehudit ha-ironit be-Polin ba-et ha-ḥadasha ha-mukdemet" (The rise of the big community: On the roots of the Jewish community in Poland in the early modern period"), *Gal-ed* 20 (2006): 13-37; idem, "Tmurot be-yeshivot Polin ve-Ashkenaz ba-meot ha-16 ve-ha-17 ve-ha-vikuaḥ al ha-*pilpul*" (Transformations in the Polish and Ashkenazic Yeshivot during the sixteenth and seventeenth centuries and the dispute over *Pilpul*) in *Ke-minhag Ashkenaz ve-Polin*: *Sefer yovel le-Chone Shmeruk* (According to the custom of Ashkenaz and Poland: Studies in honor of Chone Shmeruk), ed. Israel Bartal, Ḥava Turniansky, and Ezra Mendelsohn (Jerusalem: Zalman Shazar Press, 1993), 48-50; Ḥaim Tchernowitz, *Toldot ha-poskim* (The history of the Jewish codes)*,* vol. 3 (New York, 1946-1947); and Edward Fram, *Ideals Face Reality: Jewish Law and Life in Poland, 1550-1655* (Cincinnati: HUC Press, 1997).

[559] A useful example of this phenomenon would be the "culture of the gentleman" that Steve Shapin detects among the British empiricists of the 17th century. The expectations of gentlemanly conduct were not explicitly stated as requirements for scientific endeavor, and in many ways, they even countered the openness of empirical inquiry, but they were, nevertheless, necessary conditions for the trust needed to permit empirical study(Steven Shapin, *The Social History of Truth* [Chicago: University of Chicago Press, 1994]. See also the

The tradition of Jewish legal scholarship, I will argue, was determined not only by the scholarly community, but also by the Jewish community at large, which provided a unifying basis for adherence to a specific legal tradition. Communal continuity thus ensured the continuity of the scholarly traditions associated with this culture's halakha. Text and textuality are the most salient methods and characteristics for transmitting knowledge across rupture. Because the legal tradition is an element of scholarly culture, however, it could not be readily transmitted solely by textual transmission. Because of the close interconnection between ashkenazic scholarly culture and the communal culture in which it was taught and practiced, a geographical and temporal communal rupture inhibited transmission of the scholarly tradition. The rift of the late middle ages disrupted the continuity of this rather amorphous legal tradition even while preserving most of the content of halakhic knowledge.

The tradition could reemerge, but, inevitably, in a different form, even when the scholarly tradition was reconstructed with the intention to restore Ashkenaz. In the course of the communal rupture, this scholarly tradition, which could not be transmitted in the face of communal discontinuity, was thus lost. Scholarly culture was inextricably linked to the broad religious culture of the community, and the communal continuity of Ashkenaz was the foundation for transmission of scholarly traditions. Transmission of the texts alone resulted in a very different continuation of this legal tradition, even – as this chapter will show – when successors were, in fact, knowledgeable about the legal traditions of their

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contributions in *Science as a Cultural Practice*, ed. Moritz Epple and Claus Zittel [Berlin: De Gruyter, 2010]).

predecessors. My discussion will utilize theories on the dynamics of tradition and rupture from several fields that relate to my study of this community's scholarly culture of religious law: history, jurisprudence, sociology, and anthropology.

This chapter will explore the changes that evolved from the ashkenazic halakhic traditions in their earlier location to the same community's approaches to knowledge in the Ashkenaz of Eastern Europe. This investigation will shed light on the ways in which community, scholarly culture, and tradition are intertwined, and how these elements affect knowledge. It also helps us resolve a crucial question: As the introductory chapter has discussed, Ashkenaz had a very strong scholarly tradition of halakha, represented by the manuscript compilation, which was radically different from halakha as it came to be organized in the printed codifications that dominated the sixteenth century. Considering the strength of the ashkenazic tradition, it is surprising that its approach to halakha changed so drastically in the sixteenth century, even in the face of technological and organizational upheaval. Why did ashkenazic halakha accept this new order, rather than retaining its earlier ways? The answer lies in the communal rupture that eliminated the possibility of a continuous adaptation to the emerging changes in technology and organization. Unable gradually to adapt to the changes it was facing because of the rupture, ashkenazic scholarly culture had to reconfigure itself in a new environment. On the one hand, this vacuum allowed for reinventions of scholarly culture without appearing as an outright break in tradition. Rupture created an opening that enabled innovative approaches to knowledge to be considered authentically ashkenazic. On the other hand, the rift also meant that even

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those who actively sought to continue ashkenazic approaches as they had existed before, could no longer truly do so.

I will analyze the relationship between community and scholarly culture by focusing on the ashkenazic legal tradition that is located outside the halakhic text proper and dominates its scholars' way of thinking. This evolution in the legal tradition will be illustrated by tracing a specific halakhic requirement, the obligation to give the *bekhor behema tehora*, the firstborn male of a kosher animal, to members of the priestly class, and the fate of this requirement in Ashkenaz from the thirteenth to the sixteenth century. The illustration will reveal the legal traditions of a specific scholarly culture that relied for its survival not on textual transmission but on the continuity of a community; it will also describe how these laws take on a new life once the legal tradition is ruptured, even among a community's strongest representatives and most faithful successors.

## 2. NOTIONS OF TRADITION AND RUPTURE: LAW, HISTORY, SOCIETY

Communities and their relation to tradition have often been studied by positing rupture as a central dividing line and subsequently assigning opposing binary features to the pre-rupture and post-rupture "sides" of this border. Several fields employ these modes of thinking; they all are relevant for a study of halakhic scholarly culture and communal change: the study of law, history, and sociology or anthropology. The focus in each of these fields is particular to its discipline and thus slightly different, but the concepts still map onto one another in largely compatible ways.

Historical studies focus on the differences in traditional and modern societies' conception of their past, and on how, following rupture, societies relate to tradition, whereas legal scholars delve into notions of the legal past and the difference between traditional customary law and notions of law that emerge after communal rupture. Sociology and anthropology take a different approach to these issues, placing the opposition between traditional society's attitude toward the past and post-traditional societies' notions of history in the context of phenomena such as writing, mimetic practice, and social structures. Some fields posit tradition and its rupture in spatial or social contexts rather than in chronological ones; they thus situate traditional societies in villages or among the common folk, on the same temporal plane as modern societies, which they locate in cities or among the élite. This section will examine the notion of communal rupture in these different fields and bring them into dialogue with one another in order to understand how communal continuity and rupture affected the world of religious law.

### a.     Binaries

Historical studies often differentiate between history and memory. Memory is associated with the collective, as in Maurice Halbwachs' idea of collective memory, whereas history is the realm of the historian.[560] As such, memory is for insiders, whereas history is for outsiders; memory is subjective, unselfconscious, and hazy, whereas history is objective, critical and scientific. Memory is often tied to emotions, it is affective; whereas history is distant, intellectual, and reasonable. As Pierre Nora explained, memory is authentic in many ways that history is not; memory is unselfconscious in the sense that the subject

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[560] Maurice Halbwachs, *La mémoire collective* (Paris: Presses Universitaires de France, 1950).

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belongs in a seamless and continuous fashion to memory, whereas history is perceived from afar, once the subject is separated from the events and can consider them from a distance.[561] As one historian put it, the two are, in a sense, mutually exclusive: "General history starts only when tradition ends and the social memory is fading or breaking up."[562] There is no need to set down history in writing except in moments of disintegration. Memory is characterized as a living repository and safeguard of tradition whereas history is a detached record of past events and personages.

Similar distinctions have been made in the fields of anthropology and sociology. Robert Redfield associated small rural societies with "little culture," which was more personally enmeshed with its society, whereas learned, reflective culture was more objective and critical and associated with the élite few.[563] Jack Goody and Ian Watt have attribute similar differences to orality versus writing; orality posits continuity with tradition and is transmitted by repetition, whereas written-ness permits distance and critical reflection. In that sense, textuality is seen as more progressive, more analytical, and more rational than orality.[564] Tradition implies continuity that unites the past with the present and attaches importance to faithful repetition. Textuality in contrast, permits distance between the tradition being transmitted and the recipient of this transmission in the present, thus allowing comparison and critical analysis.

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[561] Pierre Nora, *Les Lieux de Mémoire* (Paris: Gallimard, 1984).

[562] Halbwachs, as cited in Dean Phillip Bell, *Jewish Identity in Early Modern Germany: Memory, Power and Community* (England and US: Ashgate, 2007), 2. See, in general, the discussion in "Memory, History and Jewish Identity," the first chapter of this book, 1-18.

[563] Robert Redfield, *The Little Community* (Chicago: University of Chicago Press, 1956).

[564] Jack Goody and Ian Watt, "The Implications of Literacy," in *Traditional Societies* (Cambridge, 1968), 27-69.

Scholars of law and legal history similarly distinguish between tradition, continuity, and lack of critical reflection, which is transmitted almost organically, either orally or by mimetic repetition, on the one hand, and law, which is more critical and rational and often transmitted textually, on the other. Often, the realm of custom was identified with the common people or the rural folk, while law was the field of the scholar;[565] custom was transmitted orally, and law in texts.[566] The process of legalizing custom thus entailed the transition from orality to textuality, with an accompanying shift to scholarship and legal science.[567] Each of these modes have their own logic, their own way of authentication. The authority of law rests on textual logic founded on analysis, precedent, and analogy, whereas custom supports its claim to authority by proving the reliability of its transmission, whether by means of an uninterrupted chain, the quantity of testimony, or the stature of the figure transmitting the custom. The repositories for authoritative source material are thus also distinct: the scholar searches textual archives of the past for sources of authority, whereas

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[565] Michael Clanchy, *From Memory to Written Record (England 1066-1307)* (Cambridge, Mass.: Harvard University Press, 1979); Gadi Algazi, "Ein gelehrter Blick ins lebendige Archiv: Umgangsweisen mite der Vergangenheit im fünfzehnter Jahrhundert," Historische *Zeitschrift* 266 (1988): 317-357. See especially 321-332, for a summary of many of these binaries as well as a critique thereof.

[566] This can be observed as early as Philo, who writes, "For customs are unwritten laws, the decisions approved by men of old, not inscribed on monuments nor on leaves of paper which the moth destroys, but on the souls of those who are partners in the same citizenship. For children ought to inherit from their parents, besides their property, ancestral customs which they were reared in and have lived with them even from the cradle, and not despise them becayse they have been handed down without written record" (Philo of Alexandria, *The Special Laws Book 4*, trans. F.H Colson [Cambridge: Harvard University Press,1937], 7:101.)

[567] Donald R Kelly, "Second Nature: The Idea of Custom in European Law, Society, and Culture" in *The Transmission of Culture in Early Modern Europe*, ed. Tony Grafton and Ann Blair (Philadelphia: University of Pennsylvania Press, 1990), 131-172. For instance, on p. 133: "Thus, Gratian's *Decretum* opens with the fundamental proposition that 'the human race is ruled in two ways, either by natural law or by unwritten customs – either by nature or by second nature… This conventional notion of custom as a product of popular and 'tacit' consent (*consensus populi*) was developed in postclassical jurisprudence, found a permanent home in the Digest, became standard fare in university instruction, and thence passed into the mainstream of European legal, social, political, and cultural thought."

See also, Andy Wood, *The Memory of the People:Custom and Popular Senses of the Past in Early Modern England* (Cambridge, UK: Cambridge University Press, 2013), especially pages 10-15.

the common people's source of authority was based on continuity, and *they* were, thus, the living archive, needing merely to bear witness to an existent custom in order to imbue it with validity.

Eric Hobsbawm's concept of invented traditions links unselfconscious continuity with customs, which are seen as authentic traditions, whereas a tradition actively attempting to overcome rupture is consciously engineered and thus invented.[568] Hobsbawm distinguishes between invented traditions and traditional society, which is dominated by custom. As opposed to invented traditions, true custom:

> … does not preclude innovation and change up to a point. … What it does is to give any desired change (or resistance to innovation) the sanction of precedent, social continuity and natural law as expressed in history. … Custom cannot afford to be invariant, because even in traditional societies life is not so. Customary or common law still shows this combination of flexibility in substance and formal adherence to precedent. The difference between 'tradition' and 'custom' in our sense is indeed well illustrated here. 'Custom' is what judges do; 'tradition' (in this instance, invented tradition) is the wig, robe, and other formal paraphernalia and ritualized practices surrounding their substantial action.[569]

Thus, in Hobsbawm's view, custom is a holistic legal form that can therefore handle change in a continuous fashion, whereas invented tradition, which is artificial and divorced from any real community, cannot afford to be flexible.

### b. Complications

These distinctions between tradition and rupture have been criticized in all the fields where they were advanced. Historians pointed to the essential similarities between history and memory, both by affirming forms of historical consciousness among traditional societies

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[568] Eric Hobsbawm, "Introduction: Inventing Traditions," in *The Invention of Tradition*, ed. Eric Hobsbawm and Terence Ranger UK: Canto,1992), 2. "Tradition," he writes, "must be distinguished clearly from 'custom' which dominates the so-called 'traditional' societies."

[569] Hobsbawm, "Introduction," 2-3.

and by questioning the idea of critical distance and objectivity among historians. Scholars such as Michel de Certeau, for instance, pointed to the ways in which historical writing is not so different from other more traditional forms of remembering.[570] The distinction between scientific history and emotional memory became especially weakened by the treatment of historians such as Haydn White, who saw little difference between history and other ways of constructing narratives and did not consider the latter more critical or rational than other ways.[571] However, even scholars holding intermediate views acknowledged the many similarities between pre-modern memory writing and 'scientific' historical writing.[572] While recognizing that history is but one genre among many forms of historical consciousness, each of which has different purposes and relevance (and none of which are completely neutral), these critics still insisted on designating history, the only genre that bases its authority on written sources, as scientific because it creates a distance from the present, whereas "living tradition sees itself as part of the past." Thus, only history was considered fully capable of being critical. [573] In sum, both more radical and less extreme approaches recognized that history and memory are not truly separable.

The need for Hobsbawm's distinction between genuine custom, which is transmitted continuously and adapts in authentic ways, versus invented tradition, which

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[570] Michel de Certeau, *L'Écriture de l'histoire* (Paris: Gallimard, 1975).

[571] Haydn White, "The Question of Narrative in Contemporary Historical Theory," History *and Theory* 23 no.1 (1984): 1-33.

[572] Frantisek Graus, "Funktionen der spätmittelalterlichen Geschictsschreibung" in *Geschichtsschreibung und Geschichtsbewusstsein im Späten* Mittelalter, ed., Hans Patze (Jan Thorbecke Verlag, 1987): 11-55.

[573] "Nur die Historiographie mach schliesslich die Vergangenheit in 'Distanz' als Geschichte bewusst, wogegen die lebendige Tradition sich selbst irgendwie als integrierter Bestandteil der vergangenheit fuhlt…Die Geschichtsschreibung kann …kritisch gegenuber etablierter und vermeintlich unbestrittenen Traditionen auftreten…." (Graus, "Funktionen," 39).

comes after rupture, was likewise called into question, for instance by Peter Burke, who wondered where the line between invention and adaptation or flexibility is drawn and whether it is even useful to draw such a line.[574] The identification of textuality and writing with history and critical distance, as opposed to orality with memory and lack of reflectivity, has come under the attack of scholars such as Brian V. Street, for instance, who detected in the approach of scholars such as Goody an inherent value judgement that considered written culture superior and more rational than the oral cultures they studied.[575]

Others have pointed out that textual transmission does not imply any essential approach to the text, thus severing notions of rationality from textuality. Studies of legal history have shown that the different approaches to the past among élite and common folk are, in fact, not essential elements of their social role or degree of literacy. Rather, the differences in the various actors' position in society create divergent interests that lead to different strategic *uses* of the past. A cross-over from scholarly groups to traditional memory and from rural groups to textual history is thus possible.[576] Rather than thinking of scholars on the one hand and peasants on the other as isolated in completely parallel spheres – one historical, the other continuous; one written, the other oral; one relating to law, the other to custom – overlaps have been emphasized, showing that scholars made use of oral statements and traditional groups interacted with the élites. Moreover, the scholarly

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[574] Peter Burke, "Review of Hobsbawm," *The English Historical Review* 101, no. 398 (1986): 316-17.

[575] Brian V Street, "Orality and Literacy as Ideological Constructions: Some Problems in Cross-Cultural Studies, *Culture and History* 2 (1987): 7-30.

[576] See Algazi, "Ein gelehrter Blick," 342.

élite and the common populace themselves are not monoliths, requiring distinctions and nuances within these categories.

Distinctions similar to those about history and memory, tradition and change, law and custom, have been made in the realm of Jewish history, with varying degrees of nuance. In many ways, Yosef Ḥayim Yerushalmi's *Zakhor* was an interpretation of Jewish history and memory based on Halbwachs' ideas; it considered the Jewish people's approach to its past as religious, and thus non-historical.[577] To some extent, ideas of the unselfconscious past as opposed to ruptured modernity capable of criticism are present in Jacob Katz's *Tradition and Crisis*, in which traditional society is stable and religious, and the modern era is secular (or neutral), a consequence of crisis.[578] These distinctions have, however, been similarly critiqued in Jewish studies. Amos Funkenstein mentioned that, even absent Jewish historiography, a well-developed historical consciousness existed elsewhere namely, in "halakhic interpretations and applications."[579] Ivan Marcus has worked with a much-attenuated notion of the distinction between history and memory, arguing that religious tellings of the past  display a certain historical consciousness and possess great value as historical sources,[580] and Dean Phillip Bell regards community ledgers and minutes as containing something akin to historical accounts.[581]

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[577] Yosef Ḥayim Yerushalmi, *Zakhor: Jewish History and Jewish Memory* (Seattle: The Samuel and Althea Stroum Lectures in Jewish Studies, 1982).

[578] Jacob Katz, *Masoret u-mashber* (Tradition and crisis) (Jersualem: Mosad Bialik, 1958).

[579] Amos Funkenstein, "Memory and Historical Consciousness," History *and Memory* 1 no. 1 (1989): 5-26. It is not entirely clear what Funkenstein had in mind. Perhaps a case study of halakhic change such as the one offered in this chapter can provide material to think with.

[580] Ivan Marcus, "History, Story and Collective Memory: Narrativity in Early Ashkenazic Culture," *Prooftexts* 10 (1990): 568-88.

[581] Bell, *Jewish Identity in Early Modern Germany*.

More recently, Marina Rustow and Albert Baumgarten have critiqued Hobsbawm's sharp distinction between genuine versus invented traditions and its linkage with premodern versus modern societies from the realm of Jewish studies,[582] explaining that "even when one can clearly distinguish between the two types, that distinction does not always yield analytical dividends."[583] They explain that conflating rupture and modernity is a "…presumption that rests on a notion that we find difficult to accept in light of the evidence we have examined – as though prior to modernity, Jews were unflaggingly pious, heirs to a continuous, organic and unselfconscious tradition and entirely lacking the tools, the wherewithal, or the necessity to call upon arguments from the past with self-conscious intent."[584] Instead, they suggest distinguishing weak versus strong appeals to tradition, and they show how appeals to tradition are usually a reaction to change, something that can be observed both in premodern and in modern times. In line with these adjustments, they present shifts from oral to written transmission as one such instance of crisis, which prompts appeals to authority.[585]

In the realm of Jewish law, Menachem Elon has pointed out that custom was a *learned* legal concept, not something belonging solely to popular culture.[586] Brachyahu Lifschitz has suggested that, as early as in talmudic and amoraic sources, *minhag* or custom, was a form of *law*, and, in fact, often referred to rabbinic legal adjudication rather

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[582] Albert Baumgarten and Marina Rustow, "Judaism and Tradition: Continuity, Change, and Innovation" in *Jewish Studies at the Crossroads of Anthropology and History: Authority, Diaspora, Tradition,* ed. Ra'anan Boustan, Oren Kosansky, Marina Rustow (Philadelphia, University of Pennsylvania Press, 2011): 207-237.

[583] Baumgarten and Rustow, "Judaism and Tradition," 209.

[584] Baumgarten and Rustow, "Judaism and Tradition," 233.

[585] Baumgarten and Rustow, "Judaism and Tradition," 218-227.

[586] See Menachem Elon, "MINHAG: Minhag as a Source of Law," in *The Principles of Jewish Law*, ed. Menachem Elon (Jerusalem: Keter Publishing, 1975), columns 91-99.

than to popular custom. The degree of authority accorded to popular custom differed from one halakhic culture to another at various times and places.[587] The study of *minhagim* books has both emphasized the textual appearances of custom and connected the process of textualization to rupture.[588] Haym Soloveitchik took the non-textual mimetic tradition into consideration in his analysis of legal scholarship, considering its impact on and importance to halakhic study, interpretation, and change. He pointed to the rupture of the Holocaust and the move of Jewish communities to the United States as the reason for a shift from the mimetic to the textual. This resulted in the predominance of strictly textual legalism where once a more nuanced form of law (that relied on practice and custom as legitimate sources) used to reign.[589] Talya Fishman has emphasized that halakha and *minhag* should not be considered at odds with one another, but rather complementary.[590] Thus, history and memory, halakha and custom, mimetic transmission and textuality, community and scholarship are seen as influencing one another.

In sum, rather than belonging to separate realms that are governed by different methods, dynamics or rules, history and memory, scholarship and community, law and

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[587] Brachyahu Lifschitz, "Minhag u-mekomo be-midrag ha-normot shel Torah she-ba'al peh" (*Minhag* and its place on the scale of the norms of the oral law), *Shnaton ha-mishpat ha-ivri* (2006-2007): 123-264. On pp. 246-247, he suggests that the importance of popular custom in ashkenazic halakha may be related to their geographical location in places where Roman law was prevalent, which also recognized the authority of popular custom, as opposed to halakhic communities in Sfarad and North Africa, where Islamic law reigned, which grants no authority to custom. Thus, law and custom have different meanings in different places and at different times, depending on the religious and legal cultures. Often, law and custom are not opposed; sometimes because the term "custom" is, in fact, used as a term to designate law legislated by scholars, at other times because popular custom was a recognized source of law.

[588] See Raspe, "The Migration of German Jews." See also Rachel Zohn Mincer, "Liturgical Minhagim Books: The Increasing Reliance on Written Texts in Late Medieval Ashkenaz" (Ph.D. Diss., New York: Jewish Theological Seminary, 2012); Jay Berkovitz, "Crisis and Authority in Early Modern Ashkenaz," Jewish *History* 26 (2012): 179-199.

[589] Haym Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy," Tradition 28, no. 4 (1994): 64-130. .

[590] Fishman, *Becoming the People of the Book*, 176-181.

custom, textuality and orality, are, in fact, closely related, influence each other, and have relevance for élites and the community at large. Such distinctions are, in fact, very useful, but the pairs are not binary opposites. Rupture can apply to traditional society and history is not objective; scholars utilize oral transmission, and custom often has legal weight. In order to address the question of communal tradition, continuity, rupture and law, we must, then, understand these concepts and dynamics as belonging to a common realm, often coexisting, interacting, and impinging on one another. This will enable us to form not only a more nuanced image of the relationship between communal tradition and legal scholarship but also it will correct certain blind spots, revealing phenomena and connections that were missed due to false assumptions of dichotomous realms.

### 3. COMMUNAL CONTINUITY AND SCHOLARLY TRADITION:
### a. Communal Continuity and Scholarly Tradition in Halakha

As mentioned above, when examining continuity and rupture in various realms we are not dealing with strictly binary oppositions nor entirely separate realms. Precisely when they are brought together, these concepts and dynamics can lead to a deeper understanding of the relations between community and scholarship, tradition and rupture, and the transmission of legal knowledge. In particular, analyzing changes in religious law as a result of communal rupture enables us to isolate what the culture of halakhic scholarship – the scholarly culture studied here – received from communal continuity, and the effect of communal discontinuity on the law.

Most law forms receive their authority from the past. The legal practice is a discipline based on examining whether current behavior conforms to legal norms that were

previously established and transmitted.[591] As such, legal scholarship is concerned primarily

with those legal norms that are preserved textually. In general, textuality is the only way to

transmit knowledge across rupture. Whereas both texts and oral traditions can be

transmitted, even across geographical and temporal rupture, the latter requires a continuous

chain of oral transmission. If this chain is disrupted, it is necessary to record the oral

tradition by means of a more permanent medium (until recently, text) in order for it to be

mediated. Legal investigations are thus fundamentally textual enterprises. Textual logic

facilitates critical analysis and reasoning, whereas the logic of custom requires repetition

and continuous transmission from a source of authority.

It is useful to counterpose a textual logic, based on analysis of precedent and

interpretations of analogous cases, to a logic of custom, based simply on continuity.

However, this, too, is not a clear-cut distinction: As opposed to mimetically transmitted

practices, customs repeated verbatim, for instance, function similarly to a text even though

they are oral. Texts can be transmitted orally, and practices can be analyzed textually. Even

when legal authority derives from text, the precise manner of relating the authoritative text

of the past to the current legal case is not a given. The connection may not necessarily

depend on using the logic of textual analysis, analogy and precedent. Sometimes, a logic

more similar to custom can be used, which considers the more continuous or reliable textual

transmission to be the more authoritative. Orality and textuality can thus apply to custom

or law, and vice versa, as can their forms of logic and interpretation. Moreover, the

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[591] Even legal theorists who consider the *authority* of law to stem not from the texts or the authoritative nature of their source, but from the ability to exert power (for instance, as a result of a social contract, for Hobbesians), would concede that the above is an accurate description of the *practice* of law, that which lawyers do.

communal basis for the scholarly culture is not limited to the scholarly community but involves the legal community as a whole, inasmuch as law as practiced in the community is part and parcel of the legal system. The community thus becomes a carrier not only of custom but also of law. The community is the law's sphere of jurisdiction and, as such, it is an indispensable part of legal transmission.

These insights go beyond mere crossovers from one realm to the other. The attributes of textuality and orality, law and custom, and their forms of thinking, in fact, interpenetrate. The textual transmission of law is not completely stable, as non-textual elements such as technology, organization and scholarly culture affect the nature of the legal material.[592] Scholarly culture has both practical and theoretical sides: the first refers to the specific techniques and material particular to a scholarly group. The theoretical side includes the rules and methods of working with legal knowledge that are not found in the text but often depend on non-textual transmission, as it concerns passing on an entire legal tradition, which cannot, therefore, be formulated at the level of theoretical education. This legal tradition is transmitted in the amorphous ways of the scholarly culture, through the vague channels of identity, affect, and values that rely on communal continuity in order to be preserved. In this sense, not only custom is transmitted by means of repetitive practice and mimetic continuity. Law, too, is dependent on this type of continuity in order to transmit the legal traditions that text alone, without the communal basis, cannot fully transmit.

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[592] See Algazi, "Ein gelehrter Blick," 329.

One should not use the difference between invented and real traditions, or invented laws and true custom, to distinguish between inherent authenticity and untruth. The concept of an invented tradition is nevertheless significant because it expresses the difference between a law that is newly and consciously constructed or reconstructed, on the one hand, and something transmitted in a more continuous fashion, on the other. Perhaps, instead of genuine versus invented, we should call them traditions and reconstructed traditions and distinguish between tradition and traditional*ism*. In this way, such differences can fruitfully elucidate the nature and meanings of traditions and the differences in a community before and after a rift. The more that the logic of custom, non-textual transmission, and community play a part in a legal tradition, the more vulnerable this legal tradition will be to disruption and change. We can thus gain a better understanding of the scholarly culture of halakha in Ashkenaz and the nature of its upheavals by studying the juncture points of these distinctions and examining precisely what got lost in the transition to the sixteenth century.

### b.    Communal Continuity and Scholarly Tradition in Ashkenaz

Examining the two elements in conjunction rather than separately facilitates the creation of a theoretical model of the relationship between community and legal scholarship. Ashkenaz is a marker of common origins signifying a shared religious culture. This religious cultural meaning is embedded in its legal tradition, the community's distinctive culture of halakha. One of the main distinctions between Ashkenaz and Sfarad – the two main halakhic communities – is their legal tradition. This tradition includes the legal sources particular to each culture, the ones that are separate from the shared basic canonic halakhic texts and related modes of interpretation. Whether oral or written, both legal texts

and customs function as types of legal knowledge; some of them are shared by several religious cultures, others are particular to a specific culture.

In an overarching sense, the scholarly tradition of *how* to work with this knowledge governs the legal sources. There is much overlap between the legal sources available to ashkenazic and sfardic scholars; it is their legal tradition regarding this common body of sources that differs. A legal tradition could be described as a body of methods and rules for a scholarly discipline, traditions regarding, for instance, which sources to privilege and when, or how to interpret and adjudicate. Such a legal tradition is not necessarily strictly methodical. Its manner of transmission is in accord with Nora's insight that history is "objective remembering" while memory is "sacred remembering," which was more hazy, symbolic and "affective"[593] and thus inextricable from its social aspects. As we have emphasized, however, the latter type of remembering is a crucial component of the legal tradition and thus important for the textual scholarship of halakha, too. Thus, notwithstanding the differences between memory and the mostly textual legal realm, the legal *tradition* does not transmit well textually.

While this dynamic often existed, it was especially significant in Ashkenaz because of the disproportionate reliance on extra-textual elements of transmission in this halakhic culture. In many ways, the nature of the relationship between a scholarly culture and its legal traditions and the community is in itself part of the legal tradition and thus varies from one scholarly culture to another. Ashkenazic legal tradition was heavily interdependent with Ashkenaz the community.  Jewish scholarly cultures can rarely rely

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[593] See Bell, *Jewish Identity in Early Modern Germany*, 3.

on geographic continuity as a unifying factor, but the community as a non-geographical idea can likewise provide such a unifying factor. Marcus related different communities' way of telling their history, especially their *translatio studii* and stories of religious transmission, to different structures of authority. He noted that ashkenazic narratives, which seem to emerge especially at times when communal status is in decline,[594] emphasized the life of their community. Whereas in Sfarad, chains of authoritative figures were the more frequent form, in Ashkenaz, the focus was not necessarily on powerful or learned "saintly Jews"; the canvas is society itself. Both ashkenazic and sfardic forms of establishing traditional authority in this example are not text-based; but, whereas one focused on specific figures, the other emphasized continuity at the more nebulous level of the communal entity. Thus, ashkenazic religious culture was especially tied to its community, and saw it as the basic unit of religious transmission, more so than other religious cultures. This, perhaps, relates to the ideas expressed by Soloveitchik that scholars in Ashkenaz viewed their community as sacred, often considering their behavior a source of prescriptive law even when it did not correspond to the textual law.[595] As Marcus puts

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[594] "The occasion for writing down a narrative about the past is not idle curiosity or even family pride or a community self-respect but a perceived change or loss" (Marcus, "Story and Collective Memory," 381).

[595] See, for instance, Haym Soloveitchik, "Can Halakhic Texts Talk History?" in *AJS Review* 3 (1978): 188. Soloveitchik posits the custom and even the vaguer "religious sensibilities" of the community as a force that scholars such as RaShY took seriously, even in the face of their scholarly intellectual certainty that these sensibilities were not supported by the legal text as such: "The idea of Gentiles treading Jewish wine awakened revulsion in the Ashkenazic psyche….The roots of this sentiment are difficult to uncover (it clearly antedates all literary remains of the community), but one suspects that this aversion played its part in Rashi's stubborn efforts to sustain, or at least understand *minhag avot*. It was not simply a question of ancient custom. … But here he realized that his interpretation … and he asked himself in amazement whether it was possible that the religious sensibilities of the entire Ashkenazic community had gone astray. Could so deeply felt an injunction be a figment of the imagination…? It was, one suspects, questions like these and the conflicting pull of intellectual certainty that led Rashi into ambiguity."

it, ashkenazic narratives "…describe the Jewish people as a holy community of *hasidim* – pietists – and emphasize that the self-image of Ashkenaz is of a community of righteous saints … the phrase *Kehila kedosha* [holy community] is central."[596]

Another notable characteristic of ashkenazic religious culture is the central place accorded to custom in its world of religious law.[597] "What distinguished Minhag Ashkenaz," in the words of one historian, "was the elevation of custom to a level virtually equivalent to law."[598] The insight that there is no absolute distinction between custom and law, that they do not inhabit separate realms and are not governed by different kinds of logic is thus especially relevant to understanding Ashkenaz and its legal tradition. The strong link between ashkenazic law and custom went beyond mere respect for custom as a legal source and the view that the community's actions were, to some extent, legally authoritative. In cases of an opposition between custom and communal practice, on one hand, and law and scholarly text, on the other, the legal tradition of Ashkenaz sometimes

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[596] Marcus, "Story and Collective Memory," 380-381 (capitalization in original).

[597] Israel Ta-Shma, *Minhag Ashkenaz ha-kadmon* (The ancient ashkenazic custom) (Jerusalem: Magnes, 1992), 16-22; idem, "Halakhah, minhag u-meẕiut be-Ashkenaz, 1000 – 1350" (Halakha, custom and reality in Ashkenaz, 1000-1350) in *Kneset meḥkarim* (Collected studies) (Jerusalem: Bialik, 2005); Eric (Yiẕhak) Zimmer, "Olam ke-minhago noheg: Prakim be-toldot ha-minhagim, hilkhotehem ve-gilgulehem ('Olam ke-Minhago Noheg: Studies in the History and the Metamorphoses of Jewish Customs.) (Jerusalem: Zalman Shazar, 1996).

This tendency is sometimes tied to Ashkenaz's roots in Palestinian Jewry and its conviction that authority can be sought outside the Babylonian Talmud. See Israel Ta-Shma, "Halakha minhag u-masoret be-yahadut Ashkenaz ba-me'ot ha 11-12" (Halakha custom and tradition in the Jewry of Ashkenaz in the 11th-12th centuries) in *Sidra* 2 (1987); idem, *Minhag Ashkenaz,* 9-10, 16, 93-103. See Fishman's critique of this link in Fishman, *Becoming the People of the Book*, 177-178. Other than questioning the genealogical connection to the Land of Israel, Fishman also considers problematic Ta-Shma's interpretation of *ma'aseh* (action) as referring to custom, rather than its more straightforward interpretation as a precedent from an actual legal case, which makes the *ma'aseh* into a legal principle rather than a reference to custom. These differences become less pronounced if we consider custom and law not to belong to two separate categories, something that Fishman's interpretation, it seems, would support.

[598] Jay Berkovitz, "Crisis and Authority in Early Modern Ashkenaz," *Jewish History* 26 (2012): 179–199, 181.

yielded preference to the former. Israel Ta-Shma, emphasizes this, writing that, in the eleventh century in Ashkenaz: "Custom did not yet have a specific relation to halakha because it was the entire essence of halakha and its energizing force."[599] The two were completely interpenetrated, and, in Ashkenaz, custom was particularly privileged. Thus, rather than opposing custom and law, halakha includes both law and custom, and ashkenazic halakha was especially responsive to the latter.

This characteristic also relates to the earlier discussed feature of the essentially scribal nature of halakha in Ashkenaz. By scribal, I designated a culture that worked with texts, but in ways that relied considerably on non-textual elements. This form of interpretation was, as mentioned, fluid, personal, and heterogeneous. Moreover, not only individual adjudication, but also the legal tradition as a whole, was tied to such personal and fluid transmission. Consider Rabbi Moellin's statement, mentioned in chapter one, that the rules for working with halakhic sources, for example, when one relies on texts and when on action, or which source one privileges and how "…is a teaching that has no measure because one cannot teach a rule about it … and they require a rabbi and a tradition."[600] Halakha in Ashkenaz, both individual laws and its legal tradition, was strongly determined by non-textual elements, upon which its transmission depended. This is one of the reasons why both print and codification were so fundamentally incompatible

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[599] Israel Ta-Shma, "Halakha, minhag u-masoret," 145. He also writes, "In this early period [the 11th century], the principle of 'custom-action' was still known as the living principle of Jewish law, which mainly relied on the common action and the accepted precedent, and only in the second place on creative and abstract interpretation." See Fishman, *Becoming the People of the Book*, 177, where she criticizes the "newly-fabricated term, '*minhag-ma'aseh* principle."

[600] See chapter 1 in this dissertation; Yacov Moellin, *Responsa*, §171: מילתא דלית ליה קצבה דלא להודיע כלל על זה, ...וכל כה״ג צריכא רבה וקבלה.

with ashkenazic halakha. When ashkenazic halakhic culture was challenged by these phenomena, it experienced total disruption. Whereas its texts were transmitted in writing, the non-textual elements were lost in communal rupture. The lack of communal continuity precluded the possibility for ashkenazic halakhic culture to resist these incompatible new forms of knowledge.

### c. Communal Discontinuity and Reconstruction

Ashkenaz had come to designate not just location but also origins, thus suggesting communal continuity despite new whereabouts. The important halakhic texts from Ashkenaz; *likutim* with responsa, glosses, and customs made their way to Ashkenaz in its new locations. Increasingly, these texts were printed, thus unifying and stabilizing their contents to some extent.[601] We must, however, also consider the effect on the scholarly tradition when the communal continuity is ruptured and subsequently reconstructed by successors. The members of ashkenazic scholarly culture in sixteenth-century Poland considered themselves the successors of their Franco-German forbears. They portrayed themselves as direct descendants, subscribed to the same texts, and, in theory, to the same scholarly culture. A noticeable shift occurred, however with regard to legal traditions; where transmission had been previously governed by a mixture of orality and textuality, stable textuality came to reign supreme. The logic of custom was replaced by more analytical legal reasoning, the relative weight of authorities and importance of sources was subtly redistributed, and values were reassigned. The reconstruction of Ashkenaz across

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[601] On the printing of ashkenazic *minhag* books, see Mincer, "Liturgical Minhagim Books" and Raspe, "The Migration of German Jews to Italy."

the rift of the sixteenth century meant that some of its scholarly culture, especially the parts most vulnerable to communal rupture because they were most reliant on non-textual transmission, were inexorably lost.

Moreover, the universalization of halakha – the idea that Jewish law should be identical for Jews independent of location – gained unprecedented strength in the sixteenth century, making geographical difference and local variation more difficult to uphold.[602] The oeuvre of Rabbi Yosef Karo (1488-1575) expresses this tendency most strongly. Combining halakhic opinions from a broad range of origins into his *Bet Yosef,* first printed in the 1550s, Karo stated his intention of unifying the law, which was beginning to resemble "an innumerable amount of Torahs because of the many books."[603] Rabbi Karo's method, as a rule, took the three main halakhic codes and adjudicated according to the majority. He apparently assumed that Jews across the world would use the work similarly. Tirẓa Kelman and Amnon Raz-Krakotzkin, among others, have shown that Rabbi Karo's halakhic universalism is closely linked to the phenomenon of print and that the standardization and broad geographic range of print technology influenced Rabbi Karo's halakhic approach.[604]

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[602] On Rabbi Karo's vision of a universalized halakha, see the article by Tirẓa Kelman, "Ktuvot be-ot barzel ve-oferet be-dfus: mahapekhat ha-dfus ve-yeẓirat ha-ḥibur Bet Yosef" (Written in metal and lead letters in print: The print revolution and the creation of the work Bet Yosef) in *Peamim* (148):9-27. See also Amnon Raz-Krakotzkin, "Ḥakika, meshiḥi'ut, ve-ẓenzura: Hadpasat ha-Shulḥan Arukh ke-reshit ha-moderni'ut" (Adjudication, messianism and censorship: The printing of the Shulḥan Arukh as the beginning of modernity) in *Tov elem: Zikaron, kehila u-migdar be-ḥevrot ha-yehudim bi-yemei ha-beinaim u-be reshit ha-et ha-ḥadasha: Maamarim li-khvodo shel Reuven Bonfil* (Memory, community and gender in the Jewish communities in the Middle Ages and the Early Modern Period), ed. Elisheva Baumgarten, Roni Weinstein, Amnon Raz-Krakotzkin (Jerusalem: Bialik, 2011): 335-306.

[603] Yosef Karo, *Bet Yosef*, introduction: כי לא נעשית התורה כב׳ תורות אלא כתורות אין מספר לסבת רוב הספרים הנמצאים בביאור משפטיה ודיניה.

[604] Kelman, "Ktuvot be-ot barzel," 21.

As Kelman points out, Rabbi Karo did not regard divergences among communities as the primary source of halakhic difference. The only reference to geographic deviations in *Bet Yosef*'s introduction comes in the form of a caveat when discussing *minhag* or custom; he defines these differences as a *ḥumra*, or additional stringency, thus differentiating such deviations from the law *per se*. He refers to these differences by stating, "If in some lands they hold a prohibition of a few things even though we decide otherwise, they should retain their customs … as it says in the chapter *makom she-nahagu* [in a place where one has the custom, a chapter in tractate *Psaḥim* in the Talmud]."[605] The rule from tractate *Psaḥim* that deals specifically with geographic displacement states: "One obligates him with the stringencies of the place from which he left and the place to where he is going,"[606] meaning that people remain bound to the stringent customs of their original place. Rabbi Karo's reason for this rule is that, "they already accepted upon themselves the words of the sage who prohibits," thus basing the obligatory status of the custom on implied individual acceptance.[607] In Rabbi Karo's universalist understanding, halakha applied equally, regardless of location. Moreover, he considered that one was bound to the custom of one's origin by means of personal acceptance of the custom. This implied that, once the thread of personal transmission is rent, the obligation is no longer valid. His system did not allow for communal variation that was simultaneously legal. As Raz-Krakotzkin and

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[605] Yosef Karo, *Bet Yosef*, introduction: ואם בקצת ארצות נהגו איסור בקצת דברים אע״פ שאנו נכריע בהפך יחזיקו במנהגם כי כבר קבלו עליהם דברי החכם האוסר ואסור להם לנהוג היתר כדאיתא בפרק מקום שנהגו.

[606] Babylonian Talmud, tractate *Pesaḥim* 51a: נותנין עליו חומרי המקום שיצא משם וחומרי המקום שהלך לשם.

[607] This is in line with an example in the next folio of the Talmud (tractate *Pesaḥim* 51b), where a rabbi, it is told, allowed his student to act upon a certain lenient custom and stated that this permissive behavior would be allowed only in front of the rabbi, because he himself had seen Rabbi Shimon bar Yoḥai do it. When the student was not in his teacher's vicinity, however, it was no longer permitted. This religious behavior was passed on mimetically, and lost its force from one link in the chain to the next.

Kelman have argued, this view related to the development of print culture; it is also important, however, to note its significance in terms of communal and geographic discontinuity.

Because of geographic dislocation and the accompanying complete communal rupture, the issue of what constitutes a community in terms of halakhic obligation needed to be reinvestigated.[608] Rabbi Karo's approach represents one attempt; he suggested that halakha was universal, and any non-universal element necessarily belonged to the realm of custom, which was governed by a different set of rules, such as the notion of personal acceptance. Moreover, as Kelman notes, Rabbi Karo's works equally included ashkenazic halakhic *sources* and sfardic ones, but he completely disregarded the ashkenazic *method* of adjudication.[609] He considered the sfardic legal tradition the only legitimate one (perhaps even the only legal tradition) and attributed any irreconcilable differences between the two legal cultures to custom, which he posited as an extra-legal realm. In other words, his approach made it possible to unify different legal texts into one universal legal system but not to accept multiple legal traditions. Legal traditions, as we have noted, are much more difficult to negotiate textually and are thus in greater danger of getting lost amidst communal discontinuity. The halakhic tradition of Ashkenaz was not lost in the sense that the relevant sources had vanished or that its principles had been forgotten by its successors to the east. Rather, many of the legal traditions had lost their authority or changed in meaning. The change enabled innovative interpretations that previously would have been

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[608] See Joseph Davis, "The Reception of the *Shulḥan Arukh* and the Formation of Ashkenazic Jewish Identity," *AJS Review* 26, no. 2 (2002): 251-276, for a thorough study of these investigations in Ashkenaz.
[609] Kelman, "Ktuvot be-ot barzel," 22-23.

impossible due to the limitations of the legal tradition; it also blocked earlier approaches to halakha. A case study will illustrate these dynamics.

### 4.   CASE STUDY: SANCTITY OF FIRSTBORN ANIMALS
#### a.   Introduction: Sanctity Of Firstborn Animals; Issues, Laws, Concepts

According to biblical law, the firstborn of any kosher animal,[610] if it is male, is to be sacrificed in the Temple in Jerusalem and some of its meat given to the *kohanim* (sing. *kohen*), members of the priestly class.[611] Even after the destruction of the Temple, in the diaspora, the firstborns were, according to some opinions,[612] considered sacred and designated for the *kohanim*; they therefore could not be eaten or used until they acquired an injury that rendered them unfit for sacrifice.[613] They belonged to the *kohen*, who was permitted to eat or sell them, within certain limitations. Belonging to the priestly class had only very limited ramifications in the diaspora, since most of their tasks related to Temple-service and rituals. In terms of actual repercussions, not much remained of the priestly status beyond certain honors and roles in specific rituals and prayers, particular marital restrictions, and care in avoiding contact with cadavers. It was also unavoidable that the

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[610] Exodus 13:2, "Sanctify for me every firstborn"; Leviticus 11: 3-8, and Deuteronomy 14: 4- both give the same general set of rules for identifying which land animals (*behemot*) are ritually clean. Any animal that "chews the cud" and has a completely split hoof is ritually clean, but those animals that only chew the cud or only have cloven hooves are unclean.

[611] See Exodus 13:11-15; Numbers 18: 15-18; Deuteronomy 12:5-6, 17; see Babylonian Talmud tractate *Zevahim* 56b (Mishna), and Maimonides, *Mishne Torah*, *Hilkhot bekhorot* 1:1-2.

[612] See *Midrash Tana'im* on Deuteronomy 14:23; אי מה מעשה...ת״ל קדש לי כל בכור, בין בארץ בין בחו״ל etc.

See Maimonides, *Mishne Torah*, *Hilkhot bekhorot* 1:5, and the glosses of Ra'AvaD (Rabbi Avraham ben David, ca. 1125-1198, Provençe), who seems to have consulted a copy where Maimonides stated that it does not apply in the diaspora, and who corrects Maimonides' "mistake." The gloss of Rabbi Yosef Karo on *Mishne Torah* called *Kesef Mishne*, points out that Ra'AvaD used an erroneous copy of Maimonides' work and that the firstborns born outside of the Land of Israel need not be sacrificed, but are nonetheless considered sacred and belong to the priests.

[613] Deuteronomy 15:21-22.

priestly lineage of certain families had been forgotten. However, the *kohen* did maintain a certain honored social position and he would, for instance, be called up to read the Torah first. How this privileged position translated in the social and rabbinic imagination depended on the particular community and its culture. In the post-Temple period, nothing could be done with these firstborns until they became unfit for sacrifice. As it was prohibited purposely to injure a firstborn animal in order to render it unfit, the owner was required to feed and care for this animal without any profit for the rest of its healthy life. Both slaughtering and eating consecrated animals outside the Holy Land in violation of the requirements of purity are considered very grave sins, punishable with *karet*.[614] *Karet*, often translated "extirpation," is a form of spiritual excision ("that soul shall be cut off from the Jewish people"[615]) and is considered the worst form of biblical punishment. The following section will elucidate three topics of scholarly disagreement considering the halakha of firstborn animals.[616]

### i. Birth History of the Mother and Firstborn Status

If an animal has given birth in the past, it can no longer be a first calver (female cattle pregnant with its first calf).[617] The animals it bears subsequently will thus not be considered

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[615] See, for example, Genesis 17:14.

[616] There are several other questions such as, for example, what kind of injury renders a firstborn unfit to be sacrificed and thus permissible for slaughter? I shall deal only with those issues that appear frequently in halakhic discussions that are part of the ashkenazic tradition of stringency with regard to the sanctity of firstborn animals in Ashkenaz.

See also Ta-Shma, *Halakha, minhag, u-meẓiut*, chapter 11, in which he lays out the earlier medieval ashkenazic approach to this issue and contrasts it with the non-ashkenazic approach, according to which there is no issue of firstborn animals outside of the Land of Israel.

[617] These are also called primiparous animals. See, for instance, Victor R. Squires, *Range and Animal Sciences and Resources Management* in *The Encyclopedia of Life Support Sciences*, vol. 2 (United Kingdom: EOLSS /UNESCO, 2010), 22. "Primiparous: An animal that has only experienced one pregnancy.

firstborns. There are several ways to determine the animal's birth history: If an animal had been in the same Jew's possession when it gave birth previously, all the animals born subsequently are not considered firstborns. If the animal was purchased from another Jew, and the seller did not mention previous births, there are three different *amoraic* opinions.[618]

If, however, the animal was bought from a non-Jew, it is uncertain whether the seller's testimony regarding the animal's birth history can be accepted. The testimony of non-Jews and women is generally not considered legally valid. In very urgent and exceptional cases such testimony may be accepted, provided that the seller is conveying information innocently (*mesiaḥ lefi tumo*), unprompted, and without intent to testify, but firstborn cattle is not such a case.[619] Moreover, in this specific scenario, the seller has an incentive to lie,

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In the case of cattle, these animals are sometimes referred to by ranchers as 'first calf heifer,' 'first calf cow, or 'first calver.'"

[618] Rabbi Yoḥanan is of the opinion that a Jewish seller is obligated to disclose the status of the animal (whether it is a first calver or not) at the time of its sale. If the Jewish seller said nothing, the next animal is definitely not a firstborn. (Babylonian Talmud, tractate *Bekhorot* 21b.) Rav disagrees, contending that a seller's silence implies that the animal never gave birth in the past and is, thus, a first calver. He bases this opinion on the assumption that any seller would prefer to disclose information regarding the animal's birth history had the animal already given birth, as cattle that already gave birth in the past are more desirable products and can thus fetch a higher price. Thus, if the animal had already given birth in the past, it would be in the interest of the seller to mention this information. If the seller did not disclose any such information, the animal should be considered a first calver.

      Having calved before is a sign of good health, usually results in better milk production, as they wean faster, and the heifer requires less recovery time before being able to gestate again, compared to a first calver, which typically needs about ten days longer to recover (See Heather Smith Thomas, *The Cattle Health Handbook* [US: Storey Publishing, 2009], 25). Additionally, a Jewish buyer would also benefit from the fact that there is no risk of a firstborn. (This last reason cannot be countered by Shmuel's counterargument.) Shmuel takes an intermediate position, claiming that the seller's silence does not imply anything, and the first offspring born in the new buyer's possession should be considered a questionable firstborn (*safek bekhor*). Explaining that the seller may have omitted the animal's birth history because he assumes that the animal is being bought for meat consumption rather than for milk production or breeding. In that case, the animal will be slaughtered, and the information regarding the animal's birth history is irrelevant.

[619] There are two possible ways in which having given birth in the past is a plus for a buyer. One is halakhic (the next offspring is not a firstborn); the other is universal (better milk, a healthier cow). See Tosafot in Babylonian Talmud, tractate *Bekhorot* 21b on ד"ה אישתבוחי, who explain that RaShY's choice of the kind of praise that is implied in saying that the animal gave birth in the past, namely, the fact that the cow has already given birth and is thus at lower risk of dying in birth the next time is a universal advantage (applying to Jews and non-Jews alike), rather than the halakhic one.

saying that the animal gave birth previously, as this makes the product more desirable. Any statement from a non-Jewish seller concerning the animal's previous births thus will not exempt its next offspring from firstborn status. According to some opinions, however, such testimony would serve to demote the animal from the status of a certain firstborn to the status of a questionable firstborn (*safek beḥor*). Such a questionable firstborn is not exempt, but it is not certain that the offspring is truly a firstborn, either.

Another method of determining an animal's birth history is by verifying milk production. Generally, lactation is considered proof that the animal has given birth in the past. In the Talmud, Rabbi Yehoshua[620] claims that producing milk is enough to exempt any further offspring from firstborn status.[621] According to others (Rabbi Akiva), this is not considered a sufficiently certain sign of having birthed in the past, and the subsequent offspring is considered a questionable firstborn (*safek bekhor*), but not fully exempt. Rabban Shimon ben Gamliel mentions that if one sees an animal with a suckling newborn, one may assume that this is its own offspring and not a random calf, because a mother loves only its own offspring enough to feed it. Therefore, one may assume that the animal

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They explain that RaShY's choice of the more universal praise implies that even if a non-Jew mentions the animal's previous births innocently, he is still to be suspected. Had RaShY chosen the second interpretation, that the seller would surely have mentioned past births because of the inherent halakhic advantage, then perhaps a non-Jew's innocent statement about the cow's birth history would be believed because we would assume that he was unaware of the halakhic advantage, and therefore he was not planning "casually to drop" that information to entice the Jewish buyer. (As it happens, our editions of the Talmud have RaShY choosing the halakhic rather than the universal explanation. We could also explain that, saying that one would think a non-Jew is not suspect of knowing the halakhic advantage and using that to convince the buyer, and RaShY's choice of the halakhic advantage rather than the universal one shows us that we do, in fact, suspect the seller in all cases). See also Rabbi Asher ben Yeḥiel, there.

[620] Babylonian Talmud, tractate *Bekhorot* 20b.

[621] And see, for instance, Maimonides, *Mishne Torah*, Laws of Firstborns 4:§8.

לקח בהמה מניקה מן הנכרי אינו חושש שמא בנה של אחרת היא מניקה אלא הרי זו בחזקת שילדה, ואפילו היה זה שמניקה כמו מין אחר ואפילו כמין חזיר הרי זו פטורה מן הבכורה, וכן בהמה שהיא חולבת פטורה מן הבכורה שרוב הבהמות אינן חולבות אלא אם כן כבר ילדו

suckling was its mother's own offspring, and is no longer a first calver. [622] The tosafist

Rabbenu Tam (1100-1171) interprets even Raban Shimon ben Gamliel's formulation very

narrowly, reading "because she [the mother] does not *meraḥemet* [love/have mercy] unless

she gave birth,"[623] in line with the scenario described; specifically, an animal suckling a

newborn, rather than simply producing milk. This leads him to understand that, even

according to Raban ben Gamliel, milk production by itself is not sufficient evidence.

Rather, one must witness lactation within the context of a caregiving relationship between

mother and calf. If the animal is merely giving milk, but not seen actually suckling an

animal, Rabbenu Tam would not consider this sufficient evidence. Other interpretations of

Raban Shimon ben Gamliel are broader and consider his statement to apply to milk

production generally, without requiring one to see an actual newborn animal suckling from

the mother.[624]

The halakhic discussion acknowledges that an animal rarely is capable of producing

milk if it never gave birth in the past. However, a certain method of calculation is applied,

namely, the method invoked by Rabbi Meir:[625] "base the minority on the presumption

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[622] Babylonian Talmud, tractate *Bekhorot* 24a. The other opinion, "*Tana kama,*" disagrees on this point, because the animal might be feeding another animal's calf, meaning that such a case should not exempt the subsequent offspring of that animal and instead merely demote it to questionable firstborn status (*safek beḥor*).

[623] Babylonian Talmud, tractate *Bekhorot* 24a: דאינה מרחמת א"כ יולדת

[624] Others take אינה מרחמת to mean that she does not produce milk unless she gives birth, that the process of giving birth and the love/mercy and desire to feed her young is what makes her capable of producing milk in the first place. If one interprets the statement in that way, it is not related to witnessing the mother caring for any specific animal and is limited to the production of milk independently.

[625] This method can work in two ways: an assumption can also serve to weaken a majority. In Babylonian Talmud, tractate *Nidah* 18b, tractate *Kidushin* 80a: "If a child is found at the side of dough, and there is dough in his hand, R. Meir declares it clean; the Sages declare it unclean, because it is a child's nature to dabble. [among unclean things]... What is R. Meir's reason? He holds, most children dabble, yet there is a minority who do not, while the dough stands in the presumption of cleanness: hence combine the minority with the presumption, and the majority is weakened" (trans. Soncino).

(ḥazaka) to be stringent." This method uses a specific primary assumption (ḥazaka) to buttress even a weak minority, thus rendering even the exception to the rule significant enough to require a more stringent approach. In our case, this would mean relying on the presumption (ḥazaka) that an animal is assumed to have the status of a first calver until proven otherwise[626] to apply even to the small minority of animals that produce milk without ever having given birth; this would require a stringent approach suspecting even animals that produce milk of being first-calvers and, thus, considering the subsequent offspring a firstborn who must be given to the priest.[627]

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[626] See Tosafot in Babylonian Talmud, tractate *Bekhorot* 20b for a discussion of this method in the case of firstborn animals and in various domains of halakha in which minority/majority and exception issues arise. See also Rabenu Tam, *Sefer ha-yashar*.

Base the animal on the presumption that it had never given birth, העמד בהמה בחזקה שלא ילדה. This is akin to the "presumption of the body" (חזקת הגוף) in general throughout the Talmud. This is a presumption that a body was in its primary physical state, unless reason can be brought to believe the contrary. For example, there is a presumption that a woman is a virgin, unless there is reason to believe that this is not the case, or that a physical defect was not present earlier, unless evidence is presented to the contrary (see Babylonian Talmud, tractate *Ketubbot* 65b and throughout the first chapter, for examples). The primary state of the body is considered to be whatever it is originally, unless there is reason to assume that something happened to it. Therefore, we assume that an animal never gave birth before unless we have reason to assume otherwise.

[627] The alternative approach to Rabbi Meir is to say that a minority is basically negligible. Thus, it is not a consideration at all, and even if we have a primary assumption that counters the majority, the principle is that a majority is stronger than a primary assumption. Apart from lactation and the seller's testimony, the Talmud also proposes age limits, before which we can assume that certain animals did not yet give birth.

In Ashkenaz, evidently, there were practices of trying to determine the animal's history by looking at signs on its horns. Apparently, the horns were believed to show whether the animal had given birth in the past, as one responsum puts it; "according to the tradition that with each calf another circle is born on its horns," but these are usually not considered sufficient evidence. Israel Bruna, *ShUT MaharI Bruna*, §278. The letter was written by Rabbi Eliezer of Pessau, who was a student of his and embroiled in a dispute with a Rabbi Eljahu of Prague (see Moshe Hershler, "introduction," *ShuT MaharI Bruna* (Jerusalem: Makhon Yerushalaim, 1973), 5n32.

מ"מ אם ראו סמנים בקרניה לפי הקבלה שבכל עגל נולד לו עוגל בקרניה אעפ"י שאינם סימנים מובהקים לסמוך עליהם מדאורייתא...

### ii. The Correct Method of Sale:

If the mother animal[628] was owned by a non-Jew, even partially, [629] at the time that it was

born, the newborn is exempt from firstborn status. A solution for sacred firstborns is, then,

to sell the mother animal to a non-Jew prior to birth. Several conditions determine whether

this sale is carried out correctly.[630] The proper method of selling something to a non-Jew

depends on how a Jew properly sells something to his fellow Jew. Various opinions

regarding the correct method of sale between Jews appear in the Talmud.[631] According to

Rabbi Yoḥanan, transactions take effect at the moment that the money is handed over,

whereas Resh Lakish considers a sale to become valid at the moment that the buyer takes

possession of the newly bought object by means of physically pulling it, bringing it onto

his property, or renting or buying the area on which it stands. The latter opinion is often

referred to as *meshikha*, or "pulling." The medieval ashkenazic interpretation of Rabbi

Shlomo Yiẓḥaki (also known as RaShY, 1040-1105) differs from that of his son-in-law

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[628] While, theoretically, the newborn itself could be sold in advance, it is more complicated to do so correctly without falling into the problem of selling *davar she-lo ba la'olam*, something that is not yet in existence, which invalidates the sale. For this reason, most halakhic sources advise selling the mother rather than the offspring.

[629] Even selling only part of the animal could suffice, seeing as an animal owned in partnership with a non-Jew is also exempt from firstborn status. There are different opinions concerning the specifications for the size and type of body part of the animal that the non-Jew was required to own in order to exempt the animal from firstborn status.

[630] There are additional issues, for instance, the question of what part of the animal must be sold to the non-Jew in order to consider it properly owned by the non-Jew. The measure ranges from any body part that would render the animal *treifah* (an animal whose flesh was torn or ripped in a way that renders it unkosher for consumption) if missing, to anything that would render it *neveilah* (if an animal died before being slaughtered or was slaughtered improperly) if it were missing. There is also a question of how the injury was inflicted (by accident or on purpose, with premeditation or not, by a Jew or a non-Jew, etc.) I focus only on those questions engendering frequent disagreement in my sources.

[631]Babylonian Talmud tractates *Kidushin* 28b, *Eruvin* 81b, *Bava meẓia* 46a and 47a-b, *Ḥulin* 83a, and others.

Rabbenu Tam regarding which opinion –Rabbi Yoḥanan or Resh Lakish – should be followed.[632]

Whatever the method for sales transactions with a Jew, in the case of transactions with a non-Jew, the exact opposite method will apply.[633] Thus, whoever is of the opinion that a Jew buying from a fellow Jew must do so by accepting the money, will rule that, when dealing with a non-Jew, the sale will be concluded when the actual object being sold is physically transferred to the buyer. Vice versa, those who consider physical transfer of the object to effect a sale between Jews, will consider the monetary transaction to be the crucial element for transactions with a non-Jew. RaShY holds that, for transactions between Jews, the determinant is the physical transferring of the object;[634] therefore, when selling to a non-Jew, the money changing hands determines the transaction. For Rabbenu Tam, it

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[632] Rabbenu Tam sides with Rabbi Yoḥanan that biblical acquisition is by means of money, while RaShY agrees with Resh Lakish that the merchandise changing hands is the critical moment. The principle is that the law is like Rabbi Yoḥanan when he disagrees with Resh Lakish, apart from three exceptions (this is not one of them).

RaShY solves this by explaining that it is not really a disagreement of Rabbi Yoḥanan vs. Resh Lakish, because Resh Lakish is merely relating this opinion in the name of Rav Oshaya (see Babylonian Talmud, tractate *Bekhorot* 13b).

Rabbenu Tam and RaShY's opinions differ for several reasons: The formulation "*mi-yad amitekha*" (from the hand of your peer) is biblical support for Resh Lakish's opinion that one buys from a fellow Jew (*amitekha*) by pulling (*mi-yad* )and also includes the notion that in the case of a non-Jew, the opposite is true ("mi-yad" – physical pulling, "amitekha" –> a fellow Jew). Rav Yoḥanan believes that, biblically, money buys (see Babylonian Talmud tractates *Bekhorot* 13b, *Eruvin* 81b, *Bava meẓia* 46b-47b, and others) but that the principle that the sale is only concluded when the buyer takes possession of the merchandise was a later rabbinic decision made to avoid situations in which the merchandise is still in the seller's hands but not in his legal possession any longer and he would therefore make no effort to rescue it if endangered, as it is no longer his. He deals with "*mi-yad amiteḥa*" by explaining that any mention of buying (*kinyan*) implies the exchange of money; his proof texts are שדות בכסף יקנו, "Fields will be bought for money" (Jeremiah 32:42) and מכסף מקנתו "…out of the money that he was bought for" (Leviticus 25:51).

[633] See Babylonian Talmud, tractate *Bekhorot* 13a-b. The biblical mention in Leviticus 25:14 ( או עמיתך מיד קנה – "…or if you buy from the hand of your peer...") specifies that it refers to buying from a peer, thus leading to the conclusion that transactions with non-Jews will be different.

[634] See RaShY on Babylonian Talmud, tractate *Kidushin* 14b, *Bekhorot* 3b.

is precisely the opposite; the object must change hands for the sale with a non-Jew to take place.[635] Most halakhic decisors agreed with Rabbenu Tam in this case.[636]

### iii. May the *Kohen* Return a Firstborn?

In the time of the Temple, once the priest received the firstborn animal, he had to sacrifice part, and then was entitled to its meat.[637] In cases of a questionable firstborn (*safek beḥor*), the animal had to be kept and treated respectfully until it was rendered unfit for sacrifice (by accidental injury) and only then could it be slaughtered and eaten by the *kohen* without requiring any sacrifice. Any disrespect to priestly gifts was considered very grave, and the animal could not be returned to the giver, as this was an act of disrespect.[638] Firstborn animals were considered sacred whether or not they were born in the Land of Israel. Some opinions held that, while the animal was sacred outside of the Holy Land, there was nevertheless no obligation in such cases to give the animal to a *kohen*.[639] According to others, even in a period when Temple sacrifice was not relevant, the firstborn was still considered the *kohen*'s property, as it is one of the twenty-four priestly gifts[640] and their sanctity is determined by the firstborn status of the animal itself, not by the geographical

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[635] See Tosafot in Babylonian Talmud, tractate *Bava meẓia* 48b, *Avoda zara* 71a, on "Rav Ashi..."

[636] See, for instance, Maimonides, *Mishne Torah*, Laws of Firstborns 4:§85.

ישראל שנתן מעות לנכרי וקנה לו בהן בהמה..., וכן אם קנה הנכרי מישראל בדיניהם ונתן מעות אע"פ שלא משך קנה ופטורה מבכורה.

[637] For instance, because its mother was giving milk prior to the birth, which counts for something, but is not sufficient evidence to completely exempt the animal.

[638] See *ROSh* (Rabbi Asher ben Yeḥiel) on Babylonian Talmud, tractate *Bekhorot*, chapter 5.

[639] Regarding the medieval Spanish tradition, based on a phrasing in *Mishne Torah* that many considered mistaken, claiming that Maimonides held firstborn animals to have no sanctity at all outside the Land of Israel, see Ta-Shma, *Halakha minhag u-meẓiut*, 207-208. While most halakhists were of the opinion that this is not correct (Naḥmanides, Rabbenu Yonah, etc.), the common belief in the Spanish milieu was clearly that Maimonides did not consider firstborns sacred at all outside of the Holy Land and people acted in accordance with this belief.

[640] Babylonian Talmud, tractate *Bava kama* 110b.

location of its birth. Thus, in those cases, its owner could not slaughter the animal or benefit

from it in any other way, and an unwilling *kohen* could not return such an animal to its

owner even in post-Temple times.[641] If the animal was definitely a firstborn, it would be

considered disrespectful to return such an animal,[642] but where the animal is only suspected

of being one (*safek beḥor*), the law is indefinite.

### b.      The Ashkenazic Tradition

The following sections will investigate the laws mentioned above as they developed in the

ashkenazic tradition of the post-tosafist period. After the ashkenazic "mythical past," which

is represented by the eleventh-century forefather of Ashkenaz, RaShY, the starting point

for ashkenazic halakhic tradition is Rabbi Meir of Rothenburg (d.1293). I discuss the

transmission of his approach in fourteenth-century *likutim* literature, primarily in the

various iterations of *Sefer haMordekhai*. As discussed in precious chapters, *likutim*,

manuscript compilations of a variety of halakha-related material from many different

sources, reflect a highly fluid scribal culture in which the text depends heavily on non-

textual elements. Much of the textual transmission of ashkenazic halakha was via these

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[641] From Rabbi Asher ben Yeḥiel, *ShUT ha-ROSh*, principle 49 §2 (also included in his *Piskei ha-ROSh* on the Talmud, and printed as a stand-alone section called "*Hilkhot pidyon bekhor*" (The laws of redeeming the firstborn) at the end of Rabbi Asher ben Yeḥiel's commentary on tractate *Bekhorot*. וכן בכור בהמה טהורה נוהג בזה"ז וצריך הישראל ליטפל בו ...ואח"כ נותנו לכהן, והכהן שומרו בביתו ומגדלו עד שיפול בו מום. והכהן צריך לקבלו ואין רשאי לסרב, משום דהוי כמבזה מתנות כהונה ואין מודה בהו.

[642] See Ta-Shma, *Halakha, minhag u-meẓiut*, 211-212, regarding the opinion of Rabbi Elazar of Metz (in *Sefer yere'im, §142*), who suggested that the *kohen* can simply ignore the firstborn animal until it dies. This opinion was not adopted and, in fact, vehemently opposed by all halakhic authorities. Tosafot seem to mention that this was a possibility, but that waiting for it to become injured is a better option as in the first case, the *kohen* cannot derive any benefit from the carcass, whereas once it is injured, he can. Notwithstanding this explanation, no other ashkenazic authorities seem to have considered it possible that the *kohen* had the option of letting the animal starve.

compilations. This mode was well suited to transmitting legal texts as a component, rather than a complete representative of, the legal tradition.

The echoes of what came to be characterized in these *likutim* as the quintessentially ashkenazic approach to firstborn animals reverberates in fifteenth-century responsa, where the awe for Rabbi Rothenburg is palpable. These responsa address several aspects of the ashkenazic legal tradition and its characteristics. First, I consider the logic of custom and its form of reasoning, which is centered, in these cases, on an authoritative figure, who comes to dominate an entire era. Second, I point out the ways in which the community at large is involved and show that "the common people," while playing a crucial role, are not a monolith. Third, I study how rabbis working within the logic of custom treat conflicts between concrete situations and legal authority, often providing *ad-hoc* solutions. A separate section devoted to Rabbi Israel Isserlein's (d. 1460) opinion on firstborn animals will show how his creative modes of investigation and argument, which tended to favor legal reasoning over the logic of custom, were nevertheless tempered by the strength of the ashkenazic legal tradition. Together, these insights illuminate the nature of the legal tradition of Ashkenaz as it existed before the rupture of the sixteenth century.

The final part of this study will consider the fate of *bekhor behema* in the sixteenth century, in the writings of the main representative of the new ashkenazic tradition, Rabbi Moshe Isserles, and in the responsum of a more conservative figure, Rabbi Yosef Katz. The former provides an example of the kinds of reasoning that prevail in a reconstructed tradition and of the elements of a legal tradition that lose importance when transmitted by text. The latter will show that even a scholar with a strong conscious desire to continue

earlier legal traditions cannot do so in the same manner as his predecessors across the chasm of communal rupture. The case as a whole analyzes the approach to firstborn animals when Ashkenaz was in its original surroundings and the subsequent early modern shift in approach, in an attempt to discern the lost legal tradition of Ashkenaz. It will point out the influence of the geographic move and reconstitution of the ashkenazic community on the new tone in the halakhic discussion in the sixteenth century.

i.  **RaShY**

Several sources testify to Rabbi Shlomo Yiẓḥaki's serious attitude toward the issue of firstborn animals. A collection of responsa attributed to him relates[643] that someone accidentally slaughtered a firstborn, "and came and asked the Rabbi [RaShY] whether the law of firstborns applies in this day, and Rabbi answered, certainly, certainly it applies and it applies, and the one who slaughtered it is guilty of slaughtering outside the Temple..."[644] Building on this testimony of a spoken answer, the summary in a thirteenth-century text reads as follows: "A non-injured firstborn in this day and age, there is nothing one can do about it until he becomes injured, and both [regular] Israelites and *kohanim* are prohibited to [benefit from] it, and if someone slaughters it, he is completely guilty of *karet*..."[645]

Another source, this time testimony about his actions, clearly shows the seriousness of the matter: "Rabbi [RaShY] had a calf that had not given birth yet, and he gave it to a

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[643] On the authors and editors of these responsa, see Israel Ta-Shma, *Rabbi Zraḥya ha-Levi, Ba'al ha-maor, u-benei ḥugo* (*Rabbi Zrachya ha-Levi, Ba'al ha-maor* and his circle) (*Mosad ha-Rav Kook*: Jerusalem, 1992), and Avraham Grossman, *Ḥakhmei Ẓarfat ha-rishonim*.

[644] This is written by a certain Rabbi Shmarya, who relates that someone asked RaShY, and it is printed in *Sefer ha-orah* (L'vov, 1905), 219 (emphasis added). ... ואחר שחיטה והפשטה הרגיש בדבר, ובא ושאל את רבי (רש״י) אם דין בכור נוהג בזמן הזה. ואמר רבי *ודאי ודאי נוהג ונוהג*. והשוחטו חייב משום שחוטי חוץ.

[645] See *Shibole ha-leket* (Stalks of the gathering), vol. 2, ed. Simḥa Ḥassidah (Jerusalem, 1988), §25. Written by Rabbi Ẓidkiyahu ben Avraham Rofeh in the 13thc. (Venice; Bomberg, 1546). בכור בזמן הזה אין לו תקנה עד שיפול בו מום, ומי ששוחט אותו חייב כרת גמור משום שוחט קדשין בחוץ.

non-Jew to partner with him because he was worried it would give birth to male offspring.

And he did not fear the prohibition of partnerships with non-Jews, and his opinion was that

if the calf were to give birth to a male, it is prohibited."[646] RaShY was willing to partner

with a non-Jew, something that halakhic sources frowned upon, in order to prevent the risk

of a firstborn. These recollections of what RaShY said and did testify to the behavior of the

"founding father" of Ashkenaz; moreover, they emphasize – note the doubling in the

statement attributed to him: "certainly, certainly" and "it applies and it applies" – the high

degree of precaution that he took to avoid this prohibition.[647] Although these are legal texts,

they share certain features with the realm of memory writing in terms of their affect.

RaShY's position as the forefather of this halakhic world adds to the weight of such

statements, not only because of their legal implications but also because his example of

exercising strong caution to avoid transgressing the prohibition became tied to the

collective identity of Ashkenaz.

### ii. Rabbi Meir of Rothenburg

Rabbi Meir of Rothenburg leaned toward stringency in all of the three key issues discussed

above. The view that transgressing the sanctity of firstborns was a particularly grave sin

punishable by *karet*, explains, to some extent, the tendency to be stringent with regards to

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[646] See *Tshuvot RaShY,* §183, quoted in Ta-Shma, *Halakha minhag u meẓiut,* 210. עגלה היתה לרבי
שלא ביכרה, ונתנה לגוי בשותפות מפני שהיה מתיירא שמא תלד זכר. ולא חש לאותה ששנינו אסור לעשות שותפות עם גוי. ודעתו
היתה שאם תלד זכר א״א לשומרו מתורת עבודה ומהויית מום...ואח״כ שמע שהיתה חורשת בשבת ואמרו לו לרבי, והשיב: מאחר
שאי אפשר לו שלא תהא תחת יד הגוי, מותר, דלא אדעתאי.

[647] Wood provides a strikingly similar example of the oral communication of local custom (in that
example, about property), including the doubling for effect: "John Carpenter remembered that he had gone
to see William Kere, 'being very syck and upon his dethe bed.' They discussed the dispute over Cleeve Hills,
and William 'seid to his wife *oh lett them have itt, lett them have itt* for they be in the right." Wood, *The
Memory of the People*, 9 (emphasis added).

firstborn animals.[648] His cautious attitude regarding the sanctity of consecrated animals would come to be identified as a communal trait of ashkenazic religious culture.[649] Rabbi Rothenburg did not accept producing milk or non-Jewish testimony of any kind as sufficient evidence to prove whether or not an animal was a firstborn. When asked "whether a non-Jew conversing innocently that it [the animal's mother] has already given birth in the past is reliable,"[650] he answered in the negative, referring to the talmudic statement[651] that the testimony of a non-Jew conversing innocently is believed in only one very urgent case; that of declaring a husband dead, thus releasing his wife from being an *agunah*,[652] and permitting her to remarry. Otherwise, testimony from a non-Jew is halakhically invalid.[653]

Concerning milk production, Rabbi Rothenburg writes that only if the mother was seen suckling an animal previously, the offspring born next could be exempt from firstborn status, in accordance with the opinion of Raban Gamliel.[654] He follows Rabbenu Tam's narrow interpretation of that statement, which implies that milk production by itself is not sufficient evidence; one must witness the mother actually feeding a calf. Rabbi Rothenburg also subscribed to the view that, although it was rare for animals to produce milk before

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[648] See Ta-Shma, *Halakha minhag u-meẓiut*, 214.

[649] See Ta-Shma, *Halakha minhag u-meẓiut*, 212n20: "And the strength of the living custom for this was stronger than any halakhic casuistry." Note here, too, the implied bifurcation of law and textual reasoning on the one hand and living custom and practice on the other. וגדול היה כוחו של המנהג החי בזה מכל פלפול של הלכה

[650] Meir Rothenburg, *ShUT Rabbi Meir mi-Rothenburg dfus Cremona*, §312. Or, see Meir of Rothenburg, *Tshuvot Psakim u-Minhagim* (Responsa, rulings and customs), ed. Yiẓḥak Zev Kahana (3vols.) (Jerusalem: Mosad ha-Rav kook, 1960), II:161.

[651] Babylonian Talmud, tractate *Yevamot* 121b.

[652] Literally "chained" or "anchored," since she is tied to him for the rest of her life and unable to remarry as a result of his unknown status.

[653] In the same responsum, he dismisses with similar ease the possibility of using markers of the animals age on its horns as a way of determining birth history.

[654] Babylonian Talmud, tractate *Bekhorot* 23b-24a.

ever having given birth, this rare minority is combined with the presumption (*ḥazaka*) that

"every animal is presumed not to have given birth," unless there is cause to think otherwise.

He adheres to this stringent opinion even though some sources considered milk production

in itself (even without actual suckling) sufficient evidence to disqualify further offspring

from firstborn status: "Even though, if we force the matter, one should have said that milk

exempts it, nevertheless, we act stringently regarding such a severe prohibition, because,

if it is a firstborn, there are two prohibitions of *karet*..."[655]Aware that the rarity of cases

where an animal that produces milk will be a first calver makes it seem ludicrous even to

consider such a possibility, Rabbi Rothenburg nevertheless refuses to allow that fact to

influence the halakha at hand. Indeed, he writes a strong rejoinder to anyone with such

objections:

> And the idiots who protest this and wonder, "But it is only one case in thousands where it can be found that the milk comes before the birth!?" One should answer them: "And isn't it the law that, if a man was seen to have fallen in infinite waters,  such as an ocean for example, and most probably drowned, his wife is still prohibited to marry anyone and has to remain chained all of her days?! This in spite of the fact that rabbis have applied many great leniencies to avoid a woman from being chained ... even so, if he falls in infinite water, she is prohibited [to remarry], even though it is more likely than in this case [firstborns] that not even one of tens of thousands survives in such a case [drowning], the rabbis are so stringent with prohibitions punished by *karet* and death, that they will even chain a woman all of her days!" ... How much more, then, should one not question this issue [firstborns] if one decides in favor of being stringent, where there is not such a terrible loss?![656]

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[655] Rothenburg, *ShUT MaharaM Rothenburg dfus Cremona*, §312, or Rothenburg, *Tshuvot Psakim u-Minhagim*, II:160:

אף על פי שלפי דיחוי הוה לן למימר דחלב פוטר, אבל מכל מקום לחומרא עבדינן באיסור חמור כזה שאם בכור הוא יש בו שני כריתות משום שוחט חוץ ואכילת קדשים בטומאת הגוף

[656] Ibid.: והשוטים המתרעמים על זה ותמיהם הלא אחת מני אלף אלפים לא ימצא זה שחלבן קודם ללידה. יש להשיב להם הלא נפל במים שאין להם סוף כגון בים וכיוצא בו אשתו אסורה וצריכה להתעגן כל ימיה, אע"פ שכמה קולות גדולות היקילו חכמים בה משום עיגונא... אפילו הכי אסורה כשנפל במים שאין להם סוף, אף כל פי שברור הוא יותר מזה שאין ניצולין אחד מרבי רבבות, החמירו באיסור חייבי כריתות וחייבי מיתות לעגן אשה כל ימיה. ... כל שכן שאין לתמוה על נדון זה אם נחמיר במילתא דלית ביה פסידא כולי האי.

The strong rhetoric is designed to drive home the seriousness of the prohibition, which a person should try to avoid, even if it entails incurring relatively minor discomforts. Rabbi Rothenburg explains that the slim survival chance of a husband who was seen to be drowning is taken as a serious possibility, even though taking such unlikely scenarios seriously has dire consequences, such as (in the case of drowning) rendering his wife an *agunah* for the rest of her life because of the off-chance that her husband survived. In the realm of *agunah*s, moreover, there is an injunction to search for solutions at all costs (as we have seen, testimony usually deemed questionable is accepted in such cases). Nonetheless, because the punishment of marrying a married woman is *karet*, the rabbis were fearful even of the unlikely case that the husband survived. Rabbi Rothenburg therefore, argues *a fortiori*, in the case of firstborn cattle, where the punishment is just as grave, but the downside is infinitely less serious, one should take seriously the unlikely possibility that a first calver produced milk before birth, and not rely on milk production for a lenient ruling. This halakhic argumentation about stringency and risk is intertwined with the emotional and moral exhortation to "the idiots" who are flippant about such a sin.

Rabbi Rothenburg was similarly stringent with regard to selling the first calver to a non-Jew prior to giving birth. Many halakhic scholars consider one of the two forms of sale sufficient, usually the one prescribed by Rabbenu Tam; this stipulates that the animal for sale must change hands for it to be sold to a non-Jew in a valid manner. Rabbi Rothenburg required a monetary transaction (often referred to simply as "money") in addition to the transfer of the object being sold ("pulling"), in order to effect a valid sale

according to both opinions. One of his responsa[657] contains instructions regarding the correct form of sale: "One must sell it to the non-Jew with 'money' and 'pulling,' because RaShY and Rabbenu Tam disagree whether… and if, for a Jew, one uses 'pulling,' then one uses money for a non-Jew, and if, for a Jew, one uses money, then for a non-Jew one uses 'pulling'; therefore, we are in doubt and do both."[658]

Rabbi Rothenburg, while stringent, was not oblivious to the reality: In another responsum, he addressed the case of people giving firstborn animals to a *kohen* out of malice, as a way of burdening him with an extra mouth to feed. He writes to "my guide, Rabbi Meir Kohen! What will I do and what can I answer you, concerning those people who intend for their animals to give birth to a firstborn, in order to give it to your son, a *kohen*, in order to be vengeful?!"[659] Rabbi Rothenburg wrote scathingly of this practice and explained that these people transgressed several grave sins. First, in the post-Temple period, Jews are, in fact, *required* by halakha actively to avoid firstborns by selling the mother correctly prior to birth (as RaShY did). Whereas this may have been considered a loophole in Temple times, in the post-Temple age, however, it was actually preferable to avoid the birth of a firstborn because this prevented any risk of accidentally transgressing the laws that accompany the birth of a firstborn animal.[660] Second, the above practice was

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[657] Ibid.

[658] Ibid.: ויש להקנות לגוי בכסף ובמשיכה, משום דפליגי רש"י ור"ת אי הלכה כרבי יוחנן או כרשב"ל, ואי ישראל במשיכה אז גוי בכסף, ואי ישראל בכסף אז גוי במשיכה, הילכך מספקא לן ועבדינן תרווייהו.

[659] Meir Rothenburg, *ShUT MaharaM Rothenburg dfus Prag,* §78, or Rothenburg, *Tshuvot Psakim u-Minhagim,* II:155: אלופי הר' מאיר הכהן, מה אעשה לך ומה אשיבך על אותם בני אדם המתכונים לכך שתלד בהמתם בכור כדי לתתן לבנך כהן להנקם ממנו

[660] One of the other sources for the requirement to actively avoid the birth of a firstborn, rather than allowing it to be born and giving it to a *kohen*, in post-Temple period is from Asher ben Yeḥiel, *ShUT ha-ROSh*, principle 49, §2 (also included in *"Piskei ha-ROSh"* and in *"Hilkhot pidyon bekhor"*).

contrary to the spirit of the original commandment. The priestly gifts, he wrote, were "awarded to Aaron and his sons, not to spite and belittle and harm them, and whoever means to harm with this is not fulfilling the requirement to give these gifts at all!"[661]

Third, the giver of gifts to the priest is prohibited from deriving any benefit from the *kohen* to whom he gives it, and, in this case, enjoying his suffering is a form of benefit. Last, Rabbi Rothenburg expressed moral disgust at that practice in his day, writing that whoever gives a *kohen* such an unwanted gift "is defiling the name of heaven and the consecrated gifts."[662] Notwithstanding this strong condemnation, Rabbi Rothenburg did not concede that the *kohen* be permitted to use the animal in any way before it is injured, nor was he allowed to return such an animal to its owner. Rabbi Rothenburg held this opinion not only for a certain firstborn but even for a questionable firstborn (*safek beḥor*), leaving the recipient of such an animal with little choice but to feed it and care for it for the rest of its days or until it is injured.

Clearly, not every common practice became custom, and not even Rabbi Rothenburg's sympathy for the wronged *kohanim* provided him with enough grounds to be

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וכן בכור בהמה טהורה נוהג בזה"ז וצריך הישראל ליטפל בו בבהמה דקה שלשים יום ובגסה חמשים יום. ואח"כ נותנו לכהן והכהן שומרו בביתו ומגדלו עד שיפול בו מום. והכהן צריך לקבלו ואין רשאי לסרב משום דהוי כמבזה מתנות כהונה ואין מודה בה... אלא אפילו קבלו כהן לא שרי ליה להכניסו לכיפה דלא אישתמט בשום דוכתא גבי בכור כדאמרינן גבי הקדש...

ומצוה להפקיע קדושת בכור קודם שיצא לאויר העולם שלא יבא להכשל בו בגניזה ועבודה. והא דאמרינן בפ' בתרא דבכורות דמעשר בהמה בטלו בזמן הזה משום תקלה, ופריך אי הכי בכור נמי, בכור בדידן תליה מילתא, מרחם קדוש, הכי קאמרינן ליקנינהו לאודניהו לגוי דלא ליקדש מעיקרא...

והאידנא אומר ר"ת ז"ל (תוס' בכורות ג ד"ה 'דקא') שטוב להקנות לגוי שלא יבא לידי תקלה. ואע"ג דחזינן שנענש רב מרי...

[661] Rothenburg, *ShUT MaharaM Rothenburg dfus Prag,* §78, or Rothenburg*, Tshuvot Psakim u-Minhagim*, II:155:

כל כ"ד מתנות כהונה נתנו לאהרון ולבניו ולא לצער ולהקניט ולקנטור וכל המכון לקנטור בהן לא יצא ידי נתינה כלל

[662] Ibid.:נמצא שהוא מחלל שם שמים ומחלל את הקדשים

lenient. As a later source[663] wrote in the name of Rabbi Rothenburg: "…and his [the *kohen*'s] complaint should not be to him [the Israelite who gave him the animal] but to God, who commanded him to take His firstborns, and therefore… as long as it is possibly a firstborn, he is required to take care of it because of the doubt, following the principle of 'for every doubtful prohibition, we are stringent.'"[664] The legal tradition of stringency regarding firstborns crystalized around Rabbi Rothenburg, not merely as a rigid legal interpretation but as an ethical stance; a religious attitude that would come to be identified with Ashkenaz in the texts of the following generations.

### iii. Fourteenth-century sources: *Likutim* and the Making of a Legal Tradition

Rabbi Meir Rothenburg died at the end of the thirteenth century, and his responsa circulated in the different manuscript collections that characterized Ashkenaz at that time.[665] As his approach was transmitted in these halakhic compilations and summaries, his stringent tendency became identified with the main ashkenazic tradition. As previous chapters have

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[663]This is the gloss called *Bet Yisrael* on the *Arba Turim*, which consists of two parts "*Drisha*" and "*Prisha*," composed by Rabbi Yehoshua Falk (1555-1604), a student of Rabbi Moshe Isserles.

[664] *Drisha* on *Arba Turim*, *Yoreh de'ah* §315, cites Rabbi Meir Rothenburg, and concludes: "From a responsum which I found among the responsa of our master Rabbi A.K. [in Rabbi Shlomo Luria's notes it says Rabbi Meir Rothenburg here], and I doubt that it is a responsum, also Rabbi Meir of Rothenburg responded thus in §315 "My Master, my Rabbi," etc. (in his explanations of the *Tur*)

[א] ואם תקפו כהן מוציאין וכו'...אשר שאלת אם הישראל בעצמו חייב לטפל בספק בכור אם לא רצה כהן לקבלו

אם אין הישראל רוצה לטפל בו ורוצה ליתנו לכהן צריך הכהן לקבלו ולטפל בו כי הישראל למה יש לו לטפל בו והא אפילו בודאי בכור לא הזקיקו הכתוב אלא הזמן דמפרשינן ותו לא ומשם ואילך אינו חייב הישראל, אלא הכהן, ואם הכהן יסרב מלקבלו הרי זה מבזה פרס המלך.

ונראה לומר דכל כה"ג דברים המסורים לבני אהרון וכל כהן שאינו מודה בהן אין לו חלק בכהונה א"כ בספק בכור יכול הישראלי לומר ממ"נ - איני חייב ליטפל בו עוד דאי חולין הוא איני חייב לטפל דהא אי בעינא שחטינא ליה...ואי בכור הוא כבר נטפלתי בו כשיעור שחייבתני התורה, אבל הכהן אינו יכול להטילו על הישראל, ולא עליו תלונותיו כי אם על השם שציוהו ליטול בכורו והשתא עד דספק בכור הוא צריך לטפל מספיקא כדין כל ספק איסורא לחומרא ומשום דילמא בכור הוא חייב לטפל בו ע"כ.

מתשובה מצאתי בין תשובות מהרא"ק ומסופקני אם זו תשובה.

גם מהר"ם השיב סי' שט"ו

[665] See Simcha Emmanuel, "Introduction" in *Tshuvot MaharaM me-Rothenburg ve-ḥaverav* (The responsa of Rabbi Meir Rothenburg and his circle), ed. Simcha Emmanuel (World Congress of Jewish Studies: Jerusalem, 2012), 16.

shown, these manuscript compilations represent the ashkenazic form of halakhic transmission, which was scribal and thus fluid, rather than strictly textual, relying heavily on non-textual elements for its transmission without purporting to provide a complete and sufficient legal source. This section will indicate the importance of the non-textual elements in the transmission of the laws of firstborn animals. Although the laws contained a textual component, its transmission by means of *likutim* led it to be strongly intertwined with the legal tradition, inviting reasoning closer to custom than law.

One of the most famous ashkenazic *likutim*, a halakhic compilation from the thirteenth century known as *Sefer ha-Mordekhai*,[666] discusses firstborn animals. The compilation first enumerates several opinions about whether milk production exempts animals from firstborn status. This is followed by the statement: "Our Master Rabbi Meir ruled that milk does not exempt..." It concludes this summary by stating that some opinions are lenient, but "…however, in all of Ashkenaz, one acts in accordance with Our Master Rabbi Meir; thus, it is still considered a possible firstborn (*safek beḥor*) and can be eaten only once it is injured."[667] Fifteenth-century sources addressing questions of firstborn

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[666] Written by Rabbi Mordekhai ben Hillel, who was a student of Rabbi Meir of Rothenburg, the *likut* was glossed and edited by Rabbi Schlittstadt, a student of Rabbi Mordekhai. In the fourteenth and fifteenth centuries, the latter version was sometimes called Sefer *Mordekhai katan* (see Reiner, "Ashkenaz Yerushalaim," 4-10).

[667] Mordekhai Katan, *Ḥulin* Ms. Hebr. Qu.10, Universitätsbiliothek Johann Christian Seckenberg, Frankfurt am Main.

ומי' מהר''ם פסק דחלב אינו פוטר דמאי אמר רוב פרו' אינן חולבות אא''כ יולדו' ותיפטר משו' רוב איכ' למימ' סמוך
אינ' חילבו' לחזקת הגוף שלא ילדה וה''ל פלגא, ותו' סתרו זה ואמרו...ומי' בכל אשכנז נהגו כמהר''ם ומ' ה''ל ספק בכור ונאכל
במומו

see also *Mordekhai* on tractate *Bekhorot*, ch. 10

ושוב מצאתי שמהר''ם כתב וז''ל דקדק ר''ת מדאיצטריך לטעמא דלא מרחמא אלא אם כן ילדה שמע מינה דחלב גרידא אינו
פוטר ואע''ג דרוב בהמות אינן חולבות אא''כ יולדות איכא למימר סמוך מיעוטא דחולבות אע''פ שאינן יולדות לחזקת הבהמה שלא
ילדה והוה ליה פלגא ופלגא ואסור משום ספק ונאכל במומו לבעלים ולא יצטרך לתתו לכהן כשיומם דהממע''ה ואע''ג...אבל הכא
חיישי למיעוטא להחמיר באיסור חמור כזה והוה בכור ויש בו שני כריתות משום שוחט חוץ ואוכל קדשים בטומאת הגוף

animals repeatedly cite this line. It ties Ashkenaz together as a halakhic community with allegiance to Rabbi Rothenburg's opinion, which is stringent with regard to firstborn animals. *Sefer ha-agudah* by Rabbi Aharon Zuslein, a fourteenth-century compilation, similarly mentions Rabbi Rothenburg's approach: "...a *kohen* who was sent a firstborn animal cannot return it... And Rabbi Meir of Blessed Memory was very stringent towards the *kohen,* even for an animal where the firstborn status is uncertain (*safek beḥor*)."[668]

This allegiance to Rabbi Rothenburg's halakhic opinion does not perfectly overlap with the actions of the community as a whole. As mentioned, Rabbi Rothenburg was also stringent regarding the method of sale: both money and the object must change hands to consider the mother animal sold to a non-Jew. In Ashkenaz, fifteenth-century responsa reveal cases of less than ideal transactions involving only a monetary exchange and no physical transfer of the animal ("pulling"). In a number of these cases, sales involved only monetary transactions, but the animal did not physically change hands. The cases in which the animal was sold properly would not appear in responsa, because they would not pose a problem requiring rabbinic advice. It is significant, nevertheless, that questionable cases often stemmed from imperfect sales. More significant is the way in which the halakhic literature deals with this discrepancy.

### iv. Fifteenth-century Responsa:
### Logic of Custom and the Transmission of a Legal Tradition

The statement, "in all of Ashkenaz one acts in accordance with Our Master Rabbi Meir to be stringent," became the main trope when it came to firstborn sanctity, thus associating

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[668] See *Alexander Zuslein* ("RaZakh," Erfurt d. 1349), *Sefer ha-agudah* (Cracow, 1571), on tractate *Bekhorot*, ch.3:

כהן ששלחו לו בכור לא יחזירנו לבעליו עיין שם. והרמז"ל החמיר מאד על הכהן אפילו ספק בכור.

the cautious attitude toward such prohibitions with Ashkenaz and uniting the ashkenazic legal tradition via the figure of Rabbi Rothenburg. This statement functioned not as a purely halakhic legal opinion but, rather, operated according to the logic of custom, in which the law that is linked to one's authoritative source by the strongest transmission prevails. The following section examines the logic of custom and its relationship to common practice and the populace. Next, it analyzes the manner in which conflict between the accepted opinion and reality is treated in the context of this logic.

### iv-a. Custom and the Community:

The attitude towards sanctity of firstborn animals is, thus, part of the legal tradition; it is halakhic, but not strictly legal. Many of these non-legal elements suggest that the correct mode of behavior regarding firstborn sanctity is a praiseworthy communal legacy in addition to being a technical legal issue. The following responsa examine the role of Ashkenaz as a community in this legal tradition, showing that the rather indefinite positive idea of the naïve and sacred community, is, in fact, a matter of only a specific part of the community. "Ashkenaz" as a community embodying a legal tradition is very precisely defined. It contains an idea of a lay populace as the "living archive"[669] of the sacred traditions, but only in a very particular sense, which is constructed and limited by the scholarly class's interpretation of the living archive.

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[669] For uses of the notion of "living archive" to describe the legal import of the common people, see, for example, Algazi, "Ein gelehrter Blick." For such an example regarding Ashkenaz, see Haym Soloveitchik, *Halakha, kalakala ve dimuy aẓmi* 111-112. His phrasing emphasizes the opposition of text and people*:* "…are the actions of numerous communities of sacred pure people worth less than a line in the Yerushalmi to verify the intention of the Torah?!"

Some evidence indicates that selling animals to non-Jews using only monetary transactions was a common practice among lay Jews, although it was frowned upon by the scholarly élite. A responsum to Rabbi Israel Isserlein from a Rabbi Ẓion of Bingen, [670] mentions that, "many had the custom, and go out and see how the people act, to sell to the non-Jew the fetus by means of money without any 'pulling.'"[671] Clearly, it was a widespread practice to sell by monetary transaction alone. "Go out and see how the people act" is a talmudic statement referring to common practice while expressing faith in popular behavior as a legitimate halakhic source.[672] It is clear why Rabbi Bingen used this expression, as his entire letter deals with defending the practice. He claimed that common practice conformed to "the ancient *rishonim* (first ones),"[673] thus relating the imperfect form of sale to the founding fathers of medieval ashkenazic halakha who preceded Rabbi Rothenburg by two centuries and belonged to a much more distant period of the ashkenazic past. He acknowledged that, in an ideal case "if a person comes in advance to ask us how to sell to a non-Jew, we would have instructed him like Rabbi Meir Rothenburg, who was stringent and required money as well as pulling, in order to remove himself from any

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[670] *Leket yosher* was assembled by one of Isserlein's disciples, Rabbi Yoizel Ostreicher (also known as Yosef Hochstadt). This particular responsum was copied and sent to Rabbi Moshe Mintz, who, in turn, sent it to Rabbi Isserlein, along with some remarks. See chapters 2 and 6 in this dissertation for more on *Leket yosher*.

[671]*Leket yosher*, *Yoreh de'ah*, (Jerusalem: Makhon Yerushalaim, 2010), 134-135: *hilkhot bekhor behema* §71-72. ולמה זה לנו הבכורה, הואיל ודשו ביה ונהגו רבים, ופוק חזי מאי עמא דבר, שמקנים לגוי את העובר בכסף בלא משיכה

All subsequent page-references to *Leket yosher* are for this edition.

[672] See for instance Babylonian Talmud, tractate *Eruvin* 14b: "Rabbi Tarfon ruled that the following benedictions must be said…Said Rabbi Ḥanan to Abaye: 'What is the law?' Said the other 'Go and see what is the usage of the people." ר' טרפון אומר בורא נפשות...א״ל רב חנן לאביי הלכתא מאי א״ל פוק חזי מאי עמא דבר

[673] *Leket yosher*, *hilkhot bekhor behema* §71-72; 134-135. ותיקים הראשונים שהנהגו להקנות בכסף לחודיה

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disagreement";[674] he declares, however, "now that many have held like this to act according

to RaShY and RaShbaM, we do not protest their actions."[675]

While the reference to these illustrious, almost mythical, forefathers, the "ancient

first ones" provided some rhetorical support, an additional explanation that would address

the legal aspect was needed. Rabbi Bingen provided this answer by means of a somewhat

forced argument based on Rabbi Yizḥak of Vienna (d.1270), also known as *Or zarua*, after

his halakhic compilation. [676] He was the teacher of Rabbi Rothenburg and preceded him by

a few years but belonged to the same period of the ashkenazic past as his student. *Or zarua*

introduced a novel interpretation, according to which handing over money is, in fact, the

preferable method in this specific scenario, not only for RaShY, but even according to

Rabbenu Tam, who usually required 'pulling.'[677] Rabbi Yizḥak explains that, in cases

where there is no object to hand over, Rabbenu Tam, too, would agree that the money

changing hands constitutes the decisive moment. This applies to cases of firstborn animals

as they were being sold while still a fetus in the mother's womb. Following a principle that

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[674] Ibid.: ואם ספק, אם בא לכתחילה לשאול בפנינו היאך יקנה לגוי היינו מורים כמהר"ם שהיה מחמיר ומצריך מעות
ומשיכה לאפוקי נפשיה מפלוגתא.

[675] RaShbaM was a grandson of RaShY and a famous tosafist. *Leket yosher*, *hilkhot bekhor behema*
§71-72. ומאחר דאהזיקו ביה רבים למיעבד כרש"י וכרשב"ם אין מוחין בידם.

[676] *Or Zarua,* 1: Laws of Firstborns § 408:

הלוקח עובר חמורו של עכו"ם .... מיהו במקומות שלנו נהגו להקנות לעכו"ם ולפטור מן הבכורה. ...מיהו צריך אתה לדעת
האיך יקנה לעכו"ם רבינו שלמה פי' רב מרי ידע לאקנויי קנין גמור שידע ליטול מעות מן העכו"ם, דעכו"ם לא קני אלא בכסף כדאמ'
לקמן פ"כ. ...

מיהו לדברי ר"ת דפסיק כר' יוחנן דאמר דבר תורה מעות קונות ולעמיתך בכסף - לעכו"ם במשיכה - בעכו"ם לא קני אלא
במשיכה. אם הקנה העובר לעכו"ם וקבל דמיו לא קנה העכו"ם ולא פקעה קדושת בכור, אלא צריך להקנו' גוף האם עצמה לעכו"ם
...ובמשיכ' שימשוך העכו"ם את האם.

כדברי רבינו יצחק זצ"ל שפי' דשרי לן להקנות לעכו"ם בין בו בין באמו. ואפי' לדברי ר"ת דפסק דעכו"ם במשיכה הוא
דקני ולא בכסף מיהו היכא דלית לי' מה למשוך קני בכסף לר' יוחנן שהרי משיכה לעכו"ם לר' יוחנן כמו בישראל לדשב"ל [דבר
שלא בא לעולם].

See also, Israel of Krems, *Hagahot Asheri* on *Bava Meẓia* ch.4 §8.

"the fetus is not part of the mother" (*ubar lav yarech imo*), [678] physically handing over the

mother would not necessarily effect a physical transfer of the fetus. Rabbenu Tam was, in

fact, of the opinion that "the fetus is not part of the mother." According to this

interpretation, even Rabbenu Tam himself would thus agree: when selling an animal fetus

to a non-Jew, it is, by default, the money changing hands, and not the object, that

determines the actual sale, as the object cannot be held, much less, change hands.

This interpretation was important for those seeking to defend the common

ashkenazic practice because it offered an opportunity to justify such a sale to some extent.

Of course, a transaction involving both money and physical 'pulling' as Rabbi Rothenburg

required, remained the preferable method, but *Or zarua*'s argument at least made it possible

to justify the imperfect method by providing a source for the popular frowned-upon norm.

The opinion was often brought up in fifteenth-century responsa in this context. However,

in every responsum where this leniency is suggested, the opinion is summarily

dismissed.[679] *Sefer ha-Mordekhai*, for instance, presents this opinion, but concludes with

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[678] See Babylonian Talmud, tractate *Ḥulin* 58a.

[679] Soloveitchik makes this important point in his essay on gentile wine, emphasizing that ashkenazic rabbis had a very high opinion of the piety of their communities but did not often avail themselves of possibilities to bring the law closer to the actual practice of the people, even if this would make their lives easier, and even when they had the opportunity to do so.

Haym Soloveitchik, "Religious Law and Change: The Medieval Ashkenazic Example," *AJS Review* 12, no. 2 (Autumn, 1987), 218: "...Jews had much to gain from its allowance. Occasion presented itself for the tosafists to wipe *yeyn nesekh* from the books, but the idea was rejected with shock. Spanish Jewry, for example, were lax in their observance of this injunction, and made attempts to rid themselves of this annoying restraint. I have found, however, no evidence for anything similar in France or Germany … there are numerous issues in other areas where practice was *far more conservative* than theory. And this is significant both psychologically and religiously."

In our case, of course, there is a practice among lay people that is *less* conservative than the theory of the leading rabbis at the time, and the opportunity to "wipe" this prohibition "off the books" was quite weak (we will soon see that the *Or zarua*'s idea is not entirely convincing), but the parallels are clear. Perhaps, indeed, the rabbis identify with the pious self-image of Ashkenaz, the community that refuses leniency even when it would make their lives easier, but the lay people do not.

the statement: "And Our Master the rabbi Rabbi Meir [Rothenburg] was stringent and required both money and 'pulling,' in order to remove ourselves from uncertainty."[680] This remains the bottom line for all subsequent halakhic inquiry in ashkenazic responsa.[681] Rabbi Moshe Mintz, who had received Rabbi Bingen's letter, added a short response, strongly disagreeing with the latter. After claiming that most of the letter contained nothing new, Rabbi Mintz summarized: "…only this thing he innovates, that he wants to prove that money alone is preferable to money and 'pulling,' and this is against Our Master Rabbi Meir Rothenburg, who is stringent to require both."[682] With this, considered the matter closed. Popular custom, clearly, was not just *any* action practiced by the populace. Rabbi Isserlein responded similarly. Surprised at Rabbi Bingen's attempt to elevate popular

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[680] *Mordekhai* on *Bava meẓia* (ch. "The gold," *ha-zahav* §302) "From here, Rabbi Yiẓḥak of Vienna wanted to prove that money completes the transaction even according to Rabbi Shimon ben Lakish [which is the opinion Rabbenu Tam follows] there where the non-Jew has nothing to 'pull' ... And in cases where there is nothing for the non-Jew to 'pull,' money is what buys, therefore, a Jew who has an animal pregnant with its firstborn, the Jew may accept money from the non-Jew and so sell him the fetus in order to exempt it from firstborn status, even though the non-Jew did not 'pull' the animal. ... This is even in accordance with the opinion of Rabbenu Tam, who ruled that 'pulling' is what buys for non-Jews and not money, because here there is nothing to 'pull,' seeing as the 'pulling' of the mother does not help for the fetus, since *Rabbenu Tam himself* ruled that 'the fetus is not part of its mother'...until here [I cite] from the language of the book *Or zarua*."

מכאן הוכיח ה"ר יצחק מווינא דמעות קונות לרשב"ל היכא דאין לו לעכו"ם מה למשוך, ומדרשב"ל נשמע נמי לרבי ...
יוחנן דאמר משיכה בעכו"ם קונה ולא מעות מדעימיתך בכסף מכלל דעכו"ם במשיכה... והיכא דאין לו לעכו"ם מה למשוך, מעות
קונות הלכך ישראל שיש לו בהמה מבכרת מותר לו לישראל לקבל מעות מן העכו"ם ולמכור לו העובר אע"ג דלא משך העכו"ם
להפקיעו מבכורה. ... אפילו לר"ת, שפסק שמשיכה בעכו"ם קונה ולא מעות, דאין כאן מה למשוך דמשיכת האם אינה מועלת לעובר
.דהא ר"ת ז"ל גופיה פסיק ד'עובר לאו ירך אמו היא' וכמאן דמנחא בדיקולא דמיא, עכ"ל ספר א"ז.

[681] There is also a summary of *Or zarua's* opinion in Israel of Krems, *Hagahot Asheri* on tractate *Bava meẓia* §8: ומדר"ל נשמע נמי לרבי - מעל, דמוכח ממתניתין דנתנה לבלן, והיכא דאין לו מה למשוך מודה ר"ל דמעות קונות
יוחנן דאמר משיכה בנכרי קונה ולא מעות, היכא דאין לו לנכרי מה למשוך- מעות קונות, הלכך נראה בעיני ישראל שיש לו בהמה
מבכרת מותר לו לישראל לקבל מעות מן הנכרי ולמכור לו העובר אע"ג דלא משך הנכרי, ולהפקיע מבכורה וחוזר וקונהו מן הנכרי
לאחר שיולד הואיל ואין יכול למשוך העובר מעות קונות ומשיכת האם אינה מועלת לעובר אלא בכפותה ומטעם חצר ואע"ג דאי כפתה
ומשכה הוה קנה לעובר אפילו הכי הואיל וכגון העובר אין יכול למשוך אלא ע"י משיכה דבהמה המעות קונות, דהא גבי בלן נמי הוה
יכול לקיים השכירות ע"י חליפין דשכירות קרקע נקנית בחליפין אפ"ה הואיל ואין יכול למשוך גוף המרחץ מעות קונות הוא הדין
.הכא. מא"ז

[682] *Leket yosher*, 135.

ואתה אהובי מהר"ר יוזמן, יצ"ו, ראה אשר האריך שלא צריך והביא כל מקומות פלוגתא דרש"י ור"ת וכן הפלוגתא דחלב
פוטרה פלוגתא דר"ע ור' יהושע ורשב"ג. אך דבר זה מחדש, שרוצה להוכיח דכסף מלעשות עדיף מלעשות כסף ומשיכה, וזה נגד
.מהר"ם דמחמיר לעשות שניהם, ועיין בו

practice into something stemming from a custom of "the ancient *rishonim*," he exclaims: "It is a great wonder to me to *make a custom* based simply on a talmudic discussion against the opinion of our ancient rabbis and our later rabbis,"[683] thus rejecting the attempt to justify popular carelessness by promoting it to the status of custom. Although rabbis in Ashkenaz sometimes did regard their common custom as sacred and legally binding, the category designated as "custom" was not, it seems, determined solely by actual community practice.[684]

In a question sent to Rabbi Yacov Moellin, a certain Rabbi Ḥaim Ẓarfati of Augsburg describes a case in which a Jewish owner left his cow with a non-Jew for caretaking without selling the cow to him. During that time, the cow calved. Based on several factors, the questioner concluded that the newly born calf was most likely not a firstborn. None of these signs was halakhically accepted evidence to declare the calf exempt from firstborn status according to ashkenazic practice. He provides some background information. The owner, he explains, "...sent the calf as a firstborn to the home of a certain *kohen* … and he is 'average poor' and his little children depend on him for

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[683] Ibid. (emphasis added) ‏ופליאה גדולה לעשות מנהג מסוגיא דעלמא נגד דעת רבוותא קשישי ורבוותא בתראי‎.

[684] After this exclamation, Rabbi Isserlein evaluated the halakhic basis of these practices. There is mention of two sources presenting altogether three opinions that considered physical transfer of the object being sold preferable to money. At the technical legal level, Rabbi Isserlein easily rejected all of Rabbi Bingen's arguments that selling by means of money alone is in any way preferable to selling by means of both money and a physical transfer of the object. Rabbi Isserlein was reluctant to spend too much time countering most of Rabbi Bingen's arguments, but he did specifically address the aforementioned argument of *Or Zarua*. Rabbi Isserlein speedily dismissed the argument by stating that the principle "the fetus is not part of the mother" applies only to certain laws of slaughter and has nothing to do with laws of property and sale. Thus, the suggestion of the *Or Zarua* is dismissed and the approach of Rabbi Rothenburg prevails. *Leket yosher*, 135. ‏כראי זה ראי לא פירכי קצת דבריו, ועל ראיותיו על איתנהו פירכי וכמה דכמה הם, תמוהים דברים‎ ‏דכתב זרוע, דאור והיא והביא בראיותיו למדקדק הם מובנים אפשר לבארם, פנאי לי אין אכולהו, השווה בצד פרכי וקצת זה,‎ ‏מטריפה, לבד הוא, אמו ירך עובר התלמוד בכל דקי"ל להדיא דפסקו הפרה פרק התוס מן שריותא אההוא רבה נרגא לך כתבתי כבר...‎ ‏יותר להאריך אין מזה‎.

See Babylonian Talmud tractate *Ḥulin* 58a and Tosafot on Bablyonian Talmud, tractate *Bava Kama* 47a "‏מאי טעמא‎".

sustenance.[685] This *kohen* was not in town when it was sent to him, and he also warned him

in advance not to send it to him because he would not accept it."[686] Additionally, there were

other *kohanim* closer to the owner's location, some of them richer. The *kohen* apparently

had some reason to suspect that Moshe was planning to do this to him, as he already had

told Moshe in advance not to send him anything.[687] The responsum depicts a negligent

owner, who sends his firstborn animal to a *kohen* who is described in stirring terms:

> And when the *kohen* came back home and found the calf, he was very fearful,
> because he did not know what to do – should he give it back or shouldn't he? – because he
> is a simple person [*am haarez*][688]and fearful that he might commit the sin of disrespecting
> it, and he lives in a place where there are no Torah scholars, but he declared before
> witnesses that he does not want to accept the calf, despite the fact that he will feed it until
> he can inquire from those who know Torah what he should do in order not to sin.[689]

The recipient is depicted as a pious man, unlearned (*am haarez*), but all the more

faithful to halakha,[690] as his primary reaction – terror at committing a grave sin – shows.

According to the questioner, the *kohen* actually kept the calf and cared for it twelve days

the time at which the letter is being written, in order not to do anything wrong, even

unintentionally.[691] The questioner describes the case not as a unique occurrence but as a

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[685] Babylonian Talmud, tractate *Ḥulin* 18a.

[686] *ShUT MahaRYL*, §174 (204): לסוף שלח העגל בתורת בכור בבית כהן אחד הדר בגייזנואלד, והוא עני בינוני ותלו בי' טפלי. והכהן לא היה בעיר בשלחו לו, גם הזהירו תחלה שלא ישלח לו כי לא יקבלנו...

[687] Ibid. Later on, he also writes that "the *kohen* is complaining that the owner did not send it to the rich kohanim of their area but, instead, to him because of hatred that he harbors towards him."

[688] Ibid.: ?ע"ה -עם הארץ או עבד השם, most likely the former, but the latter, "a servant of God" would work here too.

[689] *ShUT MahaRYL*, §174 (204) וכשחזר הכהן לביתו ומצא את העגל חרד חרדה גדולה דלא ידע מה לעשות אם להחזירו או לאו מפני שהוא ע"ה וירא פן יעשה עבירה לזלזל בו ודר בישוב שאין בו בני תורה, אך לקח לו עדים ואמר שאינו רוצה לזכות בו כלל אף כי יתן לו מזונות עד שיחקור מפי יודעי תורה מה יעשה שלא יחטא.

[690] Ta-Shma, among others, related this notion of pious unlearned people (as opposed to scholars) to the Rhineland pietists.

[691] Moreover, there is an added risk involved, as the questioner explained, *ShUT MahaRYL*, §174 (204): "…they both live under one ruler, and there is reason to fear that there will come destruction from this, God forbid.... And last week a certain kohen was fined by his superior [*pakid*] in the city of Rhein also because of a *safek bekhor* [uncertain firstborn] that had been sent to him in the past, and he left it with the shepherd with the other animals, and the superior accused him about this, that he did not do as the law of

veritable plague: "And many times destruction (*kilkul*) result from these *safek bekhorot* [questionable firstborns], and this is all due to the misconduct of the owners (*ba'alei batim*, literally homeowners), who are not careful when they buy the cow, and also do not care to inquire from Torah scholars how to buy it so that it is exempt from firstborn status, and therefore in Schwaben the *safek bekhorot* have multiplied more than anywhere."[692]

The owners, it seems, often neglected to sell the mother animal properly, using only money without handing over the animal, either because of purposeful negligence or ignorance. This would fulfill the requirement of proper sale to non-Jews according to RaShY but not according to Rabbenu Tam and definitely not according to Rabbi Rothenburg's injunction to use both forms in order to avoid risking transgression. The animals that were born after such incomplete sales were, apparently, often given to *kohanim*, who did not want them. In most cases these animals had been sold in some form or other, meaning that they were of questionable firstborn status (*safek bekhor*) rather than

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Moshe and Israel requires and he fined him 50 gold coins because he should have taken care of it himself. And this *kohen* is poor and has nine children. And the community in Augsburg and the rabbi wrote to that superior to explain that the *kohen* did not transgress our laws, in order to save him, and it is not known what the outcome will be."

ושניהם דרים תחת שר אחד ויש לירא דליפוק חבורא מיניה ח"ו...ובשבוע שעבר נקנס כהן אחד לפקיד שלו בעיר ראיי"ן ג"כ מחמת ספק בכור שנשתלח לו מאשתקד והוא הניחו ביד הרועה אצל בהמות אחרות והפקיד העליל עליו בזה שלא עשה כדת משה וישראל וקנסו בנ' זהובים דהוה ליה לרעותו לבדו. ואותו כהן עני הוא ויש לו ט' בנים. והקהילה מאוישפור"ק עם הרב כתבו לאותו פקיד כדי להצילו שלא עבר על דתינו בזה, ולא נודע איך יפול.

Only a week before the case of Moshe, a similar case apparently occurred, in which a firstborn was specifically sent to a poor kohen in order to cause him distress. It seems as though there were fines from the local non-Jewish authorities for Jews who did not keep their own laws (at least, when another Jew files a complaint) – I have asked other scholars what this might refer to…

The *kohen* was accused by someone, most probably the sender, of not following Jewish law. It seems as though this accusation caused the non-Jewish authorities to become involved, and, as a result, the entire community had to intervene. Rabbi Ḥayim fears that this case is similarly motivated to cause the kohen trouble, especially considering the enmity between the owner and the *kohen*.

[692] *ShUT MahaRYL*, §174 (204) ופעמים רבות באים קלקולי' מאלו ספק בכורות והכל בפשיעות הבעלי בתים שאין מדקדקין בקניית הפרה, וגם אינם חוששין לחקור ביודעי התורה איך תהיה הקנייה לפוטר' מן הבכורה, ולכן רבו בשוואב' ספק בכורות מבכל הארצות...

certain firstborns. In that case, according to halakha, the owners themselves were permitted

to keep the animal, albeit without making use of it in any way until an injury occurred.

These animals were nevertheless often given to *kohanim*, often against the *kohen's* will.

The *ba'alei batim*, although negligent about selling their animals correctly, would not cross

the line of keeping the offspring of a badly sold animal, choosing instead to burden the

*kohanim* with the results.[693] Clearly, some of these *kohanim* did not know that they had the

option of refusing livestock of doubtful firstborn status (*safek bekhor*). Once accepted,

however, the ashkenazic halakha determined that they could not return even uncertain

firstborns (*safek bekhor*).[694] In the letter, Rabbi Ẓarfati begs Rabbi Moellin, "in the name

of God and in the name of peace," to make a judgment and to attempt to exempt the animal

from firstborn status, suggesting several ways of doing so. [695] Rabbi Moellin, in his

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[693] Why did such problematic partial sales happen so often? As some of the responsa discussed in this section will show, lack of awareness might be one factor: some of the responsa mention that the owners of the animals are "*amei areẓ*" (not educated) and thus perhaps not aware of the finer points of halakha. But, again, why are they unaware – why is this considered a "finer point" as opposed to other points, if it evidently has actual relevant halakhic consequences? Maybe Jacob Katz's notion of "ritual instinct" (Jacob Katz, *Goy shel Shabat* [The Shabbat Goy], [Jerusalem: Shazar, 1984], 176-189.) is useful here: once money is handed over, it "feels" like the animal is sold, so no-one thinks twice, but then once firstborn is born they somehow do not feel at ease with keeping the *safek bekhor* themselves and insist on giving it to a *kohen*.

Also, in terms of realia, in many cases the non-Jew actually kept the animal even before having bought it, and took care of it, fed it, etc. in the winter time in exchange for its milk. Therefore, it seems, when it was sold to the non-Jew it simply remained in the same place and there was no physical act of moving it or pulling it that took place. This might also be the cause for many of these mishaps - the Jew took money from the non-Jew in exchange for his animal, but it was already in the non-Jew's stable, so the actual "pulling" was often disregarded or forgotten. Moreover, local business law did not require "pulling," which is perhaps another reason it was so easily forgotten.

[694]See *Psakim u-Ktavim* §166.

[695] According to Rabbi Ḥayim Ẓarfati's description, there was a real problem of such consecrated animals being foisted on unwilling kohanim. Apart from the personal affront and damage, it seems that this phenomenon was causing wider problems to the community at large. He also wrote that he sent a special messenger to Rabbi Moellin to respond to this issue in order to attempt to avoid any escalation (*ShUT MahaRYL*, §174 [204] (ובנדון זה כדי לבטל המחלוקת טרחתי ונסעתי בגיײנבעלט ומצאתי בצוע זה בין שניהם ששלחו לכבוד תורתך ציר הלז מיוחד לכך שתורה להם הדרך אשר ילכו בה:

response, agrees that the situation is dire and, referring to the owners, says that they are dealing with "simpletons and feeble-minded people."[696]

This instance presents a complex division between lay and scholarly: On the one hand, the *kohanim* are the pious guardians of tradition. They are portrayed as carefully observing this commandment to the point of inaccuracy, accepting responsibility in cases where they were legally exempt, feeding into the ashkenazic self-conception of guarding the sanctity of firstborns. This religious attitude, while technically incorrect, is seen as part and parcel of accepted custom and encourages legal scholars in Ashkenaz to continue being stringent in their decision making. On the other hand, however, we have the *ba'alei batim*, the homeowners and members of the community who are also ignorant about the proper laws, but they are reviled for not learning to sell their first calvers properly in advance of a birth.

The scholars rejected Rabbi Bingen's attempt to justify the actions of the cattle owners as stemming from an ancient custom in similar terms. Some types of simple people, it seems, were sacred, while others were not. Rabbi Moellin's responsum expresses his sympathy for the *kohanim* by mentioning the harsh words that Rabbi Rothenburg reserved for those who sent them unwanted firstborns.[697] Although the rabbis admired the poor *kohanim* for their devotion – perhaps precisely *because* they admired them and considered them an authentic living archive of popular conduct – the rabbis had no solutions for them.

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[696] *ShUT MahaRYL*, §174 (204)דאתרוותא דעמי הארץ וקלי הדעת נינהו, כמו שכתבת בעצמך:

[697] Ibid.: "…as much as he [Rabbi Meir Rothenburg] was upset with the *kohen* who would refuse to accept it, he was even more upset at those who intended to humiliate and pour wrath on [*lekanot*] a kohen and send it to him as a means of exacting revenge [*linkom*], and he wrote how many sins such a person commits, as is specified in his responsum to Rabbi Meir ha-Kohen."

Rabbi Moellin's responsum contains several attempts to alleviate the issue from different angles. Every time, however, he returned to the point that, "Even for a *safek bekhor*, Our Master Rabbi Meir is stringent," concluding that there is no way of removing the firstborn status entirely, and he found himself at a dead-end.

### iv-b. The Logic of Custom and Conflict:

Unlike the logic of law, the logic of custom precludes the option of limiting or diminishing the source of tradition, which must be accepted as is. Different iterations of *Mordekhai* and *Sefer ha-agudah* are used repeatedly as sources for Rabbi Meir of Rothenburg's stringent tradition that the entire land of Ashkenaz must be careful with sacred firstborns. Despite the challenging situations that arose, the responsa from the fifteenth century show that, for the most part, rabbis upheld the stringencies. They thus faced the challenge of dealing with real -life problematic situations without opposing or limiting this stringent tradition. As previous chapters have discussed, the non-textual nature of halakhic transmission in Ashkenaz was accompanied by a strong reliance on rabbis' personal *ad hoc* decision making. This fluidity, while unfortunate for textual transmission, in fact, provided the perfect tool for solving conflicts in practical situations. The use of *ad hoc* decision-making as part of the logic of custom can clearly be observed in cases of firstborn sanctity. Even when scholars suggested ways of exempting livestock from firstborn status, they would do so without directly opposing the legal tradition attributed to Rabbi Rothenburg and applied to Ashkenaz. Unable to confront the legal tradition of Ashkenaz by means of textual logic – proving it irrelevant or a less preferable interpretation of sources – they solved the problem by adjudicating based on a case specific factor.

In the case presented to Rabbi Moellin of the poor *kohen* who was given an unwanted firstborn, the question mentioned that the animal's owner had declared that, had he known that he was under no obligation to give the *safek bekhor* away, he would never have done so. Clearly, this owner was just as uninformed about the law as the *kohen* and just as careful about not transgressing it (although, unlike the *kohen*, the owner foisted the problem onto someone else). Rabbi Moellin took advantage of this formulation, and he declared that the gift was given under false pretenses, and, as a mistaken gift, it automatically returns to its owner, based on the principle that a gift given in error automatically returns retroactively to the owner. The authority mentioned for this principle is none other than Rabbi Rothenburg, as cited in the *Mordekhai*.[698] Rabbi Moellin thus supported his solution in the face of the stringent tradition associated with Rabbi Rothenburg in accordance with another opinion stemming from that very same authority. This solution is, however, very specific for a case in which the giver reveals that he had not intended to give the animal to the *kohen*. Without such a declaration, there would be no turning back once the firstborn was bestowed upon the *kohen*. This is a creative but very specific *ad hoc* solution, in which a gift that was given under false pretenses automatically reverts to the owner.

The following two responsa by Rabbi Moshe Mintz show both the possibilities and the limitations of *ad hoc* solutions and the place of local business customs when it came to these laws. Rabbi Israel Bruna asked for his opinion regarding a situation in which a non-

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[698] *ShUT MahaRYL*, §174 (204) וכן פסק מהר"ם, נראה לענ"ד כל היכא דאיתא ביה גזא דישראל בעל הפרה קאי על השולח מעות לחבירו ליתנם לגוי ושכחם הגוי, דהדרי זוזי למרייהו, דאדעתא דהכי לא שלח...ומייתי ליה במרדכי פרק האלמנה ניזונת.

Jew was the guarantor for another non-Jew who took a loan from a Jew. The non-Jew could not pay his loan with money, but he did have sheep. The debtor and the guarantor gave the Jew some sheep in lieu of the loan. The Jew did not want to keep the sheep and agreed to sell them to the guarantor. The guarantor agreed to buy them, but he did not have any money. The Jew, therefore, took some of the sheep as a warranty. When these sheep arrived in the Jew's courtyard, one of the ewes lambed.[699]

In the responsum, Rabbi Mintz claims (amongst other arguments) that, following Rabbenu Tam, the sheep are not considered to be the Jew's property because they were immediately sold to the non-Jewish guarantor, without the Jew ever having physically taken them into his possession. The sheep that the Jew *did* end up taking into his courtyard were taken merely as a warranty for the money, and not in order to own them. According to RaShY's opinion, the monetary transaction is what counts, and in this case, no money changed hands.[700] When the Jew took these sheep as a warranty, there was no reason to believe that bringing them to his courtyard implied that he owned them, as neither the Jew nor the non-Jew viewed this action as a sale. The Jew did not consider these sheep his property, but merely a warranty, and he treated them as such. Therefore, although the lamb was born in the Jew's courtyard, it was not born in his possession.

The responsum's conclusion had to take into consideration that this line of reasoning does not fully follow Rabbi Rothenburg's requirement to use both money and pulling for acquisitions with a non-Jew. In this case, perhaps when the Jew took some of

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[699] See *ShUT MaharaM Mintz*, §5.
[700] Rabbi Mintz also dismissed the possibility that the sheep were bought from the first non-Jew by forgiving the loan, which is sometimes considered a form of money.

the sheep from the guarantor, even without pulling, it should be considered an acquisition? Rabbi Mintz denies this, claiming that even Rabbi Rothenburg himself considered pulling to be the real form of acquisition, and he added money merely as an extra level of certainty: "Although Our Master Rabbi Meir requires money and 'pulling' ideally, in order to remove ourselves from doubt, even so, he believes that it is *pulling* specifically that buys from a non-Jew, as most of the opinions of the scholars follow this ... and this is almost unilateral...."[701] In this manner, Rabbi Mintz argued that Rabbenu Tam's method of pulling is truly the valid transaction, and money is merely an added stringency measure. The Jew in question thus did not acquire the sheep, as no form of pulling took place until he had already sold the sheep to the guarantor, and the only sheep the Jew took into his possession were a warranty against future payment.[702]

Rabbi Mintz supplemented this argument with a list of all the authorities who agreed with Rabbenu Tam and required only the object to change hands and not the money, including Rabbi Yiẓḥak al'Fasi (known by his acronym, RYF), Maimonides, and Rabbi Asher ben Yeḥiel (ROSh).[703] As a result, there was no doubt that, when the ewe gave birth, it was not owned by the Jew. As a final justification, Rabbi Mintz explained that it was none other than Rabbi Rothenburg who wrote that "the *custom* of the people is to rule

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[701] *ShUT MaharaM Mintz* §5: ואפי' את"ל דמנהג שנהגו חכמים עוקר דאורייתא, כגון סיטמתא, דכיוון דמוקמי' חכמים ברשות הלוקח, דהפקר ב"ד הפקר, ממילא הוי קנייה לכל מילי, מ"מ האי קנייה דנהגו התגרים גוים, אינו מועיל להפקיע קדוש' בכור, דאל"כ למה הצריך מהר"ם כסף ומשיך' לאפוקיה נפשיה מפלוגתא - הא מנהג הגוים בכל המקומות מי שנותן אפי' פרוטה על המקח קונה בו אפי' זהו' ולית דין צריך פנים?!

[702] The fact that the debtor was the one to drive the sheep that were used as warranty into the Jew's courtyard played in their favor, as the Jew did not do any pulling, and the debtor could be considered an agent of the non-Jew, bringing the sheep to the Jew as a warranty.

[703] This was a later ashkenazic source by a student of Rabbi Rothenburg and thus, theoretically, could be considered more authoritative by virtue of being more recent (See Rabbi Asher ben Yeḥiel, *ROSh* on Babylonian Talmud tractate *Bekhorot*, chapter 2: א. הלוקח...הלכך ישראל שקנה בהמה מן העובד כוכבים אע"פ שנתן (מעות פטורה מן הבכורה עד שימשוך.

according to RYF unless the tosafists oppose his opinion." [704] As, in this case, RYF is in accord with the tosafists, Rabbi Mintz explained, he saw no reason not to follow the opinion that the issue of a monetary transaction can be disregarded in this case. The use of "custom" in this statement refers to another aspect of the legal tradition, in this case a very clear principle regarding the correct hierarchy of authoritative sources. Rabbi Rothenburg also handed down this tradition. Once again, rabbinical authorities allude to Rabbi Meir Rothenburg's legal tradition in order to support a decision to break with that rabbi's tradition of stringency.

Being very case specific, this leniency was also very limited. In a case that was very similar to the one above, Rabbi Moshe Mintz did not agree to release the animal from sanctity: In this question, Rabbi Mintz was responding to Rabbi Zalman Levi Ẓion, who describes a situation in which a Reb Isaac Kohen from Bendheim took a pregnant cow from a non-Jewish debtor of his as payment for the debt. A coin was given to seal this transaction. After having bought the pregnant cow, the Jew was worried that it would give birth; he therefore rushed to a non-Jewish woman, who agreed to buy the cow from him. She gave him money but did not physically take the cow. The Jew then took the cow into his courtyard for the night, planning to give it to the non-Jewish woman the next day. That night, the cow calved. The next day, the Jew bought the cow and its newly born calf back from the non-Jewish woman for two coins. Rabbi Mintz claimed that the calf is a possible

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[704] *ShUT MaharaM Mintz* §5: ואיתא במרדכי בסוף נערה בתשובות מהר״ם דנהגו העם לפסוק כרב אלפס בדבר שלא נחלקו עליו התוס׳, he mentions the "responsa of MahaRaM" for this principle, but as a source he provides the *Mordekhai* (tractate *Ktubot*, § 170), which includes many of Rabbi Rothenburg's responsa.

firstborn (*safek bekhor*), whereas the rabbis of Nürnberg[705] deliberated and considered the calf not sacred. Although, Rabbi Mintz remarks, "…they did not wish to permit the calf at all, seeing as I prohibited it,"[706] Rabbi Ẓion nevertheless wrote to Rabbi Mintz to explain his opinion.

Rabbi Ẓion, who sent the question to Rabbi Mintz, suggested a two-pronged explanation to exempt the calf from firstborn status.[707] First, Rabbi Ẓion argued that the Jew never bought the cow because he accepted only a coin for the transaction, which, according to Rabbenu Tam, is not an acceptable form of transaction for buying from a non-Jew. Then, the Jew indeed physically took the cow into his courtyard, but at that point, he had already accepted a coin from the new non-Jewish buyer with the intention of selling it to her. This sealed the transaction, and the cow was no longer property of the Jew: he was merely safeguarding the cow for the new owner. Therefore, Rabbi Ẓion wished to claim, the cow had already been bought by the non-Jewish buyer when it gave birth. Rabbi Mintz's responsum rejected the latter's entire structure.

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[705] This included Rabbi David Tev'l Shprinẓ and Rabbi Zalman Levi Ẓion: Rabbi Shprinẓ was a contemporary of Rabbi Isserlein and is mentioned in *Leket yosher*. See the introduction to *Leket yosher*, 18. Rabbi Zalman Levi Ẓion was the son of Rabbi Ẓion Bingen mentioned above.

[706] *ShUT MaharaM Mintz*, §82: ומ״מ לא רצו כלל להתיר מכיון שאסרתי

[707] See the first part of *ShUT MaharaM Mintz*, §82, where Zalman Levi Ẓion's suggestion is copied. Rabbi Ẓion explained that it would be permissible either following only RaShY or following only Rabbenu Tam. According to RaShY's opinion that the acceptance of money completes a transaction, the cow was indeed successfully bought by Reb Isaac at first, by means of the coin, but it was subsequently sold to the non-Jewish woman for money, before having calved.

According to Rabbenu Tam, who requires the physical transaction of the object being sold, on the other hand, the cow was never bought from the non-Jew in the first place, as the Jew only used the coin. When the Jew later took the cow into his possession for the night, Rabbi Zalman explained, he did not do so in order to buy the cow, as at that point he had already agreed to sell it to the non-Jewish woman and accepted her money. He was simply keeping it safe for the night in the meantime.

Although this case seems very similar to the previous one, Rabbi Mintz refused to accept this line of reasoning. In the previous case, he conceded that the Jew took the sheep into his courtyard without intending to possess them; thus, the fact that the sheep were in his yard when one gave birth did not make the lamb sacred. Rabbi Mintz would not, however, extend such an argument to the current case. He dismissed the explanation that the Jew, Reb Isaac, merely kept the cow safe for the sake of the new owner (the non-Jewish woman) without intending to own it. Rabbi Mintz did not consider this plausible, considering that the Jew immediately bought the cow back the next day. Thus, clearly, he was keeping the cow safe *for himself*, as *he* intended to buy the cow back immediately after the birth. The Jew took the cow into his courtyard with the intention to possess it, and, as such, he became the owner as soon as he brought the cow onto his property. Rabbi Mintz asks rhetorically whether the Jew would put up any resistance had anyone tried to steal the cow from his courtyard while it was under the ownership of the non-Jewish woman, and replies, "In such a situation we can assume that Reb Isaac would have shouted out loud, 'The cow is mine! For I bought it and pulled it, and see – it is in my house!'" [708]

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[708] If one follows Rabbenu Tam, who requires the physical transfer of the animal, then the Jew did not buy the animal from the first seller. Subsequently, however, in taking the cow for the night, he effectively accepted ownership over it. The fact that the non-Jewish woman already paid him money for that cow does not hold any weight for Rabbenu Tam. Thus, the cow calved in the Jew's possession and is a firstborn. (*ShUT MaharaM Mintz*, §82 דמסתמ׳ אם בא גוי ורוצה לחטוף ממנו הפרה בדרך, או בא יודי ורוצה לחטוף ממנו הפרה .... אז מסתמא היה אייזק צועק בקול רם הפרה שלי כי אני קניתי ומשכתי וכן היא בביתי...).

Rabbi Mintz's response also rejects the second prong of Rabbi Zalman's argument. Rabbi Zalman claimed that, according to RaShY, who focused on the monetary transaction, the cow was indeed successfully bought by the non-Jew, but, by the same token, it was successfully sold to the non-Jewish woman by accepting her money and, thus, the calf was born in her possession and is exempt from firstborn status. Rabbi Mintz disagreed by explaining that these coins that were handed over when the Jew bought the cow from the non-Jew were simply given as a testimony, an "Ur Kund," and not as a monetary exchange. This form of sale is not really money, and thus, according to RaShY, the Jew never bought the cow from the non-Jew. Similarly, when he sold the cow to the non-Jewish woman, nothing truly happened, because he was not the owner of the cow at that time and thus had no right to sell it. Subsequently, when the Jew brought the cow into his courtyard, he became the owner, not necessarily due to "pulling" but because "a man's courtyard

The differences in the above cases shows the *ad hoc* nature of such solutions and its potential draw for adjudicators. Rabbi Mintz's solution could be applied to release the firstborn from sanctity in one case, but in a very similar case, where the specifics led him to intuit that the sale was not really genuine, he could retract the solution. The significant advantage of *ad hoc* decision-making is that it allows for the resolution of conflicts between stringent customary traditions and concrete situations without risking the slippery slope of opposing the law in principle and thereby opening the door to leniencies in other variations of this case.

Both above responsa by Rabbi Mintz present a specific stance regarding local selling customs. Rabbi Ẓion advanced the argument that according to RaShY's view, the Jew bought the cow by means of a coin and then sold it again by means of a coin; therefore, the cow was no longer his when it gave birth. Rabbi Mintz rejected this because the first coin, given to buy the cow, was not really money, he explained. This coin was, as the questioner attested, given as a "*Weinkauf*."[709] This accorded with local business practices, "...that which is called in the language of Ashkenaz an *Ur Kund*."[710] This refers to a

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buys in his stead" in cases where he intended to own the object, which, in this case, he obviously did, according to Rabbi Mintz.

[709] Regarding the uses of *Weinkauf* and *Trinkgeld* (where the money was given to the witnesses to drink alcohol), Arrha, and Gottespfennig (where the money was given to charity) in these areas in the Middle Ages, see for instance the second definition of "Weinkauf" in the *J. Grimm und W. Grimm, Deutsches Worterbuch* (online via Trier Center for Digital Humanities © 1998—2017) or in *Duden, Rechtschreibung der deutschen Sprache und der Fremdwörter. Der große Duden (in acht Bänden). 15. Auflage. Band 1*, (Mannheim: Bibliographisches Institut, 1961)756, under „*Weinkauf*"(In the "small" *Duden*: Trunk, mit dem der Abschluss eines Vertrags oder Handels bekräftigt wird; Weinkauf.).

[710] *ShUT MaharaM Mintz*, § 82. דנתינה וויקו"ף הוא דקנה בדיניה' אינו מטעם כסף, רק הווינקוף שנתנו המוכר ולוקח להסרסרות ולאנשי וועד לגמור המקח זהו כדי שיהיו עדות על המכיר', ואותן מעות נותן מוכר כמו הלוקח ויקנו עבורם שכר או יין לשתות ולפרסומי מילתא ולהיות עדים על המכירה. וכן נמי בדיניהם מי שמייחד עדים על מה שהוא, נותן מעות לעדים ואומר לעדים אתן לכם המעות כדי שתבא עדים, וקורים אותו בל"א א"ור קרנ"ט. ה"נ נתינת וויינקו"ף הוי כמו אתם עדים...

See also Israel Ta-Shma, *Minhag Ahskenaz ha-kadmon*, 42-48. Ta-Shma considers certain ashkenazic customs that were meant to impress memories of events important for the public upon the

business practice also termed *arrha* in which money is given, usually to a third party,

sometimes for charity (in which case it was called *Gottespfennig* or *Denarii Dei*), in order

to seal a sale or otherwise testify to a contract. These coins are not part of the payment, but

rather given to those who were appointed to bear witness to the transaction. In the case

mentioned by Rabbi Mintz, witnesses would use the money to buy some wine (hence the

name "Weinkauf") and thus make the transaction known. Rabbi Mintz concluded,

therefore, that this is not really money, and, as a result, the Jew did not own the cow. When

he then sold the cow to the non-Jewish woman, he was not the owner, and thus no

transaction took place. Then, the Jew took the cow into his courtyard, which made him the

owner of the cow prior to the birth.[711]

Even in the case where Rabbi Mintz had permitted the firstborn lamb, he made a
similar statement regarding local business customs: "And one should *not* release the
firstborn from sanctity for the following reason: … that the Jew sold the sheep back to the
non-Jew … with his kerchief, as he slapped the buyer's hand with it, as the merchants do
… this is a *sitomta*, in places where it buys, it truly buys. We shall reply, no, the custom
cannot undo the biblical sanctity of a firstborn.…"[712]

Insofar as such procedures successfully sealed a transaction according to local non-

Jewish law, they were also valid for Jewish business law, following the principle of *sitomta*,

by which Jewish law considers accepted local business practices as binding.[713] According

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memories of children, so that they may serve as witnesses for the future. He places this in the local German
context.

[711] *ShUT MaharaM Mintz*, §82: מ״מ בדיננו אין כלום ולא הוי אפי׳ רמז של מכירה...לכן ההוא מכירה כמאן דלית
דמי...כי אין אדם יכול למכור דבר שאינו שלו כי בההיא שעתא היתה הפרה עדיין של גוי הלוה, ואח״כ כשהביא ר׳ אייזיק הפרה לביתו
קנתו לו חצירו...מ״מ רשותו קנה לו...
Rabbi Mintz raises and then immediately rejects the possibility that the Jew is accepting the cow as
an agent for the non-Jewish woman because a Jew cannot be an agent for a non-Jew and vice-versa.

[712] *ShUT MaharaM Mintz*, §5: ואין לפוטרו מטעם זה: דנהי דקנה הישראל הכבשים מיד שכנערכים בכסף מלוה
ביד הגוי, מ״מ הרי חוזר ומקנה אות׳ לגוי בעד ששה זהובים בסודר שלו, שהכה בו בכף הקונה כדרך התגרי׳ עושים...האי סיטומתה
באלרא דקני ממש קני. הא ליתא, המנהג לא מצי להפקיע קדושת בכור דאורייתא.

[713] See Menachem Elon, "CONTRACT: Developments in the Formation of Contractual ties by Way
of Custom" in *The Principles of Jewish Law*, ed. Elon, under IV. LAWS OF OBLIGATION; TORTS,

to Rabbi Mintz, there was another aspect to this issue: although the non-Jew was now legally the owner of the cow when it came to property law in business, the cow was still property of the Jew when it came to acquiring *sanctity*. Thus, whereas the status of halakhic ownership usually follows local business law, Rabbi Mintz explains that this does not change the halakhic status in non-business realms, such as the sanctity of a consecrated animal.[714] As a result, Rabbi Mintz explained, the calf was born in Rabbi Isaac Kohen's[715] possession for the sake of sanctity and is considered a firstborn.

In the case of the sanctity of firstborn animals, this stringency thus evaded even forms of sale that were halakhically accepted for business law. The view that selling the cow in a way that is halakhically acceptable in terms of property law did not mean that it was similarly acceptable in other areas where greater stringency was required was also part of the ashkenazic legal tradition regarding firstborn sanctity. Rabbi Mintz thus explained why local business custom was not a valid way of removing sanctity: "For if this were not the case [that business custom does not function], why did Rabbi Meir of Rothenburg

columns 250-251: "By means of the legal soruce of custom (*minhag*), Jewish law came to recognize a way of creating orally a legally valid transaction. According to Talmudic law, the existence of a trade custom whereby a transaction was concluded by affixing a mark (*sitomta*) on a barrel of wine was sufficient to render the sale legally complete, despite the absence of *meshikhah* – the recognized mode of acquiring moveable property (Babylonian Talmud tractate *Bava meẓia* 74a). The rule was justified on the grounds that "custom abrogates the law in all matters of *mamon*. (i.e., monetary matters or the civil law; see Minhag)."

[714] Therefore, Reb Isaac did not really own the cow at the point when he sold it to the non-Jewish woman and, as a result, that sale never took place. When the Jew later proceeded to bring the cow into his courtyard, doing so gave him ownership over the cow, as he had already showed willingness to buy from the debtor by means of the Weinkauf. The act of bringing the animal into his courtyard closed that transaction as "a man's courtyard buys in his stead" [(שלא מדעתו) חצרו של אדם קונה לו etc.], after which the cow calved.

*ShUT MaharaM Mintz, §82* אלא צ״ל לא תלה דינא דבכור בדיניהם, ה״נ ווינקוי״ף קנה לעניין קדושת בכור לא קנה.

[715] Judging by the last name, he was probably a kohen himself. When a member of the priestly class is permitted to keep a firstborn animal, he is still obligated to care for it, to treat it with the proper respect, and to refrain from using it for any purpose until it acquires an injury (see Maimonides, *Mishne Torah*, "Laws of Firstborns," 1: 7 and *Or zarua* 1: §491).

require money and pulling to avoid doubt; the custom of the non-Jews everywhere is that whoever gives even one small coin for the merchandise, buys it, even a golden coin, so this needs no explanation."[716] Rabbi Mintz's own reasoning why one could not rely solely on local business custom ultimately rested on Rabbi Rothenburg's requirement of pulling and money in order to remove sanctity; otherwise, Rabbi Rothenburg would simply have proclaimed that local business law always determines the correct method of acquisition for firstborn animals. Rabbi Mintz's ultimate argument is thus based on an assumption from silence, as implied by Rabbi Rothenburg's stringent requirements. These cases demonstrate the use of the logic of custom in creating part of the legal tradition.

Rabbi Mintz thus found an *ad hoc* specific solution for the case where the sheep were given to the Jew to pay back a debt and then immediately sold, the Jew only taking a few sheep as a warranty for payment; he explained that the sheep were never acquired according to Rabbenu Tam, as the Jew did not pull them until after they were resold. Rabbi Israel Bruna rejected Rabbi Mintz's solution. When this responsum was shown to him, Rabbi Bruna wrote that he concedes that this transaction fulfills the requirements of Rabbenu Tam, but that was not sufficient because the sale was not *also* acceptable according to RaShY; according to the latter's view, the sheep may have been bought by the Jew when he accepted them as payment for the debt. Subsequently, they were not sold to the non-Jewish guarantor, who paid only after the ewe lambed. Thus, the ewe still belonged to the Jew when it lambed, and its firstborn was sacred. As we saw, Rabbi Mintz was aware

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[716] *ShUT MaHaRaM Mintz*, §5: מ״מ הני קנייה דנהגו התגרים גוים אינו מועיל להפקיע קדוש׳ בכור, דאל״כ למה הצריך מהר״ם כסף ומשיכ׳ לאפוקי נפשיה מפלוגתא, הא מנהג הגוים בכל המקומות מי שנותן אפי׳ פרוטה על המקח קונה בו אפי׳ זהו׳ ולית דין צריך פנים.

of this point of view and tried to justify his own reasoningby pointing out that most scholars side with Rabbenu Tam on this issue. He framed the requirement to satisfy RaShY's opinion in addition to Rabbenu Tam's as a mere stringency, which could be disregarded in this case. This "mere" stringency, however, was the legacy of Rabbi Rothenburg, which Rabbi Bruna considered unacceptable to counter. He therefore responded: "Are we better than Our Master Rabbi Meir [of Rothenburg] and Asheri who obligated us to be stringent [and also satisfy the requirement] according to RaShY?!"[717] Rabbi Bruna ends his letter with the following admonition: "As for the firstborn animal, I am confident that you have not done any deed to permit slaughtering it without injury...."[718] Once again, the logic of custom defeats the logic of law: Rabbi Mintz's arguments regarding which opinion was preferable and, therefore, which one should be sufficient in less than ideal cases was based on acceptable legal argumentation. The ultimate conclusion, however, rested on authority pure and simple – the authority of Rabbi Meir of Rothenburg, the epitome of Ashkenaz. Rabbi Bruna's counter-argument was not strictly legal; it was highly emphatic, employing statements such as "this is very puzzling," and "are we better than Our Master Rabbi Meir?!"

### iv-c. The Logic of Custom, the *Likut*, and Legal Periodization:

In a letter to Rabbi Isserlein, Rabbi Mintz relates that he and his colleagues were asked concerning a cow that was producing milk before calving and was sold to a non-Jew while pregnant by means of monetary transaction alone, after which it gave birth to a male calf.

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[717] *ShUT MaharI Bruna*, § 245 (last section) ומה שכתבת שרוב הפוסקים דלא כרש"י, תימה גדולה - וכי עדיפי
אנן ממהר"מ ואשירי שהצריכו להחמיר כרש"י...?!

[718] *ShUT MaharI Bruna*, § 245 ולענין הבכור אבטח דלא עשית מעשה להתיר לשחוט בלא מום לא ניחא, ומ"מ
הודיעני גופא דעובד' היכי הוה. ובכן יגדל שלומך וטובתך. ישראל מברונא.

The letter explained that "some of the scholars of the *yeshiva* were tending towards the opinion that the firstborn was exempt… according to Maimonides, who ruled that milk exempts."[719] The scholars added that, even if one remains stringent regarding milk, many authorities, including Rabbenu Tam, would accept the monetary transaction as sufficient to sell the mother.[720] Even after adducing all their reasons, Rabbi Mintz displayed discomfort with the yeshiva scholars' opinion. His explanation constantly returned to Rabbi Rothenburg:

> And my opinion does not tend to exempt it at all, since Our Master Rabbi Meir ruled like Rabbenu Tam that milk does not exempt, and this source can be found in the tosafot and in *Mordekhai* in the last chapter of tractate *Yevamot*,[721] and also in *Mordekhai* in the chapter 'he who rents,'[722] and in the first chapter of tractate *Ḥulin*[723] and in 'the gold.'[724] And it is also brought in the *Mordekhai katan* in the first chapter of *Ḥulin*, that, 'In all of Ashkenaz we follow the custom of Our Master Rabbi Meir, that milk does not exempt.[725] In this short paragraph, the *Mordekhai* is mentioned five times as a source, and

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[719] *ShUT MaharaM Mintz*, §34 or in *Leket yosher*, 128-130. מקצת בני הישיבה דעתם נוטה להתיר, וחשבינן
כמו דיעבד דמיימוני פסק דחלב פוטר, ואם תימצי לומר אינו פוטר, מ"מ מעות קונות בגוי לריש לקיש, ויש פוסקים כמותו

[720] Rabbi Mintz reported that his colleagues added the interpretation of *Or zarua* (mentioned above) to their reasoning. *Or zarua* argued that "even for Rabbi Yoḥanan [who requires a transfer of the object], money is still valid in the case of a fetus, where there is nothing to pull" (Ibid.) ועוד, אפילו לרבי יוחנן מועיל מעות
לאור זרוע בוולד דאין בו מה למשוך

[721] *Mordekhai* on *Yevamot*, §126 תשובת מהר"ם שני עובדי כוכבים כו' פסקינן דחלב פוטר ועיין לעיל פ"ק דחולין
...מ"מ אני הדיוט הכותב נ"ל דאף לפי דברי מהר"ם [קכו] שחלב אינו פוטר בבכורה ומחשיבו ספק בכור וכן נוהגין בכל ארץ אשכנז
ויש לומר יש מקומות שתקנו חכמים מחמת הספק דליהו כאילו מחצה הכי ומחצה הכי עד כאן, וע"ש בתוס' פ' אותו ואת בנו, מיהו
בתוס' הוכיח מההיא דהלוקח בהמה דחיישינן למיעוט אפילו כי ליכא חזקה בהדי מיעוט וז"ל.

[722] "*Ha-sokher et ha-po'el*," the fifth chapter in tractate *Avodah zarah* of the Babylonian Talmud. See *Mordekhai* there, §850

מסקנא דמשיכה בעכו"ם קונה דוקא ולא מעות, אך יש פוסקים מעות דוקא ולא משיכה. וצריך ליזהר כשמוכר בהמה
המבכרת לעכו"ם כדי לפוטרה מן הבכורה צריך שימשכנה לביתו וגם יתן מעות ואז יא יד כל הספקות ר"י ואני מצאתי דאם אין
לעכו"ם בית ישראיל לו ישראל מקום בחצרו וימשכנה שם.

[723] See *Mordekhai* on tractate *Ḥulin*, *ha-Kol Shoḥtin* §592 (or 596 in some editions)

...פסק המיימוני דהלכה כדברי האומר פרק הלוקח בהמה מן העכו"ם והיא חולבת שהחלב פוטר מן הבכורה, שהרי
בכל התורה הולכין אחר הרוב, ורוב בהמות אינן חולבות אא"כ יולדות, ואין הלכה כמ"ד חלב אין פוטר ... משמע דחלב לבדו שלא
ראינוה מניקה אינה פוטרת דחיישינן למיעוטא דחולבות בלא יולדות. אומר ר"י דהתם מיירי בראוה חולבת קודם לידה דבההיא מודה
דחלב אינו פוטר אם לא שראינוה מינקת אבל בעלמא סבירא ליה חלב פוטר, דהלך אחר הרוב. ותדע שכן הוא

[724] *ha-Zahav*," the 4th chapter in tractate *Bava Meẓia* of the Babylonian Talmud. See *Mordekhai* on tractate *Bava Meẓia*, *ha-Zahav* §302

והיכא דאין לו לעכו"ם מה למשוך, מעות קונות הלכך שיש לו בהמה מבכרת מותר לו לישראל לקבל מעות מן
העכו"ם ולמסור [ולמכור] לו העובר עא"ג דלא משך העכו"ם להפקיעו מבכורה וחוזר וקונהו מן העכו"ם לאחר שיולד לר"ת
שפסק דמשיכה בעכו"ם קונה ולא מעות דאין כאן מעות מה למשוך, דמשיכת האם אינה מועלת לעובר דהא ר"ת ז"ל גופיה פסיק דעובר לאו
ירך אמו היא וכמאן דמנחא בדיקולא דמיא עכ"ל ספר אור זרוע.

[725] *Mordekhai katan*, *Ḥulin* Ms.

the statement that "in Ashkenaz the custom is to follow Rabbi Meir of Rothenburg" is quoted as summarized in the *Mordekhai katan*.[726]

Not only the trope, but also the sources that transmit it exemplify the Ashkenazic legal tradition: *likutim* were the ultimate form of transmitting local traditions textually without solidifying them into strictly legal modes. Rabbi Mintz was similarly hesitant regarding the method of sale, refusing to permit the firstborn in question because it was sold with money alone, "and …it seems to me that this also is not useful, as Our Master Rabbi Meir requires pulling *and* money."[727] He concluded[728] against "taking any action that will put one into a potential prohibition punishable by *karet* of slaughtering consecrated animals outside the Temple."[729]

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ואין דעתי נוטה להתיר כלל, דמהר"ם פסק כר"ת דחלב אינו פוטר, וכן איתא בתוס' ובמרדכי פרק בתרא דיבמות וכן במרדכי פרק השוכר ובפרק קמא דכחולין ובהזהב. ואיתא במרדכי קטן בפרק קמא דחולין, בכל אשכנז נוהגים כמהר"ם דחלב אינו פוטר.

[726] Ibid.:

ומי' מהר"ם פסק דחלב אינו פוטר דמאי אמר רוב פרו' אינן חולבות אא"כ יולדו' ותיפטר משו' רוב איכ' למימ' סמוך אינ' חילבו' לחזקת הגוף שלא ילדה וה"ל פלגא, ותו' סתרו זה ואמרו...ומי' בכל אשכנז נהגו כמהר"ם ומ' ה"ל ספק בכור ונאכל במומו

ומה שמכרו במעות נמי נראה דאינו מועיל, דהא מהר"ם מצריך משיכה ומעות.Ibid.[727]

[728] He did so after evaluating (and rejecting) the opinion of the yeshiva scholars, mainly their interpretation, based on *Or zarua*, that, in this case, money is preferable to pulling. Rabbi Mintz strongly rejects this interpretation. He returned to the opinion of Rabbi Meir of Rothenburg as summarized in *Mordekhai* and shows that the formulation there is, "...and Our Master Rabbi Meir is stringent and requires money..." (This formulation "is stringent and requires money" implies that the requirement of money is the additional requirement, the stringency, and can thus in no way be considered preferable over physically transferring the object for Rabbi Meir Rothenburg, which is the more basic requirement.) Thus, to Rabbi Meir Rothenburg, who requires both forms of transactions, the more important form of buying from a non-Jew is clearly transferring the object (according to Rabbenu Tam), and the monetary transaction was merely added as an extra stringency, in order also to satisfy RaShY. Thus, the two forms of transactions were not equal in the eyes of Rabbi Rothenburg, but *money* was clearly the *inferior* option. This makes the reading in the *Or zarua* seem even less convincing, and, even if one could possibly read it independently as a legitimate structure for Rabbenu Tam's opinion alone, there was no way in which it could be construed as something to which *Rabbi Rothenburg* would have agreed. Therefore, they cannot cast off Rabbi Rothenburg's stringency, even if their interpretation of *Or zarua* was valid.

[729]*ShUT MaharaM Mintz,* §34 or in *Leket yosher*, 128-130. דזה לא מקרי דיעבד לעשות מעשה להיכנס בספק Additionally, Rabbi Mintz pointed to his predecessor Rabbi Moellin, who was also איסור כרת לשחוט קדשין בחוץ of the opinion that one must be stringent and disregard evidence from the animal's milk production. Rabbi Mintz promised that he would copy Rabbi Moellin's responsum on this topic at the end of his own letter, for Rabbi Bruna to study.

Legal traditions are best transmitted when the legal text is supplemented with orality. A responsum written by Rabbi Bruna opens with the following lines: "I once asked My Master, the Rabbi Yacov Weil (ca. 1390-1460) the Great, of blessed memory, whether we force the *kohen* to accept the firstborn, and he responded that we do force him."[730] These lines testify to a teacher's orally transmitted answer encouraging stringency, which his follower recorded in written responsa of the next generation. Rabbi Weil's own responsa show that belonged to the same legal tradition: He was stringent regarding the laws but similarly employed creative solutions to circumvent Rabbi Rothenburg's legacy without opposing it. In a responsum, he wrote: "Concerning the firstborn. See here, in all the places where I have passed, I have not heard anything other than that we give the firstborns to *kohanim* and even questionable firstborns. [*safek bekhor*]. I have not heard anyone open their mouths and reject it."[731] The ashkenazic way of behaving is accepted as

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[730] *ShUT MahaRI Bruna*, §164. והשיב. פעם אח׳ שאלתי מהר״י וויל הגדול ז״ל אם כופין את הכהן לקבל את הבכור. דכייפינן ליה. For Rabbi Weil's original response, see *Psakim u-ktavim* §168.

From Rabbi Bruna's responsum it is also clear that their predecessor, Rabbi Yacov Weil, was similarly stringent regarding these laws. Rabbi Bruna was asked about a specific firstborn animal that sustained an injury, and the questioner explained that this specific animal was a "confirmed firstborn, [which] was given to the *kohanim* of Erfurt in the times of Our Master Rabbi Yacov Weil, and every one of us [the *kohanim* of Erfurt] would care for it for one month, and so we acted for about two years" (*ShUT MahaRI Bruna*, §162)

אותו בכור ודאי ניתן לכהני ערפור״ט בימי מהרי״ו וכל א׳ ממנו נטפלנו בו חדש וכן נהגנו זה שנתים ימים

Rabbi Bruna was surprised by the description of this arrangement in Erfurt, as it implied that nobody was required to accept the firstborn animal, and they shared the burden of caring for it. This would mean that "we do not force the *kohen* to accept even a firstborn of established status," something that Rabbi Bruna had a hard time believing, because: "…once I asked My Master, the Rabbi Yacov Weil, in my days of youth, and he answered me that we do force the *kohen*, and I did not know from where he took this, and I found in the big *Or zarua* in the chapter '*ein ẓadin*' ([one does not hunt] the third chapter in tractate *Beiẓah*), where he interprets RaShY in a way that implies that we force the *kohen* to accept"( ibid. emphasis mine) אשר כתבת בכור ודאי הניתן לכהני ארפור״ט בימי מהרי״ו משמע אחר לא רצה לקבל הבכור ולא כייפינן ליה לכהן לקבל, אפילו בכור ודאי. תמהני כי פעם אחת שאלתי את מהרי״ו בימי חורפי והשיב לי דכייפינן ליה ולא ידעתי מאין לו ומצאתי באז״ג דדייק מפרש״י דכופין אותו לקבל.

[731] *ShUT MahaRY Weil*, §127 הבכורות הנה בכל המקומות אשר עברתי לא שמעתי אלא שנותני׳ מחמת הבכור. לכהנים ואפי׳ ספק בכור לא שמעתי פוצה פה ומסרב.

correct. After speculating about the source of this approach,[732] Rabbi Weil mentioned a responsum regarding this issue. The responsum in question is the above-mentioned case, in which Rabbi Rothenburg castigated those who insult *kohanim* by purposefully giving firstborns. Rabbi Weil's conclusion from this responsum was that a *kohen* is not permitted to refuse the firstborn, "for if it were not so, then how would this insult the *kohen*?!"[733] Rabbi Weil inferred the law from the particular phrasing of Rabbi Rothenburg's rebuke.[734]

Ultimately, Rabbi Weil took a typically *ad hoc* approach to resolve the case that was posed to him: As the Israelite had been negligent in failing to sell the firstborn's mother before the birth, he should be punished, and forced to keep the animal as a fine. Rabbi Weil based this on the statement in the Rabbi Asher ben Yeḥiel (or, Asheri), in which he states that, in post-Temple times, it is a requirement to prevent the firstborn from becoming consecrated by selling its mother before the birth, in order to avoid prohibitions and pitfalls.[735] By introducing the idea of a fine, he managed to save the *kohen* from having to

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[732] Ibid.: "Probably it is based on the *Asheri*, who wrote that the *kohen* must accept it, and probably this is so even when it is only a questionable firstborn, because the reason is that it is a disrespect to priestly gifts and there is no difference between certain and uncertain [in relation to disrespecting priestly gifts]." ומסתמא היינו לפי האשירי שכתב שצריך הכהן לקבלו ומסתמא היינו אפי' ספק בכור דהוי טעמא משום מבזה מתנות כהונה. Ibid. אין חילוק בין ודאי לספק.

[733] Ibid. משמ' מתוך דבריו שהכהן צרי' לקבלו דאל"כ היאך יכול להקניט הכהן כיו' שהכהן יכול לסרב מלקבלו

[734] Ibid. Rabbi Weil mentions another source from Rabbi Rothenburg, "And so I have seen in the responsa of Our Master Rabbi Meir,: 'there where a firstborn animal is born to a poor *kohen* and he wishes to give it to a rich *kohen*, he may not force him [the rich *kohen*] to accept it, as it is already in the possession of the poor *kohen* and he gained possession over it.' This implies, however, that from an Israelite [a non-*kohen*], the *kohen* is obligated to accept it". וכן ראיתי בתשובות מהר"ם היכא דנולד בכור לכהן עני ורוצה ליתנו לכהן עשיר אינו יכול לכופו שיקבלו ויכול הכהן עשיר לסרב בו כיו' שהוא כבר ברשו' העני וזכה בו. משמע אבל מישראל צריך לקבלו.

[735] See Rabbi Asher ben Yeḥiel's "*Hilkhot pidyon bekhor*" at the end of his commentary on tractate *Bekhorot*: ומצוה להפקיע קדושת הבכור קודם שיצא לאויר העולם כדי שלא יבא לידי תקלה ולהכשל בו בגיזה ועבודה דאמרינן...אבל האידנא שאין אנו בקיאין בכך, מוטב שיקנה לעכו"ם משיביאו לידי תקלה
See also Rabbi Yacov ben Asher's summary of his father's opinion in the *Arba Turim, Yoreh de'ah,* §320: 6: ובזמן הזה מצוה לשתף עם הגוי באזנו וכיו"ב קודם שיצא לאויר העולם כדי לפוטרו מהבכורה אף על פי שמפקיע קדושתו הכי עדיף טפי כדי שלא יבוא לידי מכשול ליהנות ממנו בגיזה ובעבודה

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accept the animal in practice, while still adhering to Rabbi Rothenburg and the stringent approach in principle.

In sum, all the above responsa sources concur that the formulation in *Mordekhai katan* – "In all of Ashkenaz, we follow the custom of Our Master Rabbi Meir" – [736] captures the ashkenazic tradition. This is a perfect example of what I called legal tradition: its texts are transmitted mainly via compilations, which resist textualization and contain many oral statements and testimonies, accompanying the text with impassioned exclamations. This tradition centers on a towering figure and is intertwined with the idea of a community ("in all of Ashkenaz"), which is represented by a combination of reports of actual popular practice in the community – albeit carefully selected by rabbis. The tradition employs the logic of custom, meaning that it is not based on offering better reasoning or interpretations of the law; rather, it relies on a strong source of authority, and any opposition to custom is based on very specific details of the actual cases rather than on opposing the custom itself on principle.

To explain how Rabbi Rothenburg became conflated with Ashkenaz as a religious community we must return to the case where Rabbi Bingen attempted to justify popular practice using earlier medieval sources, but Rabbi Isserlein rejected it as follows: "Our Master Rabbi Meir, who is a recent authority (*batrai*), it is written in the *Mordekhai* that he was stringent and required money and pulling ... And so too, *Asheri*, who is a recent authority (*batrai*), concludes.... And how could it be possible to make a custom to be lenient

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[736] *Mordekhai katan, Ḥulin* Ms.

ומי' מהר"ם פסק דחלב אינו פוטר דמאי אמר רוב פרו' אינן חולבות אא"כ יולדו' ותיפטר משו' רוב איכ' למימ' סמוך אינ' חילבו' לחזקת הגוף שלא ילדה וה"ל פלגא, ותו' סתרו זה ואמרו...ומי' בכל אשכנז נהגו כמהר"ם ומ' ה"ל ספק בכור ונאכל במומו

against all of these sages regarding a biblical prohibition that involves *karet*?!"[737] Thus,

common practice or no common practice, "ancient first ones" or not, Rabbi Rothenburg

and his requirement to use both methods of sale had the last word. The two authorities that

convince Rabbi Isserlein are designated as *batrai* – later ones, according to the principle of

*hilkheta ke-batrai* (the law is like the later authorities),[738] a well-known principle that it is

the latest iteration of traditional views that should be taken into consideration. This final

statement is not a purely legal one, it concerns the "legal tradition" more broadly speaking.

Rabbi Rothenburg's preeminent position and the use of his opinion in these texts,

not for their legal reasoning, but as an anchor of authority for the custom to be stringent

regarding everything related to firstborn sanctity, and as a culmination and representation

of Ashkenaz, point to another aspect of legal tradition and how a religious community

constructs its legal past. In his work on the legal scholar Nicolas Cusanus (1401-1446),

Gadi Algazi not only dissociates the essential connection between scholarly law and text

and common custom and orality, he also examines different ways of working with the past,

which include thought operations carried out by scholars and peasants.

One of these ways, he explains, in the case of legalists, is what he calls the creation

of a "middle age."[739] This method allows scholars to link legal texts from the past to the

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[737] *Leket yosher,* 135. וכן מהר"ם דבתראה הוה כתב במרדכי שהיה מחמיר ומצריך משיכה וכסף כדי לאפוקי נפשיה מפלוגתא. ...וכן אשירי דבתראה הוה...ואיך יתכן לעשת מנהג להקל נגד כל הגאונים הללו באיסור דאורייתא שיש בו כרת?!

[738] On the meaning of this formula, see Meir Rafeld, "The Halakha Follows the Later Sages," in *Sidra: A Journal for the Study of Rabbinic Literature* :(1992) 119-140; Israel Ta-Shma. "Hilkheta ke-batrai, Beḥinot histori'ot shel Klal Mishpati," (The law is like the later authorities: historical aspects of a legal principle.) in *Shenaton ha-mishpat ha-ivri: Annual of the Institute for Research in Jewish Law* (1979): 405-423; Israel I. Yuval, "Rishonim and Aḥaronim, *Antiqui et Moderni*: Periodization and Self-Awareness in Ashkenaz" in *Zion* 57, no. 4 (1992): 369-394, and many others.

[739] See Algazi, "Ein gelehrter Blick," 342, "…eine 'Funktion' oder *Dekoperation* die sich 'Mittelalter' nennen last."

present across time: by constructing a "middle period" of sources that have the authority

of the past but are not as distant from the present as to be irrelevant. This operation

resembles, in function, the principle of *hilkheta ke batrai*: It is highly textual and historical

on the one hand, but not analytical and rational, on the other. It is a scholarly legal operation

that functions like custom, searching for an anchor in the past that is close enough to

function as a direct source of authority for the present. In the case of Ashkenaz in the

fourteenth and fifteenth century, we can witness such a phenomenon: Rabbi Meir of

Rothenburg, the last of the tosafists before the ashkenazic decline, rather than distant

predecessors like RaShY, represents this bridging age. He is close enough to their own

period to accurately represent the community of Ashkenaz but distant enough to be

hallowed.

### iv-d. Rabbi Isserlein's Investigations and their Limitations

This section focuses closely on Rabbi Israel Isserlein, who had strong inclinations towards

a totally different source of legal authority. In general, his opinion on the issue of firstborn

animals is in accord with the ashkenazic rabbinic tradition of his contemporaries. In a

responsum printed in *Leket yosher*,[740] Rabbi Isserlein briefly considered the status of a goat

that was bought from a non-Jew using only one coin (once again this coin was more of a

token representing the agreement, rather than the sum in exchange for the goat), after which

it gave birth. He engaged in a very short exposition of the opinions concerning monetary

transactions versus physical transfer of the object, and concluded with a rhetorical question:

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[740] Rabbi Isserlein's student, Rabbi Yoizel Ostreicher found a responsum of Rabbi Isserlein among the correspondence of Rabbi Yehuda Obernick. Rabbi Yoizel copied this into his collection of Rabbi Isserlein's teachings, behaviors and writings. This collection eventually became the compilation *Leket yosher*. For more on this compilation see chapters 2 and 6 in this dissertation, especially n217.

"In any event, seeing as Our Master Rabbi Meir was stringent to require money and pulling in order to remove oneself from disagreement with RaShY, who can come after him to be lenient on his stringency?!"[741] With this, the matter was settled.

On the issue of milk-production as proof of the animal's birth history, however, Rabbi Isserlein's responsa betray his difficulty with the tradition that, "In all of Ashkenaz we follow the custom of Our Master Rabbi Meir that milk does not exempt." In his responsum to Rabbi Mintz, Rabbi Isserlein held a different opinion regarding the nature of milk production among livestock. He concluded the responsum to Rabbi Moshe Mintz (mentioned in the previous section) with the following request: "I beg of you, inquire, and ask [others] to inquire in your whole territory from Jews and non-Jews [lit. Aramaeans] if there can be found any man or woman who ever saw in their lifetimes any cow that was producing milk before ever having given birth, and inform me about that which you find out by means of a letter."[742] Earlier  in the same response to Rabbi Mintz, for instance, Rabbi Isserlein mentioned his own research: "as I investigated and inquired from many Jews and non-Jews [lit. "Aramaeans"], women and men, if they ever saw a cow producing

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[741] See *Leket yosher*, 137.

מ"מ  הואיל ומהר"ם היה מחמיר להצריך כסף ומשיכה כדי לאפוקיה נפשיה מפלוגתא דרש"י, מי יבוא אחריו להקל נגד חומרתו. אין פנאי להאריך יותר. נאום הקטן והצעיר שבישראל.

[742] This is Rabbi Isserlein's responsum to the responsum mentioned above, *ShUT MaharaM Mintz* §34. Rabbi Isserlein's response is collected both in *Psakim u-ktavim* §167 and in *Leket yosher,* quoting here from *Leket yosher*, 131: במטותא מינך תדרוש ותבקש לדרוש בכל גבולך מיהודאים וארמאים אם ימצא שום איש או אשה שראו מימיהם שום פרה שהיתה חולבת קודם שילדה מעולם, ומה שתעלה בידך הודיעני עי"מ. These compilations included, among other material, copies from their master's correspondence. In *Trumat ha-deshen*, the work of responsa that Rabbi Isserlein collected and edited himself to some extent, the remark requesting that Rabbi Mintz confer with others was not included. We do, however, find frequent mention of Rabbi Isserlein's own inquiries, both in *Trumat ha-deshen* and elsewhere, which is in line with the style of *Trumat ha-deshen*, which removes the more personal epistolary elements from its contents.

milk that had not given birth previously, and I did not hear even one of them who ever saw

such a thing."[743] This statement reappears in several responsa in various formulations.[744]

Rabbi Isserlein's collection of responsa, *Trumat ha-deshen,* contains one

responsum directly discussing the issue of milk production.[745] The question regards a

pregnant cow sold to a Jew by a non-Jewish seller. The seller had mentioned, in passing,

that it is hazardous to approach the cow while calving, based on past instances where the

cow had behaved violently during labor. In addition, this cow was already giving milk

when the Jew bought it. After the Jew acquired this cow, it calved, leading to the question

of the firstborn status of this calf.

Rabbi Isserlein proposed to adduce the two factors, milk production and the non-

Jewish seller's comment, in order to exempt the calf from firstborn status. He explains that,

"It seems to me that whoever is lenient according to this does not fail at all, as I will

explain."[746] First, Rabbi Isserlein listed all the authorities who consider milk production

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[743] See *Leket yosher*, 129 or *Psakim u-ktavim* §167-168:

ואע"ג שכתבתי כבר באחד מתשובותי צדדים להקל עתה בזמנינו ובארצותינו, לפי שדרשתי וחקרתי מיהודאים וארמאים נשים ואנשים רבים אם ראו מימיהם פרה חולבת שלא ילדה כבר ולא שמעתי אחד מהם שראה דבר כזה מעולם...

[744] See *Leket yosher*, 139, Rabbi Isserlein's responsum to Rabbi Yosman Katz ; this might be the responsum closest to the one printed in Isserlein, *Trumat ha deshen* (Venice, 1519), §271: ותו העיקר, משום דדרשתי ושאלתי בכמה וכמה אנשים ונשים הבקיאים בדבר, וגם הנחתי לשאול לכמה ארמאיות, ואמרו כולם שמעולם לא ראו או שמעו שום פרה שחלבה חלב הרבה כמו בעד שנים או שלושי פשיטים בפעם אחת אא"כ ילדה....אמרתי דהא דאמר תלמודא בבכורות דמיעוט חולבות קודם שיולדות היינו והבהמות שהיו בימיהם אבל הבהמות שלנו חלוקות משלהם....אהא סמכתי בדזהה לי צד הוכחה שביכרה כבר, אע"ג דההיא צד לחוד לא היה מספיק לגמרי

[745] See *Trumat ha-deshen*, §271. It is not identical to the responsum addressed to Rabbi Mintz, but many parts recur. The other responsum that relates to such a question is §270 and regards the issue of selling by means of monetary transaction alone. In this response, Rabbi Isserlein rejects, once again, the interpretation of the Or zarua that one may rely on monetary transactions alone in the case of selling the mother animal, because one cannot physically take hold of the fetus, as "the fetus is not part of the mother." He explains that Rabbi Rothenburg does not deem this sufficient, most likely because this principle is not true for any law other than slaughter and, thus, the fetus can, in fact, be physically transferred by means of pulling the mother. Rabbi Isserlein ultimately suggests *kinyan ḥalifin* (barter) in order to cover all opinions. The question is phrased as an advance inquiry, meaning that the questioner is asking about the correct mode of sale before carrying it out, rather than post factum. As a result, Rabbi Isserlein can afford to be more stringent and has no need to attempt finding leniencies and solutions.

[746] *Trumat ha-Deshen*, §271:יראה דהמקל כה"ג לא הפסיד כלל כמו שאבאר

alone to be sufficient proof of a previous birth. "However," he subsequently retracted, "it seems that one should not be lenient, as in all of Ashkenaz one is accustomed to be stringent, and so we find in the name of Our Master, Rabbi Meir, that he wrote that the custom is to be stringent."[747] Having paid his respect to Rabbi Rothenburg, however, Rabbi Isserlein returned to his own inquiries. He maintained that, (apart from the case of goats), he has never heard of any animal giving milk without having given birth previously, and It seemed clear to him that milk should be considered sufficient evidence, suggesting that "...their animals [in the Talmud] were different (lit. *meshunim* [strange]) from our animals..."[748] In the past, Rabbi Isserlein conjectured, there was probably a substantial group of cows that constituted an exception and did, indeed, produce milk before giving birth; he even presents additional proof for the claim that the nature of the animals had changed over time.[749]

In his day and age, Rabbi Isserlein asserted, the phenomenon of a cow that produces milk despite never having given birth would be not merely a normal exception, a usual

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[747] Ibid.: היה נראה דאין להקל, שכבר נהגו בכל אשכנז להחמיר, וכן נמצא בשם מור"ם דכתב המנהג הוא להחמיר" It is not clear exactly what source Isserlein found "in the name of" Rabbi Meir Rothenburg, but we can assume that he knew this from several sources, such as the *Mordekhai katan* on Ḥulin (which specifically uses the words "custom" and "Ashkenaz" in the name of Rabbi Rothenburg), or from any of the other allusions to this in the *Mordekhai* and in other ashkenazic *likutim* such as *Sefer ha-agudah* or *Sefer ha-parnes*, §300-302:

כל שיש יד גוי באמצע פטורה מן הבכורה...אבל מורי הר"ם פסק למכור אוזן הבהמה עצמה לגוי ואז לא יהא שום ספק איסור והגוי ימשוך הבהמה ברשותו ויקנה במשיכה ובמעות או היהודי מקנה לגוי חצירו או רפת בקר בכסף ונמצא שהוא רשות הגוי וכן טוב יותר כי משיכה אין קונה ברשות המקנה לבדו אלא בסימטא או לרשות הקונה וכשתלד זכר הישראל יכול לסלק מן העכו"ם במעות ואז מותר.

הלוקח בהמה מן הגוי ואין ידוע בעדות אם ביכרה אם לאו ואפילו חולבת אם לא שהוולד כרוך אחריה ומניקתו צריכה פדיון ואם הגוי מסל"ת שילדה כבר פעמים ושלש נאמן ומיהו אם ירצה הישראל אין נותן זה הבכור לכהן אלא ימתין עד שיפול בו מום ויאכלנו דהממע"ה מהר"ם.

אם עבר אדם ושחט הבכור טרם נפדה אסור בהנאה וצריך קבורה, ור' משה בר מיימון ושאר גאונים פסקו שהלוקח בהמה החולבת מן הגוי שחלב מן הבכורה פטורה שבכל התורה כולה הולכין אחר הרוב ורוב בהמות אינן יולדות

[748] *Trumat ha-deshen*, §271: וי"ל דבהמות שלהם היו משונות מבהמות שלנו

[749] From the fact that the Talmud also considers it certain that an animal does not give birth before the age of three, whereas the tosafists and Rabbi Asher ben Yeḥiel all point out that, in their own day and age, animals gave birth at an earlier age, too.

minority (*mi'uta*), but, rather, a negligible minority (*mi'uta-de-mi'uta*). Therefore, he concluded, "even if one could find one cow in a thousand, this is a minority that is completely unlikely, and to such a minority of a minority (*mi'uta-de-mi'uta*), we do not apply the method of supporting."[750] The stringency that had led some authorities to consider milk production insufficient was based on the method of using an accepted assumption (*ḥazaka*) to support the minority (*mi'uta*) and thus establish it as something to be taken seriously. In our case, the accepted assumption (*ḥazaka*) is that all animals are considered not to have given birth previously unless proven otherwise. He asserted that, whereas this method may apply to a regular minority (*mi'uta*), it would not apply to an almost negligible minority (*mi'uta-de-mi'uta*). Thus, the accepted assumption (*ḥazaka*) that animals are considered never to have given birth in the past can be used to buttress the minority (*mi'uta*) of animals that do produce milk prior to birth, and thus, milk would, for some authorities, be an insufficient factor – in the times of the Talmud. This accepted assumption (*ḥazaka*) could not be used, however, to buttress the almost negligible exception (*mi'uta-de-mi'uta*) of animals that give milk before birth in Rabbi Isserlein's day. The ability to produce milk should, therefore, be acceptable proof, in his day and age that the animal in question had given birth previously. As a result, Rabbi Isserlein was of the opinion that any animal that produces milk in his times would henceforth not be suspected of giving birth to a firstborn. In this manner, Rabbi Isserlein secured his personal convictions, taken from the realm of empirical evidence and experience, on a foundation

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[750] *Trumat ha-deshen*, §271 ואעפ"כ אי אשכחן פרה אחד מאלף הוי מיעוטא דלא שכיחא, ומיעוטא דמיעוטא לא אמרינן ביה סמוך

of legal argumentation. His certainty that animals never give milk prior to birth is expressed by the halakhic concept of *mi'uta de-mi'uta*, which allows him to propose a legal structure for disregarding the principle of "base the minority on the presumptive status," because that applied to *mi'uta*, a regular minority, but not to *mi'iuta de-mi'uta*, a negligible minority.

Regardless of his convictions and his ability to express these legally, Rabbi Isserlein could not override Rabbi Rothenburg's dictum that milk production was insufficient. The imperative of finding an authoritative figure from the "middle age" becomes apparent: Rabbi Isserlein dismissed the opinions in the Talmud on minorities that gave milk even without giving birth by saying that their animals were different. Rabbi Rothenburg's opinion, however, could not be dismissed as relating to other animals in different times, and Rabbi Isserlein is aware of this: "And Our Master Rabbi Meir wrote that the custom is to be stringent, in all likelihood he meant the custom of our areas."[751] This precluded the possibility of ruling based purely on his own convictions regarding milk production.

Rabbi Isserlein nevertheless found a way in which he could give his opinion some degree of relevance. In cases where an added reason to support the cow's prior births existed, this could be combined with the fact that the animal was evidently lactating. For instance, if the animal's prior owner testified that the animal did, in fact, give birth in the past, this could be adduced to milk production in order to exempt the animal, even if the previous owner was not Jewish. [752] In this manner, the firstborn status of a newborn animal

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[751] *Trumat ha-deshen*, §271 ומור"ם כתב דהמנהג הוא להחמיר מסתמא ר"ל מנהג ארצותינו

[752] In the responsum, Rabbi Isserlein also voices an opinion whether this testimony is considered innocent. On the one hand, the seller presents it as an aside, and even a negative quality regarding this cow, that it is violent when calving, which, the seller explains, he knows from past experience. On the other hand,

could be eliminated in cases such as the one in question, where the mother-animal was producing milk before the birth, and there was an added reason to be lenient. Rabbi Isserlein thus took a factor that, was, in his opinion, sufficiently strong by itself, and combined it with other considerations that encourage leniency. In this way, he managed to bolster his inquiries without blatantly countering Rabbi Meir Rothenburg's tradition. Rabbi Isserlein further limited the repercussions of his innovation by stipulating very specific factors where his leniency would apply.

In another responsum, Rabbi Isserlein refused to adduce his leniency regarding lactation to the other evidence, because, in that case, the additional factor regarded the form of sale. He explained that he could not adduce this element to the fact that the cow was giving milk, because, "The two have nothing to do with one another, because the reason why producing milk will exempt it is because it is proof that she already gave birth, and buying by means of money does not exempt it because it already gave birth, but rather because it is now owned partially by a non-Jew."[753] Since the other factor that inclined

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Rabbi Isserlein considers the possibility that the seller is merely presenting this as a negative point surreptitiously, in order to convince the buyers that the cow has, in fact, given birth before, which ultimately makes the animal more valuable, without seeming too obvious about it. It is not certain, therefore, whether this could be considered an innocent testimony, *mesiach lefi tumo*. Rabbi Isserlein concluded that he thinks it "unlikely that the non-Jew is planning to trick the buyers to the extent that he will speak in riddles." At the very least, Rabbi Isserlein concluded, this type of testimony suffices in order to combine it with the proof concerning about which he is really convinced – the milk

*Trumat ha-deshen*, §271... מכח דברי הנכרי, ומוכיח בהיא באשירי פ' הלוקה בהמה, דהיכא דנכרי מסל"ת שאין נראה להשביח מקחו סמכינן אדבריו.

ובנ"ד נמי נהי דאין לגמרי מסל"ת הוא דאיכא למימר שגילה בדרך רמז שכבר ילדה, לפי שהבהמה שכבר ילדה חשובה יותר ממבכרת מפני שאין מסוכנת עוד בלידה, וגם החלב טוב יותר מבהמה שילדה ב' או ג' פעמים מחלב שמבכרת. ואפשר הנכרי לא רצה לומר בפירוש שילדה כדי שלא ירגישו שכוונתו להשביח מקחו, מ"מ הדברים נראין בדעת הנכרי להערים כ"כ לדבר בחידות וסגי בהאי סברא לצרף בהא דלעיל דאין בהמה שלנו חולב אא"כ יולדת וכן כל כה"ג.

[753] *Leket yosher*, 130: אבל בנד"ד אין נ"ל לצרף קנין הכסף לטעם דחולבת ולהתיר מביניהו דשניהם דלא שייכי אהדדי כלל, דטעם דחולבת מתיר מטעם דמוכח מילתא דכבר ביכרה, וקנין הכסף אדרבה הוא מתיר מטעם שלא ביכרה אלא משום שותפות הגוי.

toward leniency related to the ownership of the cow, not to its birth history, and the two factors were unrelated, he was reluctant to adduce them and exempt the newborn calf.

Even as Rabbi Isserlein managed to give weight to his own reasoning and opinion in some way, he did so within limits, without going beyond the particular borders of the research he carried out and only in a restricted manner. Ultimately, he could not overturn Rabbi Rothenburg's decision as it was summarized in the *likut* literature by the statement "in Ashkenaz, the custom is to be stringent in these matters," which effectively closed the case. Rabbi Isserlein also considered Rabbi Rothenburg's decision that a *kohen* may not reject the gift of a firstborn – even a questionable firstborn – as very problematic. In fact, once he apparently had decided in favor of a *kohen* refusing to accept a questionable firstborn: "And that which you wrote, if we force the *kohen* in such a case to accept it.... Know, that I was already asked regarding such cases, and I did not know then about the responsum…who wrote that Our Master Rabbi Meir was strict with the kohen who did not want to accept even a questionable firstborn and considered this to be disrespect of the priestly gifts."[754] Considering this very strange, Rabbi Isserlein wrote: "And I would have said that this is not called disrespecting priestly gifts in the least, because if the Israelite would not have wanted to give it to the *kohen*, he did not have to, as it is only a questionable firstborn, as we have learned.... And how is it possible that an Israelite can have that kind of power, to force the *kohen* to take his gift from him when he does not want it, on the

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[754] Ibid. (emphasis added) ‫ כי‬,‫ דע לך‬.‫ הואיל ואית ביה כמה ספיקות‬,‫ומה שכתבת אי כייפינן לכהן כהאי גוונא לקבלו‬
‫ הקפיד על הכהן שלא רצה לקבל אפילו ספק בכור‬,‫כבר נדרשתי על כה"ג ולא ידעתי בפעם ההיא מתשובת אשירי שכתב שמהר"ם‬
‫וחשיב ליה מזלזל במתנות כהונה‬.

contrary, such a thing should be considered disrespect of the priesthood!"[755] Immediately

after this adamant statement, however, Rabbi Isserlein retracted, and deferred to the

authority of Rabbi Meir Rothenburg: "However, I did not come to disagree with the words

of Our Master Rabbi Meir."[756]

Thus, Rabbi Isserlein was only lenient within very specific parameters and

limitations;[757] only regarding the rejection of uncertain firstborns (and not permitting the

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[755] Ibid.. והייתי אומר דנראה דלא חשיב כלל מזלזל במתנות כהונה, לפי שאם היה הישראל רוצה שלא לתתו לכהן הרשות
בידו הואיל וספק בכור הוא, כדקיי"ל דאפילו תקפו כהן מוציאין אותו מידו. ואיך יתכן שיהא כח ביד הישראל לכוף הכהן ליקח מתנתו
מתי שהוא אינו רוצה בה, אדרבה כה"ג איכה זילזול כהונה!

[756] *Leket yosher*,130. 130-1 אלא שלא באתי לחלוק על דברי מהר"ם

[757] In this responsum, too, Rabbi Isserlein ultimately managed to insert his own opinion. He did so
by distinguishing between two kinds of uncertainties (*sfekot*): those that stem from legal disagreements
between rabbinic authorities, on the one hand (meaning that one is not sure which authority to follow), versus
uncertainties stemming from reality itself, on the other. Uncertainties stemming from reality, meant, in this
case, that there was an uncertainty regarding the calf itself – whether it was a firstborn or not, as there was
substantial reason to think it is not a firstborn (the fact that its mother was producing milk prior to the birth).
Such a reason was considered weak, one that, taken alone, would not suffice to exempt the animal. The
uncertainties stemming from rabbinic disagreement, however, were considered less serious and could be
disregarded with less risk, because they depend on a legal disagreement and, as such, even if one is wrong
according to one rabbinic opinion, one is, at least, acting correctly according to the other. Uncertainty
regarding the animal itself, on the other hand, is more serious, as there is a chance that the animal was, after
all, a firstborn, and, in that case, one would be liable to *karet* for slaughtering it.
　　Additionally, Rabbi Isserlein distinguished between the prohibition to slaughter or eat the animal,
which is punishable by *karet*, and the prohibition to disrespect priestly gifts by refusing them, which is
frowned upon, but does not approach the realm of *karet*. Rabbi Isserlein concluded with the suggestion that,
at the very least, there was no reason to be as stringent concerning the latter, as the ashkenazic tradition
seemed to have related to the former. He thus accepted stringency surrounding *karet*, but considered the
danger of disrespecting priestly gifts less serious, and thus allowed for more leniency when it came to
returning the firstborns. Such leniency was all the more acceptable, he claimed, when the uncertainty
stemmed from a disagreement between authorities, rather than an uncertainty about physical reality
(concerning the animal itself). In the case of an uncertainty stemming from rabbinic disagreement one would,
in any case, exempt the animal from firstborn status according to at least one out of two rabbinic authorities.
As a result, Rabbi Isserlein concluded, it was acceptable for the *kohen* to refuse a firstborn that was sold to a
non-Jew according to only one of the two required methods of sale: *Leket yosher*,131: ונימא דמהר"ם לא מיירי
אלא בספק דלא תליא בפלוגתא דרבוותא אלא בספק שנולד מעצמו כדאשכחן כמה ספיקות במסכת בכורות אבל כהאי גוונא
כמה ספיקות בפלוגתא דרבוותא אם אנו הולכים להחמיר משום איסור כרת כדי לצאת ידי כולן לא ניזיל כולי האי להחמיר בשביל
זילזול מתנות כהונה
　　"In any case, one need not add even more [to Rabbi Rothenburg's opinion], and we can say that Our
Master Rabbi Meir means this only in cases of an uncertainty that depend not on a disagreement between
authorities but an uncertainty that comes from the thing itself ... but, as in this case, where there are several
uncertainties due to disagreements between authorities, even if we are stringent to avoid the prohibition of
*karet* and fulfill all the different rabbinic requirements, we do not have to do all of this to avoid disrespecting
the priestly gifts [which is not punishable by *karet*]."

actual slaughtering of an uncertain firstborn), and then only when the firstborn's mother was indeed sold in some manner or other, and the uncertain status of the firstborn was a result only of rabbinic disagreement concerning the correct mode of sale. If the sole reason to question the newborn animal's firstborn status was the mother's milk-production alone, he could not exempt the firstborn status – not even to the extent of letting the *kohen* reject the gift.

One can also find a desire to release the animal from firstborn status in many other ashkenazic responsa, as we have seen. But whereas, in those responsa, the issue was resolved indirectly, by finding some helpful point in those particular cases; Rabbi Isserlein's approach was more confrontational and innovative: he solved the case by introducing doubt as to the status of lactating cows, and expressed the conviction that this, in reality, would have been enough to exempt the cows. Notwithstanding this innovative approach, the final halakha, in most cases, conformed with the ashkenazic tradition as transmitted in the *likutim*. The logic of custom, resting on the ashkenazic identity and Rabbi Rothenburg's authority, ultimately prevailed. This is not a pure *ad hoc* resolution, as he suggested an actual emendation to the legal structure of the halakha. Legal reasoning leads to very different potential repercussions than the logic of custom. In the sixteenth century, Rabbi Isserlein's responsum was absorbed and transmitted in a very changed halakhic organizational framework.  In this new order, Rabbi Isserlein's inquiries suddenly gained much broader significance.

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### c. Rupture: The Sixteenth Century
#### i. Rabbi Moshe Isserles: Rupture as a Vacuum for Innovation

The previous sections have allowed us to draw the general outlines of a legal tradition and to examine more closely the principles, dynamics, and characteristics of the legal tradition of Ashkenaz until the end of the fifteenth century. This final part will examine the fate of this legal tradition after communal rupture. Rabbi Moshe Isserles (1520-1572), also known as "Rema,"[758] wrote a responsum about firstborn animals. The questioner describes three different stages. The first described a Jew who "...bought a cow from a non-Jewish woman and gave her the money without pulling, he merely left it with the non-Jewish woman, so that she watch over the cow for him..."[759] The second stage complicated the situation, as "...the cow was stolen, and she agreed to pay the owner and return his money, regardless of the fact that the other non-Jews would have insisted that according to the law, she is required to pay only half of the cow's value, and the other half is the Jew's own loss."[760] The woman's agreement to pay the full value implied that she intended to buy the cow from him. Ultimately, the thief was found, "...and the non-Jewish woman sent a message to the Jew to come pick up his cow and redeem it...," implying that the woman withdrew her intention to buy the animal, returning ownership to the Jew. Precisely as the Jew was on his way to collect the cow, however, it gave birth to a male calf. The questioner wished

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[758] Acronym:   ר - Rabbi מ- Moshe א-Isserles, pronounced "Rema" רמ"א- as his last name is very similar to Rabbi Israel Isserlein's (the author of *Trumat ha deshen*), I will refer to Rabbi Moshe Isserles by his acronym "Rema," in order to avoid confusion.

[759] Moshe Isserles, *ShUT ReMa*, §87: אשר שאלתם ע"ד ספק הבכור אשר נולד כאשר קנה פרה מן הכותית ונתן לה המעות ולא משכה רק הניחה אצל הכותית, ותשמור לו הפרה ולרעות אותה עם שאר פרותיה.

[760] Ibid.: ואח"כ נגנבה הפרה ונתרצית הכותית לשלם לו הפרה ולהחזיר לו מעותיו. ושאר הכותים היו אומרים שמדינא אינה חייבת לו לשלם רק החצי , והחצי יפסיד הישראל.

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to know whether this calf is considered sacred.[761] Rema's very first sentence in the responsum displays his indebtedness to Rabbi Isserlein and, simultaneously, his break from the very tradition that Rabbi Isserlein embodies: "It seems that, certainly, if the cow was producing milk first, before this calf, it is obvious and simple that this is not a firstborn, as Our Master Rabbi Isserlein has written…[762] that if there is any [additional] facet to be lenient with a milk-producing animal, one can count on it and exempt in our day and age.[763]

At first glance, Rema seems to be deferring entirely to Rabbi Isserlein's approach that milk production can serve to exempt the calf from firstborn status when combined with additional reasons. Rabbi Isserlein himself, however, had restricted the types of proof that could be adduced to milk-production to include only elements which, in line with the cow's milk production, have direct relevance to the animal's birth history.[764] Rema, on the other hand, suggested that the milk production can be adduced to "any facet to be lenient,"

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[761] Several issues are thus unclear: first, whether the Jew bought the cow from the non-Jewish woman in the first place, seeing as he gave her money, but did not physically take the animal into his possession by pulling it. Second, it is not certain whether the non-Jewish woman bought the cow back in some way by agreeing to pay its full value after the theft. Finally, the fact that the non-Jewish woman told the Jew to pick up his cow after it was retrieved may have meant that she was at that point selling the cow back to him and, thus, the Jew had regained possession of the cow before the birth.

ואח"כ הוכר הגנב ושלחה הכותית אל הישראל שיבוא ויקח פרתו ויפדה אותה ממקום שמשכנה הגנב, *ShUT ReMa*, §87 ובעוד שהלך שם הישראל ילדה הפרה זכר, ונסתפקת אם הוי בכור.

[762] *Psakim u-ktavim*, §130 - the response to Rabbi Yosman Katz, which discusses a case where the cow is both producing milk and a non-Jew testified innocently that the cow had already given birth in the past.

נראה דודאי אם חלבה הפרה תחילה קודם ולד זה דפשיטא דאין זה בכור כמ"ש מהרא"י סי ק"ל §87 *ShUT ReMa* [763] דאי איכא שום צד היתר אצל חולבת יש לסמוך עליו ולהתירה בזה"ז.

[764] In the responsum cited by Rabbi Isserles as evidence, *Psakim u-ktavim*, §130 – Isserlein specifically wrote that, in his opinion, milk production is sufficient for exempting the calf, but "even so, we do not rely on this reason alone, but here, where there is also a non-Jew discussing innocently, and it seems that he is not doing so in order to praise his wares, that is the case in which I come forward and direct [to be lenient]." Evidently, both require adducing milk production to other evidence, but in the original responsum, this was a very specific category of evidence, not merely "any facet to be lenient," as Rabbi Isserles paraphrases.

ואפ"ה לא הוי סמכינן אהך טעמא לחודא, אלא היכא דאיכא בהדה נכרי מסל"ת ונראה דלא אכוון להשביח מקחו, כן הדבר שכך אני מורה ובא.

without discriminating. The additional considerations for leniency that Rema used in this responsum all stemmed from questions regarding the acquisition and sale of the cow, which Rabbi Isserlein specifically refused to adduce to milk production. Rema phrased his answer seemingly in line with Rabbi Isserlein, but, in fact, he took the leniency one big step further.

Moreover, Rema reasoned that, even lacking the element of milk production, the calf could have been exempted from firstborn status on the basis of the method of sale. The cow had been bought from the non-Jewish woman by means of money alone, without any physical transfer of the animal. Later, when the woman agreed to pay the full price for the stolen animal to the Jewish owner, the Jew did not physically take the cow into his possession either. Rema claims that the calf could be exempted on the basis of the form of acquisition alone. According to Rabbenu Tam and many others who required physical transfer ("pulling") of the object being bought when dealing with a non-Jew, the sale from the non-Jewish woman, which involved only money and no transfer of the object, never was consummated.[765]Rema insists that selling the animal by means of "pulling" is basically sufficient, and that this,

> can be seen from the words of the tosafot, who wrote first like Rabbenu Tam and wrote only after, 'he who wishes to take into consideration the words of both RaShY and Rabbenu Tam,' meaning that it depends on the desire of the actor [to be stringent], but by law he can certainly base the case in question on Rabbenu Tam as all the halakhic decision-

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[765] Rema referred to a citation of this opinion in the name of the tosafists in Babylonian Talmud tractate *Avodah zarah* 61a. "Rav Ashi." The original source also mentioned RaShY's opposing opinion and the preferred option of using both money and physical "pulling" in order to satisfy all opinions.

ר' אשי אמר משיכה בעכו"ם אינה קונה.

.....'לא לדיחויא בעלמא קאמר רב אשי הכי, אלא לפי האמת כדמוכח במס' בכורות פ' ב,

א"כ המקנה בהמה לעכו"ם כדי לפוטרה מן הבכורה צריך שימשכנה העכו"ם ובכך סגי בלא כסף. מיהו רש"י פי 'דמשיכה אינה קונה בעכו"ם אלא כסף דאין הלכה כר' יוחנן אלא כרשב"ל משום דרבא ס"ל כוותיה מדקאמר קרא ומתניתין מסייע ליה לרשב"ל והרוצה לחוש לדברי רש"י ור"ת המקנה בהמה לעכו"ם לפוטרה מן הבכורה צריך שיתן העכו"ם כסף וגם משיכת העכו"ם מסימטא ...או לרשותו של עכו"ם שהוא שלו ואם אין לו רשות לעכו"ם מקנה לו הישראל...

makers have ruled that money is what buys among Jews; therefore, it follows, that for a non-Jew 'pulling' is required.[766]

Most fifteenth-century responsa recognized the fact that Rabbi Rothenburg's requirement to use money in addition to pulling was phrased as an additional stringency. Similarly, they all recognized that, if one had to prioritize one method, pulling would, in this case, present the preferable choice.[767] Despite this insight, however, not one of these respondents deemed this sufficient reason to rely only on Rabbenu Tam. Rema was evidently reading his predecessors attentively and, in many ways, following in their footsteps, but he also took bold additional steps and clearly did not feel equally bound by the same tradition that obligated them.

One of the arguments used in these cases, in which Rema's conclusion differs from that of his predecessors, points to yet another part of the legal tradition that Rema did not continue. As we have shown, the understanding that 'pulling' was the preferable mode of sale and money was the less preferable one, did not lead Rabbi Isserlein or his ashkenazic contemporaries to conclude that, in cases where a Jew used only one symbolic coin to buy an animal, one could be lenient and declare that, as this is a less preferable method of

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[766] *ShUT Rema*, §87: ואע"ג דכתבו שם מיהו רש"י פי' דמשיכה אינה קונה בכותי רק מעות כו', עד והרוצה לחוש לדברי רש"י ולדברי ר"ת, המקנה בהמה לכותי לפוטרה מן הבכורה צריך שיתן הכותי כסף וגם משיכה וכו', וכן כתב הרא"ש ריש בכורות, היינו דווקא לכתחילה, כדמוכח מלשון התוס' דכתבו תחילה כדברי ר"ת וכתבו אח"כ הרוצה לחוש לדברי רש"י ור"ת. ש"מ דברצון העושה מילתא תליא מילתא אבל מדינא ודאי קי"ל כר"ת מדפסקו כל הפוסקים דמעות קונה בישראל ממילא גבי כותי משיכה. דאין לומר דגבי כותי קונה תרוייהו, כדמוכח בדברי הר"ת הנ"ל שהארכתי בזה

The last sentence, "for one should definitely not claim that both methods buy successfully from a non-Jew, as can be proven from the words of Rabbenu Tam above, which I explained," refers to the fact that even those who require stringency do not think that RaShY and Rabbenu Tam could be right simultaneously. It is not a stringency where you need both methods and, if you choose only one of the two, you are surely wrong. Rather, there is a certain chance of being wrong. Therefore, no matter what one chooses, there is some chance of being completely right. Between those two opinions, it is more likely that Rabbenu Tam was right, and more authorities agree with him in this case. Therefore, he is the more likely option here.

[767] Both in terms of consistency and in terms of consensus among earlier scholars, see, for instance, *Leket yosher*, 132.

acquisition, the Jew never bought it. Rema, on the other hand, argued that, as money is merely the less preferable means of acquisition, buying an animal from a non-Jew by means of money alone would *exempt* the offspring born from this animal from firstborn status, concluding that, "the opinion of Rabbenu Tam seems to me sufficient support, and to say that specifically 'pulling' buys, in order to exempt this calf from firstborn status," and not money.[768]

Thus, Rema considered it obvious that, if something was  considered merely an additional requirement for correctly selling the animal to the non-Jew and *exempting* oneself, there is certainly no reason to  adopt such a stringency when buying the animal and thus *obligating* oneself.[769] This is far removed from his predecessor's view, which stated that even the vastly inferior mode of monetary acquisition (by means of a merely symbolic coin) should be enough to *obligate* the Jewish buyer to treat the calf as a firstborn. Rabbi Isserlein, in fact, phrased it as a logical conclusion that, if one permits something to suffice in cases of leniency, it is *a fortiori* true that this should suffice in order to be stringent. He thus concluded his discussion of the symbolic coin: "And thus, we can claim *a fortiori*, that if for *sale* by means of money, a coin alone can be enough, a coin should *most certainly* be enough in order to be stringent and *buy* from the non-Jew!"[770]

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[768] See *ShUT Rema* §87. ולכן נ"ל דברי ר"ת לסמוך עליו ולומר דדוקא משיכה קונה, כדי לפטור ולד זה מן הבכורה. וכ"ש אם נולד זכר זה בבית גנב או בבית שמשכן דודאי היה ולדה בחזקת הגנב והקונה דהוי התם שני רשות ושינו השם ולכן פטירי ואין להאריך עכשיו בזה. כן נ"ל משה איסרלש מקראקא.

[769] Regarding Rema's systematic tendency to be lenient where financial loss was involved, see Ḥaim Tchernowitz, *Toldot ha-poskim* (The History of the Jewish Codes)*,* vol. 3 (New York, 1946-1947): 62-70 . In those cases, the leniency usually involves big financial loss and urgent need.

[770] See *Leket yosher*, 137 (the responsum to Rabbi Yehuda Obernick). וכן המנהג פשוט להקנות לגוי עבור פשוט כדי לקיים גם דברי רש"י, דסבר דקניינו של גוי אינו אלא בכסף. ומעתה ק"ו, ומה אפילו להקל ושיקנה הגוי מישראל סגי בפשוט, להחמיר ושיקנה הישראל מן הגוי לא כ"ש?!

While *a fortiori* reasoning itself is a neutral operation, the "direction" in which it functions depends on what is considered more "obvious" or "serious," and what is considered less "obvious" or "serious," with the law that applies to the less serious statement then *a fortiori* applying to the more serious one. The determination of what is more obvious is almost by definition not something to be spelled out explicitly; it is absorbed as part of a legal tradition and its implicit web of priorities and hierarchies. In this case, the order clearly changed as the legal tradition moved eastward. For Rabbi Isserlein the tendency to be stringent was more obvious than the tendency to be lenient, and he constructed his logical claim in line with this assumption. Rema, on the other hand, believed that, if a certain standard is considered merely optional in order to be lenient, it will certainly *not* be used in for stringent requirements.[771] The ways in which they ranked leniency and stringency were opposed, and thus their use of *a fortiori* worked in opposite ways.

Rema argued that, even if we assume that the Jew first bought the cow, the non-Jewish woman subsequently bought it back from the Jew according to the laws of *sitomta*,

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[771] For example, Maimonides, it seems, was of the opinion that there is no primary assumption that favors being stringent over being lenient or vice versa in these cases. (In other words, it goes both ways: giving a coin without pulling is sufficient to release the Jew from owning the mother animal, but by the same token, it is sufficient to burden a Jewish buyer with an animal that will give birth to a firstborn.) As Maimonides, however, unlike Rema here, is not speculating about any of the clauses – that is, Maimonides simply states that selling to a non-Jew by means of a coin will suffice to release the Jew and then states that the exact same rule applies vice versa – it gives us less of a window into his approach to the mechanism of leniency versus stringency in these cases, whereas for Rema, it is clear that, even absent some of the information, he feels safe to assume that, if we knew that something can obligate in some situations, it would most certainly have to exempt were the situation reversed, whereas Rabbi Isserlein thought that if an imperfect sale releases the Jew, it is obvious that, if the situation were reversed, the same sale would clearly obligate the Jew. See Maimonides, *Mishne Torah*, Laws of Firstborn Animals 1:5, ישראל שנתן מעות לנכרי וקנה לו בהן בהמה מנכרי בדיניהן אף על פי שלא משך קנה וחייבת בבכורה, וכן אם קנה הנכרי מישראל בדיניהם ונתן מעות אע"פ שלא משך קנה ופטורה מבכורה.

which state that any accepted local practice that closes a sale transaction will also be valid according to Jewish law.[772] Therefore, even if the cow was not sold by a full monetary transaction, the non-Jewish woman, at the very least, bought it from him according to accepted business practices, which should suffice. As we noted, Rabbi Moshe Mintz declared specifically that, although a *sitomta* has validity for Jewish laws of property, it does not determine issues of sanctity;[773] therefore, even if the sale of the cow according to local business law sufficed for a halakhic sale, this did not mean the sale method was sufficiently valid to remove its sanctity, and the calf was thus still consecrated.[774] This principle of whether and how legal status can "transfer" from one halakhic realm to another was thus not transmitted to Rema's legal tradition.

Rabbi Isserlein's innovations in *Trumat ha-deshen* were couched in many levels of limitations. These were not mere apologetics, but additional qualifications that were rooted in the legal tradition to which he belonged, and they ultimately served to limit the applicability of his innovations in the matter of exempting animals from sanctity. Looking at Rema's opinion on the matter, roughly one century later, it is clear how much has changed. In the responsum itself, Rema did not cite any new source that was unavailable to his ashkenazic predecessors. Moreover, although he was located in Cracow, a relatively

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[772] *ShUT Rema* §87 פרק כדאי׳ דקניא מדרבנן מסיטומתא, מ״מ לא גריעי מעות קונות מעות אין דמד״ת דאע״ג ואי״ל
נשך, איזהו.

[773] *ShUT MaharaM Mintz*, §82 לא בכור קדושת לעניין קנה ף״ וינקוי״ ה״ן בדיניהם, דבכור דינא תלה לא צ״ל ואלא
קנה.

Also, see *ShUT MaharaM Mintz*, §5 דכיוון סיטמתא, כגון דאורייתא עוקר חכמים דמנהג את״ל ואפי׳
מועיל אינו גוים, התגרים דנהגו קנייה האי מ״מ מילי, לכל קנייה הוי ממילא הפקר, ב״ד דהפקר הלוקח, ברשות חכמים דמוקמי׳
בכור קדוש׳ להפקיע

[774] Rema is aware that this could be a possible argument (although he does not mention Rabbi Moshe Mintz's responsa specifically), and he presents some counter-arguments to this (from Tosafot on Babylonian Talmud, tractate *Bava meẓia* 34a ד״ה אי נמי where they draw a similar comparison between laws of sale and laws of sanctity).

new community, Rema clearly considered himself to be an integral part of the ashkenazic

tradition. Indeed, the main justification that Rema presented for the publication of his gloss

on the *Shulḥan Arukh* was the need for a specifically *ashkenazic* adaptation of the sfardic-

centered code. In the introduction to this gloss, Rema wrote that his goal was to "collect

the words of the latter authorities and teach the ways of the customs that are kept in these

areas," seeing as, "most of the customs in these countries are not carried out like theirs."[775]

He explained that, as a result of Rabbi Karo's principle of ruling, "…in his books have

been spread many things that are not in line with halakha according to the words of the

sages whose waters *we* drink, these are the *poskim* (halakhic decisors) famous among the

sons of Ashkenaz."[776] Clearly, Rema considered himself not just a part of the ashkenazic

tradition, but a crucial link in its transmission.[777] He identified himself as a descendant of

"...the tosafists and the sages of France, whose offspring we are."[778] If Rema identified

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[775] See Rema's introduction to the *Shulḥan Arukh* with his gloss, *Mapah*: אמר משה...בהיות כי הגאון
המחבר בית יוסף ושולחן ערוך ... טבח טבחו וערך שלחנו לא הניח אחריו מקום להתגדר בו לולי ללקט דברי האחרונים ולהורות דרך
המנהגים שנהגו במדינות אלו באתי אחריו לפרוס מפה על שלחן ערוך שחבר ועליה כל פרי מגדים ... ובלא זה השלחן אשר הוא ערך
לפני י-י ולא נתנו עדיין לבני אדם שבמדינות אלו אשר רובי מנהגי מדינות אלו לא נהיגין כוותיה...

[776] Ibid. כ"ש מן הכלל שכלל הגאון הנ"ל מעצמו לפסוק אחר הרי"ף והרמב"ם במקום שרוב האחרונים חולקים עליהם
ואל ידי זה נתפשטו בספריו הרבה דברים שאינן אליבא דהילכתא לפי דברי החכמים שמימיהם אנו שותין והם הפוסקים המפורסמים
בבני אשכנז אשר היו לנו תמיד לעני' ופסקו מהם קמאי דקמאי והם: האור זרוע והמרדכי והאשר"י והסמ"ג והסמ"ק והגהות מיימון
אשר כלם נבנו על דברי התוספות וחכמי צרפת אשר אנו מבני בניהם וכבר הארכתי בזה ת"ל בהקדמת ספרי... ובזה יסתרו כל מנהגי
המדינות , וכבר אמרו חז"ל  כי הרבה דברים בין בני מזרח ובני מערב אף בדורות הראשונים כ"ש בדורות האחרונים אלו. על כן
ראיתי לכתוב דעת האחרונים עם המקומות שלא היו נראים לי דבריו בצדו כדי לעורר התלמידים בכל מקום שידעו שיש מחלוקת
בדבריו ובכל יוקו' שידעתי שאין המנהג בדבריו אחקרה ואמצאהו הכי נהוג הכי אכתוב ובצדן אשים.

[777] See Rema's introduction to *Darkhei Moshe*, his glosses on *Bet Yosef*: וע"י זה הדבר סתר כל המנהגים
אשר באלו המדינות Rema explained that Rabbi Yosef Karo employed a different authoritative tradition "...and
thereby he countered all the customs in these areas." By this Rema means not only custom "proper" but
rather: 1) the scholarly practices of *psika* (halakhic decision-making), in Ashkenaz centered on *hilketa ke-batrai*, which indeed ends up giving more weight to later renditions of halakha as passed on (and thus to the
transmission rather than the earlier text); 2) specific works that follow this scholarly practice וכן פסקו האחרונים
ובראשם מהרי"ק ומהרא"י -תמיד, *Trumat ha-deshen* and Rabbi Yosef Kolon as main representatives of this
tradition. See also Joseph Davis, "The Printing," on the definition of a halakhic community in Central and
Eastern Europe in the wake of the printing of *Shulḥan Arukh* with *Mapah*.

[778] Rema's introduction to the *Shulḥan Arukh* with his gloss, *Mapah* והם: האור זרוע והמרדכי והאשר"י
והסמ"ג והסמ"ק והגהות מיימון אשר כלם נבנו על דברי התוספות וחכמי צרפת אשר אנו מבני בניהם

himself as part of the ashkenazic tradition and did not reveal any new authoritative halakhic sources, what, then, had changed to produce such a different result?

Some of the reasons discussed earlier, namely print and codification, apply to this case study, too. The printing of the *Shulḥan Arukh* and its ultimate dominance in Ashkenaz meant that halakha became increasingly more textual and less oral. Rabbi Karo's universalistic approach to halakha had the effect of weakening local differences, especially custom. Moreover, the method of summarizing the bottom line of the ashkenazic laws appropriate to the literary conventions of codificatory glosses enabled Rema to present the tradition of Ashkenaz in a manner that corresponded to his own view, as opposed to the stylistic conventions of the *likut*, where different sources were allowed to remain layered and generational seams were often visible. The central discussion of firstborn animals in the *Shulḥan Arukh* reflects the sfardic tradition: "He who takes a lactating animal from a non-Jew …And, so, too, an animal that is producing milk is exempt from firstborn status ..."[779] This legal tradition does not see any firstborn issue whatsoever if the mother was already lactating before the birth.[780] Rema's gloss, meant to adapt the *Shulḥan Arukh* for the ashkenazic world, in order "to teach the ways of the customs that are kept in these lands,"[781] glosses the section on milk production to reflect the ashkenazic tradition: "And there are those who say, we do not rely on the fact that she is producing milk, and, similarly

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[779] *Shulḥan Arukh*, *Yoreh de'ah*, §316: 2-3.

[780] The only representative of the ashkenazic tradition in the body of the *Shulḥan Arukh* is the *Tur*, which follows the tradition of its author's father, Rabbi Asher ben Yeḥiel. In this case, the *Tur* recognized that some authorities were stringent, but, in accord with his father's opinion, also ruled leniently in the case of milk-production. *Shulḥan Arukh*, *Yoreh De'ah*, §316: 3, gloss (*Mapah*) (See n784, here for full quotation).

[781] Rema's introduction to the *Shulḥan Arukh* with his gloss, *Mapah* ולהורות דרך המנהגים שנהגו במדינות אלו...

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the later authorities have ruled, and so we have the custom to act in all these areas."[782]

These words accurately transmitted the ashkenazic tradition. Rema added that: "if there is an additional facet to permit it, or if the non-Jew is testifying innocently and not in order to praise his wares, and says that she gave birth, we rely on this to permit it."[783] These words, inserted seamlessly into the gloss as though they merely summarize the ashkenazic sources, in reality, do more: At first sight, this additional line is a rather close paraphrase of Rabbi Isserlein's regarding the issue.[784] One small part of the paraphrase, however, is not an accurate summary of his predecessor's words. Rema wrote that "if there is an additional facet to permit it, *or* if a non-Jew is testifying innocently … we rely on this to permit..." A more accurate paraphrase would not have presented the non-Jew's testimony as one of many examples of "additional facets to permit," as Rema summarized it here. In reality, the non-Jew's testimony functions more like a limiting example. Only factors that resemble it, relating directly to the cow's birth history, could be adduced to milk-

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[782] *Shulḥan Arukh*, *Yoreh de'ah*, §316: 3, gloss (*Mapah*): (See n784, here for full quotation).

[783] *Shulḥan Arukh*, *Yoreh de'ah*, §316: 3, gloss (*Mapah*):

וכן נוהגין בכל המדינות אלו. מיהו אם יש עוד צד היתר לזה או שעכו"ם מסל"ת שלא להשביח מקחו ואומר שילדה ....
סימכין להתיר. ודוקא בפרות ובמקום שלא נשמע שחולבות בלא ולד אבל בעזים שדרך שחולבות בלא ולד לא

[784] The next line makes it even clearer that Rabbi Isserlein is the source for this law: "And this is specifically so for cows… but with goats… we do not rely on this...." The distinction between cows and goats is taken directly from Rabbi Isserlein in *Psakim u-ktavim* §130. Rema also adopted the larger underlying principle of Rabbi Isserlein's reasoning, namely, the need to research the current status of animals in one's area and the circumstances in which they produce milk: Rema envisioned the possibility of adapting the rules after further study of the nature of livestock and milk production in every place and time. In his words: "And it seems to me that in places where the way of goats would not be like this, or (conversely, if) the way of cows would be like that, one should not distinguish between animals, and one should inquire into this issue." *Shulḥan Arukh*, *Yoreh de'ah*, §316: 2-3, gloss (*Mapah*):

שו"ע יו"ד שט"ז דין הלוקח בהמה מן העכו"ם ואינו יודע אם בכרה
ב. הלקח בהמה מניקה מהעכו"ם אינו חושש שמא בנה של אחרת היא מניקה אלא הרי זו בחזקת שילדה...
ג. וכן בהמה שהיא חולבת פטורה מהבכורה שרוב הבהמות אינן חולבות.
הג"ה: ויש אומרים דאין סומכין על מה שהיא חולבת טור בשם ה"נ והגהות מרדכי פרק האשה( וכן פסקו האחרונים
מהרא"י בפסקיו סימן קס"ו ובתרומת הדשן סימן רע"ט ומהרי"ו סימן קע"ד וכן נוהגין בכל המדינות אלו. מיהו אם יש עוד צד היתר(
לזה או שעכו"ם מסל"ת שלא להשביח מקחו ואומר שילדה סימכין להתיר. ודוקא בפרות ובמקום שלא נשמע שחולבות בלא ולד אבל
בעזים שדרך שחולבות בלא ולד לא סמכינן על כך. אפי' במקום דאיכא ספק ספקא כגון שילדה ב' ואיכא למימר אבל אחד דאינו בכור
א"פה אסור פסקי מהרא"י סי' ק"ל ונ"ל דבמקום דאין דרך העזים בכך או שדרך הפרות בכך אין לחלק ויש לחקור אחר זה.

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production. By using "or," however, Rema summarized Rabbi Isserlein's opinion in a way that presents it as though *any* cause for leniency no matter in what category could be adduced to milk production in order to exempt the calf. The halakhic tradition was thus codified in the *Shulḥan Arukh*, rendering Rema's summary of the ashkenazic tradition in his glosses much closer to his own interpretation of these laws than to the laws as they existed in Ashkenaz. Rema isolated Rabbi Isserlein's insight without preserving his predecessor's larger efforts to embed this within the ashkenazic tradition. Placed within a new context, that of the *Shulḥan Arukh*, the opinion led to very different halakhic consequences.

The printing of the *Shulḥan Arukh* (1565), especially with *Mapah*, Rema's gloss (1570s), changed the way in which halakha was studied. The *Shulḥan Arukh* did not undo the sources of authority so much as detach them from the legal tradition in which a scholar would have consulted his sources. It became the central (although certainly not the only) source to consult when halakhic adjudication was needed. Most of the halakhic works of the subsequent generations were in the form of glosses on this work. The ashkenazic gloss, which aims at inserting the ashkenazic decision is, in effect, a complement to the *Shulḥan Arukh* and thus becomes integrated into its genre, order, and formulation, operating on its terms: "In all of Ashkenaz one is accustomed to follow Our Master, the rabbi Rabbi Meir," is transmuted into "And there are those who say that one does not rely on the fact that it is producing milk." That entire tradition, the communities and the attitude that this authoritative line represented had now been distilled into one "*ve-yesh-omrim*" ("and there are those who say") among many;  memory is lost, leaving only the textual remnants of

history. The new halakhic "starting point" became the body of sources as they appeared in *Shulḥan Arukh*, its codified structure constituting a more strictly textual form of transmitting halakha.

The move away from compilations such as *Mordekhai* to codes like the *Shulḥan Arukh* was, as a shift from scribal to printed transmission, also a shift from a more personal, holistic, affective form of transmitting less rigidly defined topics within halakha to a more demarcated, rational, and modular approach, which divided topics into their smaller constituent elements. in Ashkenaz, concerns about the seriousness of *karet* had dictated a careful and stringent approach to the entire issue of firstborn animals; the gravity of the subject was transmitted in an almost visceral sense by the expressions used and the stories told, even the stories that depicted behavior that was not halakhically required and somewhat ignorant – perhaps, even, especially these stories. The approach can be sensed beyond the specific cases and decisions, not only in the attitudes implied by the specific linguistic expressions and hesitations of scholars such as Rabbi Moellin, but also in the writings of the innovator, Rabbi Isserlein. They are also reflected by the "simple" lay Jews in some of these questions, such as the poor *kohen* described in one responsum, who was seized with fear and trembling when he noticed a questionable firstborn animal on his property.

The *Shulḥan Arukh* encouraged textual legal reasoning. Because of its organizational structure, the division into sections and subsections creates a modular

scheme,[785] in which all the elements of a very narrowly defined halakhic topic (sale to non-Jews, milk-production, etc.) are examined separately. This organization facilitates combining the various smaller modules in different ways. Rather than each module being woven within the larger textual context of the topic within one chain of transmission, every subtopic could now be found separately, alongside the alternative halakhic opinions about that specific subtopic. Being surrounded by a broader collection of alternative traditions reduced the apparent dominance of any particular halakhic approach. In addition, the act of separating a larger topic such as *pidyon bekhor behema* into its constituent modules (milk production/sale/testimony) made it much more difficult to transmit the general approach that underlies a larger topic in a specific culture.

The older responsa preserved in compilatory sources such as *Mordekhai* managed to communicate the overall ashkenazic approach. In the *Shulḥan Arukh*, however, the halakhic stance on firstborn animals depends on the opinion that one follows regarding a combination of very discrete modular halakhic issues. The process of re-organizing the older ashkenazic sources from halakhic compilations into a more systematized code contributed to the loss of the ashkenazic attitude transmitted in its legal tradition. Gone was the long shadow of Rabbi Meir of Rothenburg; the new starting point was Rabbi Isserlein. The concentration of authority in one figure who comes to represent the community and determines its decisions was a part of the legal tradition that clearly shifted in the sixteenth

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[785]See also Tirza Kelman, *ha-Shimush be-poskim Ashkenazi'im be-Sefer bet Yosef: Hilkhot nidah ve-t'vilah ke-mikre mivḥan* (The use of ashkenazi legal decisors in the book Bet Yosef: The laws of menstrual impurity and ritual bathing as a case study.) M.A. thesis, (Be'er Sheva: Ben Gurion University 2012). Kelman studied the ways in which Rabbi Yosef Karo integrates certain ashkenazic textual material into his work. The central work, in that case, was Rabbi Isserlein's *Trumat ha-deshen*, and Kelman notes how Rabbi Karo tended to "take apart" sections from different responsa and insert them into their respective place in the *Bet Yosef.*

century. The choice of Rabbi Isserlein in itself is very significant. If Rabbi Rothenburg embodied the "middle age" for Rabbi Isserlein and his generation, following communal rupture, Rabbi Isserlein himself came to represent the "middle age," the latest representative of Ashkenaz as it existed in its original geographic location.[786] The periodization of the legal past, it seems, is demarcated by tragedies: the medieval persecutions in the case of Rabbi Rothenburg and the expulsion from Ashkenaz in the case of Rabbi Isserlein. As the final great rabbi of his period, Rabbi Isserlein came to occupy the same position for sixteenth-century scholars that Rabbi Rothenburg had for the previous period. One sixteenth-century rabbi described him as follows: "...we, in our lands, who in all our teachings drink from the wellsprings of the rabbi Rabbi Isserlein of blessed memory, who was from the sons of Ashkenaz, and the last of the last...,"[787] and a contemporary of his writes, "And it is known that our Master Rabbi Israel of blessed memory, the author of *Trumat ha-deshen*, he is the greatest of the *aḥronim* (later ones), and it is from his wellsprings that we drink."[788] Rabbi Isserlein is considered the figure who brought the wealth of all the ashkenazic generations before the persecutions to the next generation, the final summation and repository of ashkenazic halakha.

In sum, several factors contributed to this change. One was the change in the organization of halakhic knowledge and the order of halakhic books; these, in turn, resulted from a combination of two intertwined factors, namely, the emergence and spread of new

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[786] As mentioned earlier in this case study, the function of looking for this "middle age," something historical yet late enough to be more useful, can be related to the principle of *hilkheta ke-batrai*, which was especially strong in Ashkenaz (See Ta-Shma, "Hilkheta ke-batra'i," 58-78.

[787] *ShUT ha-BaḤ ha-ḥadashot*, §66.

[788] Rabbi Moshe Lima (1604-1658, Poland), *Ḥelkat meḥokek, even ha-ezer*, 17: 21.

technologies – primarily print – and the new books of halakha that were published, in particular the *Shulḥan Arukh*, and their organizational paradigm, that of a code. This led to more textualization and a type of legal argument that was less based on custom. This, however, is not sufficient. Scholarly and religious cultures, especially highly traditional ones, can continue for a very long time, even in the fact of new technologies and alternative organizational paradigms. The crucial factor for the transformation of ashkenazic halakha was communal rupture, which led to a loss of the legal traditions of Ashkenaz. This fundamental shift enabled a departure from the ashkenazic tradition such as Rema's decision on firstborn animals to occur.

The succession of persecutions, expulsions, and migrations that started with the Black Death in the mid-fourteenth century led to a situation in which, by the sixteenth century, the original ashkenazic communities were no longer in existence and had been replaced by the new communities in Eastern Europe. These new ashkenazic communities considered themselves, by and large, to be a faithful continuation of the communities of old.[789] Certain aspects of scholarly and religious culture, however, such as the amorphous legal tradition, did not carry over into these new communities.[790] Moreover, approaches

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[789] In the "*Seder dorot*" section of the version of *Sefer yuḥasin*, printed in Cracow in 1579, with glosses by Rema, he inserts himself into the ashkenazic genealogy, adding his direct Polish predecessors to the traditional ashkenazic lineage. By doing this, Rema clearly positioned the Polish rabbinic tradition as a direct continuation of Ashkenaz of old. A sense of continuity clearly persists. The "*Seder dorot*" (Order of generations) is a genealogical chain that is part of *Sefer yuḥasin* (Book of heritage) by Avraham Zacut, which deals mainly with astronomy. It is based on the 18th chapter of the late fourteenth-century work *Yesod olam* (Foundation of the world) written by a student of Rabbi Asher ben Yeḥiel, which itself is based on *Sefer ha-kabala* (Book of tradition) by Rabbi David ibn Daud(12th century, Spain). The first printed edition of *Sefer yuḥasin* (Constantinople, 1566), contained only the 18th chapter of *Yesod olam*, without glosses. On the study of this work among Polish rabbis, see Elhanan Reiner, "Yashan mipnei ḥadash" and David Fishman, "Rabbi Moshe Isserles and the Study of Science among Polish Jews" in *Science in Context* 10 (1997): 571-588.

[790] Elhanan Reiner, "Aliyat ha-kehila ha-gdola: Al Shorshe ha-kehila hayehudit ha-ironit be-Polin ba-et ha-ḥadasha ha-mukdemet" ("The Rise of the Big Community: On the Roots of the Jewish Community

reflecting the self-perception of the ashkenazic communities as a *kehila kedosha* (a holy community) with its ties to martyrdom and self-sacrifice, which found expression in responsa studied here – approaches such as the one regarding the simple but pious *kohanim* – were now very far removed from their actual community, their social, geographical, and physical source. The political and legal position of Jews was far different in Eastern Europe than in Ashkenaz; their position as a minority in relation to the non-Jewish surroundings was entirely different, their security was improved, and the sense of being a persecuted minority was reduced. As Reiner explained, the size, demographics, and economic occupations of these communities led to a shift from small sacral communities to larger communities that were in many ways economic entities. The self-perception of the ashkenazic communities as a *kehila kedosha* was connected to overall tendencies towards religious caution and self-sacrifice, above and beyond halakha. The manuscript compilation – the characteristic form of textual transmission of ashkenazic customs – did not lend itself to integration with the new forms of halakhic writing and organization. Moreover, the extremely local nature of ashkenazic law increased the difficulty of transporting local customs to a new geographic locality.

It is not, however, merely an issue of losing individual customs or detaching from halakhic authorities of the past – after all, there was, obviously, a demand to derive halakhic decisions precisely from the pool of ashkenazic authorities, hence Rema's justification for glossing *Shulḥan Arukh*. Rema's interpretation, however, assigns a very different weight

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in Poland in the Early Modern Period") in *Gal-ed* 20 (2006): 13-37. On the *kehila kedosha*, see Haym Solovetichik, *Halakha, kalkala, ve-dimu'i aẓmi: ha-mashkona'ut bi-yemei ha-beinaim* (Pawnbroking in the middle Ages: A study in the interrelationship between halakha, economic activity, and self-image) (Jersualem, Magnes, 1985), 54-55; 72; 111-112.

to these ashkenazic sources. He places Rabbi Isserlein at the center of his summary and in his responsum, whereas he barely mentions Rabbi Rothenburg, and refers only once to the *Mordekhai* in this discussion. *Sefer ha-Mordekhai* was not lost, nor was the statement inside it that "in all of Ashkenaz, we follow the custom of Rabbi Meir of Rothenburg." Clearly, Rema continued to study the *Mordekhai*. There are glosses from Rema on *Sefer ha-Mordekhai*, including on tractate *Ḥulin*,[791] the same tractate that includes the remark that "in all of Ashkenaz we have the custom to be stringent like Rabbi Meir Rothenburg." What was lost is the legal tradition of which sources take precedence and how leniency and stringency are subordinated; which authorities are the final word for a culture; and which ones are negotiable. It is not that the source was lost – Rabbi Isserles had access to the very same quotes – but their potency was gone. Nora's insight that the communal memory is affective as opposed to history based on texts, which is critical, applies here too. Shifts took place not only the direction in which *a fortiori* reasoning works with stringency versus leniency but also in the rules of which source to follow and the assumptions of how business and sacred halakha interact. The sanctification of the poor, simple *kohen* was replaced by concern for his livelihood; the pride in being extra careful with sacred animals was gone – the affect – the anxiety at opposing Rabbi Rothenburg, was not transmitted along with the legal texts that stated precisely this. Consequently, textual transmission was open to new forms of reasoning and interpretation that were inconceivable to Rema's

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[791] Rema's glosses on *Mordekhai* here, on *Ḥulin* §592: ואפשר דאף רשב"ג סבר חלב פוטר. תוס' בדף י"א – he thinks that רשב"ג might also think that milk is enough, and it really depends on בד"ה לר"מ חייש למיעוטא – how you interpret the כרוך אחריו statement.

predecessors in the original areas of Ashkenaz, not because of intellectual inadequacy, but because it clashed with the full import of their legal tradition.

### ii. Rabbi Yosef Katz: Traditionalism after Rupture

Not all halakhists in Ashkenaz were clamoring to introduce new forms of reasoning. Rabbi Yosef Katz, the author of a collection of responsa titled *She'erit Yosef* (Cracow, 1590) and a relative of Rabbi Isserles, who was a well-respected member of the Cracow rabbinical court, is a good example. Rabbi Katz was asked about a pregnant cow bought from a non-Jewish woman, which gave birth in the Jew's possession.[792] Two people went to the first owner's village, in order to find out whether the cow had calved previously. The former owner and an unrelated villager answer in the affirmative. Rabbi Katz was asked if this can be considered acceptable testimony under the law of a non-Jew "speaking innocently." It is problematic to consider this "speaking innocently," as the question was obviously prompted. The acceptability of non-Jewish testimony is based on testimony regarding a deceased husband, in order to free his widow for remarriage. Rabbi Katz concludes that the rules are very stringent as to what is considered "speaking innocently," and the testimony about the cow's birth history falls short of those standards.

Rabbi Katz then suggests a fundamental distinction between non-Jewish testimony regarding firstborn animals and non-Jewish testimony about husbands who are presumed dead: in the latter case, non-Jewish testimony is considered unreliable when it follows even a very weak prompt because these laws are well known to gentiles, who realize that the desired answer would be that they witnessed the husband's death. Any form of prompting,

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[792] In Wrocław (or Hohensalz in later German), a city in north-central Poland.

therefore, renders it a guided question, which disqualifies the testimony from being spoken "innocently." However, since Non-Jews are unfamiliar with the laws of firstborn animals, prompted testimony may acceptable in those cases. Rabbi Katz, provided the prompt was not too obvious. He nevertheless rejects this, writing "there is no reason to differentiate …"[793] His reason for rejecting such a distinction has nothing to do with the nature of these laws or with the rationale for accepting testimony. Rather, he explains, such an argument is unacceptable, "Because we do not have the liberty to distinguish based on gut theories something that cannot be found in ancient books, especially when it comes to a biblical prohibition."[794] He thus rejects this suggestion because a rational argument is unacceptable without a precedent in tradition. Here, then, is a scholar who, after communal discontinuity, is seeking precisely to maintain the older legal tradition of stringency regarding these laws, and he does so using the logic of custom, claiming that new laws based on reasoning should not be introduced where no predecessors explicitly did the same.

Next, Rabbi Katz invokes Rabbi Isserlein, referring to something the latter wrote in his *ktavim* or "writings," that is, not the more edited and organized collection of responsa printed under the title *Trumat ha-deshen,* but *Psakim u-ktavim*, the less edited compilation of responsa and other writings that was printed alongside *Trumat ha-deshen*. Rabbi Katz chooses this source although, in this case, the halakhic conclusion in *Psakim u-ktavim* and its counterpart in *Trumat ha-deshen* overlap. Rema also quoted this source, but Rabbi Katz refers to it significantly as "…his *ktavim* … that is, for a *ma'aseh* (a case) that came before

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[793] Yosef Katz, *ShUT she'erit Yosef* §24 ואין סברא לחלק שבעדות אשה יודעים הגוים ויש לחוש לשקר יותר מדין בכור.

[794] Katz, *ShUT she'erit Yosef* §24 כי אין בידינו לחלק מסברת הכרס דבר שאינו נמצא בספרים קדמונים, ובפרט במילי דאורייתא.

him…"[795] Rabbi Katz favors *Psakim u-ktavim* because they are closer evidence of Rabbi

Isserlein's actual decisions.[796] The emphasis that this was a "*ma'aseh*," a case, thus

highlights that this text deals with an actual decision, not a quote from a written law. In

doing so, Rabbi Katz favors the source that is less textual in nature, even when the more

textualized, edited, and structured counterpart was written by the very same rabbi. In this,

too he is appealing to a traditional and non-textual form of ashkenazic halakhic authority.

Rabbi Katz rejects the possibility that firstborns in his day and age do not have

sanctity at the biblical level. As he explains, Rabbi Isserlein obviously thought that

firstborns are considered to have biblical sanctity even in his day and age, as he quotes the

statement that gentiles speaking innocently are unacceptable when it comes to biblical

prohibitions in a responsum to a contemporary question. Rabbi Katz concedes that

Maimonides may have considered firstborns not sacred outside of Israel, as it is quoted in

*Arba Turim*: "…and Maimonides wrote that it does not apply outside of Israel...,"[797] but

rejects this source, because, Rabbi Katz concludes: "Rabbi Isserlein knew this source [the

*Arba Turim*] and nevertheless wrote simply … that firstborns in this day and age are a

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[795] Katz, *ShUT she'erit Yosef* §24 ...ומהרא״י...כתב בפשיטות בכתביו הנ״ל...דהיינו על מעשה שבא לפניו

[796] See Yedidya Dinari, *Hakhmei Ashkenaz be-hilhei yemei ha-beinaim: Darkeihem ve-kitveihem ba-halakha* (The sages of Ashkenaz at the end of the middle Ages: Their ways and their writings in halakha) (Jerusalem: Bialik, 1984), 297-302, for a discussion of these preferences across rabbinic culture. He shows that ashkenazic rabbis in the 15th century, such as Rabbi Yacov Moellin, specifically preferred *Psakim u-Ktavim* and *Leket yosher* over *Trumat haDeshen*, writing that "this is halakha *le-ma'aseh* (for action) we learn from these more than from the words of halakhic books *(poskim)*that were not at the time of teaching (also:deciding halakha)." *ShuT MaharYL* §72. He compares this to later rabbis, for instance Rabbi Yonah Navon, who lived in the 18th century in Jerusalem, and wrote that edited works are preferable to responsa, because "sometimes a person cannot investigate in depth as he should because of the hurry to answer his questioner," in Yonah Navon, *ShUT NeHpa ba-Kasef vol.2: Even ha-Ezer §27*. See chapter 6 in this dissertation for more discussion of this issue.

[797] *Arba Turim, Yoreh de'ah* §306: 1, בכור בהמה טהורה נוהג...בין בזמן הבית בין שלא בזמן הבית. וכתב הרמב״ם שאינו נוהג אלא בארץ ואפילו אם הובאו מחו״ל לארץ לא יקרבו שהם חולין גמורין...

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biblical prohibition...”[798] The reasoning used is thus based on custom: Maimonides is irrelevant, Rabbi Katz claims, because Rabbi Isserlein knew of the source but did not take it into consideration.[799] Thus, Rabbi Katz does not tally and analyze arguments in favor or against this interpretation of Maimonides – Rabbi Isserlein had known of this source and disregarded it, and this was all Rabbi Katz needed to know. In itself, calling the sanctity of firstborn animals outside of Israel into question is a sign of rupture. The older ashkenazic sources did not consider it an option. Additionally, it is significant to note that Rabbi Katz relied on the authority of Rabbi Isserlein, not Rabbi Rothenburg. If periodization of the legal past was determined by ruptures, and the last great figure before any break was considered the culmination of what came before, Rabbi Katz was as much a post-rupture scholar as his more innovative colleagues, whether he wanted to remain traditional or not.

Moreover, at a closer look, his ideological position, too, displays the results of communal rupture, no less than the Rema's revolutionary approach. Rabbi Katz's exclamation against making independent halakhic distinctions relate to theories “that cannot be found in ancient books,” rather than pointing to oral transmission or independent decision making. Similarly, in a responsum about customs of slaughter, he is hesitant to accept a custom because “it is not present in any old book.” He repeats that “it is difficult for me to add to the laws of *treifah* from my own reason…but I will not rest until I search

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[798] *ShUT she'erit Yosef §24:* ומהרא״י ידע הי״ד ומ״מ כתב בפשיטות בכתביו הנ״ל דבכור בזמן הזה דאורייתא דהיינו על מעשה שבא לפניו דהוה בדאורייתא.

[799] Ta-Shma's study of the ashkenazic attitude to tradition and custom presents a similar argument when a medieval figure defends his ancestors' traditions in the face of textual evidence that questions this tradition:“and although the rabbi (R Tam, who opposed the tradition based on legal reasoning from a text) found a basis for his words in the *Sheiltot*…the early sages also knew the decision as it is brought in the *Sheiltot* and they disregarded it…” cited in Ta-Shma, *Minhag Ashkenaz ha-Kadmon, 35*

for old books…" At the end of that responsum, he mentions having witnessed a similar case in his youth and remembering the conclusion; however, having forgotten the details, he disregards his recollections. Thus, even Rabbi Katz favors textual sources over his own memories.[800] Following an attenuated (or, perhaps, a more general) version of Hobsbawm's idea, we see here an attempt at (re)inventing tradition. It is an example of traditional*ism*, a forcible attempt to reconstruct a lost legal tradition. In his attempts at creating continuity across the communal rupture, this traditional figure wishing to uphold the custom of Ashkenaz is forced to rely on books. Textuality was the only remaining option, as the alternatives were gone.

Clearly, communal rupture and its reconstruction provided a great opportunity for rabbis such as Rema to introduce new, more textual and conceptual legal methods and to imbue them with authority. The only point of connection to tradition after rupture was textual, even for those who resisted the introduction of new methods. Thus, inevitably the traditionalist source of authority changed too. This complete reliance on textuality eliminated the primary tool for legal flexibility and innovation in traditional culture, which was, as we have seen in the fifteenth-century responsa, fluidity, *ad hoc* decisions, and the rabbi's personal authority. Its replacement, the stable text and textuality does not allow for adaptations and change. Legal reasoning is thus better suited as a method of textual interpretation for this body of texts, whereas attempts to use the logic of custom and transmission on them is very limiting.

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[800] Katz, *ShUT sheerit Yosef* §47: רק שקשה לי...ישן בשום ספר נמצא אינו ה"מהרא בשם שכתוב ההיתר וגם ישנים ספרים אחר שאדרוש עד אשקוט לא אבל בוריו. על הדין להחליט אוכל לא כי בידי ורפיא והן מסברתי בטריפות להוסיף ר"מהר הגאון בבית כזה מעשה קרה שבילדותי ואמת מזה. ודי מספיק, טעם או קבלה איזה יש אולי אחרים, למקומות אכתוב וגם ומהותו. המעשה איכות יודע איני אבל ואסר ל"ז אמי אחות בעל ל"ז יפה משה

## 5. CONCLUSION:
## COMMUNAL CONTINUITY, LEGAL TRADITIONS AND SCHOLARLY CULTURE

Let us return to the question that opened this chapter: why did Ashkenaz not continue its older form of organizing knowledge despite new technologies – they did not necessarily *have to* accept new paradigms. Considering the strength of custom and non-textual transmission alongside text in Ashkenaz, this scholarly culture would have been a prime candidate to resist these challenges. As this chapter has shown, precisely Ashkenaz's reliance on non-textual elements, such as oral and fluid scribal transmission; the flexible, *ad hoc* personal decision-making of individual rabbis; local halakha and custom as a legal source; and the idea that the legal tradition itself could not be transmitted in a stable, textual and universal form made their scholarly culture so dependent on communal continuity.

This legal tradition encompassed non-textual and non-articulated teachings about the interpretation of halakhic texts, about the hierarchical importance of sources, and about the determination of who represents the communal custom for their era. It also transmitted more general attitudes regarding which areas of law were to be taken lightly, and which were mortally serious, when a good member of their community should exert himself, and what characterized their religious identity as Ashkenaz. The legal tradition's mode of transmission was scribal, meaning that it was textual, but with a high degree of fluidity, leaving much to be determined by orality and leaving room for the communication of affect and emotion, adding memory to history. Its mode of reasoning was custom, leaning on reliability of transmission rather than legal reasoning, and using *ad hoc* decision-making

to resolve practical issues without directly opposing the tradition. This legal tradition, however, requires communal continuity for its transmission.

Once communal rupture occurred, this continuity disappeared and the legal tradition that accompanied the texts was lost. This rupture provided an opportunity for innovators to introduce new forms of thinking even as they based them on traditional authorities. The starting point now became the end of the preceding legal period, rather than the older period's own starting point, which was in turn, the final representative of the legal period that preceded them. This pushing forward of the final authority already offers a new point of entry. The texts were transmitted without the legal tradition in its original form, meaning that even where legal traditions had been preserved in writing, they were now simply texts and no longer held the power, the moral and emotional persuasion that they had held earlier; nor did they convey the sense that a member of "Ashkenaz" would simply never do such a thing. Last, as the rupture leads to textual rather than oral transmission, as the latter is impossible without physical communal continuity, even those wishing to use the logic of custom and rely on tradition lack the fluidity that was part of the earlier legal tradition. Applying the "logic of custom" to a stable textual world leads to petrification.

In the source that Rabbi Katz so faithfully presents as the ultimate in halakhic tradition, Rabbi Isserlein stated that testimony from a non-Jew speaking innocently is not sufficient on its own to free the calf from sanctity. Generally, however, Rabbi Isserlein concluded that, when supplemented by another source of proof for this animal's birth history, such testimony *may* be accepted to release the firstborn from sanctity! Rabbi Katz,

however, took from this only Rabbi Isserlein's opinion that the testimony of a non-Jew speaking innocently cannot release a suspected firstborn from its sanctity. Thus, both Rema and Rabbi Katz, the innovator and the traditionalist, allude to the same textual sources, from the final representative of Ashkenaz as it used to be, and neither of them continues the legal tradition that accompanied the textual source in fifteenth-century Ashkenaz. Grasping at these texts from across a communal chasm, they both find themselves reading a legal text without a given legal tradition, which they must then construct for themselves. Whether innovative or traditionalist; any legal tradition in sixteenth century Ashkenaz was fated to be a reconstructed one.

From: Georg Liebe, *Das Judentum in der Deutschen Vergangenheit*. Leipzig, 1903
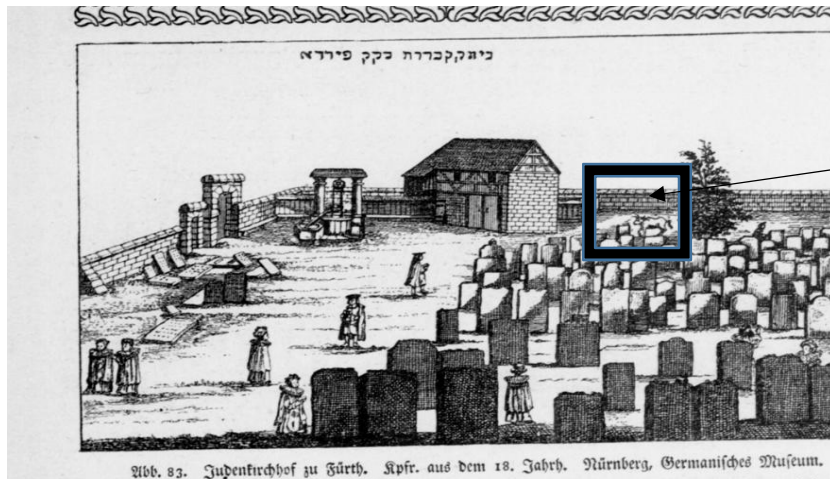


IMAGE 14.

A consecrated firstborn calf in Fürth's community graveyard in the 18th century. The community, apparently, did not force a *kohen* to accept and take care of the firstborn calf, but they were clearly not slaughtering it either.
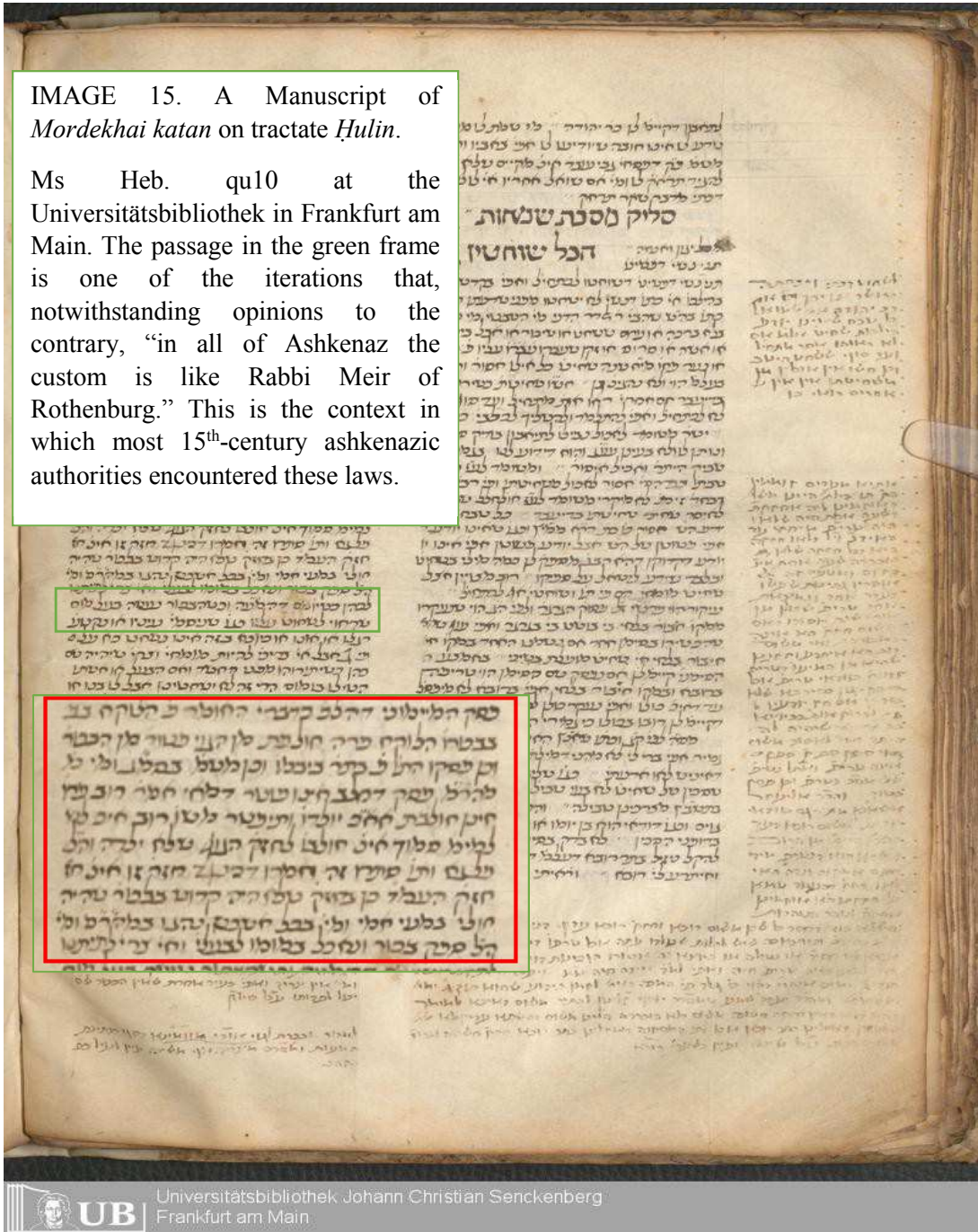
IMAGE 15. A Manuscript of *Mordekhai katan* on tractate *Ḥulin*.

Ms Heb. qu10 at the Universitätsbibliothek in Frankfurt am Main. The passage in the green frame is one of the iterations that, notwithstanding opinions to the contrary, "in all of Ashkenaz the custom is like Rabbi Meir of Rothenburg." This is the context in which most 15th-century ashkenazic authorities encountered these laws.

# UNIT III

## EARLY MODERN RESPONSA IN ASHKENAZ
## FROM LETTER TO BOOK
## THE EMERGENCE OF A GENRE

**RESPONSA AND THE RABBINIC REPUBLIC OF LETTERS**

Scholarship, Correspondence, and the Imagined Community

## 1.    INTRODUCTION

Having presented an overview of the organization of halakhic knowledge in Ashkenaz in the previous three chapters, in the remaining two chapters, I shall focus on one genre in particular – responsa, called *She'elot u-Tshuvot* (or *ShUT* for short) –  questions and answers regarding (usually) practical halakhic problems. Responsa have traditionally been part of halakhic writing at least since talmudic times, and is thus considered a self-evident part of the halakhic canon. Each responsum is an isolated unit of halakhic writing that brings together diverse topics and subtopics depending on the particular question, thus lacking an overarching organizational structure. The genre's long history, together with the organizational challenges it presents, makes responsa an invaluable key to my inquiry into the reorganization of halakhic texts. Responsa are, on the one hand, representative of the various heterogeneous types of halakhic writing such as *reshimot psakim* (lists of rulings) and *sdarim* ("arrangements," for instance, an arrangement of the preparation of a divorce document and the processes and rituals this involves) that did not easily find a home in the world of codifications and printed books.[801] On the other hand, responsa are exceptional in

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[801] The obvious comparison for rabbinic responsa, from which the translation for the term was derived, are the responsa in Roman law. Zacharias Frankel already makes this comparison (and points out contrasts) in his *Entwurf einer Geschichte der nachtalmudischen Responsen* (Breslau: Druck von Grass, Barth & Co., 1865), 8-9: "Diese Bescheide sind daher ebenso fern von den Regeln des canonischen Rechts, wie den als leges sich gebende Responsen des römischen Rechts. Im canonischen Recht sanctionirt eine geheiligte, im römischen Recht eine gelehrte Autorität; dort soll das Motiv nicht durchsichtig sein: der inspirirte Wille genügt zur Motivirung; hier ist das nicht durchsichtig, es genügt, dass ein anerkannter Rechtslehrer seine Meinung ausgesprochen. Im Judenthum ist die Autorität nicht maßgebend, nur die klare einleuchtende Begründung vermag dem Ausspruche Achtung zu verschaffen."

Other genres for comparison would be the medical *consilia* of the early modern period. See, e.g., Ian McLean, "The Medical Republic of Letters before the Thirty Years War," *Intellectual History Review* 18,

that they ultimately persisted and emerged, not only as a category of rabbinic writing, but also as a unifying principle for printed books of halakha. An investigation that does not take the existence of responsa as a book genre as a given, but, rather, examines its development, can also illuminate the fate of the other miscellaneous types of halakhic texts in the sixteenth century, as Jewish legal knowledge is reorganized. The current chapter will focus on responsa as letters; the subsequent chapter will examine the afterlife of these writings in their post-letter stage, as they are published in printed collections of responsa.

The category "responsa" is often used as the classification of a subgenre in halakha, positioning these writings as part of the textual canon of Jewish law. The printed books of responsa, or *sifrei ShUT* familiar to us, are the finished product of a series of scholarly, technological, and editorial actions that obscure the life of the letters that preceded them. As this chapter seeks to emphasize, responsa also have a place in the epistolary universe,

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no.1 (2008): 15-30. On a purely isomorphic basis, one could also compare responsa to the *problemata* about natural philosophy (themselves inspired by the Socratic dialogues). These *problemata* also take the form of questions and answers but the questions were not addressed specifically to the person answering. They had been circulating in earlier literature and were copied, often along with parts of the answers, then adapted and changed to suit the particular state of natural philosophy at the time. They were usually published as series of questions and answers. See Brian Lawn, *The Salernitan Questions: An Introduction to the History of Medieval and Renaissance Problem Literature* (Oxford: Clarendon Press, 1936); Ann Blair, "The *Problemata* as a Natural Philosophical Genre," in *Natural Particulars: Nature and the Disciplines in Renaissance Europe*, ed. Anthony Grafton and Nancy Siraisi (Cambridge, MA: MIT Press, 1999), 171-204.

Thus, the above question and answer format did not reflect an actual situation with a real questioner. It was used as a format to impart knowledge, a certain way of framing information. In most cases, the motivation for using such a format was didactical. It was often described as a short, simple, easily absorbed, or engaging way of teaching different topics. Later (in the 17th century) it was often advertised as a guide to intelligent and witty conversation. In other words, it was a good way of presenting, explaining, and framing assorted tidbits of information. Responsa, in contrast, cannot be called simple or easily accessible in any sense of the word. If anything, studying halakha from the codes would be much simpler and more easily accessible than diving headfirst into a complex practical case and the winding logic of the respondents, who often use only vague references to other texts and tend to pre-empt their opponents' objections and provide preliminary counter-objections to them. We can, however, draw some parallels. The loose organizing logic allows for some freedom in selection and structure, the didactical framing as though it were a conversation, and the variety that can be included in the genre. Ann Blair explains these very advantages as the reason why Jean Bodin chose the question-and-answer format in for his *Theatrum*; see Ann Blair, *The Theater of Nature: Jean Bodin and Renaissance Science* (Princeton: Princeton University Press, 1997), 77-81.

in the ties that bind together scholars, colleagues, rabbis, and communities at a particular time and place. Responsa were written, circulated, preserved, and exchanged before being published as books. Some responsa were never meant to be printed; indeed, countless responsa never were.[802] *Sifrei ShUT* collect disparate letters, unifying them according an (albeit loose) organizing principle, most often by their author. The letters themselves, on the other hand, were dispatched and dispersed, often according to entirely different principles. The unprinted and dispersed letters are a reminder that responsa, when they were written, belonged to another environment. Embedding rabbinic responsa in the world of scholarly networks, of epistolary culture, and of the circulation of knowledge can facilitate understanding them as part of a larger structure that held together a religious scholarly community.

An emphasis on the interplay of correspondence and rabbinical scholarship is especially fruitful given the more nuanced approaches to intellectual and cultural history that have developed in recent studies of early modern correspondence, such as a focus on epistolographical practices of scholarly cultures. These studies have highlighted the social, cultural and intellectual importance of correspondence beyond simple communication – for example, enforcing or questioning social hierarchies and practices and supporting phenomena such as humanist collaborations and the sharing of empirical data so crucial to early modern science.[803] Focus on the material aspects of correspondence, the actual tools

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[802] See for example, Yizḥak Hershkovitz, ed., *She'elot u-tshuvot harerei kedem* (Responsa of ancient mountains, after Deuteronomy 33:15) (New York: Hershkovitz publ., 1988), which includes over 100 responsa that had, for the most part, not been printed before.

[803] On the importance of the Republic of Letters for science, see Gianna Pomata, "Observation Rising: Birth of an Epistemic Genre, 1500-1650," in *Histories of Scientific Observation,* ed. Lorraine Daston and Elizabeth Lunbeck (Chicago: University of Chicago Press, 2011), 45-80; Dirk van Miert, ed.,

and circumstances necessary to support letter writing, has augmented our simple notions

of the letter as a unidimensional communication of information from the writer to the

addressee. Letters are, instead, understood as complex, multi-layered phenomena

containing a variety of meanings regarding society, culture, identity formation and so forth,

which can be unlocked by reading letters materially.[804]

Recent studies of social networks also point out the need for a re-examination of

rabbinic communication. The extensive and illuminating scholarship on the early modern

humanist Republic of Letters, from Hans Bots and Françoise Waquet's seminal *La*

*République des Lettres* to more contemporary works, [805] are enriched by network theory

perspectives. Social network theory, enhanced by the digital humanities, has become

increasingly important to our understanding of correspondence. This focus on networks

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*Communicating Observations in Early Modern Letters (1500–1675): Epistolography and Epistemology in the Age of the Scientific Revolution* (London: The Warburg Institute, 2013); Adam Mosley, *Bearing the Heavens: Tycho Brahe and the Astronomical Community of the Late Sixteenth Century* (Cambridge: Cambridge University Press, 2007), chapter 1: "Tycho Brahe and the Republic of Letters"; Ian Maclean, "The Medical Republic of Letters before the Thirty Years' War," *Intellectual History Review* 18 (2008) 15-30; Brian Ogilvie, "How to Write a Letter: Humanist Correspondence Manuals and the Late Renaissance Community of Naturalists," *Jahrbuch für europäische Wissenschaftskultur/Yearbook for European Culture of Science* 6 (2011): 13-38.

[804] James Daybell, *the Material Letter in Early Modern England: Manuscript Letters and the Culture and Practices of Letter-Writing, 1512-1635* (Basingstoke: Palgrave Macmillan, 2012), 12.

[805] Hans Bots and Françoise Waquet, *La République des lettres* (Paris: Belin, 1997). The best starting point for scholarship on the Republic of Letters is a short essay by Anthony Grafton, "A Sketch Map of a Lost Continent: The Republic of Letters," in his *Worlds Made by Words: Scholarship and Community in the Modern West* (Cambridge, MA: Harvard University Press 2010), 9-34.

For a focus on letter writing, see Lisa Jardine, *Erasmus, Man of Letters: The Construction of Charisma in Print* (Princeton: Princeton University Press, 1993); Richard Kirwa, ed., *Scholarly Self-Fashioning and Community in the Early Modern University* (Burlington: Ashgate, 2013); Diana G. Barnes, *Epistolary Community in Print, 1580–1664* (Burlington: Ashgate, 2013); James Daybell, *The Material Letter in Early Modern England*; Jeanine de Landtsheer and Henk Nellen, eds., *Between Scylla and Charybdis: Learned Letter Writers Navigating the Reefs of Religious and Political Controversy in Early Modern Europe* (Leiden and Boston: Brill, 2011); Constance M. Furey, *Erasmus, Contarini, and the Religious Republic of Letters* (Cambridge: Cambridge University Press, 2006).

among humanists in the Renaissance[806] has led to increasing interest in early modern correspondence as one of the most important ways in which scholarly networks were built, enforced, and maintained.[807] Considering studies of the humanist Republic of Letters and its significance in social, cultural, and intellectual history together with social network theory proves instructive for our consideration of rabbinic responsa from the same time and area, which one historian has called a "unique republic of Jewish letters."[808]

Moreover, viewing responsa as building blocks of a scholarly social network adds perspective to our understanding of halakha and its functions as a legal system in a given time and place. The centrality of epistolary communication for constructing the scholarly community in which halakha is determined encourages us to examine further the implications of this particular mode of communication for Jewish law. The fact that a considerable part of the discussion of Jewish law took place in this specific way has an impact on halakha and how it was negotiated and understood by rabbis and by the wider practicing community. This impact will be explained using concepts from legal theory, specifically, theories of common law, and applying those to a social network understanding of the Republic of Letters.

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[806] Dena Goodman, *The Republic of Letters: A Cultural History of the French Enlightenment* (New York: Cornell University Press, 1994); Anne Goldgar, *Impolite Learning: Conduct and Community in the Republic of Letters*, 1680-1750 (New Haven: Yale University Press, 1995).

[807] See, for instance, projects such as Stanford's "Mapping the Republic of Letters" project: http://republicofletters.stanford.edu and the "Cultures of Knowledge" project based at Oxford: http://www.culturesofknowledge.org.

[808] Elisheva Carlebach, "Letter into Text: Epistolarity, History, and Literature," in *Jewish Literature and History: An Interdisciplinary Conversation*, ed. Eliyana Adler and Sheila Jelen (Bethesda, MD: University Press of Maryland, 2008), 115-6. "Letters of inquiry and the responses they engendered form the basic units of rabbinic discourse from the post-Talmudic age until our own times, a unique republic of Jewish letters...."

Given the potential evident in combining the perspectives of intellectual history with an understanding of early modern scholarly communities, network-formation, and the world of epistolary correspondence, it is clear that a study of early modern responsa could benefit from such a treatment. Viewing responsa as both a form of scholarship and a form of correspondence can help us understand the literary, scholarly, and legal phenomenon of responsa, as well as the intellectual culture of early modern rabbis more broadly. This chapter utilizes these perspectives to study the responsa of Rabbi Moshe Isserles (ca. 1530-1572), Rabbi Shlomo Luria (1510-1574), and their circle in sixteenth-century Eastern Europe. In addition to describing responsa as crucial for building an imagined community of scholars, I address its significance to halakha and to the Jewish community at large. This broader community both buttressed the rabbinic network and, in turn, was supported by it. I argue that responsa in their function as correspondence play a unique and key role in this conception of halakha, which is not reflected in other genres of halakhic writing.

## 2. RESPONSA AS CORRESPONDENCE: MATERIALITY, CIRCUMSTANCES, PRACTICES
### a. The Material Letter

This section considers the material circumstances of writing, sending, and reading letters in the early modern period. The material perspective helps us place responsa in their early modern context and can illuminate some of the perennial questions about responsa as a genre, on the one hand, and its peculiarities in this period, on the other. Recent focus on the materiality of the letter emphasizes different ways of considering the letter in its embodied state, and includes a variety of elements, ranging from the tools necessary for correspondence through more far-ranging aspects, such as the "social-materiality" of letter-

writing, as James Daybell calls it, meaning the influence of social elements such as education, epistolary models, and status on correspondence, to the ways in which the different environmental factors such as the postal system had an impact on the world of letter writing.[809] These different aspects of materiality and their impact on rabbinic epistolarity are presented here in connection with the stages of correspondence: writing, sending, and reading. As the preservation of correspondence is part of the afterlife of the letter and the various purposes inherent in its creation and its preservation, that stage will be discussed in detail in the following chapter. The stages are interrelated – just as with any text, expectations of how a letter will be read, for instance, influence the ways in which it will be written – thus, my discussion of a particular stage may, at times, refer to the other stages as well.

This chapter does not aspire to provide a complete survey of the material conditions of rabbinic epistolarity, but rather, to serve as a preliminary inquiry into the insights gained by approaching responsa with a material consciousness and to relate this to questions of networks and the history of knowledge. As background, I shall use the descriptions of confiscated Jewish personal letters from the sixteenth century by Bernard Weinryb (letters from Turkey and the Balkans to Western Europe in 1533)[810] and David Ginsberg (letters from Cracow to Prague in 1588).[811] Although these are not responsa, they are some of the

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[809] Daybell, *The Material Letter*, 15, 70-79.

[810] Bernard Weinryb, "A Pekel Briv in Yiddish fun yohr 1588," *Historishe Shriftn fun YIVO* 2 (1937): 640-655.

[811] David Ginsberg, "Private Brivn funm yohr 1533," *Yivo Bletter* 13 (1938): 344-325. Also significant, although later in date, is a collection of letters from Prague Jews in 1619, published by Alfred Landau and Bernhard Wachstein, eds., *Jüdische Privatbriefe aus dem Jahre 1619* (Vienna: Braumüller, 1911). These letters were marked *litterae hebraicae interceptae*, seeing as they were confiscated by authorities rather than delivered. See also Lisa-Maria Tillian, "Von Prag nach Wien - nicht zugestellt: jüdische-deutsche Privatbriefe aus dem Jahr 1619," *Judaica Bohemiae* 46 (2011): 75-85. Joseph Davis,

earliest Jewish personal letters that we have in their material form, and the time period and

geographic locations are comparable to the responsa under study.[812] The letters can provide

some information about writing practices and material circumstances for Jewish

correspondence in general and help us speculate about the material aspects of Jewish

correspondence for responsa. Additionally, I include illustrations from responsa that

contain remarks about the circumstances of letter writing. Other sources such as portraits

from the period and letter-writing manuals can also be useful in clarifying material

circumstances.[813]

Letter writing, especially in the early modern period, is a complex phenomenon.

Due to several factors, including the Renaissance discovery and publication of classical

familiar letters such as those of Cicero by Petrarch (*Epistolae ad Atticum*, Verona, 1345)

and the resulting rise in the phenomenon of familiar letters (*ars familiaris*), early modern

correspondence was especially multi-layered and flexible compared to the formally

structured medieval letter, which was based primarily on *ars dictaminis* with its sources in

rhetoric. Frequently, early modern letters were not exactly the Erasmian intimate, private

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"Concepts of Family and Friendship in the 1619 Yiddish Letters of Prague Jews," *Judaica Bohemiae* 49, no. 1 (2014): 27-58, uses these letters to study notions of family and kinship at the time of the Thirty Years' War.

[812] The ideal way of collecting information regarding the materiality of letters is, of course, by studying actual surviving letters. The lack of surviving letters of responsa in their original physical state limits the possibilities of a material study.

[813] In the case of manuals, one must take into consideration the gap between the prescriptive manual and the actual letter. Daybell cites Alan Stewart's claim that manuals give a wrong impression (Daybell, *The Material Letter*, 70).

For the use of paintings to unearth material information, see the PowerPoint from Peter Stallybrass' lecture on filing (Stallybrass, "String, Pins, Thread, Wire, Laces and Folds" [lecture, The Gathered Text, Bodleian Library, Oxford, UK, September 3, 2010]), in which Stallybrass analyzes the different kinds of filing methods on the basis of archival material and by studying Jan Gossaert's painting of Jan Snoeck, a merchant from Antwerp surrounded by his paperwork. I thank Professor Stallybrass for sharing the PowerPoint file of this lecture with me.

"conversation between absent friends" that we may imagine.[814] In fact, they were often written and read by several persons, for multiple purposes. Similarly, responsa were not private letters in the way that we envision private correspondence: they were usually addressed to and read by more than the addressee alone and even copied and circulated among scholars and students alike. Thus, rather than conceiving of a simple model of private communication exchanged between the inquirer and the recipient (the rabbi), I place these letters in a much wider intellectual, social, and cultural universe with a multiplicity of readers, writers, dynamics and purposes. Moreover, responsa did not exist in a vacuum. The letters were, both functionally and materially, part of a larger web of rabbinic scholarship, written text, and religious study and communal administration, and should be studied as such. New sensitivity to the multiplicity of purposes behind writing, reading, and distributing letters thus broadens our understanding of this form of rabbinic writing.

### b. Writing

At the most basic level, the materiality of the letter touches upon its physical form. Letter writing required materials such as paper, pens, ink, a desk, and wax. Usually, letters were folded and the information for the courier placed on the outside, after which the letter was sewn together and sealed with wax. Daybell explains how material aspects such as the particular paper that was used, the handwriting, or the color of the wax conveyed meaning concerning the correspondents' status, the contents, and the nature of the letter. These meanings were readily accessible to early modern readers. For instance, liberal use of paper

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[814] Daybell, *The Material Letter,* 12.

not only signaled status and wealth, it could also make the contents harder to read without opening the letter, thus adding a layer of privacy. [815] We do not have much specific information regarding the different kinds of paper, ink, and tools necessary for Jewish letter writing, but we can assume that it had much in common with letter writing in the general context. In a business letter from Prague to Cracow published by Weinryb, both sides of the paper were filled with writing, not wasting any paper. [816] The facsimile of another letter, from the community scribe of Cracow to the community leaders was written clearly and evenly spaced, understandable, as the scribe was a professional. Here, too, the page was filled until the last row.[817] Rabbi Yosef Katz (ca. 1511-1591) opens a responsum with the statement: "from the land of *Lo'ez* [Italy] flying scrolls written on both sides, regarding a widower were sent to me…"[818]

In these letters, the information regarding the sender, the addressee, and the location was written on the outside. Usually, this information started with "*le-yad*" (to), with the names of the recipients and their location, followed by the location of the sender. In one letter from Cracow to Prague at the time of a plague, a note in Hebrew on the outside of a letter warns the recipient to "pass the letter through the smoke of gall before reading the writing, to counteract the contaminated air..." [819] This is a poignant reminder of the nature of letters not merely as disembodied messages being passed around, but as real physical

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[815] Letter writers would sometimes first fold the paper in half and write only on one side, then fold it in half again and write the information on the outside, thus leaving one fold of the sheet blank (Daybell, *The Material Letter*, 98).

[816] Weinryb, "A Pekel Brivn," 50.

[817] See Weinryb, "A Pekel Brivn," 51 (plate after p. 48).

[818] Katz, *ShUT she'erit Yosef*, §39. ‎נשלחו מארץ לועז לידי מגלות עפות כתובות משני עבריהם, בענין אלמן...‏

[819] See Weinryb, "A Pekel Brivn," 59. ‎ביי דער זייט צוגעשריבן: קודם קריאת הכתב תן אותו לעשן של מרה‎ ‎לבטל האויר המעופש כאולי הלך על קרוב [אפשר: קבר?]‏

objects that connected people and were capable of carrying disease. This example makes another important point regarding letter writing practices: In a letter from a prominent Tuscan trading family sent in 1569 from Cracow to Ferrara, the front of the letter says "*purgata esteriorimente*," which Miroslaw Bojanowicz explains to be "a usual precaution taken against the spread of the plague prevalent in those times."[820] Thus, by virtue of shared material circumstances, Jewish correspondence displayed many of the same practices and technical aspects of letter writing used by non-Jews at the same time in the same geographic locations.

Letter writing also involves an element of social materiality, that is, the social circumstances that influence the letter, primarily the means by which people learn how to write letters. As in early-modern society in general, Jewish letter writers learned the art of correspondence in various ways. Both letter-writing manuals and letter books provided models for composing letters. Strictly speaking, letter-writing manuals were created explicitly for this purpose. Letter books – collections of letters that were not originally intended to provide models for letter writing – over time, were often used similarly to manuals. Italian manuscript *igronim*, or collections of Hebrew letters from the sixteenth century, for instance, served as models in this manner.[821] The earliest printed Hebrew letter manual titled *Sefer igrot shlomim* (Book of familiar letters) was published as early as 1534 in Augsburg by the Shaḥor press. It contains samples of letters for a variety of familiar,

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[820] Miroslaw A. Bojanowicz, *The Kingdom of Poland and the Associated Postal History* (London: The Royal Philatelic Society, 1979), 1, 145.

[821] *Igrot yehudei Italyah be-tkufat ha-Renaissance, mivḥar me-ha me'ah ha-16*, vols. 6 and 7, ed. Yehuda Boksenboim (Jerusalem: Yad Ben Ẓvi, 1994). See David B. Ruderman, *The World of a Renaissance Jew: The life and thought of Abraham ben Mordecai Farissol* (Cincinnati: Hebrew Union College Press, 1981), 17-18.

business, and religious situations.[822] Some of these letters touch upon topics that also appear in responsa, such as a letter from a community writing for monetary help or a person warning his friend that he is planning to sue him.

Standardized manuals often belie the variety found in practice, in actual letters.[823] The early modern letter was a particularly protean form that allowed for more variation and personalization than highly fomulaic letter-writing manuals suggest. The opening section of letters featuring salutations, greetings, and praise of the recipient, however, consistently maintained a high level of standardization.[824] This is equally true for early modern responsa. While the contents of responsa were quite flexible, enabling every letter writer to tailor the letter to the particular situation, approach, and addressee, the salutations were typically the most formulaic part of the letters. They usually praise the recipient, often using scriptural allusions and rhyme. In many cases when responsa were copied into scholarly collections, the salutations were the first sections to be omitted,[825] but salutations

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[822] Yehudit Halevy Zwick, *Toldot sifrut ha-igronim ha-ivri'im* (Tel Aviv: Papyrus, 1990). Five Hebrew letter-writing manuals were published in the 16th century, the first three not attributed to any single author or compiler. In the words of Elisheva Carlebach, this is "a sign that such collections had been circulating in manuscript for decades, or even centuries, adding and shedding materials to suit the time and place." See Carlebach, "Letter into Text," 22.

[823] Daybell, *The Material Letter*, 70-71.

[824] "Where early modern letters most closely adhere to the epistolary norms outlined in the letter-writing manuals, however, is in the use of conventional opening and closing modes of address, and in the rendering of forms of salutations, subscription, and superscription" (Daybell, *The Material Letter*, 71).

[825] When a secretary, for example, would copy a letter into the records before sending it off, it was common to transcribe the whole letter, or sometimes just a précis, but the salutations were usually not copied, as they were superfluous for a personal record of correspondence. See Daybell, *The Material Letter*, 183.

Even before the printing of Rabbi Asher ben Yeḥiel's manuscript collection of responsa, many responsa were divided and reorganized and the salutations were removed (most likely by a son or student). See Ephraim E. Urbach, "ShUT ha-ROSh be-kitvei yad u-be-dfusim," *Shnaton ha-mishpat ha-ivri* 2 (1975): 1-153, which contains a detailed description of the responsa in manuscript collections, including attempts to reconstruct the original responsa with appropriate salutations before they were taken apart and rearranged. (See p.3 for a general description and the following pages for reconstructions of the letters from which the responsa originated.)

Rabbi Yair Ḥayim Bacharach, who published his own responsa (Frankfurt, 1699), writes in the introduction that he often abridged or removed the salutations in the questions addressed to him. One of the

could be valuable as models for aspiring letter writers. In one responsum, written by Rabbi

Isserles to Rabbi Luria, his senior colleague,[826] the salutation was taken from an older

collection of responsa. The letter begins with a lengthy rhymed greeting, which is copied

almost wholesale from a fourteenth-century responsum to Rabbi Yiẓḥak ben Sheshet found

in a collection of his responsa printed in Constantinople, 1546-7.[827] In this manner, earlier

responsa collections served as models for this formulaic part of the rabbinic letter.

Salutations were a central element in the Hebrew printed letter manuals. The

disproportionate emphasis on salutations in the Augsburg manual led one scholar to

conclude that the word "*shlomim*" (peace/greetings) in its title referred not to the familiar

and personal nature of the letters inside (called *igrot shlomim*) but, rather, to the many

opening salutations (greetings) found in the book. It contained, in addition to examples of

letters in full, tens of elaborate rhymed salutations for different kinds of addressees.

Another component that was more formulaic than the other parts of responsa was the

designation of the date, which usually included intricate and sometimes oblique references

to the month, Jewish holidays, and the weekly Torah portion. The Augsburg manual

includes many such formulas using allusions and word games to refer to the date. Many of

the forms of address and salutations in the manual are specifically labeled for addressing

rabbis and scholars, with a large proportion of the salutations described as meant for letters

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reasons he presents for this editorial decision is that it is improper for him consciously to publish the excessive praise that others bestowed on him in these salutations. He adds that any oversight where praise is included is a mistake of the copier or the printer. "ומה שלפעמים גאוני ארץ הפריזו על מידתם לתארני בתארים וכינויים ושבחי שבחין אשר הם זרה הלאה ממעלתי ושפלות מדרגתי היה לאהבת עוז ותוקף חיבתם עם כי בחרוזים ובשירים מיטבם כוזבים ומה אני יכול לעשות ומה שהיה בכחי מחקתי בהעברת קולמוס ומעט שנשאר על ידי העלמת עין או שגגת המעתיק או המדפיס לא במרד ולא במעל הוא." Yair Ḥayim Bacharach, *ShUT ḥavot Yair* (Frankfurt, 1699), Introduction.

[826] Moshe Isserles, *ShUT Rema*, §5.

[827] Isserles, *ShUT Rema*, §5. For this reason, it rhymes with Shaltiel and is in the plural. See *ShUT Ribash*, §369 and *ShUT Rema*, ed. Siev, 18 n1. The letter was written by Rabbi Shaltiel Ḥen.

"to a scholar," "to a learned man," to "a rabbi or important man," and so forth.[828] This highlights the function of letters as a site for proving erudition.[829] As rabbis and learned men were a primary group engaged in these activities, epistolarity became a realm for showing one's literary and scholarly skill at biblical and talmudic references, for proving that one truly belonged to this letter-writing group.

In addition to consulting published letter collections such as manuals or to reading earlier responsa, rabbinical scholars learned to correspond by means of personal participation. On many occasions, responsa from a rabbi to his student, or from a senior rabbi to a younger colleague contain instructions, pointers, critique, and advice on letter writing itself. In this manner, students were schooled in the practices of epistolarity that would allow them to become fully fledged members of the rabbinic world of correspondence. Rabbi Isserles remained in touch with several of his students after they had moved away from his vicinity, and his published book of responsa has several exchanges in which the same students appear repeatedly. One of these students was Rabbi Hirsch Elzaser Shur. In one of their halakhic discussions, Rabbi Isserles rebuked his student for assuming that there were mistakes in the rabbi's [i.e., Isserles'] letter. In the process of this scolding, Rabbi Isserles included pedagogical remarks and instructions regarding letter-writing practices, and he demonstrates his own practices as a letter writer: "But I will say, please always look closely at my responses to your words carefully ... Since I do not send a responsum to your highness without reviewing it once and twice … and how should

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[828] לרב, ליודע ספר, לרב או לחשוב etc. See *Igrot shlomim* (Augsburg, 1534).

[829] See the lengthy index of these in *Igrot shlomim* in the six pages that follow the introduction, (no page numbers,) and a few more later on in the manual.

I fall into such mistakes that you thought [to find] in my words according to your

writing...?!" [830]

    These exchanges also point to other writing practices, such as the use of scribes.

Rabbi Hirsch correctly assumed that a scribe was copying his rabbi's letters. Perhaps he

knew this from his days as a student, or maybe he simply recognized that the letters were

not in his rabbi's handwriting. Rabbi Isserles readily admits to this practice: "...all my

words are copied letter for letter from the body of my writing, because it is a burden to me

to write everything twice. Therefore, I leave the body of my writing in my archives and I

have the words copied in order to send them...." [831] Rabbi Hirsch also assumed that his

rabbi would simply sign and send these copies without reviewing them, which led the

student to suggest that an earlier letter from Rabbi Isserles contained a scribal error. The

rabbi was appalled at the idea:

>     And you wrote to me now that you did not look at the response yet and you think
> that there is a scribal error there, and you asked me that if I respond to you again, I should
> read the writing before sending it.... God forbid that I would send something and sign it
> before I know and check if it is as it should be! And therefore, I know that it is not a scribal
> error, rather your lack of inquiry into my response and the fact that you are in a rush to
> respond to everything that comes up in your mind regarding my response, and your
> highness should have checked and inquired into all the angles for maybe you would have

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[830] Isserles, *ShUT Rema*, §40 (punctuation added).

אך אומר במטותא מינך שתעיין היטב בתשובתי על דבריך תמיד ואל תעבור עליהם בעיון נמהר, כי בדרך זה אתה פוגם את
שנינו. כי איני שולח תשובה למעלתך עד שאעבור עליה פעם ושתים ואדע שיש עיקר בדברי לפי דעתי ואיך אפול בטעויות אלו אשר
חשבת בדברי לפי כתיבתך....

[831] Isserles, *ShUT Rema*, §40: הנה דע כי לא כן לבבי עם מעלתך, רק כי כל דברי מועתקים אות באות מגוף כתיבתי
כי קשה עלי המשא לכתוב כל ענין פעמים. ולכן אני מניח גוף הכתב באוצרותי, ואני מניח להעתיק הדברים לשלחם למעלתך או
לאחרים השואלים ממני.

    In a responsum to Rabbi Luria, Rabbi Isserles declares that he does not have a scribe. Isserles, *ShUT Rema*, §7: כי אין לי סופר מהיר להעתיק לשוני וגם כבד עלי המשא להעתיקו. "…for I do not have a speedy scribe to copy my language, and it is a burden for me to copy it…" This, however, is likely a responsum from Rabbi Isserles' younger days, when he was just starting out as an established rabbi, officially appointed by the Crown in 1547 (something that Rabbi Luria refers to in this exchange, making it appear likely that the letters were written close to this event).

found the point in your inquiries and not blamed the matter on a deficiency in the writer.[832]

Rabbi Isserles is not only clarifying his intent, the impassioned reply also educates his student regarding the correct practices of writing and reading letters.

Rabbinic epistolary exchanges were conducted in rabbinical Hebrew, a language reserved almost exclusively for rabbinic scholarship and halakhic matters.[833] As opposed to its biblical counterpart, rabbinical Hebrew allowed for leeway regarding grammatical rules and permitted mixing of languages such as Aramaic, Yiddish, Italian, or German. In rare cases, rabbis disparaged the linguistic abilities of their fellow correspondents. Rabbi Luria, in the process of a bitter exchange with Rabbi Isserles, writes: "With a thousand apologies, his honor should rather have studied the science of grammar, because your writing is like a breached wall with direct and indirect and feminine and masculine, and singular and plural."[834] He then goes on to point out specific examples, such as a place where Rabbi Isserles, "wrote: 'what my master have asked from me,' which are two opposites, like one single and plural."[835] Rabbi Isserles, while very defensive about all the other accusations in the letter, seemed entirely unconcerned by this critique and responded

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[832] Isserles, *ShUT Rema*, §40:

וכתבת לי עכשיו כי עדיין לא עיינת בתשבותה וכמדומה לך שיש שם טעות סופר ובקשת ממני שאם אשיבך שנית שאקרא הכתב קודם שאשלחהו למעלתך. הנה דע... ואני מניח להעתיק הדברים לשלחם למעלתך או לאחרים השואלים ממני. אבל חלילה לי לשלוח דבר ולחתום עליו עד שאדע ואחקרנו אם הוא כענין. ולכן ודאי לי שאין כאן טעות סופר, אלא מיעוט חקירתך בתשובתי ושאתה נחפז להשיב על כל דבר העולה בדעתך בענין תשובתי, והיה למעלתך לחקור ולעיין בכל הצדדים באולי תמצא הענין בעיונך ולא לתלות הענין בסרחון הכותב.

[833] The private letters and the community's administrative letters in Weinryb and Ginsberg are mainly in Yiddish; those parts that are in Hebrew are usually meant to be more "high-brow," learned, or impressive. For instance, the letter in Ginsberg, page 331, begins with a letter on prosaic, practical issues in Yiddish and then contains a letter to the letter writer's grandfather in Hebrew with greetings and regards.

[834] Isserles, *ShUT Rema*, §6.

ובאלף מחילות יותר היה למר לעיין בחכמת הדקדוק, כי כתבך הם חומה פרוצה לרוב בנוכח ונסתר ונקבה וזכר ויחיד ורבים. כתבת כמה פעמים מה שבקושינו אדוני, הוא שני הפכים כאחד יחיד ורבים. כתבת הייתי יוכל לתרץ, מדבר בעדו וזולתו כאחד, וכן רבות.

[835] Isserles, *ShUT Rema*, §6.

with an allusion to the biblical Moses, explaining that he is not a man of words, and "I am careful with the intended meaning, not with the words that do not add or remove anything to the topic at hand." [836] He adds, "I shall not adorn myself with that which I do not have, because in all my days, I have not studied the science of grammar," and he then goes on to blame the more obvious mistakes on practicalities. [837] As important as showing erudition was to these correspondents, correct grammar was, so it appears, not universally considered an important marker thereof.

A responsum that will be discussed in more detail later contains the following postscript in the printed edition of Rabbi Isserles' responsa: "And this is what the *gaon* our master the rabbi Meir of Padua responded to this: '...I also received your second writing. And I already received a bundle (*agudah*) of writings with the second composition that you wrote … and you did well, because you found a way to contradict all his statements." [838] Rabbi Meir Katzenelbogen of Padua (ca. 1482-1564), a relative of Rabbi Isserles who was almost fifty years his senior, the oldest rabbi in his milieu at the time, provided feedback to Rabbi Isserles' letter. Beyond praising its halakhic analysis, the older rabbi provided advice regarding writing strategies and style: "But you made it too lengthy, sometimes writing needlessly in the style of ... because for a man like him short words and hints suffice. … For example, you wrote in a long manner about ... and it is obvious that a rabbi like him would not think to compare that to the issue at hand. ... In any case, you wrote

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[836] Isserles, *ShUT Rema*, §7. איני מכת המדברים בעלי הלשון כי כבד פה ולשון אנכי, כי אנכי נזהר בענין המכוון ולא במלות

[837] Ibid.: איני מתפאר במה שאין בי כי מימי לא למדתי חכמת הדקדוק. אך באלו הדברים המבוארים לא נפל טעות מחמת מיעוט ידיעתי רק מחמת הנחוץ....

[838] Isserles, *ShUT Rema*, §48.

very nicely...." [839] Although this responsum was not addressed to Rabbi Katzenelbogen, Rabbi Isserles sent it to Padua in order to receive approval. Letters were not only a crucial means for students and rabbis to stay in touch; they were also a way for them to be schooled in epistolary practices.

### c.     Sending

The early modern period saw unprecedented expansion of the international postal service by merchants such as the Fugger family in Augsburg, who, with their extensive banking and mercantile activity controlled much of the European economy, and independent contractors such as the princely house of Thurn und Taxis. The trading house of the Fuggers had, for example, already established themselves in Cracow in the fifteenth century. They ran a monthly service from Cracow to Antwerp and another to Rome via Vienna and Venice. Locally, the postal service in Cracow was organized by Severin Boner, the court banker of Queen Bona Sforza. The first appointed Master of Posts in Poland was granted his privilege in 1558. He ran a successful mail route from Cracow to Rome and merged the Royal Post with the posts of the trading houses and guilds, operating them as a unified service. [840]

Jewish correspondence traveled some similar long distance routes. Rabbi Isserles' correspondence, for instance, contains several exchanges between Italy and Poland.[841] It is

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[839] Isserles, *ShUT Rema*, §48, end of the responsum: וזאת אשר השיב על זה הגאון מוהר"ם פדוואה: שאירי האלוף מוהר"ם קבלתי גם כתבך השני. וכבר קבלתי אגודה של כתבים עם החבור השני אשר חברת להשיג על פסק הגאון הקאר"ו, והיטבת לעשות כי מצאת פרכא על כל דבריו. אך הארכת יותר מדאי לכתוב לפעמים שלא לצורך דרך ואין לומר כי לאיש כמוהו יספיקו דברים מעטים ורמיזות לבד, ואדרבה הדברים נותנים לו מקום להשיב והמשל שמעלתך העמיק בפלפולו בענין....ללא צורך לרב כמוהו...ופשיטא שרב כמוהו לא יחשוב לדמותו לנדון שלו. ...ויהי מה יפה כתבת לסתור דבריו בכל פנה. עכ"ל ר' מאיר פדוואה זצ"ל.

[840] See Bojanowicz, *The Kingdom of Poland*, 1, 145.

[841] Edward Fram's chapter, "A Difficult Beginning" in his forthcoming book project [no title yet], also mentions the many connections, intellectual (humanism), religious (Catholicism), political (Poland's

unlikely, however, that they used the royal postal service, as these were not always open to private mail. Letters were sent primarily with Jewish couriers, who were often employed by merchants.[842] In one of the letters published by Weinryb, a certain Asher Horowitz from Prague writes to a business partner, Moshe ben Eliezer, in Cracow in September of 1588. He complains that as soon as the courier arrived in Cracow with a letter for him, the whole community knew about it. [843] Evidence of the use of couriers also appears in responsa, where rabbis often apologize for their brevity, explaining that they wrote quickly because the courier was waiting for the response. This trope is evident in familiar letters as well. [844]

The letters from Weinryb and Ginsberg show that pertinent information such as the names and locations of the addressee and the sender were written on the outside of the letter in Hebrew characters, [845] leading to the conclusion that these were meant for Jewish

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Zygmunt I married Bona Sforza of Milan), economic and cultural (print industry), etc., between Poland and Italy in the 16th century, both among the general and the Jewish population. Jewish scholars such as David ha-darshan also travelled back and forth. Yacov Elbaum discusses connections between rabbis in Italy and Poland in his *Ptiḥut ve-histagrut: ha-yeẓira ha-ruḥanit ha-sifrutit be-Folin u-ve-arẓot Ashkenaz ba-shilhei ha-me'ah ha-shesh esrei* [Openness and seclusion: Spiritual and literary creation in Poland and Germany in the late sixteenth century] (Jerusalem: Magnes Press, 1990), chapter 2.

[842] See, for instance, Francis W. Carter, *Trade and urban development in Poland: An economic geography of Cracow, from its origins to 1795* (Cambridge, UK: Cambridge University Press, 1994), 107. Carter distinguishes that "Merchants must have been accustomed to two forms of transportation, one carrying information through couriers, and the other actual conveyance of merchandise." He points out that the latter travelled much slower than the former, setting the pace for a courier at 100km/24h on average, while the pace for transporting merchandise was measured in weeks.

[843] Weinryb*,* "A Pekel," 46, and also mentioned in Carlebach, "Letter into Text," 121. דען בריב געבט אויך אן טוט אין מצוה איך האבש מיט דען שליח בסוד גיהלטין אונ׳ האב אימש פר באטין אז ער צו מיר קומען איז זויא איז די גנץ קהילה פול גיווען איז די איך אין שליח מיוחד האב פון אייך ווי וואול דז איכש גילייקינט האב איר העט אימע דארטין זאלין פר ביטן.

[844] Carlebach, "Letter into Text," 118. "One of the most common expressions in premodern letters is the invocation of urgency because the courier was waiting to be off."

[845] There are examples from the 18th century where this was not the case; for instance, in the London letters published by Jacob Maitlis, there are addresses in English and Dutch (see "Carlebach, "Letter into Text," 118, n 19) and in some cases in Italy (see Debra Glasberg Gail's doctoral dissertation on Rabbi Yiẓḥak Lampronti: Debra Glasberg Gail, "Scientific Authority and Jewish Law in Early Modern Italy" (Ph.D., diss., Columbia University, 2016)

(see Columbia University Academic Commons, https://doi.org/10.7916/D8N58MNN).

couriers (usually called a messenger or *shaliaḥ*, or sometimes *ha-raẓ* or *ha-ẓir*). Rabbi Isserles, for example, mentions that one of the couriers who brought him a letter worked for an important merchant with international business connections: [846] "Your honor's writing has reached me by means of the courier who came yesterday that has gone by,[847] and it was in the evening and the stars came out and brought to me by mister Shlomo the servant of Leib Sinai, who is the intermediary between us for the arrival of mail." [848]

Daybell describes the carrier of the letters as an "extension of the sender," who was often tasked with other roles such as delivering an oral message or waiting for and delivering the reply.[849] Rabbi Luria mentions that, when a former student of his fled and refused to return to his wife, the rabbi personally ensured that someone went to the wife's home and read the letter to her prior to sending it, in order to lift her spirits.[850] A letter from some representatives of the Jewish community leadership in Cracow to other leaders who fled from the plague to a different location (Alkush) contained urgent matters; large sums of money were needed to deal with the plague and its consequences, Jews were being attacked by hooligans, countless dead had to be buried, and others were fleeing *en masse*. The writer mentions that the courier is "called Moishe, and he is a good Jew." The leaders are asked to send money with this courier and, while the writer had designated him as

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[846] See Isserles, *ShUT Rema*, ed. Siev, 498n2.

[847] Psalms 90:4.

[848] Isserles, *ShUT Rema*, §125: הגיעני כתיבת מעלתו ע״י הרץ הבא אתמול כי יעבור והיה לעת ערב וצאת הכוכבים הביאו אלי כמר שלמה משרת ליב סיני אשר הוא האמצעי בינינו בהגעת הכתבים.

[849] "Letter bearers represented corporeal extensions of the letter; meaning was therefore generated orally and materially as well as textually" (Daybell, *The Material Letter*, 24).

[850] Shlomo Luria, *ShUT MaharShaL*, §55: אחרי גומרי מגילתא דא צויתי להקרות המגילה לפניה לדבר על לבה שיהא לה למשיב נפש ותצפה לביאתך אז העניה הרימה קולה בבכי באמרה אין תועלת בכל אלה....

reliable and a good Jew, he still tells the leaders to "write how much you are sending,"[851] thus enabling him to verify that the sum arrived in full. Interestingly, the outside of this letter contains a note in Yiddish, in Hebrew characters, with instructions addressed to "*Pany Sender*,"[852] showing that Jews, too, used this honorific. The note asked that the letter be taken to the community leaders and adds, "you will be paid for it."[853]

Daybell draws important connections between the insecure state of private letter delivery and the ways in which they were written: "...postal conditions were unsystematized and idiosyncratic, which in many ways fundamentally structured the culture and practices of early modern letter writing. ... Throughout the sixteenth and seventeenth centuries, then, the letter remained a consistently insecure form of communication, which forced writers to censor what they committed to paper." [854] In Jewish letters, we witness a similar concern for privacy. Some letters contain directions to the courier to deliver the letter to the addressees and add "*ve-lo lezulatam*" (and not to anyone else) after their names.[855] The information on the outside of the letters usually contained an acronym threatening those who open it without permission. The frequently recurring "*ve ḥal be N.Ḥ.Sh. deR.G.*" means that the *Nidui Ḥerem Shamta* of *R*abbeinu *G*ershom applied to the letter. This refers to the edict attributed to the medieval Ashkenazic rabbinic giant, Rabbenu Gershom, prohibiting opening another's mail. The implication of

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[851] Weinryb, "A Pekel," 67, Letter 7:  דען יהודי דען מיר שיקן דער הייסט משה איז איין גוטר יהודי זיכט גאט אן
אונ' שיקט וואש דא מויגליך איז אונ' שרייבט וויא פיל איר שיקט.

[852] Sender is a first name (short for Alexander), so they may have been addressing a particular person tasked with passing this letter to the next person. Alternately, it could refer to the person sending the letter (as in *senden* in German).

[853] Weinryb, "A Pekel," 67, Letter 7: מען ווערט אייך עש צאלן.

[854] Daybell, *The Material Letter*, 232.

[855] See, for example, Weinryb, "A Pekel," 65.

*Nidui Ḥerem Shamta* extends beyond a legal prohibition; it functions like a curse, and

alludes to the excommunication that will afflict the transgressor.[856] These exhortations to

privacy point to the anxiety and to the lack of privacy and security in such a delivery

system. There were no technological or legal means, no postal regulations that could truly

protect the contents of the letter. Ultimately, the writer could rely only on the fear of God

(and rabbis) in the hearts of the people through whom the letter must pass in order to reach

its destination.

Secrecy within the letters was also a reaction to the lack of security and privacy of

the postal conditions.[857] Rabbi Isserles' responsum §11 is introduced as "A thing that was

done [for different reasons] for the sake of peaceful relations;[858] the reader can infer it

himself from the contents of the letter."[859] It is described in the table of contents of the first

printed edition (in rhyme) as "an apologetic writing speaking about seeking peace, to

another great man."[860] The letter is filled with roundabout references to the case such as

"and this thing that happened, we have never seen anything evil like it."[861] The letter

clearly discusses the many sacrifices that should be made for the sake of peace, but it is

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[856] Sometimes this acronym for excommunication, which can be read as "snake" (or *naḥash*), is, in turn, folded within another acronym: *v-h-P.G.Y.N.* (*ve-ha-poreẓ geder yisheḥeno naḥash*), which stands for a curse based on a passage in Ecclesiastes 8:10 as interpreted by the Babylonian Talmud, Tractate *Avodah Zarah* 27b, "and he who breaks the fence, a snake (*naḥash*) will bite him." In other words, may the rabbinic punishment (*nidui ḥerem shamta*) apply to those who open it. See Ginsberg, "Private Yiddishe," 331 (Letter 2).

[857] See Chapter 6 in Daybell, *The Material Letter*. Daybell interprets the different forms of encrypting letters in the early modern period as a result of the paranoia created by the insecure postal conditions.

[858] The expression 'מפני דרכי שלום' is often employed as a halakhic concept, when peaceful relations between the Jewish community and non-Jews are used as a consideration for halakhic leniency (for instance, Jewish doctors are permitted to treat non-Jewish patients on Sabbath for the sake of peace – מפני דרכי שלום).

[859] Isserles, *ShUT Rema*, §11, ed. Siev, 52n1,n64.

[860] Isserles, *ShUT Rema*, Table of Contents under יא - כתב התנצלות מדבר. בענין רדיפת שלום לגדול אחר.

[861] Isserles, *ShUT Rema*, §11, ed. Siev, 55.

phrased so cryptically that it is impossible to reconstruct the actual case at hand. One modern-day editor of the responsa concludes that from the letter itself "one cannot know to whom or to what community these things were written." [862]

Not only the threat to privacy posed by the postal conditions affected letter writing. The speed and reliability of communication also had important consequences. Daybell makes this point, explaining, "Viewed from the perspective of delivery, letter-writing emerges as an innately reactive activity, dependent on the vagaries of postal conditions, the availability or sudden departure of a suitable bearer, or affected by the favorability of tides and weather." [863] The two collections of letters published by Weinryb and Ginsberg were confiscated by the authorities and are thus a case in point, showing that many letters did not reach their destinations. One could not assume, moreover that even the letters that did reach their addressees would arrive on time or with any regularity. [864] In a responsum mentioned earlier, where Rabbi Isserles explained that the servant of Leib Sinai, an important merchant, served as a messenger, he also alluded to the irregularity of this system: "And as I am writing, I don't know whether I can send it with this courier, because they do not go by order everyone on their specific day; the one simply comes as the other one goes. And I could not answer until your honor's writing arrived, and immediately with

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[862] Isserles, *ShUT Rema*, ed. Siev, 52n1 – he speculates that it relates to the Prague Jewish community.

[863] Daybell, *The Material Letter*, 232.

[864] Reiner has used an exchange between Rabbi Luria and Rabbi Isserles to study the timing of the correspondence, which probably traveled between Lublin and Cracow. Reiner has reconstructed the exchange and noted that there must have been at least six letters, some of which did not make it into print; he used the dates to conclude that it took about two weeks for a letter to be read and a response to be written and delivered between the two. See Elḥanan Reiner, "*Al sod haka'at ha-ẓur ve-koaḥ ha-dibur*" (Concerning the secret of striking the rock and the power of speech). In this case, the locations are not too far apart (about 300 km) and a courier was used.

sunrise, the second courier went out. In any case, I did not withhold myself and I put all

my business aside to answer your honor." [865]

Three consecutive responsa between Rabbi Isserles and his student Rabbi Hirsch

indicate some of the confusion that arose as a result of the irregular postal system. In the

first of these, Rabbi Isserles writes "I received your writings by means of Wolf," [866] no

doubt the name of the messenger. It seems, however, that the student repeated some of his

earlier questions to Rabbi Isserles, who responds that he had, in fact, already sent back

responses to those questions. Concluding that those answers must not have arrived yet,

Rabbi Isserles refuses to address any of the student's repetitive remarks concerning these

questions. They would have to wait until the earlier responses reach the student. [867] Rabbi

Katzenelbogen, too, mentions a courier in explaining why a responsum is so late in coming:

> I received your letter about the deaf woman after it was delayed on its way or in the
> hands of someone else for many days, and even after it arrived in my hands, it was with
> me for many days because I did not find a delivery person by means of whom I could
> answer and Mister Lozan hid his ways from me [?] because he passed through my town
> and was two *parsa'ot*[868] away from it, but he hid his coming and going from me. [869]

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[865] Isserles, *ShUT Rema,* §125: אני כותב ולא אוכל לדעת אם אוכל לשלחו ע"י הרץ הסמוך, באשר כי אינן הולכין
כסדרן ביום מיוחד להם רק כאשר יבא האחד יצא השני. ולא יכלתי להשיב עד כי בא אלי כתיבת מעלתו ומיד כעלות השחר יצא הרץ
השני. ומ"מ לא עכבתי עצמי ופניתי מכל עסקי להשיב למעלתו.

[866] Isserles, *ShUT Rema,* §38.

[867] Ibid.: קבלתי כתבך ע"י וואלף וראיתי אותו מלא שאלות וספיקות שנתחדשו למעלתך...ועל הענין הראשון
ששאלת...כבר השבתי לך ולא הודעתני אם הגיעה התשובה לידך. אבל אשער אם לא בא עדיין תשובתי ההיא כללת גם אותה בתוך
האחרות אשר שלחת לי עתה. ולכן לא אשיב רק על אלו שבאו לי על ידי וואלף.

[868] This is the plural of *parsa*, an itinerant distance measurement borrowed from the Iranian
*parasang*. The average distance a man can walk in a day is about 10 *parsa'ot*, and one *parsa* equals about
2.5 miles.

[869] *ShUT MaharY Mintz and MaharaM Padua* (Venice, 1553), section 2, §8.
מכתבך מדבר החרשת קבלתי אחר נשתהה ימים בדרך או ביד זולתי ואף אחרי הגיע לידי היה בה איתי ימים רבים שלא מצאתי
מוביל לענות על ידו וכמר לוזן העביר עלי דרכו כי עבר דרך עירי וקרוב לה ב' פרסאות והעלים ממני בואו ושובו.
Daybell, *The Material Letter*, 9-10.

Letters functioned as a part of a series of texts, enclosures, and documents. Enclosures, additional material sent together with letters, could be court documents, testimonies, and, in one case, even an object; Rabbi Katz, in his responsa, mentions having received from his colleagues in Padua an old sandal used for the *ḥaliẓa* ceremony, which he then proceeded to examine for the required positioning of the straps.[870] One example of the phenomenon of enclosures can be reconstructed from the printed responsa of Rabbi Isserles. Entries 12-16 in his responsa all relate to the same case, in which Miriam, daughter of Mordekhai, was accused of adultery by her husband.[871] The first section is a summary from the Cracow rabbinical court, together with assorted witnesses' testimonies in Yiddish that were, according to the summary, taken by a lay court. The testimony includes incriminatory statements against Miriam, such as a man who testified to seeing "him by her on the bench completely, for our great sins, they were laying on each other" [872] and a man named Shlomo ben Eliezer known as Zelkind, who saw her with the other man "under the door[way][873] in the dark, and she wore her brown fur [?]and an undershirt, so I got a shock and felt upset and told my wife." [874] It also included the statements of two men who testified that the husband actively sought people to testify falsely against his wife, even

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[870] Katz, *ShUT she'erit Yosef*, §81. ועוד בא לידי מנעל שהובא מק"ק פדואה המנעל נראה בו שעשייתו כאלו נעשה
לפני מאה שנים, והיו הרצועות למטה....

[871] Asher Siev wrote an article on this case in *Ha-darom* 25 (Spring 1967): 219-211.

[872] See Isserles, *ShUT Rema*, §12 or Rabbi Shlomo Luria, *ShUT MaharShaL* (Lublin, 1573-4), §33 for the fuller version.
איך האב גיזעהן מיט מיין אויגן דז פלוני איז גישפרונגן פון איר. איך העט גימיינט עש ווער איין נכרית גיווען, זא זאה
איך פלונית...

[873] In Luria, *ShUT MaharShaL*, §33; it is the wall rather than the doorway.

[874] See Isserles, *ShUT Rema*, §12 or Luria, *ShUT MaharShaL*, §33 for the fuller version.
איך בין היים גנגן דא איז אשתו בייא איז פלוני אונטר דער טיר גישטנדן אין דער פישטר און' האט איר ברוין טשמלטי פעלצל
אום גיהאט אונ' אין אונטר העמד, אלזו בין איך דער שראקן אונ' האב מיך מצער גיווען אונ' האב עש מיינם וייב גיזאגט. Hurwitz
translates: "He had embraced her with one arm and placed his other hand under her underwear." See Simon
Hurwitz, *The Responsa of Solomon Luria* (New York: Bloch, 1968).

offering to pay for false witnesses; these were supported by summaries of additional statements as to the questionable character of the husband's witnesses. The entry mentions an earlier legal case from a Prague court, where the husband was embroiled in a monetary dispute with his father-in-law, providing a motive for the husband's attempt to frame Miriam.[875]

This material is followed by Rabbi Isserles' halakhic analysis, clearing the woman of the charge of adultery and even of lesser infidelity. The next section is Rabbi Luria's responsum to the same case.[876] This is followed by Rabbi Hirẓ of Brisk's opinion, who, it appears from a note at the top, was first shown Rabbi Shakhna's decision on the case – not printed here – at the fair in Lublin. Rabbi Hirẓ skimmed the decision and attested on the spot that "the words of the aforementioned *gaon* seem in my eyes to tend to the truth," which he noted on the margins of Rabbi Shakhna's decision. Later, when Rabbi Hirẓ returned to his home and library, "to my Torah-room where the seats of justice are, the sacred vessels, the diverse vessels[877] to bring light to mysteries," [878] he sat down to write a more detailed legal analysis of his own, which is presented in this entry. The following

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[875] The responsum by Rabbi Isserles leaves out some of the testimonies that he considers have no halakhic bearing. In the printed responsa of Rabbi Shlomo Luria, who also presented his opinion on the case, the full accounts of the testimonies are present in §33. Perhaps Rabbi Isserles copied his responsum from the same (or a similar) packet of letters and decided to copy only a section, while Rabbi Luria added his response to the entire packet, which was then printed in his responsa in full. Moreover, the first printed edition of Rabbi Isserles' responsa often leaves out responsa when a parallel appears in Rabbi Luria's *ShUT*, which was printed a few decades earlier, although those parallel entries usually contain a note by the editor mentioning where, in the latter book, the responsum in question can be found. See chapter 6 in this dissertation for more discussion of this issue.

[876] This responsum is also featured in Rabbi Luria's own collection of responsa, with some differences.

[877] Esther 1:8.

[878] Isserles, *ShUT Rema*, §14: ואני אמרתי בחפזי בטרדת היריד נראין הדברים היינו תורף הענין, אבל לא נתתי הסכמה עד אבא חדר תורתי אשר שמה כסאות למשפט כלי הקודש כלים מכלים שונים להוציא לאור תעלומה.

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entry contains a rather short letter from Rabbi Kalman of Worms (d.1590 L'viv), a famed

older rabbi, endorsing Rabbi Isserles' decision, [879] followed by the opinion of Rabbi Eliezer

ben Manoaḥ, who agreed with the others. This type of unit, containing a succession of

letters, testimonies, and other documents, is a common phenomenon in early modern

printed collections of responsa and an excellent example of letters with diverse enclosures.

These units consisting of many enclosures are called a *koveẓ* (quire or booklet),

which was sometimes circulated as a stand-alone unit in manuscript or print. Alexander

Marx analyzed one of these in his article "A Jewish *Cause Célèbre* in Sixteenth-Century

Italy,"[880] which discusses a collection titled *Psakim* (legal decisions), published by the

Venice rabbinate in 1519, involving a complex and drawn-out disagreement between two

former business partners that snowballed into a case about the local jurisdiction of

rabbinical courts. This collection also includes a series of letters, testimonies and other

materials regarding the specific case, resembling a "letter miscellany." [881] Marx explained

that these collections were created and published in order to enable others to form an

independent opinion. [882] He conjectures: "The publication was meant to be ephemeral and

very likely only a very few copies were printed; that is probably the reason for its rarity."

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[879] See Isserles, *ShUT Rema*, §15, ed. Siev, 99n13.

[880] Alexander Marx, "A Jewish *Cause Célèbre* in Sixteenth-Century Italy," in *Abhandlungen zur Erinnerung an Hirsch Perez Chajes*, ed. V. Aptowitzer and A.Z. Schwartz (Vienna: Alexander Kohut Memorial Foundation, 1933), 150-193. Another example from sixteenth-century Rome is described by Bernard Cooperman as "…a small pamphlet of fourteen octavo folios containing rabbinic opinions about an ongoing case of litigation." See Bernard Cooperman, "Organizing Knowledge for the Jewish Market: An Editor/Printer in 16th Century Rome," in *Perspectives on the Hebraic Book: The Myron M. Weinstein Memorial Lectures at the Library of Congress*, ed. Peggy K. Pearlstein (Washington: Library of Congress, 2012), 86-87.

[881] He defines the letter miscellany as "discrete pamphlets of related letters that circulated together..." Daybell, *The Material Letter*, 176.

[882] Marx, "A Jewish *Cause Célèbre*," 149-150.

[883] He also points out an important difference between responsa of this nature and the standard *ShUT*, namely, "This collection of decisions ... was not expurgated for publication but gives all the details of the case with full names as well as the personal remarks made by the rabbis about each other.... When responsa are published as a permanent record of legal decisions such matter is almost invariably omitted."[884]

This model can also apply to the above-mentioned adultery case from Rabbi Isserles' responsa, which includes a variety of relevant material (responsa, endorsements, testimonies and court documents), and mentions all the names, appellations, locations, and other identifying details. As Rabbi Naftali Hirẓ of Brisk mentioned in his letter, he was shown the material at the fair and asked for his approval, which fits with Marx's notion that such collections were created "to enable outsiders ... to form an independent opinion." The term "outsiders" should be taken with a grain of salt; it refers to insiders of this

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[883] Marx, "A Jewish *Cause Célèbre*," 149-150.

[884] Marx, "A Jewish *Cause Célèbre*," 149-150. This can also explain a puzzling statement in *ShUT MaharShaL*, §89: Rabbi Luria is called upon to evaluate a prior decision made by other rabbis. Rabbi Luria makes an interesting statement on the issue of using the actual names of people involved: "...and before I enter this alley with the great [those who made the prior decision] and speak against kings without shame [Psalms 119], it surprises me about them – why did they hide their [the involved parties'] face with nettles [Proverbs 24:31] to compare the act of these sinners [lit. Uncircumcised ones] to Shimon and Levi the complete [pure], are they not the known ones R' Yitẓhak and his friends and in-laws [relatives], Reb Dovid Sendler'le? And perhaps they [the rabbis/judges] meant to compare it to the passage in scripture that refers to "Simeon and Levi ... their swords are weapons of violence" [Genesis 45:9]..."

Contrary to the accepted practices of responsa, Rabbi Luria is criticizing the fact that the names were omitted. Not only does Rabbi Luria see no need to respect the involved with any privacy, least of all using the names of esteemed ancestors, but he also seems to consider the personalities of the people involved to be a meaningful part of the description, saying, "It is clear to me that if R' Yitẓhak would not have begun with a stumbling block such as R' Dovid, he would never have thought of carrying out such deeds." That is, the personalities of the figures involved in the case are to some degree relevant for determining whether the accusation is likely, which is why full knowledge of their names is necessary. If we use Marx's distinction between the ephemeral *koveẓ* and print publication, it would make sense that Rabbi Luria appears to consider it necessary to include the names; he is referring to the need to include the names in the *koveẓ*, not the printed work. (The fact that these names were ultimately published in print is related to the uneven editing of the work prior to printing, which will be discussed in the following chapter of this dissertation.)

scholarly group who nonetheless do not have a personal connection to those involved in

the legal dispute.[885]

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[885] The model suggested by Marx helps explain the only printed work that we have from Rabbi Shakhna, which was printed by Johannes Helitz in Cracow around 1540. This short publication numbered 7 pages. The only known surviving copy of this printed document is found at the British Library. (A similar version is reproduced in *Ḥidushei ha-rav Aharon ha-Levi* on Tractate Kidushin, first printed in Husiyatin in 1904.) Barring these writings, however, there is nothing in writing that Rabbi Shakhna published. Some of his "*psakim*" did circulate in manuscript, as mentioned by Luria (§21) and Rema (§30) in their responsa, and as we can see in manuscripts that survive in the National Library of Israel, Oxford, and in Columbia's collection. Further responsa from Rabbi Shakhna can be found in *ShUT asifat ge'onim he-ḥadash* (Jerusalem: Zikhron Aharon, 2010).

The title page of Rabbi Shakhna's printed ruling declares the text to be about: "...issues of marriage, specifically the marriage of Moshe, son of the experienced doctor Shmuel [the Italian] who married Breindel daughter of Mano'aḥ, also known as Handel of Cracow, and so he [Rabbi Shakhna] has shown from his great *pilpul* that this marriage was completely valid, and that all of the People of Israel must be warned about her that she is a married woman of the aforementioned Moshe, and whoever wishes to see it in the handwriting of the above-mentioned *ga'on* [Rabbi Shakhna] and with his signature can come and go to the above-mentioned Moshe and find there in his hands everything he seeks...." I thank Professor Elhanan Reiner for providing me with a copy of the document from the British Library. See also Avraham Haberman, *Prakim be-toldot ha-madpisim ha-ivri'im ve-inyanei sfarim* (Jerusalem: R. Mass, 1978) 141-142.

פשוקים [פסוקים] שחבר וארגן ורקם בקסת זהב מופז האחד המיוחד בתוך עדת יעקב ההולך ונושא דגל מחנה ישראל הגאון ראש גלותינו הנר המערבי המשמש ביום ובלילה כבוד מהר״ר שכנא יצ״ו על עניין קידושין ובפרט על קידושי׳ כמר משה בן השר הרופא המומחה כמר׳ שמואל לועזי יזייא שקידש מר׳ ברײנדל בת מנוח המכונה העגדל מקראקאו

ובכאן הראה מתוך פלפול הגדול שהם קידושין גמורים ושכל בני ישראל יהיו מוזהרים בה כי היא אשת איש של כמר משה הנ״ל.

ומי שרוצה לראות כתיבת יד וחתימתו של הגאון הנל׳ יבא וילך אל כמר׳ משה הנל׳ וימצא בידו כל חפצו.

נדפס פה קראקו הבירה

על יד

יהניס העליץ

It can be argued that this responsum, like the *koveẓ* discussed by Marx, was published for a very specific reason, namely in order to publicize Rabbi Shakhna's decision as an expert on halakhic marriage, and, as a result, to establish the marital status of those involved, in order to make it clear that no one was to marry the woman in question without making sure that she was properly divorced first. If someone married her without doing so, their children would be considered *mamzerim* or bastards, which meant they would not be able to marry most other Jews.

That this writing was not primarily intended as a form of scholarly publication or intellectual transmission is also made clear by the fact that the statement on the title page is focused on the marital status of Breindel and on clearly identifying all the people involved by listing their fathers' names, as well as their locations and any other names by which they were known, something that would not be a priority if the main intention was simply to publish a halakhic interpretation of an intellectual scholarly matter. Moreover, the exhortation with Rabbi Shakhna's signature on the title page to go to the groom in question and look at the original document shows that this printed decision is mainly a way to make public the fact that Rabbi Shakhna ruled this woman to be married. The printed text would not be very important without the existence of the original signed letter to which it referred. Therefore, the ruling was written and signed, in the first place, as a type of marriage document, because it seems that the bride's father retracted and claimed that no marriage actually took place. Rather than having only the one official letter with the signature, it was printed and distributed in order to make clear the status of Breindel, because her family did not consider her married and would perhaps try to marry her to someone else without first making her obtain a divorce from Moshe. Thus,

the reason for publishing these writings was not scholarly-halakhic, but mainly an official matter of marital status.

On the identity of Moshe's father, the doctor Shmuel the Italian, see Edward Fram's chapter, "A Difficult Beginning" in his forthcoming book project [no title yet]. Shmuel was the personal physician of Bona Sforza of Milan. See also Favel Wettstein, *le-toldot Israel ve-ḥakhamav be-Polin* (On the history of Israel and its sages in Poland) (Cracow: Fischer, 1909), 9.

Within the printed ruling, there is evidence of at least one other ruling by Rabbi Shakhna that was purposely and consciously copied for publication, albeit probably in manuscript: The last part of the printed ruling, in which he explains why it does not matter that the daughter was underage, seems to have been culled from an earlier ruling which, as Rabbi Shakhna wrote, "I wrote regarding the *sivlonot* to Moravia, it is publicized to the many and the biggest scholars have agreed with me and required her to receive a kosher divorce document from her intended match, as is known to everyone. And whoever wants to come copy it can copy it, *because that ruling can be found in the hands of many.*" (emphasis added)

It seems that this case concerned a groom by the name of Yacov, not Moshe. It is likely a version of the above ruling reprinted in Husiyatin: הלֹא מה שכתבתי בעניין הסבלונות למדינת מערהרי״ן מפורסם לרבים וגדולים החכמים הסכימו על ידי והצריכוה לקבל גט כשר מן המשודך כידוע לכל: ומי שרוצה להעתיק יבא ויעתיקה כי מצויה אותה פסקא ביד רבים.

The printed ruling concerns a case in which a couple (or, rather, their fathers) had intended and agreed to marry, and the groom-to-be gave his bride-to-be a gift (as Shakhna explains it, the father of the groom was worried that the father of the bride would retract the agreement and explicitly advised his son to give the bride this gift to seal the deal). The girl took the gift from the groom's hand after encouragement from her father (though it seems that they thought it was simply a present). Rabbi Shakhna argued that this gift giving should be considered the transaction of *kidushin* and thus bind the couple together in matrimony, although the gift was not given to the bride in the context of a wedding ceremony. He engages in an original and highly pilpulistic interpretation of two texts in Tractate *Kidushin* (6ab and 50ab) to show that the mere giving of a bridal gift (called *sivlonot*), could, in fact, constitute the legal marriage (*kidushin*) itself, even without uttering any words that signaled that the groom intended to marry the bride by doing so. In his opinion, it was sufficient for the couple to have intended to wed and for the groom to manually and directly give his prospective bride a gift to effect an actual marriage. Rabbi Shakhna's interpretation of *sivlonot* here was not the most obvious one to many scholars. Most considered *sivlonot* to be merely a gift that, in some cases, (depending on local practice of when *sivlonot* were typically given) could at most be considered proof that the couple had already married earlier, but it was more complicated to claim that the *sivlonot* itself could be the transaction of *kidushin*. Moreover, simply handing over something of value without orally stating any intention (e.g., saying "*harei at mekudeshet li*" or at the very least by talking about marriage-related issues before) is not sufficient to effect the marriage. The problem is augmented in this case, where the bride was still a minor when she received the gift. (To respond to the issue that the bride was, in this case, underage, and thus could not accept it of her own will, he explained that it sufficed if the father of the bride agreed to the match at the time that the gift was received, even though the father retracted his agreement later on.) By (re)interpreting the mishnaic and talmudic sources as discussing a very specific, more complex modified case, drawing support from their specific formulations as well as from the formulations of questions, explanations, and summaries by the classic medieval authorities that the texts are, in fact, about this more complex situation and not about a plain case of *sivlonot,* Rabbi Shakhna rejects these issues to conclude that the woman was considered the wife of the man who gave her the gift, and that anyone wishing to marry Breindel would need to make sure she received a proper divorce document from Moshe first.

The introduction to one of the letters in the adultery case [886] explains the process of

the legal battle, clarifying how and when the different documents within the unit were

accumulated. As Rabbi Kalman explains, the disagreement went on for a very long time

until both sides came before the rabbinical court of Cracow, which was comprised of Rabbi

Moshe Landau (d. 1561), the oldest member, Rabbi Isserles, and his brother in law Rabbi

Katz.[887] The material in the first part of the *kovez* (§12 out of §12-16), which includes the

testimonies against the wife, the summary of the case, and Rabbi Isserles' opinion, is thus

itself a composite. The summary of the case, with the remark that the testimonies against

the wife were taken by an unfit and unlearned court, are probably from this rabbinical court.

The court in Cracow would usually write down its decisions, which were copied as needed.

This can be seen in a communal decision dating from 1592, which lists the responsibilities

of the different levels of the Cracow rabbinical court. One of these responsibilities is

recording and copying: "And they [the court] are also obliged to write their decisions in

the *pinkas* for free, and for a copy [they charge] one large coin...."[888] The testimonies

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[886] Isserles, *ShUT Rema,* §15. Rabbi Kalman's letter is an endorsement of the earlier legal decision and a repudiation of the husband. This letter explains that Miriam's father showed him the legal decision from Prague (in the father's favor) regarding the prior business disagreement, thus providing the motive for the accusing husband and proving his evil character. According to Rabbi Kalman, the rabbinical court in Cracow, which dealt with the adultery case, never saw the Prague decision itself. The decision as it is rendered in *ShUT Rema*, §12, indeed, only mentions the Prague case without providing an actual copy of the decision. This piece of evidence strengthens Miriam's case, as it disqualifies the adultery witnesses, annulling their testimony entirely rather than just weakening it. The halakhic import of this evidence is that the accusing husband may not choose to accept the negative testimony about his wife, and he is thus not merely allowed, but, rather, obligated, to receive her forgiveness and return to her.

[887] His responsa collection also includes some overlapping material about this case and some with differences from it.

[888] Published in Favel H. Wettstein, *Kadmoniot mi-pinkasa'ot yeshanim: le-korot Israel be-Folin bikhlal u-vi-Cracow bi-frat.* [Early material from old notebooks: on the history of the people of Israel in Poland in general and Cracow specifically] (Cracow: Fisher Press, 1892), 10-11. "וגם ישפטו הכל בעניני ממון
עד הסך הנ"ל. וגם ישפטו על זלזולים אשר יעשה בפניהם, אך לא יקנסו שיגיע לכיסם רק לב"ה כנ"ל. גם מחויבים לכתוב פסקיהם
בפנקס בחנם ומן ההעתקה – א' גדול. גם מחוייבים לישב בדין בכל יום מלבד ערבי שבתות..."

copied in this section of the responsa collection were thus those taken at a previous stage

of the dispute by a court of lay-people. Rabbi Isserles appended the reasoning for his

decision in the Cracow court in the form of a responsum. Next, as Rabbi Kalman explains,

"their legal decision traveled to the remaining sages of these environs who are present in

this kingdom, and not one remained who did not agree with the decision of the great

ones...."[889] The other letters in this unit, as well as those mentioned and reproduced in other

collections that pertain to this case but did not make it into Rabbi Isserles' collection, are

thus probably reactions to this peripatetic legal decision,[890] of which one unit ended up

being printed into Rabbi Isserles' *ShUT*.

We can view such a unit as a kind of "circular letter" that is copied and sent around

with additional material added as it develops. As Harold Love reminds us about manuscript

publication versus printed publication, manuscript publication does not emerge from one

center and is not simultaneous; it publishes matter in a de-centralized and consecutive

manner, meaning that material can be added or deleted, depending on where and when it

is being copied. [891] This can explain why different printed collections of responsa from the

same time and place, in this case, the collections of responsa of Rabbi Luria (§33) and of

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[889] Isserles, *ShUT Rema,* §15: ונתגלגל פסק דינם עד יתר חכמי הגלילות הנמצאים תוך המלכות הלז, ולא נשאר בהם
שלא הסכים לפסק דין האלופים...שהבעל הנ"ל מותר לשוב לביתו ואל יוציא עוד שום לעז על זוגתו מרים הנ"ל וצריך סליחה וכפרה
על מה שהוציא שם רע על בת כהן הנ"ל.

[890]For an insightful comparison and contrast between official community records of the court and responsa, see the introduction in Edward Fram, *A Window on their World: The Court Diary of Rabbi Ḥayyim Gundersheim, Frankfurt am Main, 1773-1794* (Cincinnati: Hebrew Union College Press, 2012).

[891] Cited in Daybell, *The Material Letter,* 190-1. See also Harold Love, *Scribal Publication in Seventeenth Century England* (Oxford and New York: Oxford University Press, 1993), especially Part II, chapter 4.

Rabbi Katz (§77), all contain units with material about the same case that display overlap with those in Rabbi Isserles' collection, but are not identical.

### d. Reading

Contrary to idealized notions of correspondence, in which a single message is relayed from one author to one recipient, the readership of early modern letters usually showed more variety and multiplicity. [892] In the case of Jewish letters, too, correspondence was often addressed to several readers,[893] and a number of notes to different people were often added one after another on one and the same sheet of paper, meaning that they could all be read by all the addressees and different authors. For instance, the letter in Weinryb's collection to the Cracow community leaders also includes separate greetings from the scribe to his "Aunt Etta," and when a Yosef Levi wrote a letter from Bulgaria to his brother-in-law in Padua in Yiddish, it is immediately followed by a letter to his grandfather in Hebrew. Unlike many other societies in the early modern period, but similarly to humanist circles, the rabbinic community is one in which literacy was a prerequisite. This meant that all the participants could read and write their own letters rather than having to rely on scribes, readers, and amanuenses.

In practice, however, as we have already seen, many rabbis, including Rabbi Isserles, used scribes to copy their letters, thus preserving one copy for their own record without having to write the same thing twice and perhaps also ensuring that the addressee

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[892] See Daybell, *The Material Letter*, 12.

[893] For instance, in Weinryb, "A Pekel," 67, Letter 7 and Ginsberg, "Private Yiddishe," 331, a letter addressed to two brothers.

receives the neater and more legible copy. [894] Thus, although responsa could have been

more private than contemporary correspondence in general, because there was no strict

need for scribes or other amanuenses, in fact, this, apparently, was not the case, and at least

one person other than the author (the scribe) was familiar with responsa before they even

left his desk. Likewise, there are examples of responsa written by several questioners, such

as the members of a rabbinical court[895] or a group of students rather than an individual.[896]

Susan Whyman's notion of "epistolary literacy,"[897] which includes the particular

knowledge of how to read and write letters of correspondence, a skill beyond basic literacy,

can apply here too. In his work on the Talmud, Rabbi Luria explains the following passage:

"A torah scholar (*talmid ḥakham)* must learn three things: writing, [ritual] slaughter, and

circumcision."[898] Regarding the first of these, "writing," RaShY explained that he must be

able to sign his name. Rabbi Luria's interjection and alternate explanation is very telling

of the notion of epistolary literacy as part of early modern rabbinical scholarly culture:

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[894] In one 15th-century manuscript collection of responsa from Rabbi Yacov Moellin, the introduction contains a note from a scribe who was tasked with copying all the letters because his master's handwriting was difficult: ואני הגבר...כי הסכים עמי פיו טהור אמ"ץ מהר"י סג"ל באותו הזמן בקיץ קפז (1428) שהיה רוצה להניחו להעתיק אליו כל התשובות שהשיב מיום שהיה מורה הלכה, כי עדיין הוא בידו כתיבת ידו מכולם, בשביל שהיה סופר מהיר נחוץ בקריצותיו ולא היתה מכתב ידו נקראת בעיני כל, והניח להעתיקה ושלח בכל פעם ההעתק והגוף החזיק, ובכן נתקבצו תיבה מלאה.

This introduction is copied in Israel Yuval, *Ḥakhamim be-doram: Ha-manhigut ha-ruḥanit shel yehudei Germanyah be-shilhei yemei ha-beinaim* (Sages in their generation: The spiritual leadership of German Jewry at the end of the Middle Ages) (Jerusalem, 1989), 111-113. He mentions that it was first published in *Ha-mazkir* 9 (1869): 23. Later a collection of his responsa was printed as *ShUT MaharY Moellin* (Cremona, 1556).

[895] See Katz, *ShUT she'erit Yosef,* §33.

אנחנו דיינים מבוררים נתבררנו....והנה אנחנו דיינים מחולקים בזה ולא רצינו לברור שלישי מחכמי וויניציאה כי כולם קרובים ונוגעים בדבר. בחרנו במכ"ת להודיע דעתו עפ"י דין תורה כן יקום וכן קבלו עליהם שני הכתות.

[896] See, for instance, Katz, *ShUT she'erit Yosef,* §10, which presents a "great dispute between the students," describing the position of one group and then explaining that "other students doubt this...." "על הטענה הזאת ועל תשובת שמעון נפלה מחלוקת גדולה בין התלמידים, יש מהם שרוצים....ותלמידים אחרים מפקפקים בראיה הזאת ואומרים שאינה דומה לנד"ד. לכן אל יהא למשא להשיב...

[897] See Daybell, *The Material Letter,* 28, for different degrees of being "fully literate in the epistolary arts" and for Susan Whyman's term of "epistolary literacy" as a skill.

[898] Babylonian Talmud, Tractate *Ḥulin* 9a.

"And it is obvious that he can sign! Rather, ['writing' signifies that] he should be capable of writing responsa and halakhic decisions and also familiar letters in the clear language that befits a Torah scholar."[899] The skill of writing personal letters appears alongside halakhic skills. As the section about writing detailed, the acceptable ways of reading and writing responsa were not automatically acquired once one knew how to read. Rather, they had to be taught by means of manuals, collections of responsa, and guided practice, instruction, and feedback on actual letters.

The question of privacy and readership brings us back to the purpose of the unit composed of many enclosures, sometimes called a *koveẓ*. Marx, in his study, explained that they were created and published to enable outsiders to form an independent opinion.[900] As I pointed out, these outsiders whose legal opinion was sought were, in the first place, other rabbis. Clearly, however, there was another audience for this kind of circular letter. Marx points out that responsa of this nature were not expurgated for publication but gave all the details of the case with full names.[901] The same can be said about the adultery *koveẓ*: even the cited excerpts include multiple names, many of them enhanced with nicknames and other identifying details. This concern with identification leads us to an additional audience for the *koveẓ*: the Jewish community in general, or, at least, anyone interested in Miriam's

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[899] Luria, *Yam Shel Shlomo Hulin*, Chapter 1, §15: אמר ר"י אמר רב ת"ח צריך שילמד ג' דברים.כתב פירש"י כתב לכתוב, שידע לחתום שמו. ופשיטא שיכול לחתום, אלא שיכול לכתוב שו"ת ופסקי דין ואף אגרת שלומים בצחות לשון נאה לת"ח.

[900] Marx, "A Jewish *Cause Célèbre*," 149-150.

[901] Marx, "A Jewish *Cause Célèbre*," 149-150.

marital status. An additional purpose of publishing this unit was as an open letter[902] that

Miriam and her family would use as proof of her innocence to protect their reputation.

This additional purpose may also explain some of the rhymed openings in this unit

and in other similar cases. In such letters, the salutations address an unnamed general public

instead of greeting and praising a particular recipient as is usually the case. The opening

passage in Rabbi Luria's letter, for instance, lacks any specific recipient and the opening

lines do not target any individual, but focus, instead, on the plight of the victims, on the

false nature of the accusation, and then, on the author's intention to "restore the crown to

its former glory"[903] and clear Miriam's name. The impression that this is an open letter is

buttressed by the salutation's unusual length and its meticulous rhyme scheme with a

number of scriptural allusions and a degree of pathos extreme even for rabbinic letters:

I saw the tears of the wronged. /Who goes down and cries from market to market./A keening cry, a whining cry, a cry of weeping./Mightier than the thunder of great water[904]/Mightier than the breakers of the sea[905]/These are the raging waters[906]/The bitter waters/Its source from the Rock of Contention[907] from ROSh Ẓurim[908]....

This continues for more than ten lines. [909]

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[902] A so-called *kol koreh* (after Isaiah 40:2) is a term used for open letters or public declarations in the rabbinic context, (for instance from the orthodox Jewish news site www.CrownHeights.info: "107 *Rabbonim* [Rabbis] and *Dayanim* [rabbinic Judges] have signed a *kol koreh* [public proclamation] affirming the Halachic obligation of all Jews immediately to report and notify secular law enforcement when they know of an instance of child abuse.") In modern Hebrew, for instance, a call for papers or a call for bids is also called a *kol koreh*. They all denote a message that is intended to reach a wide audience that is not known in advance.

[903] Luria, *ShUT MaharShaL* §33. להשיב עטרה לישנה

[904] Psalms 93:4.

[905] Ibid.

[906] Psalms 124:5.

[907] I Samuel 23:28.

[908] Bamidbar 23:9.

[909] Isserles, *ShUT Rema*, §13 and Luria, *ShUT MaharShaL*, §33: ראיתי דמעות העשוק. היורד ובוכה משוק לשוק. קול נהי וקול בכי וקול תמרורים. מקולות מים רבים משברי ים אדירים. הם מים הזידונים מי המרים. מקור נובע מסלעי המחלוקת מראש צורים. The last section in the adultery *koveẓ* as it appears in Rabbi Isserles' printed responsa is

Moreover, a letter may have had different purposes at various times, for diverse readers, or different purposes simultaneously: Reading, circulating, and keeping such a responsum may have been a scholarly matter for some, a question of solidarity for others, a legal and marital matter, a question of evidence for a rabbinical court, or a proof of innocence for a slandered woman. The multiple purposes make for diverse kinds of reading, with a focus on differing parts of the letters. One reader may concentrate on the scholarship or the legal analysis, while another would skip to the signatures and care only about the stature and final decision of the rabbis who signed; Miriam and her family might show this to others to prove their vindication; suitors might want to know what her current marital status was, and, perhaps, there were those who were just reading the adultery testimonies for the gossip, entertainment, or titillation. This insight also explains the circulation of some of these cases which, from a halakhic intellectual perspective, do not necessarily add much in terms of original scholarship or legal precedent. Responsa, clearly, are a complex phenomenon. Moreover, these correspondences were rarely private communication.

### 3. RESPONSA AND RABBINIC DISCOURSE
### a. Introduction: Responsa and Social Networks

The study of social networks enables us to re-examine rabbinic communication. The scholarship on the early modern humanist Republic of Letters, from Hans Bots and Françoise Waquet's seminal *La République des Lettres* to more contemporary works have

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a letter from Rabbi Eliezer ben Mano'aḥ, containing a rhymed opening that is, likewise, more public declaration than personal salutation.

explored this phenomenon for early modern Europe.[910] Social network theories, which

have become ever more central thanks to new approaches practiced in digital humanities,

have become increasingly important to our understanding of a broad range of phenomena,

including the formation of scholarly communities and the circulation of knowledge.

Christian Loeber, a later member of the humanist Republic of Letters, emphasized

that their society was, in fact, not a republic at all because it wielded no political power.[911]

This insight is particularly relevant with regard to the rabbinic community, which held no

real political power or control over contiguous territory. The boundaries of the rabbinic

network encompassed Europe, stretching from Northern Italy to Eastern Europe, the

Balkans, and the Levant.[912] The nodes, in cities such as Padua, Frankfurt, Prague, and

Cracow, were linked by merchants and their merchandise, couriers, traveling scholars,

migrants, books, and letters. Its important cities hosted religious institutions such as courts

that adjudicated Jewish law, or *batei din*, houses of learning, or *yeshivot*, community

leaders, and famous rabbis. The canon for this scholarly community included the entire

corpus of Jewish law, from the Talmud through halakhic manuscript miscellanies, to

recently printed works of halakha, such as the *Shulḥan Arukh* (Venice, 1565). Two years

after its initial publication, the *Shulḥan Arukh* codified both sfardic and ashkenazic

interpretations of Jewish law, thus putting the two traditions on the same page (both

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[910] Hans Bots and Françoise Waquet, *La République des lettres* (Paris: Belin, 1997); Anthony Grafton, "A Sketch Map of a Lost Continent: The Republic of Letters," in idem., *Worlds Made by Words: Scholarship and Community in the Modern West* (Cambridge, MA: Harvard University Press, 2010), 9-34.

[911] Quote is from Christian Loeber, *Dissertatio politica forma regiminis reipvblic*, cited in Bots and Waquet, *La République*, 21.

[912] See Katz, *ShUT she'erit Yosef*, §19 to Rabbi Eliezer Ashkenazi, who came from Egypt to Poland, and Isserles, *ShUT Rema*, §114 from Rabbi David ben Yakov ha-Kohen, who studied with Rabbi Isserles and became a rabbi in Turkey.

literally and, to some extent, figuratively). Their written communications were carried out by means of responsa. The topics under discussion in these letters of responsa touched upon all areas of life and religion from the perspective of Jewish law. They contained discussions of real cases with specific circumstances, but in some instances, debates touched on the issues in a more general form or were explicitly theoretical.

One study suggests that letters about halakha had, in fact, been one of *the* main catalysts for the development of communication in the Jewish world, surpassing Christian communications in medieval Europe, which increased noticeably only in the early modern period.[913] This centrality of epistolary communication for constructing the halakhic scholarly community supports a deeper examination of the implications of this particular mode of communication for Jewish law. By establishing a scholarly network, correspondence also enabled the creation of an imagined rabbinic community. The term "imagined community," borrowed from Benedict Anderson,[914] does not imply that the rabbinic community is a phantasm, but, first, that it is something that must be constructed rather than a pre-existent entity, and, second, that it has importance *as an idea* in the rabbinic imagination and in the imagination of the Jewish community.

Viewing responsa as both a form of scholarship and a form of correspondence broadens our understanding of the phenomenon of responsa and the intellectual culture of early modern rabbis. Utilizing defining concepts constituting the humanist Republic of

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[913] Sophia Menache, "Introduction," and "Communication in the Jewish Diaspora: A Survey," in *Communication in the Jewish Diaspora: The Pre-Modern World*, ed. Sophia Menache (Leiden: Brill, 1996), 10, 26, 45-46.

[914] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London and New York: Verso, 1983).

Letters, such as consensus, openness, intellectual freedom, and equality, I shall elaborate the connecting thread for these ideas. Theories of common law will be used to explain how the existence of this imagined community is crucial for legal authority, justifying Jewish law not only from its scholarly perspective, but also for the larger Jewish community bound by its obligations.

### b.      Responsa Beyond Conduits of Communication

What is the significance of responsa when they are regarded as correspondence, and how does epistolarity, the medium for these communications, shape halakha? At a basic level, responsa answer a practical need: exchanging information over distance. Elisheva Carlebach emphasizes the importance of responsa as "*...a conduit* for some of the most enterprising minds in the early modern period."[915] Recent studies in the field of communication, however, indicate that conduits are not, as the term might imply, immaterial or transparent; rather, correspondence impacts the discourse itself, requiring an examination of the effects of this particular scholarly mode.

Anderson's study of nationalism in the 1980s introduced the important insight that there is no such thing as a pre-existent community, nation, or other cohesive social unit, even given a unified continuous geographical, political, linguistic, or social sphere.[916] Rather, national communities are constructed, by means of mass communication. Anderson's notion of an imagined community has, as one scholar put it, given a "new lease on life" to the Republic of Letters as a concept of an autonomous sociocultural space, as it

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[915] Carlebach, "Letter into Text," 115-6 (emphasis added).
[916] Anderson, *Imagined Communities*.

links the existence of a shared literary universe to the formation of a community.[917] A similar notion is implied in Jürgen Habermas' studies of the constitutive role of communication for the creation of a modern public sphere.[918] Without communication, there is no such sphere. This claim applies especially to the Jewish diaspora, which was not a defined or continuous geographic, linguistic, or political unit. A connection can be made between these insights and the assumptions implicit in the approach of social network analysis. Social network theories identify, measure, and interpret phenomena by tracking their communications. Such research does not assume that a community exists a priori; it is mapped by tracking the connections between individual nodes without positing the existence of a network outside the aggregate of links connecting those nodes. The communication is what constructs the very network.

Based on these insights, we may say that, beyond the practical need to share information about halakhic issues, the deeper effect and significance of rabbinic correspondence was the creation of a network and a community. Rather than assuming the existence of a rabbinic community as an established space in which correspondence is merely the "conduit" that permits the circulation of information, correspondence should be seen as a building block – perhaps *the* building block – that creates this community. The use of network theories has become increasingly popular in intellectual history given the recent evolution of the digital humanities, which facilitates the analysis of large amounts

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[917] Avriel Bar-Levav, "Amsterdam and the Inception of the Jewish Republic of Letters," in *The Dutch Intersection: The Jews and the Netherlands in Modern History*, ed. Yosef Kaplan (Leiden: Brill, 2008), 235.

[918] Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger (Cambridge, MA: MIT Press, 1989).

of data and enables mapping out the information in graphic form. Such a project could, in theory, be carried out for the rabbinic correspondence of the sixteenth century by recording every individual correspondent who wrote or received responsa as a node and every instance of correspondence as a connection. This could then provide information about the size of the network; its density; its distances; its centers of influence; the nature of those centers; and the interrelationship of the centers. We could, for instance, probably establish that the rabbinic network was a strongly "assortative" social network, meaning that all the nodes formed ties with others who were similar to them (in terms of race, gender, occupation, educational achievement, and so on). As there were many more instances of communication within Eastern Europe than between the latter and Italy, and even fewer instances of correspondence between Eastern Europe and the Levant, we could also establish that the network was propinquitous (the nodes tend to have more ties with others that are geographically close). We could identify figures such as Rabbi Katzenelbogen of Padua, who connected the ashkenazic Jews in Northern Italy to their Eastern European counterparts, as one of the "bridges" in the network, an individual providing the sole link between two other nodes, and we could probably point out social circles or groups in which all the individuals are tied to one another directly or indirectly, and distinguish these from cliques, in which every individual is directly tied to every other individual. In short, using network theory to map rabbinic correspondence could provide us with a wealth of interesting information.

UNIT III, CHAPTER 5: RESPONSA AND THE RABBINIC REPUBLIC OF LETTERS

Without first taking a step back to inquire into some larger preliminary questions, however, this approach carries serious risks.[919] First, epistolary correspondence, particularly in this period, was a complex phenomenon. Composing correspondence was not limited to a single author, its circulation extended beyond an individual addressee, and its reading and preservation entailed various goals, and included multiple complex meanings. Therefore, even identifying the sender and the recipient of every single letter would not produce an accurate map of the communication network. Moreover, as studies of early modern humanism have pointed out, printed books rivaled, perhaps even surpassed individual letters in their importance for communication.[920] Any map of epistolary correspondence, no matter how complete, would thus still fail to represent the resulting community as a whole because it would neglect the role of print in creating the scholarly republic. Ultimately, quantitative studies cannot be interpreted meaningfully without first establishing the nature of questions that are relevant to such a study, the context of the data, and the larger import of this information.[921] This study poses some of these preliminary questions concerning rabbinic communication and their meaning.

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[919] In his introduction to a study of 19th-century French correspondence, Roger Chartier has reflected on the need to connect the larger data with individuals and the historical narrative. See Roger Chartier, ed., *La Correspondance: Les usages de la lettre au XIXe siècle* (Paris: Fayard, 1999), 10-13.

[920] The unique contribution of letters as opposed to other types of texts for halakha will be discussed in the concluding case study. See Daniel Stolzenberg, "A Spanner and His Works: Books, Letters, and Scholarly Communication Networks in Early Modern Europe," in *For the Sake of Learning: Essays in Honor of Anthony Grafton,* 2 vols., ed. Ann Blair and Anja-Silvia Goeing (Leiden: Brill, 2016), 2:157-172. Similar arguments have been made for other non-letter modes of communications, such as sketches and technical drawings, objects, etc. Oral, person to person conversation should, of course, not be neglected either.

[921] This dilemma has been discussed at length among data analysts and digital humanities scholars who use these methods. For accessible and interesting treatments of these issues, see, for instance, H. Ekbia, M. Mattioli, I. Kouper, G. Arave, A. Ghazinejad, T. Bowman, V. R. Suri, A. Tsou, S. Weingart, and C. R. Sugimoto, "Big data, bigger dilemmas: A critical review," *Journal of the Association for Information Science and Technology* 66 (2015): 1523–1545, doi:10.1002/asi.23294; Shawn Graham, Ian Milligan and Scott Weingart, *The Historian's Macroscope* (working title; under contract with Imperial College Press), Open

### c.     **Responsa and Sociability**

Responsa were the driving force of communications that, along with the exchange of halakhic information, established a sociability.[922] Friendships between scholars are often initiated and carried out via responsa,[923] and correspondents kept each other informed of their whereabouts, family life, health, and employment situations,[924] thus allowing ties of friendship that were initially formed in physical proximity to continue across a distance.[925] In some cases, responsa even included two distinct parts: one halakhic, the other social, but they were meant to be read together as one communication. Rabbi Katz, Rabbi Isserles'

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Draft Version (Autumn 2013), http://themacroscope.org; and Scott Weingart, "Demystifying Networks, Parts I & II," *The Journal of Digital Humanities* 1, no. 1 (Winter 2011): 9-22.

[922] See Françoise Waquet's earlier study of the Republic of Letters and her insistence that the *Republique des Lettres* cannot be understood in purely political terms without considering its sociability. Françoise Waquet, "Qu'est-ce que la République des Lettres? Essai de sémantique historique," *Bibliothèque de l'École des chartes* 147 (1989): 473-502.

[923] The two aspects were clearly related in the minds of the participants: At the conclusion of a question to Rabbi Isserles, Rabbi Luria writes: "And I am surprised that you did not add anything for me in the courier that came from your father, not even a friendly letter." He expected to find a responsum along with the courier from Rabbi Isserles' father, or, given the absence of a proper halakhic responsum, at least some friendly regards. Rabbi Luria closes the above remarks with a declaration of friendship laced with some misgivings about whether the recipient sufficiently appreciates the relationship, given the lack of letters: "Finally, I accept from this day, that your love shall be engraved upon my heart, and I wish that it should be appreciated from your end even half so much...." See Isserles, *ShUT Rema*, §6.

[924] Rabbi Hirsch Elzaser, for example, writes to Rabbi Isserles that he returned safely to Poland from his rabbinical work in the German lands, to which the latter replies that he is happy to hear of his safety: "Although I told you to stay in Ashkenaz to be a rabbi and teacher to them somewhere." Isserles had given his student career advice, telling him to take up a more lucrative teaching post in the West, which Elzaser ended up disregarding. Isserles ultimately gives his blessing, explaining that the choice to live with less remuneration in exchange for a more peaceful political situation is understandable: "Perhaps it is better to have dry bread and peace in these countries, … since in these lands their hatred of us is not as strong as in the countries of Ashkenaz..." (Isserles, *ShUT Rema*, §113, ed. Siev, 464). See also n1 there and Isserles, *ShUT Rema*, §95.

[925] Likewise, apologies for the brief or incomplete nature of responsa frequently mention the author's reasons for brevity, whether his declining health, his many journeys, and the resulting distance from his books or the many troubles, worries, and responsibilities hindering him from formulating a better response. Rabbi Meir of Padua, for example, refers to the burning of the Talmud in 1554 when he mentions that a responsum should not be considered final, "as the wellspring of the Talmud is not in his hands, due to our many sins, … because this was when the books were burnt as a result of the decision in the lands of *Loez* (Italy)…." This is paraphrased in the last lines of Katz, *ShUT she'erit Yosef,* §1. Another example is Luria, *ShUT MaharShaL,* §16, where he complains about issues and rivalries between him and other rabbis and also mentions his own teaching activities and students.

relative who sat with him on Cracow's *bet din* (rabbinical court), sent Rabbi Meir of Padua

his decision on a case and subsequently replied to the response from Padua, opening the

reply as follows: "…your honor wrote to me 'as soon as I received your *psak* (halakhic

decision),' thus implying that your honor did not receive the *mikhtav shlomim* (familiar

letter, letter of friendship) …, in which I write an apology of sorts, explaining what led me

to the situation where I contemplated, in my humiliated spirit, to send a halakhic decision

to your honor!"[926] Rabbi Katz feared that the recipient received one letter without the other,

meaning that there were two physically distinct elements included in the responsum: the

halakhic decision or *psak*, which he originally wrote for the people who brought the case

to his rabbinical court, on the one hand, and the personal letter that he added in order to

provide the necessary context and apologies regarding the circumstances of the *psak*, on

the other hand. Although the two entities were separate, they were meant to be read

together, the personal letter providing context for the halakhic document, which required

the greetings and apologies of the personal letter in order to be socially and intellectually

appropriate. This combination illustrates the dual role inherent in responsa letters in

general.

In one instance, a halakhic request by Rabbi Katz had been circulated among many

rabbis. "Rabbi Eliezer from Egypt," who lived in Posen and whom he did not know

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[926] See Katz, *ShUT she'erit Yosef*, §1(.2) ed. Siev, 13. כתבתי שנית להגאון מהר"ר מאיר מפדוואה אחר
ששלחתי לו פסק הנ"ל המתחיל 'הוברנרנו לדון': המאיר לארץ ולדרים, הוד קרנו יגדל לדור דורים, הוא אהובי הרה"ג כמהר"ר מאיר
יזיי"א וכאל"ש [יראה זרע יאריך ימים אמן וכל אשר לו שלום]: אהובי, מכתב דמר הגיעני ושמחתי כעני מוצא שלל רב. והנה מכ"ת
כתב אלי איך שבא לידו הפסק, וא"כ לא בא ליד מר איגרת שלומים שיחדתי למר ובו כתוב התנצלות מה, מי הביאני הלום לשבר
ברוחי הבושה ולשלוח פסק קמי מר. כי מן הראוי לשאול שאלות ולא לפסוק קמי מר.

personally at the time of this letter,[927] was insulted at not having received the appeal in a letter addressed to him personally, or, as Rabbi Katz writes: "It was told to me that his honor was angry and fuming about the fact that I did not write to his honor myself...."[928] Indeed, the substantive information arrived, but receiving a responsum was considered a form of respect, and not receiving a personally addressed responsum was perceived as an insult. Responsa correspondence was a social act whose significance exceeded the sharing of specific information, and every responsum thus built and fortified a network.

### d.    Responsa's Role in Creating a Discursive Network

Responsa thus did not *circulate within* a pre-existent network; they *created* the social ties that constituted the community. Moreover, the responsa communications established the discourse that took place within this community. This is clear from the many discursive functions that responsa carried out. This section will study several of these functions, such as education through study; pedagogical remarks; moral guidance; enforcing correct modes of reasoning by means of games; and the establishment of a language that is particular to the community and internally stratified. These functions, together, show that responsa effectively established, negotiated, and supported a scholarly community with its own sociability, paradigms, language, and modes of reasoning, creating a discursive community.

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[927] Rabbi Katz makes this clear by means of the salutation: "Thus I replied to Eliezer who came from the land of Egypt … and his nickname is Leizer (L..iZR) and his one name, Eliezer, may the *E-l* (God) of our fathers come to his –*ezer* (aid), but he is *li-zar* (Heb. – a stranger to me)…" זאת השבתי למהר"ר אליעזר אשר בא ממצרים...וכינויו ליזר, ושם האחד אליעזר – אלהי אבי יהיה בעזרו, ברם הוא **לי-זר** .Katz, *ShUT she'erit Yosef,* §19

[928] Katz, *ShUT she'erit Yosef,* §19. אכן מעלה עשן קא חזינא הכא, וכמו שהוגד לי גם כן איך מ"כ היה כועס ומתרעם על שלא כתבתי למ"כ בעצמי.

i. **Study**

Students used correspondence to remain in touch with their rabbis, and Rabbi Isserles'

printed responsa contain many such exchanges. Unlike individual responsa that center

around one or two questions regarding one case followed by a lengthy, complex answer,

his correspondence with Rabbi Hirsch[929] contains a series of several short questions, most

of which concern distinct investigations into specific halakhic texts, rather than longer

complex cases drawn from life. For instance, a letter from Rabbi Hirsch contains a series

of twelve short questions, each of which centers on one specific textual source (a passage

from the *Mordekhai* or one point in the *Bet Yosef*). Rather than dissecting a complex,

practical halakhic issue, Rabbi Isserles answered all of them in short, successive

paragraphs, resembling a scholarly text-specific conversation. Rabbi Hirsch was in the

process of preparing *novellae* and glosses on the *Mordekhai* together with his father-in-

law, which is why many of Rabbi Hirsch's questions discuss this work. The student thus

was keeping his teacher involved in an ongoing scholarly project of his.[930]

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[929] Isserles, *ShUT Rema*, §38, 39-§113 and 95, 105, 131 are all communications between Rabbi Isserles and the same student.

[930] From Rabbi Isserles' correspondence with Rabbi Hirsch Elzaser Shur, a student and the son-in-law of the great Rabbi Israel Shakhna, we can reconstruct that a single responsum in the printed work (§40) was preceded by at least five letters that were part of the same conversation – three from the student and two replies from the rabbi. Some of these were printed in the book, while others were not. Rabbi Isserles' book contains several additional exchanges between the two.

See Isserles, *ShUT* Rema, §95, ed. Siev, 417n1, which explains that Rabbi Hirsch and his father-in-law were in the process of writing notes on *Mordekhai*, which explains all of the questions concerning this text. Siev also claims that the volume that purportedly represents Rabbi Isserles' glosses on *Mordekhai* were, in fact, the product of Rabbi Hirsch and his father-in-law's project and were thus not written by Rabbi Isserles himself. See Asher Siev, "Hagahot ha-Rema al ha-*Mordekhai*," (Rabbi Isserles' glosses on the *Mordekhai*) in *Hagut ivrit be-Amerika* (Studies on Jewish themes by contemporary American scholars), ed. Menahem Zohori, Arie Tartakover, Haim Ormian (Tel Aviv: Yavne: 1972), 426-439.

Likewise, Rabbi Beer, another former student, asks Rabbi Isserles about some of the latter's glosses on the *Shulḥan Arukh*. The student's questions were based not on the printed glosses but on manuscripts, perhaps those he had written in his student days under Rabbi Isserles, as the rabbi answers with the following reference to his newly printed work: "Have you not heard yet, did you not see[931] with your own eyes the *Shulḥan Arukh* on *Oraḥ ḥayim* with my glosses that were printed here?" [932] Subsequently, he assures the student that the glosses as they appear in the printed book lack the ambiguities that appeared in the student's manuscript copy. In format and structure, the letter to Rabbi Beer resembles those between Rabbi Hirsch and Rabbi Isserles, containing a succession of multiple, short text-based questions. Responsa of this kind were, in effect, a way for students to continue studying with their rabbis even after they no longer lived close to them. Thus, it also ties the correspondence to the scholarly archive and the rabbi's "working notes," discussed in further depth in the following chapter.

### ii.     Pedagogical Remarks

Responsa permitted rabbis and students to carry on their student-teacher relationship in other realms, in effect, teaching across a distance. Throughout the epistolary exchange between Rabbi Isserles and Rabbi Hirsch, many pedagogical remarks are included, such as Rabbi Isserles' evaluations of his student's questions and educational suggestions. As we have seen, students also received advice and guidance regarding the art and skill of responsa writing itself. In general, Rabbi Isserles often remarks on the scholarly level and

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[931] Isaiah 40:28.

[932] Isserles, *ShUT Rema*, §132. הלא כבר שמעת אם לא ראית בעיניך השלחן ערוך על א"ח אם הגהות שלי הנדפס בכאן, ושם אין מקום לקושייתך. This volume of the glosses on *Shulḥan Arukh*, on volume *Oraḥ ḥayim* (Cracow, 1571), was the only one printed in Rabbi Isserles' lifetime.

the halakhic validity of his student's questions, sometimes rebuking his student: "...this is something simple in my opinion, the explanation is thus, and I am surprised at your sense and your good understanding that you did not notice that which is so clear...." [933] On other occasions, he complimented him, writing, "you asked beautifully with this," [934] or he paraphrased the student's question, stating, "the law is with you, but the question is nothing." [935] In this manner, the correspondence allowed rabbis to continue educating students across the republic, preserving connections and educational allegiance. In some instances, students used responsa to request halakhic help from their rabbis in legal court cases.[936]

### iii.    Moral Guidance

Sometimes, responsa to students were used for moral exhortations. An example can be found in the responsa of Rabbi Luria, in which he rebukes a learned scholar and former student of his who left his wife and children, ignoring the many rabbis who commanded him to return. Although the letter is couched in the language and rhetoric of halakhic responsa – it does, for instance, analyze the different rabbinic opinions on the extent of the religious obligation to rebuke one's fellow and on the permissible amount of time that a husband can be absent from his wife –it is patently an emotional plea for his former student

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[933] Isserles, *ShUT Rema*, §38.2. וזה דבר פשוט בעיני שפירושו הכי, ותיהתי על שכלך וטוב הבנתך שלא שמת לבך על זה שהוא מפורש לנגד עיני.

[934] Isserles, *ShUT Rema*, §38.4. זהו תורף שאלתך ויפה הקשית בזה אבל על פי האמת נראה לי דלא קשה כלל.

[935] Isserles, *ShUT Rema*, §39.1. הדין עמך אבל הקושיא אינה כלום.

[936] In one responsum, Rabbi Isserles comes to the aid of a former student who asked the rabbi for his endorsement in a case that directly implicated the student, who was making a legal claim to his wife's inheritance. Rabbi Isserles, as he mentions, did not personally see the point of writing anything, as he considered it obvious that the student's claim was legitimate. Nevertheless, he indulges the student, and adds: "...since this is so simple to me, I will not lengthen it with proofs, but if it is too little for you, I will add more to it" (Isserles, *ShUT Rema*, §112). ובהיות הדבר פשוט בעיני לא אאריך בראיות, ואם מעט לך אוסיף כהנה וכהנה.

to return home. The index of the first printed edition of the response places the letter under "laws of marriage," but described it as "a letter of rebuke to a learned scholar who traveled to a distant place…"[937] Clearly, the legal discussion is primarily a way of transmitting the emotional and moral sensibilities. Rabbi Luria calls upon the student to "leave your former sins and come, for the sake of your wife and sons, and stop living for this mortal life but rather the eternal life, 'for it is your life and the length of your days'[938]…." Having tried flattery, mentioning his great regard for the student's learning, in an attempt to convince him, Rabbi Luria also uses threats, writing that in the student's attempts to justify his immoral behavior, he "already dived into deep waters and brought up nothing but a *ḥeres* (shard)"; [939] "therefore," Rabbi Luria cautions, "take care that the *samakh* will not be changed into a *mem*." The substitution of *samakh,* the last letter in the word for shard (*ḥeres*), turns it into the word for *ḥerem*, rabbinic excommunication.[940]

### iv.     Games

An idiosyncratic exchange and its unique role can elucidate yet another facet of this rabbinic scholarly community. The end of a letter from Rabbi Luria to Rabbi Isserles contains the following statement: "And please, my lord, show me your honor: a woman who claimed land and homes and seats in the synagogue with her marriage contract[941]

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[937] Luria, *ShUT MaharShaL*, Index, under "laws of marriage," הלכות אישות:
כתב מוסר לחכם אחד שהלך למרחקי׳ להביא טרף לביתו ושהה יותר מעש׳ שנה כו׳
[938] Deut 30:20.
[939] Babylonian Talmud, Tractate *Bava Kama* 91a, an expression that denotes a worthless attempt at explaining something.
[940] Luria, *ShUT MaharShaL,* §55. לכן הנח מהראשונות ובא בגין אשתך ובגין בניך ואל תצפה עוד לחיי שעה אלא
לחיי עולם כי היא חייך ואורך ימיך כי כבר ראית שצללת במים אדירים והעלית חרס ולכן תראה של איחליף סמ״ך במ״ם…
[941] Meaning that she used the debt owed to her in the marriage contract after her husband's death to claim these items.

[followed by a halakhic question…].[942] And I adjudicated that they cannot, and my proofs are hidden with me until I see your words." [943] If the only purpose of responsa were the exchange of halakhic information, this is a strange way to present the question; first, it is introduced in an almost taunting register, "And now, my lord, show me your honor" which is an allusion to Moses' request to understand God.[944] Even stranger is the declaration that Rabbi Luria is already satisfied with his own answer but nevertheless refuses to reveal it before seeing his colleague's explanation. The halakhic question here constitutes a kind of challenge, a riddle or test for a scholar to prove his abilities, and the recipient understands it as such.

Rabbi Isserles considers this question a distinct element of the correspondence, and he therefore decides to answer in a separate booklet. In two separate letters, Rabbi Isserles refers to this question using the words "you tested/checked me."[945] He also addresses the decision to conceal the original answer, calling out Rabbi Luria's intention to present a challenge: "… I thought that it is an advantage and a great thing to display all … And his highness announced himself to me with concealment.... And what did his honor wish to tell me with this, if not to scare me and frighten me so that I will fear answering … in any

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[942] Rather than having to give back the lands and seats that she confiscated.

[943] ונא אדוני הראני כבודך, אשה שגבתה בכתובה קרקעות ובתים ומקומות בית הכנסת. §6, *ShUT Rema* ,Isserles
אם העשירו אח"כ הבנים אם יכולין לסלקה במעות מזומנים. ואני פסקתי דלא, וראיתי כמוס עמדי עד שאראה דבריך.

[944] Exodus 33:18.

[945] מה שהשיב לי מר בענין הפסק ובדק לי בענין הכתובה, אחבר קונטרס .38 ,Siev .ed ,7§ ,*ShUT Rema* ,Isserles
אי"ה ואשלחו למר.

Isserles, *ShUT Rema*, §9, ed. Siev, 42 (emphasis added). ומה שבדקני מר בשואלו ממני שאחוה לו דעתי בענין
שומא של כתובה אם הדרא אי לא, וז"ל דמר: ונא אדוני הראני כבודך, אשה שגבתה...עכ"ל דמר. הנה גופא דעובדא לא ידעתי וגם
השאלה סתומה מאד, ולכן אצטרך למשש בה מכל הצדדים שאוכל למצוא בדעתי טעמו דמר ולהשיב כפי מיעוט שכלי.

case, I will speak against rabbis and not be ashamed[946]....”[947] Thus, the question was posed

by Rabbi Luria and received by Rabbi Isserles as a kind of test, as the words “checked me,”

and Rabbi Luria’s decision to hide the correct answer make abundantly clear. Although his

reasoning was concealed, Rabbi Luria did mention his ultimate conclusion at the outset.

Rabbi Isserles, perhaps precisely because he was taking this up as a challenge, disagreed

with the conclusion – reasoning unseen – and set out to prove the exact opposite. Rabbi

Isserles ends the letter by sending regards to relatives and reassuring Rabbi Luria that he

will care properly for his brother, who was coming to town.

The continuation of the exchange bears out the nature of these responsa as

belonging to a kind of scholarly game. Rabbi Luria’s own answer to the halakhic question

(the one he had prepared in advance) can be found in his printed responsa, followed by a

summary of Rabbi Isserles’ attempt at resolving it, interspersed with criticism. Rabbi

Isserles never asked Rabbi Luria for the correct answer,[948] which insulted the latter: “And

I will respond … the law that I wrote, which is as follows ... and you girded your loins

bravely to show us miracles and say the opposite against me, and you decided the issue for

yourself to the extent that you did not even ask me to show you my opinion, rather you

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[946] Psalms 119:46. “I will speak of thy testimonies against kings and will not be ashamed.”

[947] Isserles, *ShUT Rema*, §7 ומר בסתום חכמה הודיעני במה ששאלני אדוני, וז"ל: והנה פסקתי דלא וראייתי כמוס עמדי עד שאשמע דבריך. ומה הודיעני מר בזה אם לא להבהילני ולהפחידני שאירא מלענות על רב. ומכל מקום אדבר נגד רבנים ולא אבוש לומר מה שבדעתי על זה.

The challenge is mentioned once again in the printed collection, when Rabbi Isserles starts a response with the disclaimer that, although he had intended to send the test as a separate enclosure, the scribe ended up copying it as part of the larger letter: “Now I will come to negotiate concerning the writings of my lord, and I wanted to compose it in a separate booklet but the scribe tricked me and connected it all together, and they became one in his hand.”

Isserles, *ShUT Rema*, §8. אך ומעתה אבא לישא וליתן על הכתב של אדוני והיה בדעתי לחברו לחברו בקונטרס בפני עצמו. שהסופר מעל בי וחברו יחד והיו לאחדים בידו.

[948] Isserles, *ShUT Rema*, §8, which is Rabbi Isserles’ attempt at solving the question, indeed does not include a request for Rabbi Luria’s answer.

treated [your decision] as though it was adjudicated in the court of the Prince." [949] Having

voiced his annoyance at not being asked to reveal his own opinion, Rabbi Luria continues

with an oath before nonetheless presenting his opinion, unprompted: "On God's life, if not

for my love for you, I would not reveal to you my opinion as you did not ask for it, but it

is Torah study, and I will not hold myself back from saying it, and if you accept it, accept

it." [950] What follows is a complete dismissal of Rabbi Isserles' approach to the issue,

"Know, that all the proofs that you presented, I already knew their proofs as well as the

rejections of them...."[951] Rabbi Isserles also wrote a defense to that takedown,[952] which

Rabbi Luria summarizes, laced with pointed remarks such as, "By the life of God … you

did not grasp the root of the words … until I awakened you regarding this ... *now* you have

grasped the root of the issue, but before you did not...." [953]

A similar phenomenon to the above can be observed in the writings of Rabbi David

Darshan, a student of Rabbi Isserles who was a popular preacher belonging to the

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[949] Luria, *ShUT MaharShaL*, §50. ואשיב ואומר הדין שכתבתי דלא הדרא שומה גבי כתובת אשה ואזרת כגבור חלציך להראות פלאות לומר היפך נגדי והחלטת הדבר לעצמך עד שלא בקשתני אפילו להראות דעתי אלא כאילו נפסק בבי דינא של בי נשיאה.

[950] Ibid. חי ה' לולי אהבתך לא הייתי מגלה דעתי מאחר שלא בקשתני אבל תורה היא ולא אמנע מלאומרה אם תקבל תקבל.

[951] Ibid. ...דע שכל הראיות שהבאת כבר ידעתי ראיותיהם ודחיותיהם.

[952] Not all the letters of this exchange are printed in *ShUT MaharShaL*, and, as we see, the order of the correspondence in the book is not chronological. We know that Rabbi Luria first wrote his own answer, then asked Rabbi Isserles (without showing his answer), then received the latter's responsa, then criticized it, received a response to this criticism, and finally responded to that defense as well. In Rabbi Luria's book, the responsum with his original opinion also includes his very last response. This should not be a problem if we consider, as I argue we should, that the book may be based on Rabbi Luria's letter book, in which he kept records of his correspondence that were not necessarily originals or word-for-word copies of the actual letters. He may have taken his original opinion and summarized his final response at the bottom and kept these together with the letters from Rabbi Isserles that were part of this exchange. See chapter 6 in this dissertation for more.

[953] Luria, *ShUT MaharShaL*, §49. חי ה' לא אדע מה אשיב חורפי דבר כי מרגיש אני שלא ירדת כלל לשרש של דברי התו' עד שעררתי אות' בעניין....וכן כתבתי בפסק שלי, ובטוח אני במעלתך שעכשיו ירדת לשרש של העניין אבל לא מקודם...

secondary intelligentsia. His printed collection of sermons, entitled *Shir ha-ma'alot le-David* (A song of ascent for David), contains additional material, including a few responsa, one of which bears the following description: "With this question, the *gaon* our master the rabbi Yakov Reiner, the head of the yeshiva, tested me in the year 1557 in the holy community of (Ferrara), and he is now the head of a yeshiva in the land of Ashkenaz."[954] Rabbi David also sent a copy of his attempted response to his rabbi, Rabbi Isserles, perhaps to find out whether he had answered well.[955] In Rabbi Luria's collection, we also find two responsa that include a few lines of approval from more senior rabbis at the bottom – yet another example of authors of responsa showing their writings to colleagues and superiors other than the designated recipient, for intellectual feedback or halakhic backing.[956]

These responsa aim not only at resolving questions of inheritance and marriage contracts but also function as an intellectual game to challenge and intimidate, to forge

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[954] *Shir ha-ma'alot le-David* (Cracow, 1571), 8a. בזאת השאלה בחן אותי הגאון מהר"ר יעקב ריינר ריש מתיבתא שנת שי"ז לפ"ק בק"ק פיררא והוא ריש מתיבת' לעת עתה בארץ אשכנז.

[955] This letter was included in the printed responsa of Rabbi Isserles without any mention that it was, in fact, written by a student, and not authored by Rabbi Isserles himself, leading many to assume that the latter wrote it. It was probably found among his correspondence and printed. See Isserles, *ShUT Rema, §62,* ed. Siev, 285. The note by Siev there (*) points out the mistake.

[956] Isserles, *ShUT Rema, §48-49.* As mentioned earlier, Rabbi Isserles himself also showed a responsum to Rabbi Meir Katzenelbogen of Padua, who was almost fifty years his senior. In addition to providing feedback on the style and form of the letter, which we focused on earlier, Rabbi Katzenelbogen also evaluated the halakhic reasoning: "I already received an *agudah* (bundle) of writings with the second composition that you wrote to remark upon the decision of the Karo, and you did well, because you found a way to contradict all his statements." See Luria, *ShUT MaharShaL*, §15, §1. Both contain a type of approbation at the bottom:

In §1: יפה כיון וכתב האלוף הגאון על ככה כמסיני למשה הלכה: נאם יצחק ב"ר בצלאל ז"ל הגר בלאדמיר. This is arranged in a typographically separate part of the page in the first edition.

In §15: יפה כתב ויפה דן נאם יצחק ב"ר בצלאל הגר בולאדמר. The rabbi in question was Rabbi Yitzḥak ben Beẓalel, the rabbi of Ludmir, who was older than Rabbi Luria. He wrote responsa and glosses, which did not survive. One responsum from Rabbi Yitzḥak is printed in *ShUT ha-BaḤ ha-ḥadashot* §70). In another responsum, Rabbi Luria attacks Rabbi Yitzḥak over the rights to collect the alcohol tax (§35-36), which the latter seems to have adjudicated on his own. Rabbi Luria then sends this to Rabbi Yosef Katz, who thinks that Rabbi Luria was wrong to condemn Rabbi Yitzḥak. See *She'erit Yosef,* ed. Siev, 52n1 (§17) and Meir Rafeld, "*Ha-MaharShaL ve-yam shel Shlomo*" (Rabbi Shlomo Luria and the *sea of Shlomo*) (Ph.D. diss., Bar Ilan University: Ramat Gan, 1991), 48-49.

connections and to determine intellectual status.[957] One-upping and intellectual jousting

frequently took place between the lines of responsa, but this type of responsum dedicated

*entirely* to such a pursuit makes explicit the discursive functions hiding behind those hints

of competition. Beyond solving pressing halakhic problems and sharing essential

information, responsa were used as a game to educate younger members, inviting them to

join the rabbinic community. It was a way of initiating some into the community while

excluding others and establishing and clarifying the "rules of the game." In modern

theories, both languages and discourses are often compared to games (respectively by

Wittgenstein and Foucault, but also by "speech act" theorists such as J. L. Austin),[958] whose

rules are taught, established, enforced, and clarified through use within a community. The

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[957] For a medieval precedent of this practice, see Simḥa Goldin, "'Companies of Disciples' and 'Companies of Colleagues': Communication in Jewish Intellectual Circles" in *Communication in the Jewish Diaspora: The Pre-Modern World.*, ed. Sophia Menache (Brill: Leiden:1996), 134: "...Rabbenu Tam perceived that his brother-in-law and colleague was in fact testing his knowledge and cleverness, and so hints at this unpleasant situation: 'I knew that although his questions are deep, he knows the answers, but he asks me in order to test my skills with his riddles.'"

Regarding other kinds of halakhic riddles, see the literature on "*katafot*" or "*kataves,*" which were games and riddles related to halakha that scholars presented to one another, for instance by using numerical values of words or acronyms to refer to halakhic concepts and laws. They were often used for educational entertainment on holidays and other festive occasions. An example of this is §86 in the responsa of Rabbi Luria. The first usage of this term for such phenomena is in 15th-century Ashkenaz in *Leket yosher*, which relates it to Rabbi Isserlein. In the case of the riddles in this discussion, however, the halakhic case was *itself* the riddle. These *katafot*, and their appearance in Ashkenazic halakhic scholarly culture in the period under discussion, support the suggestion that responsa fit somewhere on the spectrum of pedagogical game-like tools, and were perhaps used as such. See David Gulenkin, "*Ha-milah katafot be-ivrit ve-kataves be-yiddish: mekoroteha, perusheha, mekora*" (The word 'Katafot' in Hebrew and 'Kataves' in Yiddish: its sources, meaning, and source), *Sinai* 106 (1990): 165-183; Heinrich Gugenheimer, "*Katafot, katavot, ve-ha-be-la'azim be Sefer MaharYL*" (Katavot, katafot and foreign words in Sefer MaharYL), *Sinai* 108 (1991): 165-182.

[958] See, for instance, Anat Biletzki and Anat Matar, "Ludwig Wittgenstein,"§3.4 *The Stanford Encyclopedia of Philosophy* (Fall2016 edition), ed. Edward N. Zalta, URL=https://plato.stanford.edu/archives/fall2016/entries/wittgenstein.

See Foucault's notion of discourses and "games of truth," in Gary Gutting, "Michel Foucault," *The Stanford Encyclopedia of Philosophy* (Winter 2014 edition), ed. Edward N. Zalta, URL=<https://plato.stanford.edu/archives/win2014/entries/foucault/>.

On speech act and language games, see Mitchell Green, "Speech Acts," *The Stanford Encyclopedia of Philosophy* (Winter 2017 edition), ed. Edward N. Zalta, URL = <https://plato.stanford.edu/archives/win2017/entries/speech-acts/>.

"games" in responsa do just that for the scholarly rabbinic discourse about halakha; they establish and enforce the accepted rules of reasoning.

### v.  Language

The language in responsa is very revealing about the community formed by its participants; although written in Hebrew, only those inside the community understood its subtleties. I shall present two examples of this stratified literacy: Rabbi Isserles was approximately two decades younger than Rabbi Luria, and the age gap was a sensitive issue.[959] Rabbi Luria refers to his opponent twice in a responsum as a "youth," (once in a veiled manner and once more openly). [960] In 1547, Rabbi Isserles was appointed the official rabbi of Cracow. A responsum from Rabbi Luria salutes his colleague in glowing terms: "And the man Moshe is very great ... my beloved relative, the leader – young, but the wisest in his generation – our master the rabbi Rabbi Moshe." [961] Praise inflation was normal in salutations, and although there must have been standards to which members of the community were sensitized, the precise economy of status and praise are not always easily understood by outsiders. Rabbi Siev, who edited the responsa in the 1970s, used this

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[959] Rema's birth date is around 1530; Rabbi Luria was born in 1510. Rabbi Isserles mentions being very young at the time of his appointment, which led Siev and others to confirm that he must have been in his twenties. See Asher Siev, *Rabbi Moses Isserles (Ramo)* (New York: Yeshiva University Press, 1972), 12, for discussion of his age.

[960] Luria, *ShUT MaharShaL*, §49. מה אשיב חורפי and מהר"ר משה יניק - (he who taunts me). This also alludes to ימי חורפי in Job 29:4, where חרף refers to youth (because winter is the time to begin sowing). For the place of this responsum in the larger back-and-forth between the two, see the discussion in the following sections.

[961] Isserles, *ShUT Rema*. והאיש משה גדול מאוד, נערמו מימיו נצבו כמו נאד אהובי שארי האלוף יניק וחכימא דדרא כמהר"ר משה יצ"ו וכל דילך שלום.

Siev writes in a note to this responsum (Isserles, *ShUT Rema*, ed. Siev, 294n2*):

הרש"ל היה קשיש מרבינו ופה הוא מראה לו כבוד גדול אע"פ שאח"כ מתמרמר עליו. יחס הכבוד שהראו אחד לשני התגבר על החיכוכים הזמנים שעברו ביניהם.

example to praise the extraordinary love and respect between the two rabbis. [962] The

acrimonious tone of the remainder of the letter, however, [963] lends credence to Elhanan

Reiner's more recent assumption[964] that such praise was probably meant cynically.

Unwritten rules regarding proper modes of address were readily accessible at the time to

members of this community, enabling the recipient to assess the tenor of this salutation,

although it is more difficult for us to interpret precisely from a temporal and cultural

distance.

Historians frequently cite a particularly spiteful exchange between Rabbi Isserles

and Rabbi Luria (of which only parts have made it into the printed collections) because of

its allusion to Aristotle.[965] At first glance, the contents seem purely halakhic, dealing with

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[962] For example, in the opening of §7 (in ed. Siev), "Who can say his strengths and glories, it is ... my relative our master and rabbi Rabbi Moshe, may the Lord preserve him, and greetings also to the throne and the whole camp who camp around his divine presence. May God grant that his throne remain complete without any attacks...."

[963] The correspondence continues with an accusation that Rabbi Isserles had purposefully let the wrong people read a responsum in which the latter attacked Rabbi Luria's position, thus making him look bad.

[964] Reiner mentioned this in conversation.

[965] This responsum has often been quoted as one of the key texts for the so-called "Kupfer thesis," named for an article by Ephraim Kupfer, "*Le-dmuta ha-tarbutit shel yahadut Ashkenaz ve-ḥakhameha ba-meot ha-14-15*," (Concerning the cultural image of ashkenazic Jewry and its intellectuals in the 14th-15th centuries.) *Tarbiẓ* 42 (1972-1973): 113-147, which contended that there was a long-standing Ashkenazic tradition of philosophy and rationalism that found its way to Eastern Europe in the sixteenth century; this view countered the earlier thesis that philosophical traditions were imported from the outside, via Italy and the sfardic world. For an enlightening discussion of this thesis, see David Ruderman, *Jewish Thought and Scientific Discovery in Early Modern Europe* (New Haven: Yale University Press, 1995), 54-99.

Historians have often described this responsum as containing an accusation that Rabbi Isserles' students were saying *tfilat aristo* (the prayer of Aristotle), but that is not what Rabbi Luria writes. In the responsum, he writes that he heard that some of the young men (*baḥurim*) have this prayer written in their prayer books. Rabbi Luria blames Rabbi Isserles because, by quoting Aristotle and others, Rabbi Isserles creates the impression of endorsing philosophy and buoying this phenomenon, thus legitimizing it. Rabbi Isserles answers in §7 that he never even saw this. Thus, the responsum, at most, proves that there was such a tradition in Ashkenaz, but it is not conclusive regarding Rabbi Isserles' position regarding this tradition.

Moreover, while this responsum was often cited as proof that Rabbi Isserles was at the center of such an ashkenazic tradition of rationalism, all he claims is that those men who copied the prayer of Aristotle were following the legacy of *their* fathers ( רק כל זה עדיין הוא שורש פורה ראש ולענה ירושה להם *מאבותיהם* מאותן הפילוסופים והלכו בדרכיהם *שהמשיכו עצמם אחר*). None of this implies that Rabbi Isserles was part of this tradition or even saw it in a positive light. Lawrence Kaplan, in an article arguing for an ashkenazic rationalist tradition

the laws of slaughter. The underlying discussion, however, touches upon mystical and philosophical issues. Several letters in this exchange are missing, pointing to the possibility that it was never meant for a print audience and was added by the publishers without too much thought.[966] One of the reasons why this disagreement is so difficult to decipher, apart from the gaps created by the missing epistles, is the language used by the rabbis in their communication.

The stratified nature of rabbinic Hebrew in general and the linguistic and grammatical flexibility of Hebrew in responsa in particular, as well as the rabbis' propensity for wordplay in letters, meant that the potential for allusions, metaphors, and equivocal writing was immense. Rabbi Luria remarks that Rabbi Isserles' statement was problematic and "hard as a stone," using the word *tinra*, the halakhic term for a lump in an animal's lungs. The latter responds that the stone is, in fact, filled with water, symbolizing Torah. The figure of speech develops throughout the exchange, referencing, in no particular

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that continued to Eastern Europe, (Lawrence Kaplan, "Rabbi Mordekhai Jaffe and the Evolution of Jewish Culture in Poland in the Sixteenth Century," in *Jewish Thought in the Sixteenth Century*, ed. Bernard Cooperman [Cambridge, Mass.: Harvard University Press, 1983], 266-282) misleadingly translated and paraphrased this responsum from Rabbi Isserles as follows: "…the rationalist current in Polish Jewry was, as R. Moses Isserles himself states, 'a legacy of *the* fathers,' i.e., …a continuation of the Ashkenazic tradition…" (Kaplan, "Rabbi Mordekhai Jaffe," 267), thus obscuring the fact that Rabbi Isserles clearly excluded himself from this tradition. This erroneous paraphrase then found its way into Ruderman's *Jewish Thought and Scientific Discovery*, where he uses the quote to illustrate this so-called "Kupfer thesis." Ruderman cites Rabbi Isserles (via Kaplan) as writing that the prayer of Aristotle belongs to "the tradition of *our* fathers" (Ruderman, 56, see note there), thus further strengthening the impression that Rabbi Isserles identified himself as part of this tradition. Ruderman concludes, "Despite the obscurity of his [Rabbi Isserles'] answer to his rabbinic colleague [Rabbi Luria], and despite the seeming traditionalism of his astronomical commentary, the pedagogical and theological novelty of Isserles' position should not be overlooked" (Ruderman, *Jewish Thought and Scientific Discovery*, 76). In the original responsum, Rabbi Isserles is clearly distancing and excluding himself from the tradition of "*their* forefathers."

[966] For instance, the first printed letter in this exchange, §5, from Rabbi Isserles to Rabbi Luria, begins with a quote in which Rabbi Isserles cites Rabbi Luria's earlier letter. Within this quote, Rabbi Isserles is cited in Rabbi Luria's words, meaning that letter §5 was preceded by at least two earlier letters that were part of this altercation but did not make it into the printed collection.

order, Moses' hitting the rock and varying interpretations of this episode; the kabalistic meanings of water and rocks in the creation of the universe; the laws of slaughter and different types of lumps in the carcass; and, finally, the validity of Rabbi Isserles' initial argument. These different levels of meaning are deployed simultaneously, and the frequent shifts from one metaphor to another – not to mention a digression asking what is more important, the metaphor, or the signified – make it almost impossible to tell which conversation is taking place at what point or what, precisely, is being discussed.

This veiled language not only reflects the stratified nature of rabbinical Hebrew and the linguistic conventions of responsa, but also it relates to a point discussed often by Daybell, namely, the lack of privacy in these letters. Due to the sensitive nature of some of the issues in this exchange – both the esoteric topics that are broached and the personal nature of the attacks – they may be using this language to hide part of the discussion. At one point, Rabbi Isserles reproaches Rabbi Luria for committing mystical secrets to writing.[967] The shared language thus represents the rabbinic network's shared cultural standards, social norms, and intellectual universe. At the same time, the use of epistolary vocabulary to hide the contents also underscores the hierarchical nature of the rabbinic community; although anyone literate in Hebrew was able to read the words in the letter and anyone familiar with rabbinic scholarship could understand parts of it, some participants in the exchange were nonetheless able to communicate in ways intelligible only to an inner circle, even within this elite group.

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[967] Isserles, *ShUT Rema*, §6 (the responsum is from Rabbi Luria to Isserles, the first citation is the former quoting the latter, the second part is Rabbi Luria in his own name). ואם אדע בהן אין מרדכי לכתוב או לרמוז מהם דבר...הראיתנו מוסר במה שכתבתי דברים פנימיים כאלו...

This language was both deployed and *created* in responsa; it was taught, enforced, and developed by means of responsa itself as personal connections were initiated and evolved, and as social structures were established and negotiated. Moreover, analyzing the characteristics of different readers of responsa through letters that address distinct communities shows that the audience for responsa was stratified; there was an inner circle of scholars and a wider circle from the community at large; each read responsa in its own ways. This leads us to the question: who was the assumed audience for these responsa?

### e. Responsa and Their Audience:
### i. The Open Letter

Often, responsa clearly were not addressed to a specific recipient: In those cases, their introductions point to a different purpose than simply solving a halakhic question. Instead, the author provides the halakhic justification for a previous controversial action. This type of responsum functions as an apologia aimed at those who took issue with the rabbi's halakhic decision. For instance, Rabbi Isserles once performed a marriage ceremony on Friday. The families had some qualms, which delayed the ceremony, bringing it dangerously close to sundown, the beginning of the Sabbath. Rabbi Isserles proceeded with the ceremony because he feared that postponing the wedding would lead the groom's side to change their minds and call off the match, humiliating the bride. Ultimately, the ceremony extended into the Sabbath, which evidently upset some people.[968] After the event, Rabbi Isserles wrote what would become a responsum in his collection (§125), opening not with a salutation to a specific recipient, but with the following address: "And

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[968] These people considered the performance of marriages on Sabbath to be forbidden because the act of marriage involves a transferal of property, which resembles a financial transaction.

I heard behind me the sound of a great noise, that they let a voice go round in the camp[969]

saying, 'Look at Moshe!'[970] regarding the deed that was done by me recently, when I

conducted a marriage … and this is the deed that was done."[971] What follows is an almost

literary description of the case:

> There once was a man.... And it was in the days that a match was sought ... the father went to the world to come ... and the daughter remained, bereft and lonely.... And it was when the days of … her marriage came to pass ... she saw no sign of the dowry … except for a voice telling her to immerse and prepare herself for her wedding…. And this maiden did as she was commanded by her female neighbors.… They also covered her on Friday with a veil as is the way of the maidens.... And as the evening shadows lengthened and the day was almost over ... the relatives closed their fists.... Also the groom … his heart did not heed anything that the town leaders were speaking to him, telling him not to humiliate a daughter of Israel because of abhorrent money.... And as a result, time was passing by.... And the works of Satan succeeded until the time finally arrived … and the groom agreed to come to the marriage canopy, and so as not to humiliate an upright daughter of Israel, I stood up and officiated the marriage at the aforementioned time."[972]

The narrative of this case is not merely technical; it injects a sense of drama by

describing the events as they unfolded rather than simply summarizing the final situation.

The narration of the chain of events, first portraying the poor father arranging the match,

then his death, and every subsequent occurrence, constantly noting how the time was

passing and "the evening shadows lengthened" was not necessary, but it does draw in the

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[969] Exodus 36:7.

[970] Exodus 33:8.

[971] Isserles, *ShUT Rema,* §125. ואשמע אחרי קול רעש גדול אשר העבירו קול במחנה לומר הביטו אחרי משה, במעשה הנעשה ע"י מקרוב, שסדרתי קידושין תחת החופה כדרך הארץ...והיה בעישון לילה בליל שבת כשעה ומחצה בלילה, והמעשה אשר הכריחוני לזה הוא מבואר נגלה, לכל באי שער עירנו, וזה המעשה אשר נעשה.

[972] Isserles, *ShUT Rema,* §125. איש היה בארץ ותם הכסף ממנו...ויהי בימי שידוכיה...הלך האב לעולמו ...ונשארה הבת שכולה וגלמודה אין לה אב ואם כי אם קרובים נעשו לה רחוקים והעלימו עיניהם ממנה...והיה כאשר באה בימים זמן נישואיה אשר היה ראוי לטבוח טבח...לא ראתה שום תמונת הנדוניא ושאר צרכים, זולתי קול אחד הבא לה שתטבול ותכין עצמה לחתונה כי יהיה לה הנדוניא. והבתולה הנ"ל עשתה כאשר צוו עליה נשים השכינות ושמעה לקולם גם כיסו אותה ביום ו' בהינומא כדרך הבתולות. וכאשר נטו צללי ערב וכמעט קדש היום...קמצו ידיהם ...והיה נחסר מן הנדוניא כמעט שליש הנדוניא. גם החתן נסוג אחור ולא רצה בשום אופן לכנסה ולא שת לבו לכל הדברים אשר דברו אליו מנהיגי העיר, שלא לבייש בת ישראל מכח כסף נמאס. ולא אבה שמוע...וע"י זה נמשך הזמן מכח קטטות ומריבות...והצליח מעשה שטן עד שהגיע הזמן הנ"ל שהשוו עצמן ונתרצה החתן ליכנס לחופה, ושלא לבייש בת ישראל הגונה קמתי וסדרתי הקידושין בזמן הנ"ל

reader. Similarly, the many details, such as the description of the bride's hesitance and the neighbors' convincing her to immerse in the ritual bath and covering her with a veil, serve to introduce emotional elements, rendering the bride completely innocent and her impending potential humiliation even greater.

The language, too, is more lyrical and dramatic than usual, including countless details and powerful biblical allusions, even when superfluous. Compare the above description to Rabbi Isserles' own, much drier reference to this case, in his gloss on *Shulḥan Arukh*'s statement that one does not perform weddings on the Sabbath: "...and there are those who permit … because human dignity is important, and so it is the habit that sometimes when one could not agree about the dowry on Friday until nightfall, that one performs the *ḥuppa* and marriage on the night of Sabbath, as everything was already prepared for the festive meal and the wedding, and it is a humiliation for the bride and groom…."[973] Some of the facts, such as the bride's potential embarrassment, clearly do have some halakhic relevance, but the choice of words and the tenor of the entire description in the responsum is not halakhic; it is emotional.

The description in the responsum concludes with an explanation of why he wrote this down: "And here, since one is complaining about me, I came to remove their accusation from myself, to bring proof and my reason and justification that were with me, and what it was that I relied on...." Everybody was probably talking about this case independently of the halakhic question, as implied by the remark that the case was "known

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[973] Isserles, *Mapah* on *Shulḥan Arukh, Oraḥ ḥayim,* §339:4. מ"מ...ויש מתירין לקדש...הגה: מקדשין ולא
סומכין על זה בשעת הדחק כי גדול כבוד הבריות כמו שרגילין שלפעמים שלא היו יכולים להשוות עם הנדוניא יום ו' עד הלילה דעושין
החופה והקידושין בליל שבת הואיל וכבר הוכנו לסעודה ולנשואין והוי ביוש לכלה ולחתן אם לא יכנוס אז...

and revealed to all those who enter the gates of our town."[974] The public preparations for the wedding and the turmoil caused by the delay was probably enough to attract everyone's attention, and Rabbi Isserles' decision caused some controversy. The responsum explains that "everywhere, and especially in our town which is populous, thank God, there sometimes are five or six weddings on the same day and they extend into the night and nobody says a word...."[975] It was apparently an all too common occurrence that weddings were held on Friday and started so late that they ended up extending into Sabbath. While most such cases were overlooked, this case attracted attention because of the surrounding drama, and, perhaps, because of Rabbi Isserles' prominent standing, which may have led some detractors to fear that his involvement would be understood as a message that weddings on the Sabbath now had a rabbinic seal of approval.

Following his stirring account, Rabbi Isserles provides a long halakhic explanation of his considerations. The halakhic argument is book-ended with yet another general statement addressed to no one in particular:

And with this I conclude … that of course, one should be swift before Sabbath not to arrive at this situation. But, if everything possible was said and done, and the time has slipped away until dark has fallen, and there is a fear that the match will break up or the virgin will be humiliated, etcetera, he who relies to be lenient does not transgress (lit. "lose out"), and he can enjoy the joy of Sabbath peacefully thereafter. And the *mitzvah* can atone for him if his intentions are for the sake of heaven and Peace. Thus writes Moshe, son of my lord and father Rabbi Israel of righteous and blessed memory, also known as Moshe Isserles of Cracow.[976]

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[974] Isserles, *ShUT Rema,* §125. וזה, לכל באי שער עירנו, והמעשה והסבה אשר הכריחוני לזה הוא מבואר נגלה המעשה אשר נעשה.

[975] Ibid. ומה לי להאריך פוק חזי מה עמא דבר בכל מקום, ובפרט בעירנו אשר יש בה הקיבוץ עם ת"ל ולפעמים עושים ה' או ו' חופות ביום אחד ונמשכים עד הלילה ואין פוצה פה ומצפצף...

[976] Ibid.

Such a responsum serves multiple purposes: a defense of Rabbi Isserles' decision from a halakhic perspective directed at his scholarly detractors, a more emotional defense of his actions to less halakhically proficient readers, and a way of emphasizing to both audiences that he made this decision because of the urgency of the situation, although he in no way endorses such actions in general. This would educate the public about the prohibition while also appeasing his accusers by trying to attenuate the strong message that his actions sent. There is no evidence of the steps taken to distribute this open letter, leaving us to wonder whether he posted it in a public place, whether it was read aloud, or copied and sent to specific key figures. Possibly, he simply trusted that, once written, it would reach the desired audiences in the usual ways. He expected that the usual scholarly readers of responsa would judge him on this matter from a halakhic perspective; he hoped the popular audience would react to the dramatic narrative features.

Books of responsa provide multiple examples of this kind of discussion and justification before an anonymous tribunal.[977] The duality of the writing styles in this letter introduces an additional broader audience. The denser, scholarly halakhic argument is

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[977] Rabbi Yehuda Minẓ introduces a responsum by writing that a friend "... ordered me in defense of my own honor not to provide any of the wagging tongues with reasons to protest what I ruled regarding...." See Minẓ, *ShUT MaharY Minẓ*, §3.

Rabbi Yoel Sirkis, a student of Rabbi Isserles, has a responsum that is also an open letter regarding a ruling he made about a divorce document. He introduces it as a defense before a tribunal and a threat to his detractors. See Rabbi Yoel Sirkis, *Tshuvot ha-baḥ* (Frankfurt am Main, 1697), §95:

"And now I have come to suggest my reason and justification before the great heads of the *yeshivot* of Israel in this kingdom, they will see and understand and admit to the truth, as lovers of truth are wont to do.... Here, I have brought in a book my reason and justification ... and anyone who comes to complain and be arrogant and dispute me, I am not worried about my honor at all, but he should be concerned about himself because one day he will have to justify answering for not knowing and thinking that he knows!"

Rabbi Yair Bacharach (*ShUT Ḥavot Ya'ir*, §105) explains that, at a meal with friends, he declined to eat gravy after a flea had jumped inside because insects are not kosher, something that caused the others to ridicule him. After he returned to his home, he sat down to write a halakhic justification of why his decision made sense.

addressed to the rabbinic audience. The letter was written, however, to elucidate and educate a secondary audience who may not have read the technical portion of the letter but was still concerned about the goings on he or she had witnessed or heard about. For this audience, he used a combination of emotional writing and a very clear, simple, and practical conclusion. This kind of responsum, a combination of public letter and apologia, thus teaches us not only about the multiplicity of the functions of responsa but also about the mixed nature of its audience.

### ii. the Forum

Even beyond such open letters, the audience of responsa is still more complex than it seems. As we have seen, some letters that included responsa alongside other enclosures related to a specific case were purposefully created as open letters. But even those letters that were ostensibly addressed to a single recipient had larger implied audiences. In one responsum, Rabbi Luria accuses Rabbi Isserles:[978] "I have received your writing from *Ploni Almoni* (anonymous) smudged and open, as though it were already ancient, so that your desire has been fulfilled, namely that all the eyes of the readers have plowed and navigated through it so that they knew that I have humiliated myself in the eyes of a king like you."[979] He then quotes all the praise that Rabbi Isserles heaped upon him, calling it, "a fatty tail [a

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[978] He opens with the usual praise. See Isserles, *ShUT Rema,* §67: והאיש משה גדול מאוד, נערמו מימיו נצבו כמו נאד אהובי שארי האלוף יניק וחכימא דדרא כמהר"ר משה יצ"ו וכל דילך שלום.

[979] Isserles, *ShUT Rema,* §67. קבלתי כתבך ע"י פלוני אלמוני מטושטש ופתוח כאלו ישן נושן, עד שיצא תאותך אל הפועל שחרשו ושוטטו בו כל עיני הקוראים עד שידעו שנתביישתי בעיני המלך כמותך

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delicacy] with a thorn inside,"[980] meaning that the praise was worthless in the face of Rabbi Isserles' betrayal.

The nature of the accusation itself reveals the assumption that letters were more often than not read by others. Instead of blaming Rabbi Isserles for not guarding the letter more carefully, Rabbi Luria accuses him of exaggerating, knowing full well that the audience for the letter would extend beyond the addressee; he may even secretly have counted on this fact. In keeping with these expectations, Rabbi Luria fights the negative impression by the same means: "Therefore, I have made public in writing, to have it copied by one person and then sent by another (and not your brother-in-law), so that the matter should be made public, just as this issue did here even before your letter reached me, and the whole city was full of tumult[981]…"[982] The communications in responsa do indeed exude a sense of the theatrical, of taking place on a certain platform for a larger audience, a forum composed of fellow scholars, peers, and students.[983] This forum, the imagined aggregate of the potential audience of responsa, was the rabbinic Republic of Letters.

Most importantly, early modern correspondence was not necessarily private in our sense of the word. In her discussion on humanist letter writing, Judith Henderson shows how the very notions of private and public meant very different things in ancient times, in

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[980] Isserles, *ShUT Rema,* §67. The expression comes from the Babylonian Talmud, Tractate *ROSh Hashana* 17a: "R Aḥa, son of R Ḥanina, said, 'we have here a fat tail with a thorn in it.'" תחילת מכתבך, וז״ל: עוקר הרים …וכו'. כל אותן הדברים הם כאליה וקוץ בה.

[981] Isaiah 22:2.

[982] Isserles, *ShUT Rema* §67, ed. Siev, 297. ע״כ גליתי בכתב להעתיק ע״י אחד ושלחתי ע״י אחר שלא ע״י גיסך כדי שיתפרסם הדבר, כמו שנתפרסם פה טרם בא כתבך לידי ונעשה העיר הומיה

[983] On the connection between the public sphere and "theater," and how this relates to the oral and to argumentative transparent discourse, see, for instance, Marcel Hénaff and Tracy B. Strong, "Introduction: Vision, Speech, Theatricality," in *Public Space and Democracy*, ed. Marcel Hénaff and Tracy B. Strong (Minnesota: Minnesota University Press, 2001), 5-6.

the Renaissance, and in modern times. This affects the private or public nature of the letter.

Moreover, different epistolary traditions expect different audiences, be it the more

conversational classical *ars familiaris* revived in the Renaissance or the more formal,

public rhetoric-driven medieval *ars dictaminis*. The medieval letter was "almost never

private, but usually semipublic in nature," [984] a function that persisted in some forms of

humanist letter writing alongside the *ars familiaris*, which was directed at close friends.

There is, additionally, a gap between any officially proclaimed theories and assumptions

about privacy in letter writing and the actual status of letters in practice. In Henderson's

words, "The humanist might write as if he were engaged in a private conversation, but that

conversation was often intentionally, or at least potentially, a public discussion...." [985]

Erasmus stated that his letters were intended for individuals, as opposed to his

books, which were for general consumption. Henderson points out, however, "This

distinction between the letter ... and the book is disingenuous, of course, for like other

humanists, Erasmus composed or at least revised letters with a second … audience in

mind." [986] Humanist letter collections, Henderson explains, are "the equivalent of our

literary review or scholarly journal, as a forum for professional discussion and career

building."[987] Lisa Jardine's seminal work *Erasmus, Man of Letters*, has shown the central

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[984] William D. Patt, as quoted on page 26n31 of Judith Rice Henderson, "Humanist Letter Writing: Private Conversation or Public Forum?" in *Self-Presentation and Social Identification*: *The Rhetoric and Pragmatics of Letter Writing in Early Modern Times, Supplementa Humanistica Lovaniensia* (18), ed. Toon van Houdt, Jan Papy, Gilbert Tournoy, and Constant Matheeussen (Leuven: Leuven University Press, 2002), 17-39.

[985] Henderson, "Humanist Letter Writing," 17-18.

[986] Henderson, "Humanist Letter Writing," 33 (Quote from standard edition of Erasmus' *Opera omnia Desiderii Erasmi Roterodami*, translation and quote from Henderson, 33n67).

[987] Henderson, "Humanist Letter Writing," 25.

role that such letters played in Erasmus' self-fashioning. [988] In an article about the letters

of the humanist Joseph Scaliger (1540-1609), Dirk Van Miert points out: "In the practice

of Renaissance epistolography, recipients customarily showed letters to their peers, who

sometimes copied them out or excerpted them."[989]

Even as notions of confidentiality and ideas of privacy as we know it were taking

shape with the rise of Protestantism, letters were considered as belonging to a private

sphere that was not strictly private. Van Miert points out: "...even if letters were read by

people surrounding the recipient, as they usually were," this would still be "regarded as

falling within the boundaries of the confidentiality of mail, even if he [the author of the

letter] never specified how to define the circle of those authorized readers." [990] In other

words, even when humanists did expect letters to be private, this did not exclude showing

them to a certain circle, and they were aware that their correspondence would sooner or

later reach audiences other than the addressee. "Scaliger knew that his letter would be read

by more than one person, and he seems not to have objected to this, as long as the

distribution was kept to a minimum." [991] This applies also to rabbinic responsa, and the

participants in this epistolary culture did not expect otherwise.

The notion of an early modern sphere that was private in some ways, but not private

precisely in our sense of the word facilitates our understanding of the audience of early

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[988] Lisa Jardine, *Erasmus, Man of Letters.* Jay Berkovitz's study of the responsa of Rabbi Yair Ḥayim Bacharach as an act of self-fashioning is an important reading in this vein for seventeenth-century responsa. See Jay R. Berkovitz, "The Persona of a *Poseq*: Law and Self-Fashioning in Seventeenth-Century Ashkenaz," *Modern Judaism: A Journal of Jewish Ideas and Experience* 32, no. 2 (2012): 251-269.

[989] Dirk Van Miert, "Confidentiality and Publicity in Early Modern Epistolography: Scaliger and Casaubon," in *For the Sake of Learning*, 1: 3-20, particularly pages 4-5.

[990] Van Miert, "Confidentiality and Publicity," 18-19.

[991] Van Miert, "Confidentiality and Publicity," 18-19.

modern rabbinic responsa. In order to envision the readership of responsa, it is helpful to avoid a public/private binary approach and, instead, consider such intermediary notions such as the "semiprivate sphere" suggested by Van Miert or the notion of "coterie" publication introduced by Love. These allow for notions of a discussion that is public and meant for a larger audience than the recipient alone, on the one hand, but, on the other, is limited to a very close-knit exclusive community. According to Van Miert, showing a letter to people "surrounding the recipient" was an acceptable form of sharing such correspondence. Printing correspondence was considered crossing the boundary from private into public.[992] This intermediate form of publication, to a forum both carefully selective yet decidedly public, can help us comprehend the connection between the responsa correspondence and the community that it created.

This semi-private audience was, in fact, a constitutive aspect of responsa. Responsa are performative in that they convey a sense of the theatrical, of taking place on a certain platform for a larger audience, a forum composed of fellow scholars, peers, and students. This audience is a crucial factor in responsa communications and the establishment of its discourse. Discourses are determined not only by their active participants, but also include the entire implied audience, including "passive" observers, because their horizons of understanding affect the formation of the discourse, as the "feedback" circuit in communication studies clarifies.[993] The notion of a "forum" encompasses the public,

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[992] Van Miert, "Confidentiality and Publicity," 4-5.

[993] The meanings and messages in the discursive "production" are organized through the operation of codes within the rules of "language." Thus, each stage will affect the message (or "product") being conveyed as a result of its "discursive form." See, for instance, Theodor Clevenger, Jr. and Jack Matthews, "Feedback," in *Communication Theory* (2nd ed.), ed. C. David Mortensen (London and New York: Routledge, 2017), 41: "…the term feedback refers not to any catalog of listener behavior, but to a *relationship* between

theatrical element while also emphasizing limited accessibility; the responsa were simultaneously public and private, accessible yet elite.

If we combine the elements contributing to the building of a sociability – the discursive aspects of education, the use of an internal language, intellectual games establishing circles of insiders, and the semi-public nature of the responsa, we can conclude that the community that responsa created was a discursive forum. It created, negotiated, and enforced the accepted scholarly discourse, which took place in an open, but elite forum. The creation of this community with its concomitant discourse is the most important meaning of the Rabbinic Republic of Letters, as comparisons to the humanist republic and theories of common law will show in the next section.

4. **CONCLUSION:**
   **RESPONSA AND THE RABBINIC REPUBLIC OF LETTERS**
   a. **Comparative Questions**

An exploration of intellectual correspondence among rabbis – an erudite scholarly community living at the same time and in the same geographic sphere as the members of the humanist Republic of Letters, and displaying similar practices and material conditions – can yield comparative insights on the role of material circumstances, social structures, knowledge practices, and power in early modern Europe. It can shed light on the specificities of humanism and its particular cultural context, on the one hand, and rabbinic scholarship, on the other. Burke lists seven criteria for testing the extent to which the

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the behavior of the speaker, the response of the listener, and the effect of that response on the further feedback of the speaker."

republic of letters, which definitely existed in the consciousness of its members, as Bots
and Waquet have shown,[994] "was translated into practice." They are: invitations to foreign
scholars, the internationalization of libraries, visits to famous scholars as part of the
practice of travel, the album amicorum, the learned society, the learned journal, and
correspondence.[995]

Some phenomena do not have a parallel in the Jewish world for this period. For
instance, the Jewish scholarly periodical was non-existent until the eighteenth century and
limited even then.[996] It is significant to note, however, that the first such periodicals were
outgrowths of responsa – *Pri eẓ ḥayim* (1721-1761), periodically published rabbinical
responsa, which presented the novellae of the scholars of *Eẓ ḥayim*, the sfardi *bet midrash*
in Amsterdam; one historian described it as "another sign of an emerging republic of
letters."[997] Another early attempt at publishing a rabbinic periodical was made by Rabbi
Yiẓḥak Lampronti (1679-1756) in Ferrara, and, likewise, contained responsa.[998] Other
entities, such as libraries,[999] display somewhat similar practices to the non-Jewish world

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[994] Bots and Waquet, *La République*, chapter 1.

[995] Peter Burke, "Erasmus and the Republic of Letters," *European Review* 7, no. 1 (1999): 5.

[996] The first Jewish newspaper, the *Gazeta de Amsterdam*, dates from the 1670s. It was aimed at
sfardi merchants and focused on trade. See Bar-Levav, "Amsterdam and the Inception," 225-238. One scholar
uses a term by Daniel Gutwein to point out that *Pri eẓ ḥayim* shows the adoption of a modern pattern for
traditional communication. See Kerstin von der Krone, "The Representation and Creation of Spaces through
Print Media," in *Space and Spatiality in Modern German-Jewish History*, ed. Simone Lässig and Miriam
Rürup (New York: Berghahn Books, 2017), 127.

[997] Bar-Levav, "Amsterdam and the Inception," 235.

[998] This publication, titled *Reshit bikurei kaẓir Talmud Torah de kehilat-kodesh Ferrara* ("The first
of the first fruit of the harvest of the Talmud Torah of the holy community of Ferrara") failed after three
issues. See David B. Ruderman, "Contemporary Science and Jewish Law in the Eyes of Isaac Lampronti of
Ferrara and some of his Contemporaries," *Jewish History* 6 (no. 1-2), 1992: 211-224.

[999] Although some historians considered the *bet midrash* to be a kind of public library for scholars,
there is little evidence of any real libraries among sixteenth-century rabbinical scholars that could be
compared to those used by humanists. See Roberto Bonfil, "La lecture dans les communautés juives de
l'Europe occidentale au Moyen Âge," in *Histoire de la lecture dans le monde occidental*, eds. Guglielmo

that we can investigate.[1000] One could draw some comparisons between international

learned academies and *yeshivot*, where students often crossed borders to study with

different rabbis. Traveling scholars and invitations of scholars to academic posts abroad[1001]

are another comparable criterion. As many have pointed out, the degree of geographical

mobility at many different levels of Jewish life increased greatly in the early modern

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Cavallo and Roger Chartier (Paris: Éditions du Seuil, 2001, 2nd ed.) 182-221; and Simcha Assaf, "*Sifriyot batei-midrash*," *Yad la-koreh* 1 (1947): 170-172; most of his examples, however, are from a later time period.

In the 17th century in Europe, see also L. Fuks, "Jewish Libraries in Amsterdam in 1640," in *Aspects of Jewish Life in the Netherlands: A Selection from the Writings of Leo Fuks*, ed. Renate G. Fuks-Mansfeld (Assen, NL: Van Gorcum, 1995), 38-57.

Yosef Hacker presents proof for semi-public libraries called "*midrash*"[sing.] among early modern sfardic communities. Testimony points to one such institution in Salonika, and Azariah de Rossi mentions having found the books that he was looking for in a "*midrash*" in Ferrara, but there is little knowledge of such a phenomenon being widespread or common. See Yosef Hacker, "*Ha-medrash ha-sfaradi – sifriya ẕiburit yehudit*," (The sfardic *midrash* – a Jewish public library.) in *Rishonim ve-aḥaronim: meḥkarim be-toldot Yisrael mugashim le-Avraham Grossman* (Earlier and latter ones: studies in Jewish history presented to Avraham Grossman), ed. Yosef Hacker, Yosef Kaplan, B. Z. Kedar (Jerusalem: Merkaz Zalman Shazar, 2009), 263-293. The reference to Azariah de Rossi is on page 275n50.

[1000] In the ashkenazic world in Eastern Europe, there is evidence, if not of an actual library, then at least of a plan to build one. Rabbi David Darshan describes his plan to, "build a *midrash* … And I will place within it ... four hundred select books and more, and they will all be handsome ... and I collected them from the four corners of the earth and have spent on them several hundreds of golden coins ... and these books will be ready and waiting for anyone who wishes to understand and know God." See David Darshan, *Shir ha-ma'alot le-David*, Introduction, 2a: ואני נתן בלבי להעמיד מדרש לכבוד אלקי ישראל באיזה מקום שיזמין לי הקב"ה. אשר אכניס לתוכו ליקר הוד תפארת השמים והארץ ארבע מאות ספרים נבחרים ויותר. והן הן כולן בעלי יפת תואר...אשר טרחתי בעבורן מזמן בחרותי שהייתי בן י"ט שנה כידוע להגאון...עד עתה כ"ה שנה, וקבצתי אתן מד' פינות העולם והוצאתי עליהם כמה מאות זהובים. See Avriel Bar-Levav, "Ma efshar la'asot be-400 sfarim? Haẓa'a le-sifriya Yehudit, Cracow shnat 1571" ("What Can One Do with 400 Books? A Proposal for a Jewish Library, Cracow 1571"), *Zmanim* 112 (2010): 42-49. He proposes to be in residence at the library to aid scholars with their inquiries and even to write to rabbis with questions that he cannot answer. David Darshan, *Shir ha-ma'alot le-David*, Introduction, 2b: ומה שיקשה מהשואל ועצמי אני אטריח לשאול מן הגדולים. Siev believes that a question sent from Rabbi David in Isserles, *ShUT Rema*, §81, is, in fact, such an inquiry. The question ends, "So I beg of you, your small student David Darshan with agreement of the friends." כה מעתיר תלמידך הקטן דוד דרשן בהסכמת החברים. See Isserles, *ShUT Rema*, ed. Siev, 334n6.

[1000] Elḥanan Reiner, "Darshan noded madpis et sfarav: perek alum be-toldot ha-tarbut ha-ivrit be-Europah ba-meah ha-17," (A wandering preacher prints his books: A hidden chapter in the Jewish cultural history of 17th-century Europe) in *Ḥut shel ḥen: Shai le-Ḥava Turniansky*, (A strand of favor: A gift to Ḥava Turniansky) ed. Israel Bartal et. al (Jerusalem: Merkaz Zalman Shazar, 2015), 123-157. See also David Ruderman, *Early Modern Jewry: A New Cultural History*. (Princeton: Princeton University Press, 2010), 23-41. For correspondence between Rabbi David and Rabbi Isserles, see Isserles, *ShUT Rema*, §62.

[1001] Burke, "Erasmus," 10.

period. [1002] David Ruderman notes the widespread phenomenon of itinerant scholars,

rabbis, preachers, and other intellectual figures in the early modern period and designates

mobility as one of the main characteristics of Early Modern Jewry.[1003] Other criteria could

be formulated that are unique to the Rabbinic Republic, such as, perhaps, the intense

binding of the scholarly community by means of marriage and family ties. Whether this

republic existed to a lesser or a greater extent, its participants most definitely conceived of

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[1002] Sophia Menache points to itinerant scholars as one of the main factors contributing to high levels of communication across Jewish communities as early as the Middle Ages, explaining that they acted as "communication channels." "The centrality of the halakhah in communication developments is further reflected through *wandering scholars and studen*ts who became itinerant either to enhance their erudition or to assure their sustenance.... Whether as visitors or in their capacity as preachers, such itinerant scholars acted as communication channels among the different communities they visited. Itinerancy, moreover, went far beyond irregular transmission of information: it stood at the core of medieval study in general and Jewish learning in particular." (Emphasis in original.) Menache, "Communication," 34.

Yosef Hacker, Yosef Kaplan, and Evelyne Oliel-Grausz have shown this for the sfardic diaspora in Europe and the Ottoman Empire. See Evelyne Oliel-Grausz, "La Circulation du Personnel Rabbinique dans les Communautés de la Diaspora Sépharade au XVIIIe siècle," in *Transmission et passages en monde juif*, ed. Esther Benbassa (Paris: Publisud, 1997), 313-34l; Yosef Hacker, "Spanish émigrés in the Ottoman Empire in the fifteenth to eighteenth centuries," [Hebrew transliteration] in *Ha-pezurah ha-yehudit ha-sfaradit aḥarei ha-gerush*, ed. Michel Abitbul et. al (Jerusalem: Merkaz Zalman Shazar, 1993), 27-72; Yosef Kaplan, "The Travels of Portuguese Jews from Amsterdam to the 'Lands of Idolatry' (1644-1724)," in *Jews and Conversos: Studies in Society and the Inquisition; Proceedings of the Eighth World Congress of Jewish Studies Held at the Hebrew University of Jerusalem, August 16-21, 1981*, ed. Yosef Kaplan (Jerusalem: Magnes Press, 1985), 197-224.

The travels of Ashkenazi Jews from the German Lands to Eastern Europe and back again are described in Mordekhai Breuer, *German-Jewish History in Modern Times, Volume 1: Tradition and Enlightenment 1600-1780*, ed. Michael A. Meyer (New York: Columbia University Press, 1996) and in Eric Zimmer, *Gakhalatan shel Ḥakhamim: prakim be-toldot ha-rabanut be-germania ba-meah ha16-17. (The Fiery Embers of the Scholars: The Trials and Tribulations of German Rabbis in the Sixteenth and Seventeenth Centuries)* (Beer Sheva: Ben Gurion University Press, 1999), 12-13. On the rivalry between German Ashkenazic rabbis and Polish Ashkenazic rabbis, see also Eric Zimmer, "rabanei Germania ba-meah ha16 ve-zikatam le-rabanim be-tfuẕot aḥerot" ("The 16th Century Rabbis of Germany and their Attitudes towards Contemporaries beyond their Borders"), *Proceedings of the World Congress of Jewish Studies* (1985): 129.

Moshe Idel has shown this for the spread of mystical ideas from Safed to Italy. On the role of traveling scholars in the transmission of new ideas in kabalah from Safed to Italy, see Moshe Idel, "On Mobility, Individuals and Groups: Prolegomenon for a Sociological Approach to Sixteenth-Century Kabbalah," *Kabbalah* 3 (1998): 145-73, and Moshe Idel, "Italy in Safed, Safed in Italy: A Chapter in the Interactive History of Sixteenth-Century Kabbalah," in *Cultural Intermediaries: Jewish Intellectuals in Early Modern Italy,* ed. David Ruderman and Giuseppe Veltri (Philadelphia: University of Pennsylvania Press, 2004), 239-269. For the case of Ashkenaz, see Elḥanan Reiner, *Darshan noded madpis et sfarav*, 123-157.

[1003] David Ruderman, *Early Modern Jewry: A New Cultural History* (Princeton: Princeton University Press, 2010), 23-24.

it as a real community.

Some actual overlap between the two republics occurred, especially among those humanists who were interested in Hebrew as part of their scholarly activity. Some excellent examples of learned Hebrew letters were, in fact, written by Christian members of the humanist Republic, such as Johannes Reuchlin, Christian Wagenseil, or Isaac Casaubon. In the case of the latter, Casaubon expressed great hopes that the conversion of Julius Conradus Otto (formerly Naftali Margaliot from Vienna), with whom he corresponded, and whose letters he found "delightful," would benefit the entire Republic of Letters.[1004] When these overlaps occur, and scholars cross boundaries from one Republic of Letters to another, this "could enable the transmission of knowledge between cultures, but it could also reveal the fault lines between them," as Theodor Dunkelgrün notes.[1005] The comparison of humanist Hebrew letters to rabbinic correspondence can be a stimulating study of cross-cultural adoption, "transposing a humanist literary genre into Hebrew," in Dunkelgrün's words.[1006]

Comparing the two Republics can, in addition, point to the elements shared by both early modern erudite communities – the Christian humanist and the rabbinic – thus emphasizing the independent significance of religiously and ideologically neutral scholarly cultural practices and circumstances. Bots and Waquet have solidly contextualized the

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[1004] Anthony Grafton and Joanna Weinberg, *I have always loved the Holy Tongue: Isaac Casaubon, The Jews, and a Forgotten Chapter in Renaissance Scholarship* (Cambridge, MA: Harvard University Press, 2011), 244. For more on Casaubon's Hebrew correspondence with Otto, see 231-293 and 304; on Scalinger, see 87.

[1005] Theodor Dunkelgrün, "The Humanist Discovery of Hebrew Epistolography," in *Jewish Books and Their Readers: Aspects of the Intellectual Life of Christians and Jews in Early Modern Europe*, ed. Scott Mandelbrote and Joanna Weinberg (Leiden: Brill, 2016), 257.

[1006] Dunkelgrün, "The Humanist Discovery," 217.

members' conscious definitions of the humanist Republic of Letters in their time and place, explaining that, in its Golden Age (1550-1750), participants defined the humanist republic in terms of their scholarly, religious, and political surroundings, sometimes echoing their environs, while at other times juxtaposing their own republic as a kind of utopian mirror image.[1007] Given this contextual definition, it is useful to provide the Rabbinic Republic as a counter-example; an intellectual community in so many ways similar, but lacking such conscious references to itself. Many of the similarities, in fact, reside at the level of erudite practices, technologies, and methods, such as letter writing, travel, and internal social codes, and it may, perhaps, be helpful to balance the more politicized and historically reactive view with these more neutral elements as a significant part of what defined the Republic of Letters. Some correspondence in scholarly communities developed as they did simply because letter writing was an accepted practice, a central part of pedagogy and one of the main ways in which mastery of a language was acquired, practiced, tested and displayed to peers.

Comparing the enormous growth of communication in Christian Europe in the Golden Age of the humanist Republic of Letters to the more continuous development in the Rabbinic Republic before and after the early modern period offers ground for fruitful

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[1007] Humanists defined their community as a body, similarly to ideas of the state in this period; they highlighted its nature as a unified state, as opposed to a fragmented Europe, and portrayed it as universal rather than the divided "Europe of the Christian Princes" (Bots and Waquet, *La République*, 25; reference to Michel Peronnet's term). See Peronnet, "Guerre et paix de la *Respublica Christiana* a l'Europe des princes chrétiens," in *Le cheminement de l'idée européenne dans les idéologies de la paix et de la guerre*, ed. Marita Gilli (Paris: Les Belles Lettres, 1991), 9-18. Humanists emphasized a multi-confessional space, in opposition to the "*cajus regio ejus religio*" that reigned around them. They also highlighted the internal principles of equality and intellectual freedom of the Republic of Letters, calling it, as Pierre Bayle did in the *Dictionnaire*, "an extremely free state" (Pierre Bayle, *Dictionnaire*, under "Catius") in contrast to the absolutist state. The Republic's far-reaching goals of spreading truth widely were also contrasted to the comparatively limited institutional circles of the contemporary Academies. See Bots and Waquet, *La République,* 23-27.

speculation. What factors contributed to this growth, ranging from increased mobility, print, and trade to increasing ideas of universalism due to the "désenclavement planétaire,"[1008]as Bots and Waquet put it. It may, for instance, be interesting to place these ideas of scholarly cosmopolitanism in the context of the emergence of the *Shulḥan Arukh* and its universal aspirations for halakha in a de-localizing, cosmopolitan vein.[1009] Additionally, the humanist Republic of Letters, which is so often read in the teleological terms of its successor, the Enlightenment,[1010] could benefit from comparison to an epistolary community among scholars of halakha that existed at the same time in overlapping areas but boasted no such afterlife. This chapter will utilize investigations of the aspect of sociability and discursivity in the République des Lettres as a tool to comprehend the importance of rabbinic correspondence to its own Republic of Letters. This insight will serve our inquiry of correspondence and its meaning for law. Clearly, however, we have not come close to exhausting the topic; there are many other significant comparisons waiting to be made.

### b.    Discourse and Law

Rabbinic responsa contributed to building a community that we can characterize as a

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[1008] Bots and Waquet, *La République,* 31, citing Pierre Chaunu, *Histoire, science sociale: la durée, l'espace et l'homme à l'époque moderne* (Paris: S.E.D.E.S., 1974).

[1009] This idea was put forth by Elhanan Reiner in his lecture, "The Urge for Codification in the Sixteenth Century: The Project of the Shulḥan Arukh (1531-80)" (presentation, Katz Center for Advanced Judaic Studies, Philadelphia, PA, February 12, 2014). See also Joseph Davis, "The Reception of the *Shulḥan 'Arukh* and the Formation of Ashkenazic Jewish Identity," *AJS Review* 26, no 2 (2002): 251-276.

[1010] To give but two examples, see Charles B. Schmitt, "Science in the Italian Universities in the Sixteenth and Early Seventeenth Centuries," in *The Aristotelian Tradition and Renaissance Universities* (London: Variorum Reprints, 1984), 42 n14. See Gianna Pomata, "Observation Rising: Birth of an Epistemic Genre, 1500-1650," in *Histories of Scientific Observation,* ed. Lorraine Daston and Elizabeth Lunbeck (Chicago: University of Chicago Press, 2011), 45-80. Many of Elisabeth Eisenstein's arguments could also be read in this vein.

discursive forum, but what is the significance of this discursive forum for the halakha that constitutes the contents of the responsa? The Rabbinic Republic of Letters consisted of a small number of members and, as the previous section has shown, it was elitist in nature, scholarly in occupation, and intellectual in its focus. It was, however, closely linked to the larger transnational Jewish community in many ways; the two networks supported one another and frequently overlapped. It is, therefore, crucial not only to understand how the discursive forum impacts halakha in the scholarly sense but also to examine its effect as a legal system on this larger community. In order to answer the first question, we turn to scholarship by social, cultural, and intellectual historians of the humanist Republic of Letters in the early modern period. This scholarship, with its insights into a learned community that existed in the same space and time as the Rabbinic Republic of Letters and inspired the use of this term, is helpful for considering the significance of the rabbinic forum for its scholars. I shall utilize concepts from legal theory to delineate the connection between the scholarly community and the legal authority of the halakhic discussions for the Jewish community in general.

### c. The Meaning of the Republic: Cooperation, Consensus, Openness, Equality

In the case of the *République des Lettres*, what is the significance of the idea that an amorphous group united in the same communication network considers itself one "Republic?" Bots and Waquet have pointed to the participants' self-image as members of an "invisible church."[1011] Burke confirms that the Republic of Letters is "an invisible or

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[1011] One can draw obvious comparisons (and distinctions) between this invisible church and the halakhic universe – both imagined religious kingdoms with aspirations that crossed borders. In 1718, Christoph August Huemann compared the humanist universe to the "invisible church." See Bots and Waquet, *La République,* 20.

imagined community."[1012] What is the central significance of a community in these cases? Erasmus, the most exemplary member of the humanist Republic of Letters, emphasized its cooperation across confessions and geographical boundaries;[1013] cooperation in the Rabbinic Republic also often takes place through letters.

Beyond this epistolary aspect of cooperation, Burke points out a more central element in the idea of the humanist Republic – that of consensus.[1014] This also applies to the Rabbinic Republic: practically, responsa contributed to a shared canon of sources, rules, and logic, enabling rabbis to compare, inform one another, and unify their respective halakhic textual collections. For instance, Rabbi Isserles informs a former student that he recently reviewed a certain halakhic work that they had previously studied together. In the meantime, new interpretations had come up. He gives the student instructions should he wish to copy the new interpretations from the glosses of current students to add to his own, and he directs him to a scholar in Poznan who noted the most up-to-date teachings in his glosses and would let him consult it.[1015] The idea of consensus, however, is far more significant than the practical aspect of sharing texts and opinions.

The idea of intellectual equality[1016] was another crucial element in the humanist community. In his *Dictionnaire,* Bayle explains that the Republic of Letters "…est un Etat extrêmement libre. On n'y reconnoit que l'empire de la vérité et de la raison; et sous leurs

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[1012] Burke, "Erasmus," 8, and Bots and Waquet, *La République,* 31-32.

[1013] Bots and Waquet, *La République,* 31-32.

[1014] Burke, "Erasmus," 8.

[1015] Isserles, *ShUT Rema*, §38: וכן מצאתי כתוב במרדכי שלי שכתבתי הפירוש אצל העמוד בחורף שעבר. ואל תתמה שלא פירשתי לכם כן בהיותכם עמי כי אין כי דומה שונה פרקו...ועיין בספר המרדכי של מהרר מרדכי מפוזנא ותמצאנו שם, כי ידעתי שכתבו במרדכי שלו.

[1016] This is already emphasized by Bayle in the *Dictionnaire.* See Bayle, *Dictionnaire historique et critique* (Rotterdam: Reinier Leers, 1697), s.v. *Catius.*

auspices on fait la guerre innocemment à qui que ce soit." [1017] There is an aspect of liberty and freedom to the Republic – related to a lack of hierarchy and to the use of reason – that is shared by the Rabbinic Republic. Although the dynamics of hierarchy among rabbinical scholars determining who was worthy of participating in the rabbinic correspondence were clear, in many ways this correspondence was an open playing field: any student of halakha could attempt to write a responsum to any rabbi (provided he used the correct salutations and appropriate apologies). The type of reasoning employed in responsa was not *based* on hierarchy, meaning that hierarchy was not considered the source of authority, and a more prestigious status was not a convincing argument in itself. The reasoning in responsa, in essence, requires nothing more than the knowledge and mastery of specific principles and a certain body of texts, thus opening the discipline to any halakhic scholar without excluding anyone a priori.

The various definitions of the meaning of "republic" – an imagined community, the notion of cooperation and sharing information, the idea of consensus, and intellectual equality – are all profoundly connected. A "republic" in this sense does not mean that the participants lived in a particular geographical place or were part of the same milieu or political sphere. Rather, it implies that this community shared paradigms, that they are part of one common discourse, that which Bayle calls "la vérité la raison." A discursive community establishes what constitutes truth and reason, or, in other words, the accepted texts and the accepted modes of reasoning that determine the community's discourse. The

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[1017] As Burke adds, "at least in principle." See Burke, "Erasmus," 8. Bots and Waquet, too, point to centers, peripheries, hierarchies and other internal distinctions within the Republic.

idea of an open, free, scholarly community is thus founded on the idea of a dynamic

consensus, i.e., the shared paradigms of a discursive community. This discursive element

defined the humanist Republic of Letters and its rabbinic counterpart at their most

fundamental level.

### d. Consensus, Community and Legal Discourse

Although humanists did study law, and some of them were involved in legal projects in

different capacities, that scholarly community was not primarily engaged in legal issues.[1018]

In the case of responsa, however, the legal element is central. The importance of a

discursive forum for the theorization of law can be explained through the perspective of

legal theory. Common law did not really have a fully developed legal theory.[1019] Its

practitioners were averse to philosophical inquiries; instead they focused on ways in which

the legal intersects with concrete adherence, execution, and enforcement. This practical

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[1018] Much of humanist scholarship grew out of older disciplines, including jurisprudence, which was centered mainly on Justinian's *Corpus Iurus Civilis*. Some of the earlier streams of jurisprudence, in fact, display interesting parallels with the study of halakha, but a clear shift in the focus of legal studies towards philological aspects took place in the early modern period, in line with general humanist interests. This removed the kinds of inquiries that interested humanist lawyers even further from what halakhists were discussing at the time. This can be seen in the shift from the medieval Italian school of jurisprudence ("*mos italicus*") to the French school of humanist jurisprudence ("*mos gallicus*") in the 16th century. The latter was philologically and historically oriented, exemplified by scholars such as Guillaume Baudé, François Baudouin, and Denis de Godefroy. See Donald R. Kelley, "Civil Science in the Renaissance: Jurisprudence in the French Manner," *History of European Ideas* 2, no. 4 (1981): 261-276, and Chapter 1 of Harold J. Berman, *Law and Revolution II: The Impact of the Protestant Reformation on the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 2003). For a consideration of the similarities between the tosafist halakhic method and that of the Pavian law schools in the 12th century, see chapter 5, in Israel Ta-Shma, *Creativity and Tradition: Studies in Medieval Rabbinic Scholarship, Literature, and Thought* (Cambridge, MA: Harvard University Press, 2006). Interestingly, the different stages of commentators and glossators also line up in parallel moments for the scholastic and halakhic worlds.

[1019] In Postema's words, the common law jurists' "lack of theoretical persistence was partly due to the fact that they were, in almost every case, not philosophers and theoreticians but active practitioners, and there was not any immediate practical need to work out the theoretical details" (Gerald J. Postema, "Philosophy of the Common Law," in *The Oxford Handbook of Jurisprudence and Philosophy of Law*, ed. Jules L. Coleman, Kenneth Einar Himma, Scott J. Shapiro [New York: Oxford University Press, 2004], 600).

attitude provides an interesting comparison with halakha[1020] because, like early common law jurists, most rabbis concentrated on practical scholarship and were not interested in formulating legal theories. According to Gerald Postema, classical common law lawyers considered that the source of authority for common law lies in the concept of common reasoning. Their mantra was: "the common law is no other than common reason."

This idea did not refer to some natural, innate or commonsense notion of law. Nor does "common" refer to the "man on the street." Rather, "common reason" designates the disciplined practice of reasoning. Thus, in Postema's words, "If 'reason' legitimated some doctrine, this was only because that doctrine survives critical scrutiny in a process of reasoning and disputation."[1021] The meaning of "common" thus relates not only to the discipline's consideration of customs and society but also to an idea of a "public"; the intelligibility of its reasoning among a public of practitioners is the main proof, in the eyes of its experts, that common law is indeed a legitimate form of law. Jurists in their own community, not the general population, carried out this scrutiny.[1022] Common law is based on an essentially collaborative, public form of reasoning[1023] – public in the sense that

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[1020] It would make little sense to study the legal theories of the authors of responsa in a philosophical, moral, or theological vein, as the religious basis for halakha and the possibilities for its enforcement are so different from those of the legal systems of states. It is, on the other hand, interesting to consider legal discourse in terms of its relationship to the community in which it existed, both the scholarly community of jurists and interpreters of law as well as the larger legal community that was bound to live their lives according to halakha.

[1021] Postema, *"Philosophy of the Common Law,"* 595.

[1022] Ernst Kantorowicz has already pointed out how the highly specialized (and increasingly specializing) nature of legal reasoning, on the one hand, and its broad application, on the other, in essence turned the practice into a full-fledged "profession" belonging to a particular class. In fact, this allowed for the rise in the Middle Ages of a class of scholars alongside the more established classes with political or religious power – the clergy and the king. See Ernst H. Kantorowicz, *Kingship under the Impact of Scientific Jurisprudence* in *Twelfth-Century Europe and the Foundations of Modern Society* (Wisconsin: University of Wisconsin Press, 1961), 89-111.

[1023] The specific forms of reason for common law are primarily precedent and analogy. In Postema's words, "Dworkin's mythical superhuman judge 'Hercules' is not a hero of common law reasoning. His

legally trained scholars were capable of evaluating in a public forum. The status of such a "public," simultaneously open and elite, which represents a certain intellectual discipline, is very similar to the halakhic discursive forum established by responsa. Why is this discursive forum, however, so important for a justification of law?

Any explanation of law is, in fact, incomplete without addressing its nature as a discursive practice. In Postema's words: "…the practice of law is essentially, if not wholly, a practice of argument – a practice constituted by deeds, to be sure, but the deeds essentially involve words, that is, publically articulated arguments. … No theory of law can hope to illuminate its nature, structure, and characteristic mode of operation without putting at the center of its explanation an account of its discursive, argumentative, and forensic character."[1024] The argumentation *about* law *is,* essentially, its practice. Ronald Dworkin considers this a characteristic that sets law apart:

Legal practice, unlike many other social phenomena, is argumentative. Every actor in the practice understands that what it permits or requires depends on the truth of certain propositions that are given sense only by and within the practice; the practice consists in large part in deploying and arguing about these propositions. … a good part of what their law reveals about them cannot be discovered except by noticing how they ground and defend these claims.[1025]

Similarly, the meaning of halakha as it is practiced throughout history cannot be explored without addressing its discursive nature. The discursive nature of halakha, I contend, is in large part supported by the idea of the Rabbinic Republic.

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theoretical successes, if they fail to take fully into account their dependency on intelligibility to others in a context of public justification, fail…" (Postema, "Philosophy of the Common Law," 609).

[1024] Gerald J. Postema, *A Treatise of Legal Philosophy and General Jurisprudence, Legal Philosophy in the Twentieth Century, vol. 2: The Common Law World* (Dordrecht: Springer, 2011), 537.

[1025] Robert Dworkin, *Law's Empire* (Cambridge, MA: Belknap, 1986), 13. Cited in Postema, *A Treatise*, 432.

The idea of a shared discourse is inextricably tied to the idea of argument and even disagreement. In fact, discursive consensus is the necessary basis for disagreement.[1026] At first glance, most of the writing in responsa strikes us as disagreement rather than consensus, but viewing responsa as a means of creating a discursive community of scholars reveals the deeper underlying consensus. Not only joint interpretation but also intelligible disagreement requires a measure of consensus. [1027] Meaningful disagreement is possible only with a shared discourse and basic shared paradigms – as vague and general as they may be – that determine the rough outlines of an authoritative canon and the limits of valid reasoning. Just as in the case of common law, where the justification, at its most basic and non-theoretical level, was "common law is common reason," the idea of the Rabbinic Republic implies that halakha is supported by a common form of reason. This underlies all their communications, even (or especially) those that involve controversy and divergence. Much of the communication that takes place in rabbinic correspondence, while concerned with disagreeing, is thus, at the same time, strengthening the notion of a shared halakhic paradigm.[1028]

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[1026] In the words of Postema: "Among classical legal positivists, most notably Hobbes and Bentham, the aim may have been, as Hume put it, to 'cut off all occasions of discord and contention.' The neo-formalists held the same view. Dworkin, in contrast, treated law as providing a focus, language, and forum for political debate about matters of serious common concern" (Postema, *A Treatise*, 425). Postema cites Hume, *A Treatise of Human Nature*, ed. David Fate and Mary J. Norton (Oxford: Oxford University Press, 2000), 322. In addition, he refers to his own work and to Robert Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978), 338; and Dworkin, *Law's Empire*, 413, respectively, in this passage.

[1027] "First, Dworkin's sting argument challenged the assumption that we can sensibly argue with each other only if there is consensus among us on the ground rules for deciding when claims are sound … Although there is typically no consensus with respect to interpretation of the object, there must be a substantial amount of consensus to fix the object of interpretation" (Postema, *A Treatise*, 432).

[1028] The analogy to common law also helps clarify an important difference between the Rabbinic Republic of Letters and the Republic of Letters in the early modern world in general. Whereas, in the case of the Renaissance, scholars have emphasized the importance of collaboration for the establishment of empiricist science (see n1010 here), such "collective empiricism" was not a concern of the Rabbinic

This focus on the correspondence of the Rabbinic Republic of Letters has helped us to understand the significance of its resultant community. To be sure, information is exchanged within these letters; cases and decisions are communicated; texts are compared; and halakhic conclusions are announced. The true achievement of responsa, however, is the creation of a scholarly community with a shared discourse, a forum in which halakha can be meaningfully discussed. As with common law, the existence of this "common reason" can function as a basis for the authority of the law that emerges from it. The primary contribution in the construction of such a forum, far beyond the practical communications, is thus the implication that a discursive forum exists for this entire discipline, lending legal authority to its halakhic discussions. An imagined community and its concomitant shared discourse are thus necessary for any attempt to establish authority for law as a real and existing field in space, time, and society.[1029]

Scholars of common law concerned with comprehending the meaning of "law," rather than presupposing its existence as natural law theories do, or defining it, as in Benthamian legal positivism, by considering how it is executed, turn precisely to this shared discourse when searching for the site where "law" is located in a given society. In such theories, the shared discourse is not necessarily the source for the legitimacy of law, but it is proof of its existence as a meaningful system. In fact, even certain positivist ideas of law (typically the more complex and systematic ones) also depend on the existence of a

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Republic. The collaborative aspect of the Rabbinic Republic does not entail the pooling of empirical data but, rather, the collaboration on a legal discourse that Dworkin and others discuss.

[1029] This is different from inquiring into its philosophical or moral source of validity – the two are not contradictory; they are different perspectives of inquiry. Halakha can have a certain source of validity related to divine revelation and the transmission of canonical texts, but to ask whether and how it functions in an existing society is a different question.

discursive community. When H. L. A. Hart sought to define the legal system, his main

lynchpin became the "rule of recognition,"[1030] or the existence of a principle that

determines what constitutes acceptable law.[1031]

The discursive semi-public character of the legal community is also linked to

different theories of how common law, as formulated by jurists, relates to law as lived and

practiced by society.[1032] This function of legal discourse is important not only for those

scholars formulating and interpreting the law but also for the community bound by its

rules.[1033] The notions that the laws are addressed to a community at large and the

community's understanding of them is important play a role in the reasoning behind the

laws. Although the law need not be debated with every member of the legal community

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[1030] "The rule of recognition of the system is not itself a valid rule of law, but is the standard of validity for all other legal rules or norms. Thus, a rule of recognition exists and is binding not as a valid rule of the system, but as a social rule, accepted and practiced by law-applying officials as a common public standard" (Postema, *A Treatise*, 269).

[1031] "The concept of a rule of recognition (resting on the notion of a social rule) is the pivot on which Hart's theory of law turns. With it, he believed, he could explain how law is fundamentally a matter of convention or custom, broadly construed, and yet transcends local custom; how law constitutes a systemic unity and persists through time; how legal rules can be authoritative not in view of their content or merit (justice, wisdom, or reasonableness) but by virtue of their source in an institutionalized form of social recognition …; how the perspective of a law elite can diverge from that of ordinary citizens without losing its status as authoritative; and thus, how law, which purports to control and guide social interaction normatively, can, without entirely losing its claim to status as a legal system, appear to most of those subject to it as an alien coercive machine" (Postema on Hart in Postema, *A Treatise*, 269). The centrality of this rule in Hart's definition derives from the understanding that a legal system, in order to be both legal and a system, must be based on some shared paradigm, general as it may be, of what makes a law legitimate or not.

[1032] Postema argued that the structure and the rational dynamics of the interaction among officials, especially judges in their law-identifying, law-interpreting, and law-applying activities, are influenced by the simultaneous interaction between officials and citizens. "The decisions and choices of officials and of ordinary citizens," he argued, "are in complex ways interwoven, and this interdependence is rooted in the very nature of law" (Postema, *A Treatise*, 498-499).

[1033] In Postema's words, "law's ability to guide in this manner depends crucially on the uptake of the rules by those to whom they are addressed. … So, each individual's grasp of the rule's import depends in part on anticipating how the rules are understood by their peers and by officials who have responsibility for administering them. 'The structure of practical reasoning on which the practical import of rules of law depend[s] cannot be a matter of private insight but must be part of a shared, public practice of rule understanding and rule following'" (Postema, *A Treatise*, 500; he cites Postema, "Coordination and Convention," 189).

bound by it, its source in a discursive discipline that *can* be argued gives the law legitimacy in lived life as well. Similarly, rabbinic correspondence was crucial not only to the scholarly community but also to the broader legal Jewish community.

### e. The Scholarly Community and the Legal Community

The scholarly Rabbinic Republic of Letters was supported by, and, in turn, served as an important component of a much larger network that pertained to the Jewish community at large. As studies of the early modern humanist Republic of Letters have pointed out, the expansion of other networks of correspondence, such as those of governments, religious orders, merchants, and trading houses, facilitated communication among scholars, thus enabling the growth in scope and density of the network of the *République des Lettres*.[1034] The same is true for the Rabbinic Republic of Letters. It was a distinct republic, but it made use of, supported, and was itself intertwined with other networks, such as communal networks, family networks, merchant networks, and others.

The contents of the communications passing through this scholarly network had a direct connection to the Jewish community at large: the cases discussed by the rabbis would affect the slaughterers, scribes, business partners, cantors, and lay people. The rabbi himself in his function as a judge, halakhic authority, or executor of religious rites and ceremonies could serve as the mediator between scholarship and community. At other

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[1034] "As the critical elements in the infrastructure of early modern communications, they made possible – but did not compel – the emergence of the republic of letters. The most mundane element of the Republic of Letters was also its sine qua non; that is, the regular and reliable circulation of correspondence. ... Expansion of overseas trade, colonial administration, and missionary work thus laid the foundation for a truly global network of epistolary exchange and, at the same time, an increase in the density among European commercial and governmental centers" (Steven Harris, "Networks of Travel, Correspondence, and Exchange," in *For the Sake of Learning,* vol. 2, 348).

times, the link was indirect, passing through community leaders (often rich and influential laymen), who ran the community's daily affairs and administered to its needs. At one level, the Rabbinic Republic of Letters was a scholarly republic of its own. Because it dealt with practiced religious law, it was also linked to the legal community, which consisted of all Jews who considered themselves bound by the laws studied in these rabbinic writings (either voluntarily, through social allegiance, or pressure). The relationship between the Rabbinic Republic and the legal community is immensely significant, especially because, like the Rabbinic Republic, the legal community was an imagined community that barely possessed any real executive legal power.

The rabbis' power (albeit limited) was similarly tied to this network of letters, which Carlebach has termed "instrumental to the exercise of rabbinic authority."[1035] Some responsa were actually read by wide groups of Jews, and many additional responsa could affect their lives. In practical terms, a threat of excommunication, one of the only punitive measures available for rabbis to enforce their decisions, was considerably less forceful if the person being threatened could simply go to another rabbi in another community. The idea of a Rabbinic Republic that crossed borders was, therefore, crucial for rabbinic authority in a very practical sense. Rabbi Luria, for instance, in a responsum to the aforementioned student who deserted his wife, threatens the student with excommunication, adding that he will not hesitate to send the responsum to the rabbis at the location where the husband is hiding, should he refuse to obey.[1036] Without the Rabbinic

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[1035] Carlebach, "Letter into Text," 115-116.

[1036] This was not Rabbi Luria's first attempt at convincing the student to return to his family. The student kept ignoring him, however, and his wife asked Rabbi Luria to enlist the important rabbis at the location where her husband was hiding to help convince the husband and publicize his evil actions. See Luria,

Republic of Letters, it would be much easier for individuals to escape the bounds of Jewish law, claiming that they left the realm of its jurisdiction or that they found a parallel and unrelated community with the authority to interpret halakha.

The significance of the imagined community, however, far exceeded practical questions of execution: the idea of the Rabbinic Republic was of greatest importance for the legal community and similarly, the idea of the legal community mattered for the scholarly Rabbinic Republic. Without the notion of a Rabbinic Republic of scholars immersed in halakhic knowledge and sharing a discourse, of a group of experts who were subject to mutual censure if they came short, the legal community would be much weaker. Conversely, without the imagined legal community that was bound to follow halakhic decisions, the intellectual debate loses much of its importance and urgency. The highest level of halakhic study was always *a liba de-hilketa*,[1037] for the sake of law. The legal community that rested on the halakha gave added weight to the scholarly deliberations; for what is law without anyone (theoretically) bound to keep it?

As the earlier mentioned two-tiered tone in Rabbi Isserles' responsum about the wedding on Friday evening showed, some responsa contain two distinct parts: the description of the case and legal decision on the one hand, and the halakhic technical legal

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*ShUT MaharShaL,* §55. Hurwitz, *Responsa of Solomon Luria*, 73, translates the responsum as follows: "I shall send you this letter privately, in order not to disgrace you and cause you trouble in the place where you are now. But in case you ignore it, I shall send the next letter to Rabbi Jacob and Rabbi Leser, as suggested by your wife, and they will break your friendship with the scholars among whom you now reside. I have promised your wife under oath that I shall do everything in my power to bring you back home, in order to get her consent to send you this letter privately, and I shall keep my promise. Do not depend upon your fame and popularity. I shall not give in to you for that – a ban is waiting for you!"

[1037] See for instance, Babylonian Talmud tractate *Bava kama* 92a.

discussion on the other.[1038] The former was written in a specific tone to a broader audience – the legal community, the general community of religious Jews. The halakhic part was directed at the scholars and written in dense technical terminology. They were not circulated in separate sections, however, because both communities needed the reminder of the other's existence. Those who were interested mainly in the halakhic argument would attach less weight to the reasoning were it not tied to a case with real halakhic consequences. For those readers interested in the actual case and the ruling but not in the reasoning, it was equally crucial to see the reasoning, for it provided the weight to the decision. The Rabbinic Republic of Letters was profoundly important to the legal community of halakhic Jews, but it was also crucial for the Rabbinic Republic to imagine a legal community to which their discourse applied. The two imagined communities not only overlapped and supported one another in myriad technical and practical ways; they also needed the idea of the other to imagine themselves.

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[1038] A good example of this is responsum §125 in Rabbi Isserles' *ShUT Rema*, discussed in n626 of this chapter, in which he provides justification for performing a marriage on a Friday afternoon that ended up extending into the Sabbath. The opening and closing passages include many explicitly non-halakhic elements, such as a long, emotional narrative of the occurrence. The middle part of the letter included the halakhic technical discussion.

**RESPONSA FROM SCHOLARLY ARCHIVE TO PUBLISHED BOOK:**
Rabbis, Their Archives, and the Virtues of Disorder

### 1. INTRODUCTION

The previous chapter grounded responsa in the universe of early modern correspondence and investigated the intellectual and legal significance of these communications for the resulting community, and, vice versa, the importane of an existing community bound to Jewish law in lending weight to these epistolary discussions. The current chapter traces the life of the responsum following the initial stage of correspondence – the transition from instances of rabbinic communication to a published book that becomes part of the scholarly corpus. The previous chapter indicated that the initial sending of rabbinic epistles implied a semi-public readership, which means that the letter stage itself should be considered a form of publication. In the final phase, we encounter responsa in published book form. This chapter will analyze the published books of responsa for three sixteenth-century rabbis in Eastern Europe: Rabbi Shlomo Luria, Rabbi Yosef Katz, and Rabbi Moshe Isserles.

Examining responsa in this "book stage" will facilitate reconstructing a prior phase that is often overlooked – the life of the responsum between the letter and the printed book. I approach this phase by studying responsa as part of the rabbi's own archive, viewing this archive within the broader context of scholarly archival practices in early modern Europe. By archives, I am referring to a scholar's own papers, which he collects, creates, and consults as part of his scholarly endeavors,[1039] not to the repositories of states or

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[1039] For such a definition, see Peter N. Miller, *Peiresc's History of Provence: Antiquarianism and the Discovery of a Medieval Mediterranean* (Philadelphia: American Philosophical Society, 2011), 14: "Archives, as we have come to understand them since the nineteenth century, are the residue of intention, the often accidental survival, in often accidental shape, of past life preserved in words. We tend not to view a

institutions. These archives and the practices related to them will be analyzed as they relate to publication – in print and in other ways. The emerging picture of this scholarly culture shows that, even as print technology was becoming better established, publication took many different forms. Although print offered numerous advantages, this chapter, in drawing attention to other publication practices, will indicate that print publication was not always the most self-evident option; the ensconced scholarly practices, often centering on manuscripts, afforded distinctive benefits that could not easily be matched or replaced by print technology.

The issue of publication has repercussions for our understanding of the place of responsa within halakhic literature. The ubiquity of responsa throughout the history of halakha, going back to talmudic times, together with its relatively straightforward origin – a rabbi is asked in a letter about a concrete problem and renders his decision in writing – presents *ShUT* as an obvious, distinct, and consistent category of halakhic writing. Responsa have, indeed, been characterized in this vein by historians and other scholars of Jewish literature: Zacharias Frankel, in his *Entwurf einer Geschichte der Nachtalmudsichen Reponsen*, defines responsa as the form that religious norms assume when their discovery is prompted by a "real occurrence."[1040] Menahem Elon, who classifies

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scholar's working papers as the goal of his work, but rather as the preparatory material for it. But papyrologists, for example, take a different view. They use 'archive' in a self-conscious and distinctive way to include private materials, compiled by ordinary people, as well as public documents. 'Archive' refers explicitly to documentary, rather than literary materials – for these latter the term 'library' is reserved – and can include letters, notes, lists, and memoranda."

[1040] Zacharias Frankel, *Entwurf einer Geschichte der Literatur der nachtalmudsichen Responsen* (Breslau: Grass, Barth & Comp., 1865), 6-7: "…oder es gibt eine häufig durch ein wirkliches Ereigniss hervorgerufene Anfrage den Anlass zur Auffindung der Norm. In diesem Falle kleidet sich die Norm in die Gestalt einer Antwort, eines Responsums."

halakha using legal terminology, provides the following definition: "The term 'responsa' includes all of the recorded rulings and decisions rendered by the halakhic authorities in response to questions submitted in writing. This literary source includes the preponderance – both quantitative and qualitative – of *mishpat ivri* (Jewish law) in the post-Talmudic period."[1041]

In these definitions, legal decisions resulting from theoretical inquiry (sometimes called "*psak*") are often juxtaposed to responsa's everyday origins – the one representing scholarship, the other legal adjudication in "real life."[1042] *ShUT*, as the more spontaneous halakhic text, is celebrated for providing a glimpse into the "workshop" of the halakhic decision maker, to cite Yiẓḥak Zev Kahana, who contrasted *ShUT*, which he defined as the "finished products," to other kinds of halakhic writing in his *Meḥkarim be-sifrut ha-tshuvot* (Studies in responsa-literature).[1043] Scholars emphasize the immediacy of responsa and the circumstances that necessitated their writing; responsa are typified as representing the "quality of living law, which," in Elon's words, "is the essence of every responsum…"[1044] Those such as Elon, who approached halakha with a legal orientation, pointed to these characteristics in order to classify responsa as a distinct legal source. As such, the genre of responsa is often defined as "Jewish case law" or compared to common law, with a tendency to ascribe to responsa as a category a similar legal status as that of common

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[1041] See Menahem Elon, *Jewish Law: History, Sources, Principles*, trans. Bernard Auerbach and Melvin J. Sykes (Philadelphia: JPS, 1994), 3:1454.

[1042] Yiẓḥak Zev Kahana, "Ha-psak ve-ha-tshuva," [The halakhic decision and the responsum] in *Meḥkarim be-sifrut ha-tshuvot* [Studies in responsa literature] (Jerusalem: Mosad ha-Rav Kook, 1973), 97-107. For responsa as taken from "real life," see p. 99.

[1043] See Kahana, "Ha-psak," 100.

[1044] See Menaḥem Elon, *Jewish Law*, 2:976.

law.[1045] Whereas such legal definitions may hold true for many individual *tshuvot*, matters become infinitely more complicated when trying to define the legal significance of the responsum beyond its initial moment, as a genre and an intellectual or legal category.

The definition of responsa as a genre generally derives by extension from the understanding of the individual responsum. Elon defines responsa as similar to "judge-made law"; whereas the latter is recorded in the common law in the reports of judicial decisions, he explains, the post-talmudic Jewish law is reported in the compilations of responsa.[1046] Kahana also takes this category as a given, devoting a chapter to the question of which genre rabbis preferred as a legal source – responsa or *psakim*. Yedidya Dinari similarly states that "it is important to determine whether" a certain work "is a *sefer tshuvot* or akin to a *sefer psakim*."[1047] Such categorical definitions seem inadequate, however, when we look at early modern *sifrei ShUT*, or books of responsa, as a whole. It becomes clear that one cannot automatically use responsa as an organizing principle for halakhic writings, much less attribute any single unified legal significance to responsa as a whole.

Kahana's paradigmatic inquiry attaches major legal importance to the different categories, but includes a footnote with the caveat that sometimes – strangely enough – halakhic scholars did not distinguish between responsa and other forms of rabbinic writing. His example in the footnote comes from sixteenth-century Ashkenaz – Rabbi Luria.[1048]

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[1045] See Elon, *Jewish Law*, 2:976.

[1046] Elon, *Jewish Law*, 3:1467.

[1047] Yedidya Dinari, *Ḥakhmei Ashkenaz be-shilhei yemei ha-beinaim: Darkheihem ve-kitveihem ba-halakha* [The sages of Ashkenaz at the end of the Middle Ages: Their ways and their writings in halakha] (Jerusalem: Mosad Bialik, 1984), 303n 223.

[1048] Kahana, "Ha-psak," 100n18. Rabbi Luria referred to a responsum by Rabbi Meir Rothenburg as follows: "Rabbi Meir was asked … until here the words of the *psak*" (From MaharShaL's *bi'ur* on the SMaG, cited in Kahana).

Elon wishes to equate "compilations of responsa" with the Law Reports of English law and the law reporter systems of American law.[1049] The question of official versus unauthorized reports and the matter of selecting material are, however, crucial issues concerning these systems. Compilations of responsa, by contrast, are not particularly selective – on the contrary. Acknowledging this, Elon considers the lack of strict redaction of the works of responsa as one of their "problems,"[1050] together with the "complete lack of system in the arrangement of the responsa," something that, according to Elon, begins to improve only after the sixteenth century.[1051]

This "problem," which prevents works of responsa from fitting any clear paradigm, has confounded even experts on the genre. Indeed, the very notion of how a work of responsa should look is unclear. In the introduction to the multivolume bibliography of responsa that he edited, Shmuel Glick describes the difficulty of defining what qualifies as a true work of responsa: "And lest these things seem light in the eyes of the reader – we deliberated immensely regarding the definition of books that deserve to be called 'works of responsa,' and it is questionable if one can even arrive at a clear-cut definition of a 'work of responsa,'" he writes.[1052] Ultimately, Glick bemoans the fact that deciding what qualifies as a "work of *ShUT*" is, "in essence, a subjective decision."[1053] The strict generic

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[1049] Elon, *Jewish Law*, 3: 1467.

[1050] Elon, *Jewish Law*, 3: 1517-1521.

[1051] Elon, *Jewish Law*, 3: 1522.

[1052] See Shmuel Glick, "Introduction," in *Kuntres ha-tshuvot he-ḥadash: Oẓar bibliografi le-sifrut ha- she'elot ve-ha tshuvot mi-reishit ha-dfus ve-ad shnat 2000* [The new handbook of responsa: A bibliographic anthology for responsa literature from the beginning of print to the year 2000], 4 vols, ed. Shmuel Glick. (Ramat Gan: Bar Ilan Law Library Press, 2006). *Kuntres,* 1: 82-83 ואל יהיו הדברים קלים בעיניך הקורא – רבות נתחבטנו בהגדרת הספרים הראויים להיקרא "ספרי שו״ת" וספק אם ניתן לתחום בהגדרה חד- משמעית מהו ספר שו״ת ומהו ספר הכולל שו״ת.

[1053] See Glick, "Introduction," in *Kuntres,* 1: 82.

definitions that we often project onto earlier works – not to mention the intellectual, religious, or legal significance that we subsequently seek to assign to a genre –are, as Glick implies, a product of our conceptions of what such works should be. These assumptions are not a given; they are tied to the modes of textual organization in a certain time and place.

The problematic issue for a contemporary bibliographer or scholar of *mishpat ivri*, can, however, be a great boon to a historian, especially a historian interested in scholarly culture. Precisely the subjective aspect of what qualifies as a work of responsa can help us understand how scholars in a certain period viewed the material that they were studying and creating. The conception of genre – what defines a certain type of literature – is not objective; it depends on time, place, the material and technological conditions of texts, the scholarly practices surrounding the literature, and the ideas underlying this form of writing. Embracing the instability of the work of responsa, can, in fact, provide a key to greater understanding of particular scholarly cultures and the halakhic world.

Utilizing rabbinic scholarly practices related to responsa, I shall demonstrate that, far from being an epiphenomenal "problem," the lack of organization in these compilations is, in fact, an essential *characteristic* of early modern responsa, pointing to archival forms of scholarship. Moreover, the question of organization (or lack thereof) is a key to a general understanding of ashkenazic halakha in this period, an era when the production of these texts faced such profound disruption that the very distinctions between halakhic categories were taking on new shapes. Examining the epistolary and post-epistolary life of halakhic responsa in early modern Europe thus will not only facilitate comprehension of this type

of halakhic text but also will permit us to rethink the categories of halakhic texts as they existed in this period. This revision, in turn, enables me in the concluding case study, which follows this current chapter, to contrast halakha as organized in responsa with halakha as organized in printed codes. This inquiry illuminates notions of textual flexibility and stability, of order and disorder, and of scholarship, that displays a dynamism extending beyond the restrictions of printed books.

## 2. PARADIGMS AND PECULIARITIES
### a. Paradigm Problems

If one were to designate a paradigm for works of responsa and attempt to find the embodiment of such a paradigm in the ashkenazic sphere, the best example would be *Trumat ha-deshen*. This book of responsa, authored by Rabbi Israel Isserlein in the fifteenth century, fits, more than any other ashkenazic candidate, the paradigm of a *Sefer ShUT*: *Trumat ha-deshen* contains only responsa; all the responsa are from one author; every entry contains a distinct question, clearly separated from the response; the work has a title (which, in itself, is exceptional) that includes a reference to the amount of responsa included, thus affording the book defined boundaries that match up with one consistent type of generic content. Moreover, the work is supremely organized; all the entries are ordered according to subject, and the table of contents thus doubles as a topical index. It is understandable why this was the first work of fifteenth-century ashkenazic responsa to be printed (Venice: Bomberg, 1519).[1054]

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[1054] See chapter two of this dissertation for more on this work, especially n217.

Paradigms, of course, have a strange relationship with reality. Not unlike platonic ideas, they are simultaneously theoretical and idealized while purporting to describe reality. Tellingly, there was a long tradition that *Trumat ha-deshen* was not an authentic work of responsa and that the questions were not taken from life, but, rather, composed by the author: As one seventeenth-century rabbi writes, "For it is known that the questions in *Trumat ha-deshen* were made by Rabbi Isserlein, the author of the responsa himself, and not that others asked him these...."[1055] *Trumat ha-deshen* was thus not considered a genuine work of responsa precisely because of its extraordinarily close resemblance to the paradigm of responsa, which implied heavy editing. The work was so paradigmatic as to become suspect.

The practices of a scholarly culture, which include not only its accepted behaviors but also its technological possibilities, thus influenced conceptions about the "correct" appearance of a work of responsa. Moreover, these elements of scholarly culture also affected ideas about the halakhic value of responsa. It is not surprising, therefore, that conceptions related to responsa underwent change precisely in the sixteenth century, as print technology promoted new organizational paradigms. As a rule, rabbis had always preferred responsa as legal sources over more theoretical halakhic works, considering the former, in the words of a fifteenth-century rabbi, "…practical halakha, and we rely more on them than on the *poskim* which were not at the time of action."[1056] In the sixteenth

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[1055] Shabtai ha-Kohen, *Siftei kohen* on *Yoreh de'ah* §196:1. דהלא נודע שהשאלות שבתה״ד עשה מהרא״י בעל התשובות עצמו ולא ששאלוהו אחרים כמו בפסקי כתביו.

See also: *Siftei kohen* on *Yoreh de'ah* §196:20; David ha-Levi, *Turei zahav* on *Yoreh de'ah* §328:2; Yoel Sirkis, *Bait ḥadash* on *Yoreh de'ah* §196.

[1056] Jacob Moellin, *ShUT MaharYL* (about the responsa of ROSh vs. his *psakim*, discussed in further detail a few passages later). ומה שכתבת שאין לסמוך על התשובה, אדרבה הלכה למעשה הוו וילפינן מינייהו טפי מדברי

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century, however, the possibilities for organizing and stabilizing halakhic texts were changing, enabling the creation of halakhic works that presented alternatives to collections of responsa, for example, halakhic codifications, whose structure, comprehensiveness, and stability made them appear more textually reliable. Accordingly, responsa began to lose their status as the most authoritative source for halakhic decision making in contrast to the value attached to codifications. One sees this most strongly in cases where a halakhic authority left behind both responsa and more edited, organized halakhic works.

There were several collections of textual counterparts to *Trumat ha-deshen* that included writings attributed to the same author (although collected and copied by others). Organizationally, however, they were the exact opposite: inconsistent in content, in genre, in source, authorship, and in their level of editing. The most famous of these were Reb Yoizel Ostreicher's *Leket yosher* and the anonymous *Psakim u-ktavim*, which was printed at the same time as *Trumat ha-deshen*.[1057] Thus, counterintuitively – but understandably, if we consider the structure of the work and its reputation of using inauthentic questions – *Trumat ha-deshen*, the most paradigmatic work of responsa, took on the status of an "organized work" (*ḥibur* or *psak*), in contrast to its correlates, which represented authentic responsa, as they were less organized. This lack of organization was noticed by Moritz Güdemann, who describes the authograph manuscript of *Leket yosher* as: "Nach Inhalt und *Formlosigkeit* interessant für die Cultur – und Unculturgeschichte der deutschen Talmud

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הפוסקים שלא היו בשעת הוראה. On the translation of the term "*poskim*," we see it used as a noun both in the sense of a figure (a legal decisor) and in the sense of a book (a collection of legal decisions), for example in the words of Rabbi Shakhna, printed in Isserles, *ShUT Rema*, §25, about the fact that he often asked his father to make a collection of his halakhic decisions: בקשתי עם הרבה לומדים ממנו שיעשה פוסק "I and many of his other students asked him to make a *posek*."

[1057] For more on these works, see my discussion in chapter 2 of this dissertation.

Hochschüler im XV J." [1058] Its formlessness was, indeed, very telling of the cultural history of early modern ashkenazic halakhists.

Throughout halakhic literature, most rabbis declared the unedited collections of Rabbi Isserlein's responsa more reliable than their organized counterpart.[1059] One sixteenth-century authority – perhaps the figure whose work, more than anyone else's, embodies the printed and codified book of halakha – Rabbi Yosef Karo, disagreed: He notes a legal contradiction between *Trumat ha-deshen* and the other writings attributed to Rabbi Isserlein and concludes: "when it comes to *halakha*, it appears that we should rely on what he wrote in the book *Trumat ha-deshen* more than on what is in his writings *(ktavim)*, because a person is more meticulous about that which he writes in a book than about that which he writes in his writings.... "[1060] Clearer proof that concepts of knowledge organization influence the legal standing of halakhic texts could hardly be found.

An analogous pair of texts from an earlier period, namely, the thirteenth-century responsa of Rabbi Asher ben Yeḥiel as opposed to his *psakim*, his writings on the Talmud, encountered similar reactions. The author's son instructed readers to disregard his father's responsa when they contradict the *psakim* because the latter were written later in his career, thus reflecting his more recent opinions. Reactions to this rationale differed: Most telling

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[1058] Moritz Güdemann, *Geschichte des Erziehungswesense und der Cultur der Juden in Frankreich und Deutschland von der Begründung der jüdischen Wissenschaft in diesen Ländern bis zur Vertreibung der Juden aus Frankreich (X.-XIV. Jahrhundert)* (Wien: Hölder, 1880), 16.
        See also Moritz Steinschneider, *Die hebraïschen Handschriften der K. Hof- und Staatsbibliothek in München* (Munich, 1895), 225.
[1059] This dilemma is discussed at length in the chapter entitled "Ha-psak ve-ha-tshuva" [The halakhic decision and the responsum] in Kahana, *Meḥkarim*, 97-107. Most of my examples here are taken from this piece.
[1060] Bet Yosef, *Tur Oraḥ ḥayim*, §263:16:
ולענין הלכה נראה דיש לסמוך על מה שכתב בספר תה״ד יותר מעל מה שכתב בכתביו דמה שאדם כותב בספר יותר מדקדק בו ממה שכותב בכתביו.

is the reaction by Rabbi Yosef di Trani (1538-1639), who finds the idea that all the responsa

date from before the other writings implausible. He uses both commonsensical reasons –

"during all those years that the ROSh was writing his *psakim*, did he place a gatekeeper at

the gate of the house of study, so that nobody ask him a halakhic question!?" – as well as

reasons based on chronological textual proof to make his point.[1061] Rabbi di Trani

suggested that one should read the distinction between responsa and other halakhic writings

in terms of organization:

> It makes sense to say that every rabbi and halakhic decision maker who made a comprehensive work (*ḥibur kolel*), whether he made this early in life or at the end, one should consider the words of the comprehensive work more important than the words of the responsum, because if it happened that he changed his mind, he would correct the issues *in their place* in his work while he is studying the responsum, because it stands to reason that he would not respond without studying the root of the issues from his work. Even if the words of Torah have aged in his mouth, he returns to look at them at the moment of action.[1062]

The larger work, characterized here as a personal reference tool, is constantly

updated, an activity facilitated by everything having its "place," whereas responsa can

boast no such thing. A student of Rabbi di Trani's in the seventeenth century states this in

even stronger terms:

> When a halakhic decision maker is busy with a responsum that he is answering to his supplicants, making a halakhic decision, he does not hesitate to consult his *psakim* and his laws how he decided. And if he decided differently from what he wrote in the responsum, he either erases what he wrote in the *psakim* or corrects his responsum. However, when a person is writing a work (*ḥibur*), he does not go back to all his responsa to see what he decided, because it is a great bother to search where he wrote this specific

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[1061] Yosef Di Trani, *ShUT Morenu ha-Rav Yosef mi-Trani*, I: *Ḥoshen mishpat*, §7:

"דאטו כל אותם השנים שהיה הרא״ש עוסק בפסקי הלכות העמיד שוער על פתח בית המדרש שלא ישאלו ממנו דבר
הלכה?...ובכמה תשובות כתב שכתב בפסקיו."

[1062] Yosef Di Trani, *ShUT Morenu ha-Rav Yosef mi-Trani*, I: *Ḥoshen mishpat*, §7:

"מסתברא דכל רב ופוסק שעשה חיבור כולל בין שעשאו בתחילת ימיו בין בסוף, יש לתפוס דברי החיבור עיקר מדברי
התשובה שאם איתא דהדר ביה הוה ליה לתקן הדברים **במקומן בחיבורו** בשעה שהוא מעיין בתשובה, דמסתמא אינו משיב אא״כ עמד
על שרשן של דברים מתוך חיבורו. אפילו אם נזדקנו דברי תורה בפיו חוזר ומסתכל בהם בשעת מעשה."

thing in his responsa, since they are not organized as in a work (*ḥibur*) that is important/thought-out (*savur*?) and prepared before him, and whenever he wants to see what his opinion is in a work (*ḥibur*), he opens the tractate where this law is mentioned.[1063]

One cannot expect responsa to reflect an authority's latest opinion, he claims, because they are not organized and thus difficult to update. A rabbi's work (*ḥibur*), on the other hand, is a structured, comprehensive, and complete archive of his writings, leading to the expectation that its author will make sure constantly to consult it and update and correct when needed, rendering the latter work much more reliable than the responsa, precisely because of the responsa's place in "real life." The ability to retrieve, consult, and correct past writings in a consistent fashion is thus tied to their reliability, an area in which responsa were at a distinct disadvantage because of their lack of organization. The relevance of this aspect to the place of responsa in halakhic decision making will be discussed in greater depth towards the end of this chapter.

In the eighteenth century, we likewise encounter the opinion that the comprehensive work is more reliable than a responsum, not because of organizational methods but because of the supposed circumstances surrounding the study and writing of these disparate forms of halakha: "It seems to me that his words in the work (*kuntres*)[1064] are more important than the responsum because these are his words that were written with

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[1063] Ḥayim Benvenisti (Turkey, 1603-1673), in *ShUT Ba'ei ḥayei*, 1: *Ḥoshen mishpat*, §61:

"כשהפוסק עוסק בתשובה שמשיב לשואליו ופוסק הלכה אינו נמנע מלבקש אחר פסקיו והלכותיו איך פסק. ואם פסק בהיפך ממה שכתב בתשובה או מוחק מה שכתב בהלכות או חוזר בתשובה. אבל כשאדם עוסק בחיבור, אינו חוזר אחר תשובותיו לראות איך פסק מפני שטורח הוא לו לבקש בתשובותיו היכן כתב זה - שאין סדורות כמו בחבור שהוא סבור ומוכן לפניו וכל זמן שהוא רוצה לראות מה דעתו בחבור פותח המסכתא שבה דין זה מוזכר."

[1064] The word "*kuntres*" means quire or booklet as a physical unit but also a treatise as an intellectual unit, (see chapter one, n106 in this dissertation), thus signifying a *work* with some degree of distinct borders, completeness, and unity. In this case, it refers to the *kuntres agunot*, a booklet on the laws of women whose husbands went missing, composed by Rabbi Ḥayim Shabtai (Salonica, 17th c.), as opposed to his responsa.

more quiet, relating to the roots of the laws, and there is no one rushing him to pick up the responsum, because sometimes a person cannot inquire properly due to his hurry to respond…."[1065] Juxtaposing the image of the rabbi calmly inquiring into the foundations of law in his quiet study with the harried circumstances of sending off a responsum, the author considered the former circumstances were more beneficial for the creation of reliable legal texts. Even later, the anxiety about responsa and the disorderly circumstances that stem from their immediacy prompts a nineteenth-century rabbi to instruct his sons never to publish his responsa, "…because one is not to rely so much on the responsum compared to something that was written when studying the same topic thoroughly."[1066] Rabbi Naftali Ẓvi Yehuda Berlin's reassurance to the sons that responsa are reliable, by invoking a special divine inspiration that rests upon a rabbi at moments of specific halakhic problems, shows just how profound anxieties about the reliability of responsa, once considered the most trustworthy type of halakhic document, had become.[1067]

More than clarifying the legal status of responsa itself, ideas about the genre of responsa and its legal weight thus reveal the state of technological possibilities, of scholarly practices, indeed, of knowledge organization, for a given period. When a culture comes to

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[1065] Rabbi Yonah Navon (Jerusalem, 1713-1760), *ShUT Neḥpah ba-kesef, Even ha-ezer*, §27:
"נלע״ד שדבריו בקונטרס הם יותר עיקר מהתשובה לפי שהם דבריו שנכתבו יותר בישוב בשרשי הדינים ואין מי שיעמוס עליו ליקח התשובה דלפעמים האדם לא יוכל להעמיק כראוי מסיבת המהירות להשיב שואלו דבר. ומצינו כיו״ב שאנו עושים עיקר מפסקי הרא״ש יותר מהתשובות במקום דסתרי אהדדי, כידוע. והוא הדין הכא…"
[1066] Rabbi David ha-Levi Bamberger, in the responsa of Rabbi Naftali Ẓvi Yehuda Berlin (1816-1893), *ShUT Meshiv davar*, Oraḥ ḥayim, §24, cited in Kahana, *Meḥkarim*, 106. שאין לסמוך כל כך על התשובה כמו על מה שכתב בדרך לימוד אותו ענין…והקיף את הענין על בוריה יותר ממה שמקיף בעת שבא לשואלו דבר.
[1067] Hints of the idea that a special type of divine intervention applies when rabbis make practical legal decisions can likewise be observed as early as the Middle Ages, when divine intervention is also invoked where anxiety is expressed about mistaken legal interpretations entering the canon and becoming precedent. See, for instance, Israel Ta-Shma, *Minhag Ashkenaz ha-kadmon*, 3rd edition [The ancient Ashkenazic custom] (Jerusalem: Magnes Press, 1999), 33.

put more faith in complete, ordered works than in spur-of-the-moment decision making, it is likely to view responsa as a less reliable category. Let us, then, investigate the works of responsa of sixteenth-century Eastern Europe, their organization, their paths to publication, and the attitudes that these works imply.

### b. The Responsa Of Rabbi Shlomo Luria

The only two works of responsa printed in sixteenth-century Eastern Europe are the responsa of Rabbi Shlomo Luria (Lublin, 1574-5) and those of Rabbi Yosef Katz (Cracow, 1590).[1068] *Responsa of Rabbi Shlomo Luria* was printed by Klonimus, son of Mordekhai Yaffe in Lublin. The book contains roughly one hundred entries, many of which, indeed, fit the standard notion of responsa; but many other entries do not. Elhanan Reiner describes the work as follows: "As was accepted in *sifrei ShUT* of this period, it included materials that related to the different stages of the author's life, and included texts and documents with a different character, of which only some respond to the definition '*tshuva'* or '*tshuvat she'ela,'* in the sense of correspondence about explicitly halakhic questions between two or more rabbis."[1069] Not all of the entries are even titled "*she'ela*" (question); many are simply called "*siman*," section. Some of them were not prompted by outright letters, or even by questions: In §85, Rabbi Luria included a list of laws introduced without any

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[1068] This is according to the list in Glick, *Kuntres*, 1: 96-97. Possibly, the responsa of Rabbi Luria were being prepared during his lifetime, although the title page clearly shows that the printing was completed after his death. On the timing of the printing of *ShUT MaharShaL*, see Elhanan Reiner, "Yiḥus ve-hoẓaat shem ra: Maharal, mishpaḥat Beẓalel, u-parashat ha-Nadler" (Lineage and libel: Maharal, the Beẓalel family, and the Nadler affair," in *Maharal: Akdamot – pirkei ḥayim, mishnah, hashpa'ah* [Maharal: Overtures – biography, doctrine, influence], ed. Elhanan Reiner (Jerusalem: Merkaz Zalman Shazar, 2015), 101-127, especially page 115.

[1069] Reiner, "*Yiḥus*," 110. כמקובל בספרי שו"ת בני הזמן הוא כולל חומרים המתייחסים לתקופות שונות בחיי המחבר ומכיל טקסטים ותעודות בעלי אופי שונה שרק חלקם עונה בדיוק להגדרה של 'תשובה' או 'תשובות שאלה,' משמע התכתבות על שאלות הלכתיות מובהקות בין שני רבנים או יותר.

question, simply as "The laws of Ḥanukah in short, from my big work called *Yam shel Shlomo*," followed in the next entry by the laws of burning leavened bread before Passover. That entry is signed with his name and a remark that he invented a riddle, which is printed there, together with the explanation of the riddle's solution.[1070]

Many of the entries in the book do originate in correspondence, but they are not answers to legal questions, and definitely not "case law." The case discussed by Reiner, §12 in the responsa, for instance, affirms the pure lineage of an esteemed rabbinic clan, which had been contested; §29 responds to a request about the chronology of sages; and §64 to a request to describe his received order of prayer. Other entries, which do concern legal cases are not, in fact, results of scholarly correspondence between rabbis, but are, rather, more akin to official court documents, such as circular letters like those discussed in the previous chapter, which include testimonies, rabbinic opinions, and open letters proclaiming someone's guilt or innocence, with rhymed openings addressed to no one in particular, [1071] for example, the entry in §33, which is also reproduced in Rabbi Isserles' collection of responsa, alongside many similar letters and other documents about the same case.[1072]

In terms of genre and content, the compilation deals with both halakha and custom.

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[1070] Regarding other kinds of halakha riddles, see chapter 5, n954 of this dissertation, which refers to literature on "*katafot*" or "*kataves*" – games and riddles that scholars presented to one another on halakhic topics, for instance, using numerical values of words or acronyms to refer to halakhic concepts and laws. They were often used for educational entertainment on holidays and other festive occasions. This entry in the responsa of Rabbi Luria at the end of §86 is such an example.

[1071] Isserles, *ShUT Rema*, §13 and Luria, *ShUT MaharShaL*, §33.
*ShUT MaharShaL*, §13 and the entries culminating in §101 can also be added to this list.

[1072] For more on this accusation of adultery, the other responsa and documents of which are printed in Isserles, *ShUT Rema*, §12-16, see chapter 5 of this dissertation.

Indeed, a closer look at the work reveals the absence of a strong distinction between these fields. *Mateh Moshe* (Cracow: Prostiẓ, 1591), written by a student of Rabbi Luria named Moshe of Przemysl, also known as Moshe Mat (1540-1606), is known primarily as a book of customs (*sefer minhagim*). The book's main claim to fame is the author's proximity to Rabbi Luria, which enabled the author to observe his teacher and transmit his customs. The author himself highlights the element of his apprenticeship with Rabbi Luria in the introduction: "For who am I … I am a fool and do not know, but … because I served scholars, specifically the great rabbi, the light of the exile … Rabbi Shlomo Luria … I was among those who ate at his table, and saw, and I have specified his customs and rules, this alone will be for you an offering."[1073] Many of these customs were, indeed, witnessed and recounted by Rabbi Mat. Take, for instance, a typical passage:

> ROSh wrote at the end of the laws of fringes: "and he who fears the word of God checks his fringes before wrapping himself, lest he make a blessing in vain.' ... And so I have also seen from my master and teacher, our master, the rabbi, Rabbi Shlomo [Luria], of blessed memory every time that they would call him up to the Torah, he would check his fringes before wrapping himself [in the *tallit*], and while checking one should separate the fringes, because this is why they are called *ẓiẓit* [fringes], after the strings that separate, and the sign for this is the acronym (*ẓiẓit*): ẓaddik (righteous) is he who separates *ẓiẓit* in all times.[1074]

A closer look at these customs, however, shows that a significant amount of the material was not, in fact, witnessed in person, but, instead, copied from his rabbi's writings, including the responsa. Take, for example, the section on prayer:

> The *Kolbo* writes … that one does not say the blessing in the morning when

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[1073] Moshe Mat, *Mateh Moshe* (Cracow, 1591), Introduction:

כי מי אני ומה חיי אשר ערכה לבי לגשת אל המלאכה הזאת ואני בער ולא אדע אך יעצוני כליותי והציקוני רעיוני לאמור קום מה לך נרדם אף כי לא ישמעו לדבריך ישמעו לדברי רבך כי שמשתי ת״ח בפרט להרב הגדול מאור הגולה תפארת גאון ישראל מוהר״ר שלמה לורי״א אשר העמיד תלמידים לאלפים ולרבבות הייתי מאוכלי שולחנו וראיתי ודקדקתי מנהגיו ודיניו זה לבד יהיה לכם למנחה.

[1074] Moshe Mat, *Mateh Moshe*, Hilkhot ẓiẓit u-tfilin ve-hanaḥatan (Laws of fringes and phylacteries and putting them on), §15.

washing hands … until coming to the synagogue … and so, too, my teacher, our master Rabbi Shlomo of blessed memory, and so he writes in a responsum: 'when I get up from my bed and wash my hands as they have decreed ... but in any case, one does not recite the blessing, … until I come to the synagogue'… until here his words.[1075]

This is indeed a quote from the responsa, §64:

What you asked, my friend, about the issue of prayer, asking whether I have a tradition (received) from elders [regarding] its contents, know that I did not have the merit to receive from my grandfather … the rabbi, Rabbi Yizḥak of blessed memory, even as a dog who licks from the sea, because when I was young, I labored in Talmud and *pilpul* [casuistry] and not in the fine points of prayer, and woe for this loss, also his books burned due to our many sins in the great fire that was in Poznan and the holy books burned as well as his prayer book and I only remember a little bit, and though it is little, my soul shall survive by it[1076] and here they are: … and I will tell you what I added and removed in my own prayer, when I stand up from my bed and wash my hands as they have decreed … I do not say the blessing … until I come to the synagogue….[1077]

Moshe Mat thus frequently quotes from the responsa in his book of customs;

perhaps he is the one who sent Rabbi Luria the original request. In certain places, he not

only cites his rabbi's responsa but also provides references to specific entries by section

number. For example, under the rules of meals, he refers specifically to Rabbi Luria's

responsa by section number: "and my master, in his responsa §72 wrote that covering with

a hand is considered a covering even for himself…."[1078] Clearly, there was considerable

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[1075] Moshe Mat, *Mateh Moshe*, §4.

ד. כתב הכלבו בסימן כ׳ בשם הר״ם שאינו מברך בבוקר כשנוטל ידיו ענ״י ואשר יצר עד בואו לבית הכנסת. ואם בירך קודם לכן אינו מברך פעם אחרת בבואו לבית הכנסת ותופס במקום שהניח עכ״ל. וכן כתב האגור בשם מהר״י מולי״ן וכן מורי מהר״ש ז״ל וז״ל בתשוב׳ כשאני קם ממטתי ורוחץ ידי כתקנו כמו שכתוב האשירי שבבוקר צריך נטילה ורחיצה כמו לאכילה אבל מכל מקום אינו מברך כ״א אשר יצר וענ״י מניח אני עד בואי לבית הכנסת להתפלל כי שם מקומה ובעבורה נתקנה עכ״ל

[1076] Genesis 19:20.

[1077] *ShUT MaharShaL*, §64.

[1078] Moshe Mat, *Mateh Moshe*, §274; *Mateh Moshe,* § 365 refers to §97 in Luria and quotes the entire responsum (in fact, the entire section here is only the quote from Rabbi Luria's responsa).

Another example in which Mat refers to Rabbi Luria's written responsa is *Mateh Moshe*, "Dinei hanhagot be-vet ha-kneset ve-dinei braḥot ve-psukei de-zimra" (Rules of behavior in the synagogue and rules of blessings and verses of praise), §47 and §58 (both refer again to the same responsum from *ShUT MaharShaL*, §64). *Mateh Moshe* §60 mentions something that Rabbi Luria wrote in his glosses to the *Tur*, and in 419§, Mat mentions something concerning the Shabbat candles, in which he quotes from *Yam shel Shlomo*. A multitude of different points from *ShUT MaharShaL*, §64 are mentioned time and again in *Mateh Moshe,* mainly in the second unit of *Mateh Moshe* ("Amud ha-avodah," the pillar of divine service),

overlap between works of customs and works of responsa. In addition to attenuating any strict categorizations of custom as oral versus law as textual, this circumstance helps us deconstruct the idea of responsa as a unifying category for books: far from being a separate genre, responsa were cited in collections of custom, and questions of custom appeared in responsa.

Having established the lack of unity in terms of contents, we can now turn to internal structure and the organization of the material in the book. The responsa in *ShUT MaharShaL* clearly do not follow a prescribed order. Discussions of laws of inheritance, holidays, and burial – to name a few examples – appear throughout the responsa in no particular order, with no attempt to place similar topics in proximity. The seven explicit dates are insufficient to establish a detailed chronology of the responsa. The earliest date (1546) comes first, the latest date (1572) comes last, and the intervening decades are generally in the correct order; the scarcity of dates, however, limits the effort to discern any temporal order.[1079] Moreover, the work lacks a clear thematic organizational scheme, even a rudimentary one, such as, for instance, placing the questions in separate sections based on the four main divisions of Jewish law used by the *Arba Turim* and *Shulḥan Arukh* (civil law; ritual law; holidays and liturgy; family law). Certain responsa do sometimes

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concerning prayer. In addition to the above examples, §331, §336, §338 in "Dinei birkat ha-mazon" (Rules of the grace after meals), and §758, on fasting on one's father's *yahrzeit* (anniversary of death) when it occurs on the eve of Shabbat, provide specific section numbers from *ShUT MaharShal* (§9).

    Moreover, other sections, such as *Mateh Moshe* §695, concerning using freshly milked milk on the *Shavuot* holiday, refer to Rabbi Luria's responsa without providing a specific section number.

    [1079] Some of these dates are mentioned in the documents that are copied into the responsa, but do not neccesarily reflect the dates of the day on which Rabbi Luria wrote that particular responsum: §4: 1546/7; §8: 1554; §12, Reiner dates to about 1546; §20: 1559; §24: 1551; §35: 1547; §96: 1569; §101: 1572.

follow one another when their contents are related.[1080] Sections 81 and 82, for instance, both deal with the problematic window of time after the evening prayer but before actual nightfall. The typical halakhic divisions, however, would not have placed these two questions in the same category, as one of them deals with this window of time in relation to burial whereas the other examines issues of menstrual purity during that interval, topics that are unrelated in the usual divisions of halakhic material. Even if certain related responsa appear in a sequence, the succession is associative rather than thematic.[1081] Moreover, another section, §14, deals with a similar problematic window of time, and no effort was made to move it any closer to the other two questions.[1082] Apparently, one can rule out any consistent attempt at chronological or thematic organization.[1083]

This lack of organization becomes very clear when considering the work's index:

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[1080] Two consecutive sections, §53 and §54, deal with the period of mourning over the destruction of the Temple in the months of Tamuz and Av, and sections §57 and §58 both deal with laws of matzah. Sections §60 and §61 both concern forms of cooking on the Shabbat; §31 and 32 both deal with the Ninth of Av; §86 and §87 are about leavened bread on the eve of Passover; and §94 and §95 both concern ritual hand washing laws.

[1081] On the issue of having to choose between thematic and topical organization, see Ann Blair, *The Theater of Nature: Jean Bodin and Renaissance Science* (Princeton, NJ: Princeton University Press, 1997), 78. She notes that Bodin's decision to organize his *Theatrum* in question and answer form solved this issue: "The dialogue form gives Bodin the flexibility to combine both."

[1082] Even the topics mentioned here are sometimes discussed elsewhere in the work, with no proximity to the questions mentioned. For instance, if thematic connections were an issue, §53-54 could easily have been placed in proximity to §31-32, as they all deal with the mourning over the destruction of the Temple during the months of Tamuz and Av. The cluster of sections beginning with §84 and ending with §89 are all atypical responsa in form. They do not contain the typical question and answer format, but, instead, are different *sdarim*, lists of rules and laws, and even one list of laws in riddle form, with an explanation. Although this part of the responsa does share a common element of atypical form, which may point to some intentional organization, other such material is scattered throughout the responsa, with no proximity to this particular cluster. For example, §65 is a description of the *Hagadah* and the Passover Seder.

[1083] There are several clusters of questions that give the impression of having originally been part of the same letter or document; §66-67, for instance, and §70-71 and §49-50 each contain one formal opening statement in the first of the pair, followed by one question, without a formal closing or signature. The second of the pair does not contain a formal greeting or opening. Instead, it contains a question (sometimes with "and" preceding it), and the closing greeting and signature. These may have been one document originally, which either Rabbi Luria himself (when arranging his notebook or papers) or the editor of the printed work divided into two sections.

The index was printed together with the first edition. It organizes the responsa under several halakhic topical headings such as "Laws of Sabbath" or "Laws of mourning," providing a short description of the halakha related topics with references to the section number of the responsum where it is discussed. The list is not complete, meaning that not every responsum is noted in the index.[1084] Conversely the same responsum is frequently mentioned more than once, sometimes even within the same section if more than one relevant law appears in it; for example, §6 is mentioned twice under "Laws of menstrual impurity."[1085]

Although the index is not detailed enough to be used as a work in its own right, it does serve as a useful (if somewhat incomplete and inconsistent) finding aid. The descriptions in the index are sometimes reformulated from specific cases into more general halakhic issues: For example, the question of §77 in the responsum is, "I was asked by a blind person whether he must light the Ḥanukah candles," whereas the description in the index is more wide-ranging, stating: "A blind person, if he makes the blessing on the moon and 'he who creates the luminaries' and whether he is commanded to light Ḥanukah candles." In other cases, however, the description in the index remains very case specific and is formulated exactly as the actual responsum: The question posed in responsum §94, for example, focuses on a common practice in which travelers would wash their hands in the morning and then disregard ritual hand washing during the rest of the day. Instead of

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[1084] For instance, §29 is not mentioned, which is somewhat understandable because it concerns a non-halakhic topic (the chronology of the sages) and thus would not fit anywhere in the index; §18, however, would easily fit under the laws of the Shabbat, but does not appear in the index, nor do §45 and §56.

[1085] This reformulation in a more general vein makes the index similar to the *shorashim* (roots) that existed for Rabbi Kolon's printed responsa, discussed in the second chapter of this dissertation.

transforming this specific description into a more general halakhic theme, the index reads: "Travelers who are accustomed to be lenient regarding hand washing and wipe them on grass etc." For the sake of comparison, the index in a more recent edition describes the question more universally: "Whether travelers are allowed to stipulate a condition in the morning so as not to wash their hands all day."[1086]

Some of the details in the index seem superfluous. For instance, the description of §14, placed under "Laws of marriage," contains a three-line account of "one from our country who was married to a woman and went to the land of *Togra* (Turkey) and married again, and it became known to the sages who were there, and they decreed....," when it could have been described in shorter, simpler terms, of less than a line, which was typical throughout the index. Another such example can be found under "Slander."[1087] The entry is described as "A person who has slandered a certain young man how he slept in one bed with his married sister and washed with her in one bathtub, §28." The legal import of the case could have been described in less vivid terms, without all these details,[1088] but perhaps the table of contents was designed to catch the potential customer's interest, thus highlighting the more extreme and sensationalist elements.[1089]

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[1086] Luria, *ShUT MaharShaL* (Jerusalem: Oẓar ha-sfarim, 1969), 10. אם מותר להולכי דרך להתנות על הידים בשחרית שלא ליטול ידים כל היום.

[1087] The heading omits "Laws of," which is somewhat appropriate; as these cases do not involve much legal deliberation, they usually use the authority of the rabbi to quell a rumor or an assault on someone's reputation.

[1088] *ShUT MaharShaL* (Lublin, 1574-5), 4b: אחד הוציא לעז על בחור אחד איך ששכב עם אחותו בעולת בעל במטה ורחץ עמה באמבטי אחת. For example, it could have been described as: "a case of slander against siblings, and the brother claims that the stain on his reputation has impacted his livelihood, and the sister's husband wants retribution for his wife's shame."

[1089] Beyond the goal of piquing the reader's interest with titillating stories, it also emphasizes the fact that Rabbi Luria was trusted not only with intricate problems of scholarship but also with delicate questions of personal status (marriage, divorce, lineage) that could have very real and dire consequences on

In sum, the uneven nature of the index reflects the lack of organization, unity, and structural coherence of the work as a whole. In addition to certain omissions and disproportion, the index also includes outright mistakes. A description of a responsum regarding carrying on Sabbath, for instance, refers the reader to §46, which deals with a similar issue, but the correct reference should have been §51. Other mistakes are more blatant, as when the question "whether a sick person may ask magicians, §3" for instance, is placed under the heading "Laws of interest."[1090] For two entries of the index, the word "section" is provided, but the actual section number is missing.[1091]

As a whole, the editing of this work is very uneven: Many questions use the typical generic names (*Ploni, Almoni*) or the names of the tribes (Reuven, Shimon) to replace personal names and list towns in Israel (Tiberias, Sepphoris) to replace place names.[1092] Several other sections, however, did mention personal names, place names, and other specific identifying information, for example: §14 mentions the community of Plevna; §19 involves a Moshe, son of Eliezer; and §89 contains several full names.[1093] The printer and

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the most central aspects of a person's life, such as whether and whom one was permitted to marry. On the serious issues of lineage at the time, see Reiner, "*Yihus*."

[1090] That mistake may derive from the fact that in the *Tur*, *Yoreh de'ah*, the laws of interest are followed by the laws of "non-Jews and witchcraft." It shows that someone involved in the index was using the organization of the *Tur* as a reference point to some extent, although this was not reflected in other aspects of the index, such as the order of the topics, which diverge from that of the topics in the *Tur* in small ways (e.g., which topic follows which) and bigger ways (e.g., the designation of the four separate books).

[1091] Luria, *ShUT MaharShaL* (Lublin, 1574-5), 2b: נוסח קידוש של שמיני עצרת תמצא בסוף סימן- it should be §68.

ואם יש לקדש בליל שמיני עצרת קודם לילה סימן -.

[1092] Luria, *ShUT MaharShaL*, §1, for example.

[1093] Other examples: §11 mentions Anshil/Hansel and Shimon Günzberg, as well as Miriam. The case is a very delicate personal one; §19 mentions a Moshe ben Eliezer, who calls into question a divorce document from Neustadt; §20 and 21 include official testimonies in Yiddish (with full names, etc.); §33 includes full testimonies and names in a case of suspected adultery, replete with details; §59 about a scandalous thing a man said to a respected woman – all the names are included, as well as the full testimony containing a quote of the shocking things that were whispered; §69 contains full names in a case of regrets about a match; the responsum in §89 openly wonders why the letter writer hid the names of those involved,

editor, apparently, did not attempt to obscure or change the names of the people involved in these cases. Reiner has studied one case where it seems that a responsum regarding a questionable lineage, which included the names of a prominent rabbinical family, was censored after print; the quire including the problematic responsum was removed and replaced by an identical looking quire that skipped directly from the previous responsum to the subsequent one, leaving no trace of the omitted pages. The volume also includes countless minor mistakes and inconsistencies: for example, §16 is not numbered, §56 lacks the usual typographical distinction between the question and the answer, and so forth.

Some material in the book seems to have no place in a work of responsa. In the first edition, the very last entry of the book (§101, which appears to be not a responsum but a copy of several court documents about a case of slander, opening with the formula: "in the presence of three, a court, which are as one…,"[1094] together with a copy of the public condemnation of one of those involved; an attempt to clear the slandered woman's name; and a rabbinic opinion on the case) concludes with a threefold repetition of the word "*tam*" (finis) alone, on one line  somewhere halfway down the page. Before the last reiteration of "*tam*," however, two words – "*simanei dinim*" (signs of laws) – introduce, in a barely noticeable fashion, the following five and a half pages.

These pages contain a list of short, one or two line passages, which appear to be very brief summaries of specific points of halakha, together with references for the sources

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and §96 gives a full copy of the testimonial documents with full names concerning a person who asks for a 'prescription' to repent for having been the indirect cause of someone else's death, and so on. These are unedited documents meant for specialists, rabbis, and courts, who needed to know the pertinent information, and, perhaps, also for those involved who required proof to clear their names; there was no need to print such details in the book of responsa, however, and such elements were usually omitted in printed responsa.

[1094] Luria, *ShUT MaharShaL*, §101: במותב תלתא בי דינא כחדא הוינא.

being summarized in a range of works, such as *Sefer ha-Mordekhai* and *Trumat ha-deshen*.

The reason for the appearance of the list or its relationship, if any, to the rest of the work

of responsa is unclear. Some, but not many, of the laws summarized here, and their source,

referenced in the summary, show up in some of the responsa (for example, the last lines on

the first page of the list are mentioned in §11 of the responsa). In fact, this list is not

explicitly mentioned anywhere, and the next seven editions, starting from the second in

1599, simply omit it. Taken as a whole, the work thus appears more like a heterogeneous

compilation including mainly – but not exclusively – correspondence and other documents,

notes, and writings related to halakha or to other aspects of Rabbi Luria's career as a scholar

and religious community leader. It would be difficult to find any one classification that

perfectly defines this work, but one thing is clear: it is not a compilation of case law.

### c.      The Responsa of Rabbi Yosef Katz

Rabbi Yosef Katz, born in ca. 1511, was a well-respected rabbi in Cracow, serving on the

city's rabbinical court together with Rabbi Moshe Isserles, who was his younger relative.

His collection of responsa was the first printed in Ashkenaz in an author's own lifetime.[1095]

Glick does not list the work as having been printed in the author's lifetime, but Rabbi

Katz's introduction clearly shows that he was involved in preparing the work for print. The

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[1095] Glick, *Kuntres ha-tshuvot*, 1: 96-97, 101. וה' א-להא...ישביזנה מכל צרה ויחדש כנשר נעוריו יאריך ימי
הדרת יקרת תפארתו לחוות בנועם שיח סוד יסוד תורת ה' תמימה...הלא כה דברי המחוקק העומד ממעל הדפוס יצחק בהר"ר הארון
מפרוסטיץ.

     Perhaps by the time the title page was being printed, he had already passed away, or perhaps this can only be found on certain copies of the first edition, where it was added later. (For more on inconsistencies among copies of this edition, see discussion below.)

title page of the work does add "of saintly and blessed memory" after Rabbi Katz's name, but it also mentions that the printing began on the twelfth of the Hebrew month of Shvat 1590, a full year before Rabbi Katz's death (on 2 Shvat of 1591). Moreover, the work concludes with a prayer by "the printer who is standing above the press, Yiẓḥak … Prostiẓ," asking God to restore "like an eagle his youth" to Rabbi Katz, and lengthen his life, meaning that he was clearly alive at the time (perhaps he was sick, hence the prayer to restore his strength).

The vast majority of the responsa in Rabbi Katz's collection deal with issues related to monetary law, such as business, marriage, and divorce contracts, inheritances and wills, and other conflicts about contracts and finances; less than half of the responsa deal with laws related to kosher food, ritual purity, holidays, and the like. It is thus not by any means a complete collection of legal matters. The author introduced, endorsed, or described all entries, rather than having the original question copied in its entirety. Very few entries contain the full question, with the names of the people involved and their salutations.[1096] Rabbi Katz himself appears to have paraphrased and reported, or at least introduced with one line, all the entries, aside from a few exceptions. Almost every single entry is introduced by a variation on these formulas: "a question from the holy community

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[1096] Katz, *ShUT she'erit Yosef,* §36 is an exception (the letter was written by Rabbi Menaḥem Man Bacharach and is printed in full). In §41, the letter is also provided in full (it is signed by a Moshe ben Eliakim of Heilprun, who, after the signature, adds, ״כמעט ששכחתי סניף אחד״ – "I almost forgot one element…" and explains more details about the case). Likewise, §71 is an exception – it is parallel to the documents about the case in Rabbi Isserles' responsa, §12-16.

of…,"[1097] "I was asked…,"[1098] "this is what I responded…,"[1099] "a question from…,"[1100] "before us came…,"[1101] "we were asked to judge…,"[1102] "a thing that occurred…."[1103] In one case, he describes a halakhic question and then concludes, "and I have been asked concerning this several times."[1104] Structurally, the responsa themselves thus demonstrate some level of consistency and unity.

A glance at the book as a whole, however, shows the limits of this consistency. First, in terms of the overall organization of the responsa in the book, as in Rabbi Luria's work, the collection does not display any clear order; for instance, the work contains numerous questions regarding the *shtar ḥazi ḥelek zakhar*, a document that allows daughters to inherit, but no effort is made to concentrate these in one place.[1105] The first printed edition of *ShUT she'erit Yosef* contains several mistakes and inconsistencies. For example, two consecutive entries are labeled §32. In order to compensate, the table of contents (which is nothing more than a list of the responsa with a short description of the issues) simply lists §32 twice, adding the folio number after the section number. Thus, the first §32 reads: "§32, folio 44, regarding a testimony…," whereas the next one says "§32, folio 47, two people who bought a stolen object…."[1106] Elsewhere in the book, §68 is misnumbered as §71. In the table of contents, the line between §67 and §69, which should

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[1097] Katz, *ShUT she'erit Yosef,* §3, 33, and many more. "שאלה מק"ק"
[1098] Ibid., §20, 22, and many more."נשאלתי "
[1099] Ibid.*,* §24, 25, and many more. "זה השבתי ל'"
[1100] Ibid.*,* §26, 27, and many more. "...שאלה מ"
[1101] Ibid., §15, 16, 39, and many more. "...בפני... נתעצמו בפני...בפנינו"
[1102] Ibid.*,* §38, 43, and many more. "...הובררנו לדון...זאת לדעת שבא לפנינו"
[1103] Ibid., §35, 23, and many more. "...מעשה"
[1104] Ibid.*,* §74: "...שאלה...וכמה פעמים נשאלתי על זה"
[1105] Ibid.*,* §1, 2, 8, 35, 37, 62, 67, 74.
[1106] Katz, *ShUT she'erit Yosef,* Table of Contents, 2b: לב דף מ"ד בעדות...לב דף מ"ז שנים שקנו

have contained §68, is not listed by any section number. Instead, only the page and folio where that responsum is printed are provided.[1107] As Yiẓḥak Rivkind has already pointed out, four responsa, apparently, were added at the last moment, after the book was already almost ready for publication.[1108] These four responsa were printed with the table of contents, the first of them appearing immediately after the list of contents ended, on the same page. Although all the copies I have seen contain these responsa, Rivkind mentions copies of the same edition that do not contain them.[1109]

The work's haphazard organization and lack of unity becomes even clearer upon consideration of the printed book's title-page: The responsa of Rabbi Yosef Katz, *ShUT she'erit Yosef*, as it is commonly called, is not, in fact, the work's real title. The title page reads: "The responsa and explanations on the *Mordekhai* … and on the *Tur* … which were clarified and glossed by Rabbi Yosef Katz, also known as *she'erit Yosef*.[1110] This much longer and more convoluted title reflects the varied contents of the work more accurately. The book contains about eighty responsa, followed by assorted glosses and explanations of the other two works mentioned on the title page. It is thus, not solely a collection of responsa, nor is it even a collection of responsa with some added writings appended at the end; a third of the book consists of these non-responsa items. The glosses themselves are

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[1107] This reference, to page 75d, is not entirely correct either: although the response does indeed start on the page referenced, but not on that quarto (it starts on 75a), the question that precedes the response starts one quarto before that. Perhaps in order not to draw attention to the blatant misnumbering of the question, they referred the reader to the page of the response where the wrong number is not visible.

[1108] Yiẓḥak Rivkind, "Dikdukei sfarim" [Bibliographical inquiries], in *Alexander Marx Jubilee Volume: Hebrew Section*, ed. Saul Lieberman (New York: Jewish Theological Seminary of America, 1950), 401-432.

[1109] Rivkind, "Dikdukei sfarim," 422-423.

[1110] Katz, *ShUT she'erit Yosef,* title-page: שאלות ותשובות וביאורי׳ על המרדכי...ועל טור חשן המשפט: אשר אזן וחקר ותקן הגאון...זצ״ל יצ״ו ונקרא בשם שארית יוסף..."

poorly organized, containing numerous awkward passages and redundancies.[1111] For instance, in the middle of a series of glosses on the *Mordekhai* on one chapter of a tractate of the Talmud, Rabbi Katz suddenly starts his gloss by stating which chapter and tractate he is glossing, something that should be obvious from the sequence. In short, the work does not fit the paradigm of a work of responsa. How, then, do we explain the overall logic of this book?

Rabbi Katz wrote an introduction to the work, replete with apologies, assuring the reader that he never intended to print this work. He then explains the book's origins: Some of the writings were created in the course of his forty-nine years as a judge in the rabbinical court of Cracow; others were the result of the "questions that arose from all the praised communities of Israel, near and far."[1112] The explanations on the *Mordekhai* and *Tur* were written as he noticed apparent contradictions or mistakes while teaching and studying those works, which he elucidated and corrected. In other words, he does not elaborate an underlying logic unifying this book but merely describes the circumstances prompting the writings contained in it. In explaining the rationale for publishing the book as a whole, he writes the following: "And the omniscient witness can testify for me that I wrote this only

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[1111] Asher Siev, "Preface," *ShUT she'erit Yosef*, ed. Asher Siev (New York: Yeshiva University Press, 1984), 36.

בנוגע לביאורי רבינו על המרדכי והטור נראה שלצורך ההדפסה העתיקן משולי דפי הספרים שהשתמש בהם בלימודיו עם תלמידיו, שהרי הם קצרים...אבל מסתבר שהרבה הערות והארות נכתבו על גליונות בודדים ולבסוף נאספו ונתחברו אל יתר הביאורים שהוכנו לדפוס. לפי זה נבין תופעה מוזרה שבמקומות אחדים באמצע ביאורי ח"מ מתחיל את סימונו במילים "בחשן משפט". במקום אחד מביא את אותו הדין שב"מ פעמים, מקשה אותה קושיה ומתרץ תרוצים שונים...

He cites, for instance, a case in which Rabbi Katz adds, "meaning…" after a few words in *Mordekhai*'s quote of the Talmud, and then completes the sentence exactly as it appears in our Talmud.

...ולפעמים אין מוצאים שום חדוש בדבריו ועומדים תמהים מה בא ללמדנו. נאלצים אנו להסיק שהיתה גירסא מוטעת בספרים שהשתמשו בהם תלמידיו ולכן בא לברר ולחזק את הגירסא הנכונה.

[1112] Katz, *ShUT she'erit Yosef,* introduction: גם פרשתי כנפי על כל הבא לדרוש דבר ה׳ בשאלות עולות מכל קהלות תהלות ישראל הן ממקום קרוב הן ממקום רחוק

to have it in my hands for the needs of my old age, out of fear of 'guard yourself lest you forget…."[1113] Anyone familiar with these tropes can guess the rest; his colleagues and children begged and prodded him to print these personal notes, which is how he explains the publication of the book. In other words, the work has no overarching logic other than the fact that Rabbi Katz had amassed these writings throughout his rabbinical career.

### d.      Rabbi Moshe Isserles and *ShUT Rema*

In sum, the two works of responsa by sixteenth-century ashkenazic rabbis that were printed in Ashkenaz in that century do not fit the ideal paradigm of responsa. Moreover, the circumstances surrounding their printing suggest that the authors had not planned to publish these works in any organized fashion. Indeed, this unplanned approach seems characteristic of much of print publication in the sixteenth century of works by authors who were still active. We will now consider the third and last figure, Rabbi Moshe Isserles, also known by his acronym Rema, whose book of responsa was not printed until 1640, several decades after his early death in 1572. The responsa, published at the press of Menaḥem Naḥum Meisels in Cracow, were brought to print by a nephew named Moshe, the son of Elazar, Rabbi Isserles' brother, and financed by a Yacov Eliezer, who was married to Rabbi Isserles' granddaughter.

Rabbi Isserles' nephew introduces the book by first praising the author, then quickly mentioning the responsa, after which he moves on to Rabbi Isserles' other works: "These are the responsa that were secreted under the throne of glory[/seat of honor] of the

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[1113] Katz, *ShUT she'erit Yosef,* introduction: ‏ונאמן עלי היודע ועד שלא כתבתי זאת רק להיות בידי לצורכי‎ ‏לזקנתי מפני יראת השמר לך פן תשכח וגומר...‎

author, our master the rabbi, Rabbi Moshe, he of the *Mapah* which is spread over all of life, they are the glosses on the *Shulḥan Arukh*…"[1114] The statement that the responsa were "secreted under the throne of glory" of Rabbi Isserles, as well as a similar description in the opening poem mentioning "the beloved responsa that were hidden until now, you can see them with your eyes…"[1115] imply that the letters were taken from some cache of his writings, perhaps in a study.[1116]

Other than this one line mentioning the book that it was introducing, however, the rest of the introduction discusses primarily the publisher's hope of printing *Darkhei Moshe*, Rabbi Isserles' larger work, which he had begun writing even before the *Mapah*, but which had not yet been printed at that time. In what is ostensibly an introduction to a collection of responsa, the only titles mentioned are *Shulḥan Arukh* and *Darkhei Moshe*; the latter is mentioned twice more and printed in larger, bolder letters. Additional expressions such as: "If he who awakens to help sees that he desires the *Torah of Moshe*, he should shed from his money and expenditures to lead you also in the ways of Moshe (*Darkhei Moshe*)…"[1117]

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[1114] Isserles, *ShUT Rema*, introduction: אלו התשובות שהיו גנוזות מתחת כסא כבוד. המחבר הגאון מהר״ר משה בעל המפה הפרושה על כל החיים ה״ה הגהות הש״ע.

[1115] Isserles, *ShUT Rema*, opening poem (emphasis in original): התשובות החביבות שהיו גנוזות עד הנה בעיניך לראותם. מפרים לאכול ומימיהם המתוקים לשתותם. כן תוכל לחזות בנועם ה׳ **ובדרכי משה** לילך בארחותם.

The poem praises Rabbi Isserles' leadership and Torah prowess. The first words of every stanza, taken together, read"ישראל״ ("And this is the Torah that Moshe placed before וזאת התורה אשר שם משה לפני בני the Sons of Israel," Deuteronomy 4:44.) from the top down, and the last words read מורשה תורה צוה לנו משה ("Moshe has commanded upon us the Torah, a inheritance from the community of Yacov," יעקב קהלת Deuteronomy 33:4.) from the top down.

[1116] Aron Prostiẓ of Cracow, the printer of some tractates of the Babylonian Talmud that included Rabbi Isserles' glosses on Rabbi Asher ben Yeḥiel's Talmudic commentaries called "the *Asheri"* (Cracow: Prostiẓ, 1602), mentions having these glosses from Rabbi Isserles' actual handwriting, ידו מכתיבת ״ממש as the title page proclaims. See Ḥayim Dov Friedberg, *Toldot ha-dfus ha-ivri be-Polania* (History of Hebrew typography in Poland), 2nd ed. (Tel Aviv: Baruch Friedberg, 1950), 21.

[1117] Isserles, *ShUT Rema*, introduction (emphasis in original):
ה״ה ספרו הגדול **דרכי משה** שהוא כסות עיני לכל השולחן ערוך. מקורו מקור מים חיים ארוך וברוך וכמו שכת׳ הגאון המחבר עצמו בתשובה סי׳ ל״ה: אולי אבנה גם אנכי ממנו להיות מצוה גוררת מצוה רבה אחריה. כחתן יכהן פאר...החפץ ימלא ידו. מקמ׳ קמא דאתקין אמטי קמייכו. והיה כל מבקש ה׳ יבוא ויביא מן ראתא לידייכו. בראות המעיר[?] לעזור כי חפצי׳ בתור׳ משה יזיל

suggest that this nephew was using the responsa to attract investors to print *Darkhei Moshe*.

Although it was printed at a later date than the other works, and at a longer interval after the author's death, this collection, similarly, was not conceived as a strong unit, as a number of elements show. The book contains about 130 sections on a wide variety of topics. Many are clearly based on actual letters, such as §48, a responsum sent by Rabbi Isserles to Rabbi Meir Katzenelbogen of Padua (ca. 1482-1564), which even includes the latter's agreement with Rabbi Isserles' decision at the bottom. Other entries seem more akin to a judge's notes or diary entries, such as §29: "The aforementioned rabbis disagreed on one more thing regarding the *sukah*…,"[1118] or §30, which is introduced as "something that occurred in Cracow … and the aforementioned came before me to demand…."[1119] Moreover, almost a third of the *ShuT Rema* was not penned by Rabbi Isserles himself.[1120]

Although the responsa do not follow a specific organizational pattern, some correspondence is arranged in associated clusters, as, for instance, §3-9, which all belong to Rabbi Isserles' correspondence with Rabbi Luria, or §12-16, in which all the material forms a discrete unit. The earliest responsum that can be dated precisely stems from 1550; the latest dated one was written in 1571, close to Rabbi Isserles' death.[1121] The earliest responsum is among the first ten responsa of the book, while the latest responsum is the final entry in *ShUT Rema*. No real attempt was made, however, to organize the responsa,

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כסף מוצאו  להדריך אתכם גם (**בדרכי משה**) בית ישראל יראי ה׳ יאמרו לאמר נלכה באור ה׳ יורנו מדרכיו נלכה באורחותיו. כי מצי״ון הגדול הזה תצא תורה ודבר ה׳ מדבבות פשתותיו. נאם הצעיר משה בן א״א כמהר״ר אלעזר אחי הגאון המחבר זלחהעה״ב מכובד בכבודו. להיותו דודו. ובכן לכבוד הודו. אשבח תהילת יסודו.

[1118] Isserles, *ShUT Rema*, §29: ...עוד אחרת נפל בין החכמי׳ הנ״ל בעשיית הסוכה.

[1119] Isserles, *ShUT Rema*, §30: ...מעשה היה פה ק״ק קראקא באחד שמו אברם...והנה זה אברם הנ״ל בא לפני.

[1120] Roughly 40 out of the 132 entries were written by rabbis other than Rabbi Isserles.

[1121] Asher Siev, "Introduction" in Isserles, *ShUT Rema*, ed. Asher Siev (New York: Yeshiva University Press, 1971), 29.

whether chronologically, topically, or by correspondent. The work contains many other instances of correspondence between Rabbi Isserles and Rabbi Luria in addition to the first cluster of seven responsa with Rabbi Luria, but they are not placed with that cluster. Although several topics recur throughout the responsa, they are not positioned near one another. For instance, two responsa about the very same issue are separated by one unrelated responsum, but, rather than moving them together, the editor points out in the table of contents that §26 is "some more about the issue of the *shtuki* (a person of unknown lineage) from above, which is in §24,"[1122]; he does not move §25 out of the way or explain its awkward location. In another example of editorial carelessness, §25 itself was neither composed by Rabbi Isserles nor addressed to him; it was probably found among his letters and included accidentally. In another such mistake, §62 was neither from nor addressed to Rabbi Isserles.[1123] The topic of the *shtuki*, discussed in §24 and 26, is addressed yet again, in §69 – the question is even prefaced by the remark that "this responsum is related to responsum §24 above, which also discusses this issue"[1124] – but, clearly, placing the two together was not a priority.[1125] The book displays many such simple signs of disorganization: the answers given in responsum §95, for instance, are replies to questions provided only in §113, and so forth.

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[1122] Isserles, *ShUT Rema*, Table of Contents, 64:2b כ"ד שבסי׳ הנ״ל השתוקי ענין על עוד – כו.

[1123] See Siev, "Introduction," in Isserles, *ShUT Rema,* ed. Siev, 30-32. It was written by Rabbi Israel Shakhna to a Rabbi Moshe ben Meshulam from Italy. See also, Isserles, *ShUT Rema*, §25, ed. Siev, 147n*. Those who published the book saw that it was addressed to a "Rabbi Moshe" and assumed this was Rabbi Isserles, thus placing the responsum in the collection, although the mistake could be discovered quite easily.

[1124] Isserles, *ShUT Rema*, 1st ed., §69. זה. מענין כ"כ המדברת ג"ד לעיל כ"ד לתשובה שייכות לה יש זו תשובה סט ...סט

[1125] In the table of contents, at §24, it mentions that the topic is discussed in §69, but under §26, which also deals with this topic, only §24 is mentioned, omitting §69. Under §69, it is mentioned that this topic is also discussed elsewhere, but an incorrect reference (to §28) is provided.

We can conclude that structurally this book most resembles a roughly chronological letter collection, in which units of correspondence – not topics, or even addressees – constitute the organizing principle. Probably, the letters were kept more or less in the order of arrival and then published that way, without much rearranging. As Rabbi Efraim Margaliot of Brodt (1762-1828), the author of genealogical and hagiographical works about Rabbi Isserles and his circle, wrote: "most likely, the responsa were sent to Rema and kept among his writings and they [the printers] thought that it is from Rema and printed it … and so too the responsa from §55 to §60, they were also laying among the writings and were printed…."[1126]

The responsa printed in §5-7 in *ShUT Rema,* which represent part of the correspondence between Rabbi Isserles and Rabbi Luria, have been discussed in the previous chapter. The intense acrimony of these letters and their esoteric subject, on the one hand, and the publication of only part of the correspondence, on the other, suggest that the collection of responsa was published by Rabbi Isserles' descendants without giving the details of the project too much thought. The letters are almost incomprehensible, both because of the private hints and insinuations and because of the topics that were broached. The insults that flew between the rabbis are especially stinging and strongly worded; yet, they were oddly enough published without any editing to temper these halakhically irrelevant personal altercations. Rabbi Luria clearly also possessed copies of the correspondence, as he cites both his own and Rabbi Isserles' earlier letters in later ones,

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[1126] Efraim Zalman Margaliot of Brod, *Ma'alot ha-yuḥasin* (Lemberg: Rohatyn, 1900), 2:

כי הגאון מו"ה משה שנזכר כאן שהשיב לו מהר"י ז"ל אינו הרמ"א רק הוא גדול אחד מארץ לועז...וכפי הנראה נשלחו
תשו' אלו ליד הרמ"א ונשארו בין כתביו והיו סבורים שהוא תשו' להרמ"א וכן התשובה שנדפסה בתשו' הרמ"א מן סי' נ"ה עד סי'
ס' סמך בענין הגט מפראג שהיה בשנת שיו"ר ג"כ הי' מונחים בין כתבי הרמ"א ונדפסו...

but he chose not to include them in his printed work. If we speculate that publishing these letters was a conscious editorial decision, rather than an oversight, for instance, because the publishers of *ShUT Rema* decided after the death of both correspondents that these letters could be published, a different question arises: Why did they not print the missing letters that preceded the printed exchange, which could have clarified the topic under discussion? It is likely that the publishers of the work simply printed whatever they could find.

There are two strong editorial elements in *ShUT Rema* – the remarks that were added in parentheses in cursive font (so-called "RaShY script"),[1127] usually to provide more precise references to sources in other works, and the table of contents at the end of the work. Some references added clarifications[1128] and others provided cross-referencing within the work.[1129] Both of these contributions, however, contain many inconsistencies and countless mistakes. Some remarks are rendered in the first person, for example, §7 says, "In any event, my proofs are not rejected," and, in parentheses after "proofs," is added "(those that I wrote at first)," creating the impression that Rabbi Isserles himself wrote these remarks, possibly at a later point, in the margins of his copy of the responsa.[1130] Other

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[1127] On why the sfardic semi-cursive typeface in printed books gained the name "RaShY script," see Mordechai Glatzer, "Early Hebrew Printing" in *A Sign and a Witness: 2000 Years of Hebrew books and illuminated manuscripts*, ed. Leonard Singer Gold (NY: NYPL and Oxford University Press, 1988), 89.

[1128] For instance, in *ShUT Rema,* §17, which discusses testimony about adultery. Throughout the discussion, the relevant sentences from the Yiddish testimonies are repeated in parentheses. Another example is *ShUT Rema,* §6, on page 15a in the first edition.

[1129] For instance, in *ShUT Rema,* §26, Rabbi Isserles writes that he himself has already "answered my part in this" (ועל דבר השתוקי...כבר נשפכו הרבה דיואות ונשברו כמה קולמוסים בזה וכבר עניתי חלקי בזה). In other words, he already wrote a responsum regarding such an issue. In parentheses, the reference to the responsum in which Rabbi Isserles dealt with the issue (§24) is provided.

[1130] *ShUT Rema,* §7.

first person remarks, however, seem to be an editorial voice, such as the comment before §5: "This responsum was already printed in *ShUT MaharShaL* ... therefore I shortened the responsum itself … only [I included some of it] to append to them the ending, which was not printed there."[1131] It is not clear who created these references. Perhaps it was the same anonymous person who did so for Rabbi Isserles' *Mapah*, which first appeared with such references (similarly in parentheses and cursive font) in 1607, printed by Prostiẓ.[1132] The press of Meisels replaced Prostiẓ's print shop in Cracow around 1630 and took over much of their typographic material and employees.[1133] Possibly, they also "inherited" access to Rabbi Isserles' manuscripts or copies thereof, which included these references in the margins, or the same editors who added the references in the *Mapah* did so for the responsa. The printing press was located in Cracow, where Rabbi Isserles had lived, and near many of his colleagues and relatives who no doubt possessed manuscripts from him or copies thereof, so it is not difficult to imagine how the material was collected. While such references could indicate a strong editorial vision; they are riddled with so many inconsistencies, omissions, and errors, that they provide little structure or unity to the

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[1131] *ShUT Rema,* §5: תשובה זו כבר נדפסה בתשובת מהרש״ל...ולכך קצרתי עצמות התשובה...רק להסמיך אליהם סוף דבריו שלא נדפס שם.

[1132] It is not known who wrote these references, but Rabbi Isserles' own introduction to his *Mapah* mentions that he does not provide exact references, meaning that they must have been added later. In fact, the introduction by the printers of the 1607 *Mapah* clearly mentions that they created these references for that edition (much later, scholars assumed that these references came from Rabbi Isserles and, at times, erroneously used them as the basis for halakhic interpretations).

Some historians believed that they were created by Rabbi Shimon, son of Pinḥas Horowitz, but he was actually involved in a later edition, after 1607. See *Shulḥan Arukh Friedman Edition, Oraḥ ḥayim* (Jerusalem: Makhon Yerushalaim, 1994), 1: 35-36. See also Ḥayim Shlomo Rosenthal, "Introduction," in Moshe Isserles, *Darkhei Moshe ha-shalem* [The complete *Darkhei Moshe*], ed. Ḥayim Shlomo Rosenthal (Jerusalem: Makhon Yerushalaim, 1979), vol. *Ḥoshen mishpat,* 19-34. See also, Siev, "Introduction" in *ShUT Rema*, ed. Siev, 18-20.

[1133] See Friedberg, *Toldot ha-dfus ha-ivri be-Polania*, 27.

work.[1134] In terms of finding aids, there is no topical index, and the table of contents at the end of the book simply provides a list of the sections with a short description of each. As this addition, too, is filled with errors, it can serve only for a very cursory overview of the contents.

Another explicit editorial intervention was the decision not to print those responsa that had a parallel in the printed *ShUT MaharShaL*. The responsa in question were omitted, but, curiously, the section number and sometimes the description remained, followed by a note informing the reader where to find the responsum in question in Rabbi Luria's book. It is puzzling that they decided to leave the section number from *ShUT* Rema's absent responsum in place rather than simply removing it. For instance, in §60 of *ShUT Rema*, all one can see are two lines, proclaiming: "60 already printed in the responsa of Rabbi Luria §50...."[1135] Next, §61 likewise only mentions that this responsum was already printed in Rabbi Luria's collection and sends the reader not only to the relevant responsum in that work but also to a related responsum in *ShUT Rema* itself. It would have made more sense to place the whole remark next to that responsum, which was printed, rather than in an empty entry dozens of sections later![1136]

The references regarding the omitted entries in *ShUT Rema* and their location in *ShUT MaharShaL* were provided both in the body of *ShUT Rema*, next to the section number where they would have appeared, and under the corresponding section number in

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[1134] See also Siev, "Introduction," in *ShUT Rema*, ed. Siev, 20.

[1135] Isserles, *ShUT Rema*, §60: ע כבר נדפס בתשובת מהרש"ל סימן נ' עד ומההיא דפ' אלמנה ניזונת.

[1136] Isserles, *ShUT Rema*, §61: עא נדפס בתשובת מהרש"ל סי' מ"ט וע"ל בסי' א'.

To add to the confusion, the reference to the entry in *ShUT Rema* is wrong – it should be §3, 4 not §1.

the table of contents. Some inconsistencies between references to the same responsum in the table of contents and the book itself are among the many editorial errors.[1137] For instance, §18 is about women beginning their preparations to use the ritual bath during the daytime; it was omitted because "it is printed in the responsa of Rabbi Luria, §11."[1138] Rabbi Isserles' contribution to this topic can be found in §21, which is described, rather confusingly, as "response to the *gaon*, the author, about dipping in the ritual bath … which is in the responsa of Rabbi Luria §6, and it was not printed there."[1139] The description in §21 of the body of *ShUT Rema* is clearer: "The topic of this question is written in the responsa of Rabbi Luria §6, but this responsum [§21] is not printed there."[1140] The publishers seem to have conceived of the responsa collection not as a work onto itself but as part of a larger body of correspondence and therefore saw no need to print those parts of the correspondence that had already been printed in Rabbi Luria's collection. Perhaps they assumed that the audience for both works of responsa was identical.

In short, the responsa of Rabbi Isserles were printed as a loose collection of letters, with barely any attempt at structuring the work or determining an organizing principle for the unit as a whole. This is very revealing about the conditions in which responsa were kept and published, even several decades into the seventeenth century. Most important for our

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[1137] For instance, §4 is omitted, because it appears in *ShUT MaharShaL*, §49. The table of contents, under §4, provides the correct reference, but the body of the work sends the reader to *ShUT MaharShaL*, §91.

[1138] Isserles, *ShUT Rema*, Table of Contents, 64:2b. יח על ענין הטבילה והחפיפה ביום ונדפסה בתשובת מהרש״ל סי׳ י״א

According to Siev's notes in his edition of *ShUT Rema*, 128n9, the table of contents sends the reader to Rabbi Luria's responsum "above" (הנ״ל), but I have not found this.

[1139] Isserles, *ShUT Rema*, Table of Contents, 64:2b. כא תשוב׳ להגאון המחבר בענין האבילה והחפיפה שבתשובת מהרש״ל סי׳ ו ולא נדפסה שם.

[1140] Isserles, *ShUT Rema*, §21: ענין שאלה הזו היא כתובה בתשובות מהרש״ל סי׳ ו׳ אך תשובה זו לא נדפסה

inquiry is the fact that, although Rabbi Isserles was perhaps the figure most sensitive to the impact of print in Ashkenaz – as can be seen from his introduction to *Torat ḥatat*,[1141] where he explains his choice to follow the printed edition of a work that most people possessed, or, indeed, from his project to associate his glosses with the *Shulḥan Arukh* as a whole – he did not plan to print his responsa. The responsa make an occasional appearance in his glosses to *Shulḥan Arukh*,[1142] but, unlike the many works that he did publish in his lifetime, and unlike *Darkhei Moshe*, which he clearly hoped to print one day, no such mention is made of the responsa. Perhaps this is related to his death in his early forties; responsa were, as we saw from the two other sixteenth-century examples, material that one would print toward the end of one's life (more on this near the end of this chapter). The responsa remained in his archive, to be printed more or less as they were found, only in 1640.

In summary, of the three main ashkenazic works of responsa from this era, one was not printed until the seventeenth century, and even then, it was printed with very minimal editorial intervention, barely curated, and not in a unified structure. The two works of responsa that were printed in sixteenth-century Ashkenaz were similarly unstructured and disorganized. Although they contained a serious amount of responsa, the works were riddled with so many peculiarities and exceptions that they hardly seem like "real works of

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[1141] The manuscripts of *Sha'arei Dura* are divided into about 30 to 40 sections; the second printed edition (Venice, 1547-8) is the first to use sections that start with the first "gate" and run straight through to the end (not beginning a new count after the end of the ten "gates"), 96 sections altogether [plus 32 on *nidah*]. Rema used this division of the printed edition, consciously devised to complement the printed *Sha'arei Dura*. We also know from several remarks that he used the Venice 1548 edition. See Dvileizky, "Introduction," *Sha'arei Dura,* ed. Dvileizky 22n124. In *Torat ḥatat*, Rabbi Isserles streamlined, unified, and summarized *Sha'arei Dura*. Realizing that most people now had the printed edition of *Sha'arei Dura* and would continue to utilize it, in his own work, Rabbi Isserles therefore followed the order and division of sections as found in the printed *Sha'arei Dura*, starting with the Venice edition of the work.

[1142] For instance, Isserles, *Mapah* on *Shulḥan Arukh, Oraḥ ḥayim,* §339:4 refers to the same case as §125 in the responsa.

responsa" according to the classical paradigm. I would like to suggest, however, that they were perhaps not all that peculiar. If we abandon the assumption of generic paradigms, but, instead consider their production in the context of scholarly practices and their material composition and creation, we can see that these works were, in fact, paradigmatic – not only of the concept of a work of halakha in this specific time and place but also for an early modern scholarly work *tout court*.

### 3. ARCHIVAL PRACTICES
### a. Archives And Letter Books

As the discussion in the introduction suggested, the idea of how a certain work is supposed to look is closely related to the scholarly culture, practices, and technologies of an intellectual milieu. Instead of starting from a paradigm of works of responsa, let us, instead, begin from the context in which these rabbis were working, from the material conditions of their writing, and their scholarly culture and its practices. In most cases, responsa started out as letters. The usual practice was to send one copy of a letter (usually the neater and more legible copy rather than the messier original) to the recipient and to keep one copy for one's own records. A variety of practices – material and scholarly –existed for the storing of these letters. Peter Stallybrass' "reading" of the portrait of the Antwerpian merchant Jan Snoeck surrounded by his paperwork has helped us visualize how documents were organized, filed, and kept. Early modern merchants would often file and organize their correspondence by pinning or stringing it together and sometimes hanging it on the

wall. [1143] In Ginsburg's collection of Jewish correspondence from the sixteenth century, one letter contains a plea to the addressee: "Therefore, my beloved friend, do not act in the way that people do, to read the letter and then pin the writing on the wall and leave it." [1144] Clearly, Jews were using similar filing systems for their correspondence.

Another practice for filing these letters can be gleaned from remarks in the exchanges between Rabbi Luria and Rabbi Isserles. At some point, Rabbi Luria refers to an earlier statement by Rabbi Isserles (not printed in the responsa collection), in which the latter objected to the use of esoteric matters in a letter. Rabbi Isserles expressed his reservations using a talmudic reference, a statement about not writing God's name on secular documents such as loan contracts because of the risk that once the debt is paid, "God's name will be thrown in the trash."[1145] Rabbi Luria took offense at the remark and its implication that his letters wound up in the trash. He answered cynically: "Perhaps this is *your* habit of treating *my* writings, but *your* writings are like a crown of gold to me."[1146] Rabbi Isserles, who of course meant nothing of the sort (he was using this reference from the Talmud merely to allude to the fact that holy matters should not circulate in such a quotidian medium), answers with the requisite shock, adding that, when it came to Rabbi Luria's letters, "I keep them inside my other sacred books, as is appropriate for them,

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[1143] See Peter Stallybrass on filing: Peter Stallybrass, "String, Pins, Thread, Wire, Laces and Folds, lecture with Powerpoint, The Gathered Text, Bodleian Library, Oxford, UK, September 3, 2010, in which Stallybrass analyzes the different kinds of filing methods on the basis of archival material and by studying Jan Gossaert's painting of Jan Snoeck, a merchant from Antwerp surrounded by his paperwork. I thank Professor Stallybrass for sharing the Powerpoint file of this lecture with me.

[1144] Ginsberg, "Private Yiddishe," 331, letter II, also mentioned in Carlebach, "Letter into Text," 118. לכן אהובי ורעי אל תעשה כאופן שעושים בני אדם שקורין הכתב ואח"כ דוקרים הכתב בקיר ויניחנו אלא אדרבא אבקש ממך שיהיה לך...

[1145] *Scroll of Ta'anit,* chapter 7: למחר זה פורע את חובו...ונמצא שם שמים מוטל באשפה

[1146] Isserles, *ShUT Rema*, §6. (emphasis added) אפשר שכן ההרגל אצלך כתיבתי אבל כתביך הם לי לעטרת פז

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because all their words are words of Torah." [1147] Keeping responsa within sacred books may have been a common practice. Rabbi Meir Katzenelbogen of Padua faced some difficulties when trying to collect responsa from his predecessor Rabbi Yehuda Mintz for publication. In the introduction to that collection of responsa, Rabbi Meir writes that his brother-in-law, the grandson of the responsa's author, "...checked in his books here and there and found a few booklets [*kuntresim*] hidden inside the books spread here and there,[1148] until he assembled sixteen *psakim* [adjudications] and brought them to me...."[1149] Perhaps the grandson was keeping his grandfather's responsa inside books, or maybe he had inherited some books from his grandfather that already contained these responsa between their pages.

In sum, there were many ways of preserving correspondence in the early modern world, such as in loose pages, in bound notebooks, or by running a thread ("*fil*"- hence "filing") through related letters and hanging them on the wall for easy reference. Letters were copied into letter books, bound or strung together, or kept in other ways for Jewish and non-Jewish correspondence alike. Sometimes, a record of the letter would be kept in a specifically designated "letter book"; at other times, a précis or a fuller copy would be noted in a kind of commonplace book, which were notebooks arranged according to

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[1147] Isserles, *ShUT Rema*, §7. אדוני, אומר שכל דברים אלו גורם מיעוט אמונת מעלתו בי ושאין כ"ת דן אותי לכף
זכות ...שלא חשבתי למלעתו על זאת כי לדעתי דברי נגד אדוני כאן נחשבו כמו שמדומה לי מכל דברי מעלתו על כן כתבתי דרך
שפלות...רק אני גונזם תוך שאר ספרי קודש כראוי להם, כי כל דבריהם תורה.

[1148] Possibly, the responsa were copied into a notebook that had belonged to Rabbi Mintz and that contained many other matters, or it was a part of a bound miscellany of his notes, which is why they were "hidden inside the books spread here and there."

[1149] Mintz and Katzenelbogen, *ShUT MahaRY Mintz u-MaharaM Padua*, Introduction:
אמנם עתה בזמן קרוב בא אלי גיסי האלוף מהר"רי מינץ ס"ל ז"ל י"ץ בן בנו ואמ' איך בדק בספריו אנה ואנה ומצ' קצת
קונטרסי' גנוזים בתוך הספרים אחת הנה ואחת הנה עד שקבץ יחד י"ו פסקים והביא' אלי

"commonplaces," thematic or topical headings under which a scholar would copy relevant texts. Often, the letters would be copied in their entirety and filed in bundles, cabinets, or chests. Secretaries often filed copies of outgoing letters by folding them, adding an endorsement with a short description on the back (literally "*en dos*") and bundling them with other letters by date or correspondent. A similar system could be used to bundle and keep incoming mail.[1150] Many of the one-line descriptions that introduce responsa in Rabbi Katz's collection, for instance, are akin to such endorsements, which function as a short introduction to the letter.[1151]

These accounts contextualize rabbinic responsa more robustly in the accepted practices of preserving early modern correspondence. We can imagine a figure such as Rabbi Isserles in Cracow, having his correspondence copied by a scribe, signing, and sending the scribe's copy while filing his own writing with the corresponding incoming letters, together with other halakhic notes related to his scholarly and judicial activities, by pinning or stringing them together in bundles, hanging them on his wall or filing them in cabinets, as his contemporaries did. We can envision preservation of these papers together with scholarly notes and rabbinical court papers such as official testimonies and copies of contracts and divorce documents and how parts of these archives would be copied and once again circulate via letters, print, or other means, to other scholars, students, and rabbis.

### b.      Letter Books and Their Uses

Let us proceed from the materiality of keeping letters to the "logic" of these practices by

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[1150] Daybell points out that if a letter has two sets of folds, it was likely folded once when it was mailed and then folded again in another way when it was filed. See Daybell, *The Material Letter*, 218.

[1151] See above, notes 1093-1102 for examples of such descriptions as they appear in Katz, *ShUT she'erit Yosef,* §3, 15, 16, 20, 22-27, 33, 35, 38, 39, 43, 74, and many others.

considering who kept such collections: Letter books were kept by legal professionals, administrators, monasteries, diplomats, churchmen, institutions, merchants, scholars, students, and university men. As several of these functions resemble those of a rabbi, as a religious leader, legal professional, and scholar, it is likely that rabbis also kept collections comparable to letter books. The practice clearly reflects an administrative purpose – a need simply to preserve a record of communications for later reference. The recipient, in turn, was also expected to keep the letters, in order to permit the conversation to continue smoothly across time and space. Rabbi Isserles tells his student: "…know, my dear, that all your questions from the day you parted from me, as well as my responses to them, are copied with me, *connected* to my responses. ... And for this reason, everything is before my eyes when I write to your highness. And so, you, too, should do [the same], so that the things will be *tied* to one another, every statement to where it fits."[1152] Note the use of verbs like "*meḥubarim*" (connected, bundled) and "*kshurim*" (tied), which denote the thematic connections among the letters but also refer to physically attaching relevant letters.

Additional administrative or record keeping reasons for retaining correspondence include the need to show it to a colleague for feedback or have it available for reference in case a decision is contested. [1153] The phenomenon of letter books was not, however,

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[1152] Isserles, *ShUT Rema*, §40.  וראיתי שחזר מעלתך על הראשונות שכבר השבתי עליהם והגיע התשובה למעלתך כאשר ניכר לי מתוך כתבך אשר כתבת באחרונה. ולכן לא אצטרך להעתיק תשובתי שנית רק להשיב על מה שהקשה מעלתך על תשובתי. ותחלה אני אומר, דע אהובי שכל שאילתך מיום פרידתך מעמי וכן תשובתי עליהם הם מועתקים אצלי מחוברות עם תשובתי אשר ידע מעל'. ולכן הכל הוא לנגד עיני בכתבי למעלתך, וכן תעשה כדי שיהיו הדברים קשורים זה בזה דבר דבור על אופניו. ובדרך זה אין אני צריכין לחזור לחזור תמיד הדברים הראשונים אלא לכתוב בקצרה הענין אשר אנו עליו.

The expression דבר דבור על אופניו comes from Proverbs 25:11: "Like apples of gold in settings of silver is a word spoken fitly." Here, the author removes the words דבר דבור from the meaning of speech and uses them as things or statements in general, which should be physically organized and filed in the right place.

[1153] Rabbi Yehuda Mintz introduces a responsum as follows: "I said, I shall tell this law so that *the later generation* shall know for what reason I permitted..." (Mintz, *ShUT MaharY Mintz*, §4, emphasis

restricted to administrative purposes, as can be deduced from the variety in the types of letter books that existed. Consider the following summary by James Daybell, who studied the material letter in early modern England: "The habit of keeping letter-books varied widely, ranging from the official deskbound folio for regularly entering outgoing and incoming correspondence to the student notebook, improvised out of several single sheets of paper stitched together, where letters were recorded in ad hoc fashion among exercises and erotica."[1154] The varieties of ways to preserve letters point to at least as many purposes for preserving them. These practices and purposes of preserving letters ring true for early modern rabbis as well.

Technically, one can distinguish between letter books, which are devoted exclusively to letters, on the one hand, and more general manuscript miscellanies, which are meant to be records of a variety of things, including incoming and outgoing correspondence, on the other. As these books were often hybrids, there is not much point in distinguishing between these too sharply. Letter books could serve, initially, as a form of news and, later, as a form of history or memorialization, as in cases where students of famous humanists would posthumously publish their teachers' letters. The responsa of Rabbi Luria were printed in Lublin shortly after his death, and the title page addresses this fact. After praising Rabbi Luria, announcing that he had died, and adding a long blessing for the dead,[1155] the title page exhorts potential readers "…not to guard those coins, which

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added). The responsa are thus copied as a personal record in the interest of posterity, while also providing Rabbi Mintz the material needed to defend his decisions should they be contested.

[1154] Daybell, *The Material Letter*, 72.

[1155] Luria, *ShUT MaharShaL*, title-page: הלא הוא הגאון המופלג עלה לישיבה שבשמים. מהר"ר שלמה בן מהר"ר יחיאל לורי"א ז"ל תהא נפשו צרורה בצרור החיים אמן.

are round. Like the cycle that repeats in the world, they roll. And take, in their stead this most precious book….” In the following sentence, the title page addresses a specific group of potential purchasers: “And especially the students of his honor … who will find in it many useful things.”[1156] A poem by the printers on the next page ties the publication of the book to Rabbi Luria’s death: “…his responsa declare the immense wisdom of our master. Who left us and went to his honored resting place.... In order to show his greatness to the world ... we made up in our hearts. To print these questions and his responsa, which we decided to bring to our labor of print.”[1157] One more aspect of this book relates it closely to a posthumous publication of their rabbi’s *nachlass*: some of the copies of the book were bound together with poems about Rabbi Luria, which were arranged on the page in circular form and typed using type very similar to the book itself. One of these copies was even bound with a eulogy of Rabbi Luria.[1158] We can thus assume that the circumstances surrounding the printing of this work were closely connected to the author’s death and consider its publication as a form of memorialization.

Letter keeping can, however, serve more far-ranging goals: the previous chapter mentioned *Sefer igrot shlomim* (Book of familiar letters), the letter manual published as early as 1534 in Augsburg by the *Shaḥor* press. The book’s introduction links the succession of letters into one narrative: “I began with the matter of a request, because this

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[1156] Luria, *ShUT MaharShaL* , title-page: לכן אל תחוסו על הזוזים אשר המה עגולות. כגלגל שחוזר בעולם מגלגלות. וקחו במחיריהן ספר יקר מכל סגולות. ובפרט תלמידי דמר המה יחוסו בלי עצלות. כי ימצאו בו דברים הרבה אשר המה לו מועילות...

[1157] Luria, *ShUT MaharShaL*, title-page (folio b): המה יעידון יגידון רוב חכמתו. שאלות ותשובות של מורינו. שנפרד מאתנו והלך לכבוד מנוחתו. אוי נא לכו כי גרמו עוונתינו. להראות את העמים גדולתו. בראותינו את זה אמרנו בלבינו. להדפיס שאלות ותשובותו. ראינו להביא במלאכת דפוסינו (Every other line rhymes: ABABAB).

[1158] The copies in question are the copy from JTS and the copy of the Bodleian Library, which Elhanan Reiner photographed and showed me.

is the way of the world, a person asking his friend, and I connected to it an issue of refusal, because this is the way of the world, that a person sometimes refuses his friend's request. Then I added one on anger and a threat, as the way of the world is to be angry at the person who refuses him…."[1159] The decision to connect the letters in this way, reminiscent of the later genre of epistolary novels, points to yet another form of reading correspondence – as fictional entertainment. More generally, Daybell posits letter books "as a form of 'self-writing,' a way of textualizing a life (or aspects of a life) in an enduring letter form."[1160] He provides examples showing that letter books were closely tied to the construction of self in the early modern period and thus present a form of life writing.[1161] In sum, people kept correspondence without necessarily specifying a particular purpose. In Daybell's words:

> …what marks early modern manuscript letter books is their remarkable variety in form, appropriated by individuals in a highly idiosyncratic and personalized manner. While many employed special volumes solely for the purpose of copying correspondence, other writers recorded letters less systematically in a series of hybrid manuscripts…. Individual manuscript books performed multiple functions, and letters were copied variously into muster books, journals of voyages, accounts, commonplace books and almanacs.[1162]

The early modern letter book is thus a useful way of conceptualizing responsa as they were kept by rabbinical scholars, not only in terms of their narrower definition, but especially in terms of their hybrid nature.

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[1159] Anonymous, *Igrot shlomim* (Augsburg, 1534). התחלתי בעניין המבקש כי כן דרך העולם לבקש אדם מחבירו, וחיברתי אחריו עניין מיאון כי כן דרך העולם שממאן אדם בשאילת חבירו. וחברתי אחריו עניין כעס והתראה, כי כן דרך העולם לכעוס על מי שממאן בבקשתו.

[1160] Daybell, *The Material Letter*, 179.

[1161] Daybell, *The Material Letter*, 188. "Throughout the early modern period ... letter books were intimately connected with the construction of self, and a strong argument can be made for considering the genre as a form of life writing...." The connection between such life writing and record keeping, between an intimate diary and a personal record of communications and transactions, can be especially useful for our framing of pre-Rousseauian notions of biography.

[1162] Daybell, *The Material Letter*, 180.

### c. Archives and Reference Tools

"Although often administrative in impulse, connected to office, letter books were also compiled by a wide range of letter writers for individual, spiritual and creative purposes," as Daybell puts it.[1163] For rabbis, situated on the intersection of the administrative, the intellectual, and the creative, one of these purposes was for use as a reference tool for study or in order to include certain elements in a later publication. Rabbi Luria's magnum opus, his work on the Talmud called *Yam shel Shlomo,* contains many places where sections from his responsa are copied into the work in the relevant location [1164] or vice versa. One example of copying from *Yam shel Shlomo* to his responsa was mentioned above, where §85 was introduced as: "The laws of Ḥanukah in short, from my big work called *Yam shel Shlomo*." Inversely, in *Yam shel Shlomo* we often find statements such as "and behold here the responsum, which I already wrote," after which parts of a relevant responsum from his *ShUT* are inserted.[1165] The papers and writings in the rabbi's study were thus a part of his reference material, a dynamic archive that functioned as his working tool in generating new writings.

Such personal tools of reference and scholarship often included letters, and there is clearly some overlap between the letter book and the commonplace book, as they both were forms of manuscript record keeping that could range from the mundane to the intellectual.

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[1163] Daybell, *The Material Letter*, 179.

[1164] See, for example, Luria, *ShUT MaharShaL*, §43, §73, §33, and many more. Meir Rafeld mentions this in his dissertation on Luria. Meir Rafeld, "Ha-MaharShaL ve-ha *Yam shel Shlomo*" (PhD diss., Bar Ilan University, 1991), 96-97.

[1165] Luria, *Yam shel Shlomo*, tractate *Beiẓah* 1:§1. Other examples of this can be found in ibid., 3:§5, and in *Yam shel Shlomo*, tractate *Yevamot* 6:§41, "and here you have a responsum that I wrote in my youth…" (this refers to *ShUT MaharShaL*, §14). See also *Yam shel Shlomo*, tractate *Kidushin*, 1:§40, 2:§19, and 3:§2.

Just as letters were preserved in commonplace books, letter books, too, contained other commonplace material. The creation of idiosyncratic reference tools out of one's own notes, as well as the presence of letters in these collections, is well documented among many of the humanist scholars of the early modern period. In the words of Ann Blair: "Commonplace books served as storehouses and clearinghouses for all the questions, tropes, examples, and general information that supplied copiousness of both words and things…. The commonplace book was a crucial, although often unacknowledged, tool of scholarship in all fields."[1166] Conrad Gesner's (1516-1565) famous reference work, the *Bibliotheca universalis,* started as his own collection,[1167] comprising many excerpts and copies, including letters, which he organized by topic, often by simply pasting the piece of paper in the correct place.[1168] Gesner writes as follows in a letter:

> I regret that two of my letters to you have disappeared. I don't remember what I

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[1166] Ann Blair, *The Theater of Nature*, 70. "Closer scrutiny of the *Methodus*, long admired for some modern-sounding precepts of historical research, has led Anthony Grafton to conclude that even seemingly "organic" texts, presumed to have grown out of the author's original insight, stem from "the cobbling together of bits of material from the most disparate sources, unacknowledged at the time, and difficult to discover now."

[1167] Gesner's great *Bibliotheca* started as the scholar's own reference tool (and included letters), as did Aldrovandi's. See Paul Nelles, "Reading and Memory in the Universal Library: Conrad Gessner and the Renaissance Book," in *Mind and Memory in Renaissance Culture*, ed. Donald Beecher and Grant Williams (Toronto: Center for Reformation and Renaissance Studies, 2009), 147-169.

"He advised that notes were to be written out during the course of one's reading on a sheet of good quality paper, and on one side only. After this was done, the sheet could be cut up – with sharp scissors – 'and then you divide the cut slips in the desired order, first into larger parts, then subdivide again and again, however many times this is needed.' The slips could then be arranged on a table or in small boxes. Once placed in order, the whole thing might be copied out or, if legibly transcribed, the slips could be mounted directly onto additional sheets of paper. All of this signals a very porous boundary between print and manuscript. Indeed, Gessner suggested that even printed books could be cut up in a similar manner. For this two copies of the text would be needed as after cutting up one page, the other side could no longer be used. He raved that huge savings in labour could be gained in this way. Such a practice could not have been all that uncommon, and in all of this Gessner is surely describing the methods he himself employed in compiling the *Bibliotheca universalis*." See Nelles, "Reading and Memory," 165.

[1168] See Fabian Kraemer and Helmut Zedelmaier, "Instruments of Invention in Renaissance Europe: The cases of Conrad Gesner and Ulisse Aldrovandi," *Intellectual History Review* 24, no. 3 (2014): 321-341.

See also Ann Blair, "Note Taking as an Art of Transmission," *Critical Inquiry* 31, no. 1 (Autumn 2004): 85-107.

wrote in them, nor can I find your letters to which you wish me once more to respond. After responding to letters, I am accustomed to put them into my piles of paper – even to cut them up – and distribute them among my papers according to their subject. Hence it would be convenient if you could repeat, in a few words, what you wanted to ask me.[1169]

The natural historian Ulisse Aldrovandi (1522-1605) first created his *Pandechion epistemonicon* for his own use, by copying copious information from his reading and study onto scraps of paper, which he kept and only much later pasted into a book and ultimately published.[1170] Doctors, such as Adriaan van der Spiegel (1578-1625),[1171] likewise created such reference works, and Robert Boyle's archive, which he consulted and organized, included many letters.[1172]

In light of these practices, we might infer that Rabbi Katz's responsa were kept together with notes about halakhic books that he was teaching and studying. Similarly,

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[1169] The citation is from a letter to Johann Bauhin, as cited in Brian W. Ogilvie, *The Science of Describing: Natural History in Renaissance Europe* (Chicago: Chicago University Press, 2006), 180: "…Renaissance naturalists also took copious notes on what they had observed and read. Gessner, Spiegel, and their contemporaries preferred the humanist format of the commonplace book. In his *Isagoge*, Adriaan van de Spiegel set out detailed rules for how to make a botanical commonplace book, or as he termed it, a florilegium. By dividing the book up properly … the more advanced scholar could control a great amount of material and have a useful resource for writing his own books on the subject. Conrad Gessner used such a method of commonplaces to keep track of the vast amount of information contained in his numerous publications. His usual practice, at least late in life, was to keep files according to commonplaces, and to divide up his notes and correspondence into these files. By so doing, he established a comprehensive system, but at the cost of quick recall of any particular element…."

[1170] See Kraemer and Zedelmaier, "Instruments of invention," 328: "Ulisse Aldrovandi described the steps up to the finished *Pandechion* as follows: he continuously took notes on diverse topics on slips of paper, thereby only writing onto one side of them. These paper slips were at first stored in a disorderly fashion. In a second step he would sort them into bags made of linen. He would have one bag for each letter of the alphabet. Inside these bags the scraps of paper were at this stage still "*confusim et mixtim.*" In a final step, they were pasted into the volumes of his *Pandechion* in a strictly alphabetical order. It was only at this moment that the notes were brought into their final order. The *Pandechion....*"

[1171] Volker Hess and J. Andrew Mendelsohn, "Fallgeschichte, Historia, Klassifikation: François Boissier de Sauvages bei der Schreibarbeit," *NTM Zeitschrift für Geschichte der Wissenschaften, Technik und Medizin* 21 (2013): 61-92, and Volker Hess and J. Andrew Mendelsohn, "Case and Series. Medical Knowledge and Paper Technology, 1600–1900," *History of Science* 48, no. 3/4 (2010): 287–314.

[1172] See Michael Hunter, "Mapping the Mind of Robert Boyle: The Evidence of the Boyle Papers" in *Archives of the Scientific Revolution: The Formation and Exchange of Ideas in Seventeenth-Century Europe,* ed. Michael Hunter (Woodbridge, UK: Boydell Press, 1998), 121-136.

Rabbi Luria kept his halakhic correspondence with other related documents, which were likely followed by a list of notes and summaries from various halakhic works, hence the inexplicable list at the end of the first edition of his responsa. Rabbi Isserles mentioned to a student that he had a book that served as the basis for his glosses on *Shulḥan Arukh*: "It is true, so I wrote in *Shulḥan Arukh*, which was printed recently … and the rationale I wrote … in my book [*Darkhei Moshe*],[1173] according to which I compiled the laws in *Shulḥan Arukh*."[1174] Thus, rabbis, much like humanist scholars, created their own reference tools, which combined notes, glosses, letters, and printed works in idiosyncratic ways.

It may be more fruitful to compare rabbinic collections that included responsa to adversaria than to commonplace books. The latter were systematic compilations in which excerpts were organized by "common place" or theme, often aimed at aiding memorization,[1175] whereas *adversaria*[1176] were more disordered, possessing, in the words of Elisabeth Décultot, "a fundamentally aleatory composition."[1177] In *adversaria*, notes were taken down chronologically, as the scholar's intellectual activity progressed, and, "as they were less tuned towards the conservation and faithful reproduction of the text being

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[1173] The book's title was added in parentheses in the first edition.

[1174] Isserles, *ShUT Rema*, §131: אמת כן יסדתי בש״ע הנדפס מחדש...והטעם כתבתי בס״ד בספרי, אשר ע״פ אותו הספר חברתי הדינים בשלחן ערוך

[1175] See Marie Joan Lechner, *Renaissance Concepts of the Commonplaces* (New York: Pageant Press, 1962); Ann Moss, *Printed Commonplace-Books and the Structuring of Early Modern Thought* (Oxford: Clarendon Press, 1996).

[1176] Ogilvie, *The Science of Describing,* 180: "Other writers suggested keeping two notebooks or files; in the first of these, the *adversaria*, one should jot down interesting thoughts or provocative literary passages in chronological order; in the second, the observations from the first should be copied according to commonplaces. By so doing, one was less likely to forget or be unable to find one's thoughts."

[1177] Elisabeth Décultot, "Introduction: L'art de l'extrait: définition, évolution, enjeux," in *Lire, copier, écrire: les bibliothèques manuscrites et leurs usages au XVIIIe siècle*, ed. Elisabeth Décultot (Paris: CNRS Éditions, 2003), 9: "Quant aux collections d'adversaria … elles obéissent au contraire à une composition fondamentalement aléatoire."

read and more toward confronting its contents, they already testify to critical activity, a prelude to hermeneutic work."[1178] This "de-structured order,"[1179] as Décultot calls it, which flourished after the popularity of the commonplace book waned, represented, in the humanist context, freedom from the topical tradition of the commonplaces.

The *adversaria*'s order, in reflecting not the material but the chronological progression of the scholar's own intellectual activities, was perfect for collecting a multitude of variegated material as it presented itself, prior to imposing any strict order. In their mode of organization, rabbinic books of responsa taken as a whole, including their incongruous insertions and additions, bring to mind fragments from commonplace books and their more personal and less organized siblings, the *adversaria*. These "paper-archives,"[1180] as historians sometimes call them, were the product of reading, studying, writing, and reflecting. Simultaneously, the archives provided the raw material for the scholar to continue his activity. Viewed through this lens of scholarly practices, rather than via an abstract paradigm of books of responsa, the peculiarities in printed *sifrei ShUT* of this period are more understandable.

## 4.      PATHS TO PUBLICATION

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[1178] Décultot, "Introduction," 9: "Moins tournés vers la conservation et la reproduction fidèle du texte lu que vers la confrontation avec son contenu, ils témoignent déjà d'une activité critique, préludent à un travail herméneutique." For an example of such an archive from seventeenth-century Ashkenaz, in which the author even mentions that the notes were assembled in the course of his life and thus not chronological, see my discussion of Rabbi Yair Bacharach in the epilogue of this dissertation.

[1179] Décultot, "Introduction," 11.

[1180] For instance, Fabian Krämer, "Ein papiernes Archiv für alles jemals Geschriebene: Ulisse Aldrovandis *Pandechion epistemonicon* und die Naturgeschichte der Renaissance," *NTM Zeitschrift für Geschichte der Naturwissenschaften, Technik und Medizin* 21 (2013): 11-36. Taking this expression further, some historians speak of scholarly use of these archives as a "paper-technology." See Volker Hess and Andrew J. Mendelssohn, "Paper Technology und Wissensgeschichte," *NTM Zeitschrift für Geschichte der Naturwissenschaften, Technik und Medizin* 21 (2013): 1-10.

### a.       Personal/Public Reference Tools

These personal reference tools were, in the first place, used by the scholars who collected them. Simultaneously, however, they possessed a more public character. Students, colleagues, and relatives would consult these collections in manuscript form and sometimes copy from them. This copying could be done in person or by means of correspondence. Nicholas de Peiresc's (1580-1637) extensive archives included not only his own correspondence but also material assembled by means of letters, as colleagues would send him copies of documents.[1181] The naturalist Caspar Bauhin (1560-1624) developed his herbarium by collecting samples and descriptions that people shared with him via letters.[1182] We thus see evidence of the overlap between the letter and the archive: on the one hand, letters were stored in archives, and, on the other hand, correspondence served as the format for conveying the textual contents of archives to others. As one historian explained, Bauhin's herbarium turned from "personal memoranda, a living commonplace book," into a veritable "documentation center," which others could also consult.[1183]

The scholar's archive was thus not only his personal reference tool; whether consulted in person or by means of letters, it was also accessed by others. This phenomenon, in which scholarship, letter writing, and the sharing and storage of information overlap, can also be observed in rabbinic scholarly culture. In a responsum to his former student, Rabbi Isserles mentions recently having taught a certain halakhic work

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[1181] See Miller, *Peiresc's History of Provence*.
[1182] Ogilvie, *The Science of Describing,* 212.
[1183] Ogilvie, *The Science of Describing,* 212.

that they had previously studied together, providing information should his correspondent

wish to copy the new interpretations from current students who would let him consult their

notes.[1184]

Elsewhere, Rabbi Isserles alludes to a type of archive where manuscript copies of

Rabbi Luria's writings were kept and updated. In a question to Rabbi Isserles, a student

included a copy of Rabbi Luria's writing on a separate piece of paper. Rabbi Isserles

concludes his reply by thanking the student for sending the copy, and declaring: "And I

shall save your copy together with all the other copies of his words that can be found in our

town...."[1185] Rabbi Luria, indeed, expected others to consult his writings: He attacked

Rabbi Isserles for criticizing him without consulting his glosses on *isur ve-heter* or the *Yam*

*shel Shlomo* on the relevant topic,[1186] although neither of the above-mentioned writings

had been printed at the time that Rabbi Isserles published said critique.[1187] Similarly,

students were evidently copying Rabbi Isserles' glosses from the margins of his print copy

of the *Shulḥan Arukh* before the glosses were published in print: Responding to a letter

from a student who inquired about an apparent contradiction in Rabbi Isserles' glosses on

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[1184] Isserles, *ShUT Rema*, §38 ואל תתמה אצל העמוד בחורף שעבר. וכן מצאתי כתוב במרדכי שלי שכתבתי הפירוש שלא פירשתי לכם כן בהיותכם עמי כי אין דומה שונה פרקו...ועיין בספר המרדכי של מהר"ר מרדכי מפוזנא ותמצאנו שם, כי ידעתי שכתבו במרדכי שלו

[1185] Isserles, *ShUT Rema*, §132.1: מה שאתה מעתיק אלי דבריו בזה ביריעה קטנה ... גם העתקתך תהיה שמורה אצלי עם שאר העתקות הנמצאים מדבריו בעירנו ואין אחד כדבורו [כחברו – ראה שערי דורא מהד' דביליצקי כרך ב, מבוא] וכל שנה ושנה העניין משתנה ואין הדעות שוות. In *ShUT Rema,* ed. Siev, 515n34 – Siev thinks that this is the source of the major dispute between the two rabbis.

[1186] Luria, *Yam shel Shlomo*, tractate *Ḥulin*, chapter 1, §29.
אחרי הדברים אלו הוגד לי איך שמהר"ם השיג עלי בספר תורת חטאת שלו...והנה אמרו לי תלמידיו להדיא שעלי היה השגתו, ונתגלגל הדבר בראות פנים והודה לי, ושאלתי את פיו איך עלה על דעתך להשיג עלי ולא עיינת בהגהתי באו"ה "...שלי גם לא ראית בספרי הגדול בפ"ק דחולין ולא ידעת שורש דברי
See also Luria, *Mekhonot Shlomo/Amudei Shlomo* on *Sha'arei Dura*, gate 4§8.
ח. [דיני מולייתא] שוב ראיתי במה שרצה מהר"ם להשיב עלי בספר תורת חטאת שלו לאסור לא נמלח גבי מולייתא דגבי וכתב להוציא מלבו של חכם כו' חוץ לכבודו לא עיין בהגהתי ולא בספרי אלא שהציץ מן החרכי' ולא ראה יה והארכתי בספרי בפרק פ"ק דחולין ושם הראיתיו לך טעותיו עיין שם.

[1187] *Yam shel Shlomo* on tractate *Ḥulin* was first printed in Cracow, 1733-5.

the *Shulḥan Arukh*, Rabbi Isserles reassured the student that the printed work does not contain the confusing formulation "as it is written before you, which you copied from my *Shulḥan Arukh*."[1188] Speculating on the source of the formulation, Rabbi Isserles adds, "…and I do not know if this came from God, or if I corrected it at the time of printing."[1189] In other words, he is not sure whether this was purely a mistake in the student's own notes, or whether the student had copied correctly at the time, but, in the meantime, Rabbi Isserles had already corrected it for print. These archives were, thus, in constant flux.

Rabbi Luria's own archive, including his glosses and marginalia, appears to have been accessible to scholars who wished to copy from his writings, even after his death. In the introduction to *Ḥokhmat Shlomo*, the publisher writes*:* "If he who is studying this has trouble with any issue regarding halakha that he cannot understand in full depth, … he can send a messenger or come himself, as is the habit that everyone comes to the fair of Lublin, and there he can see it in the volumes of the Talmud of the *gaon* of blessed memory themselves, which are in the hands of his son…."[1190] Rabbi Eliezer Altschul, who was involved in printing Rabbi Luria's *Yam shel Shlomo* in 1616, describes copying the work from the rabbi's archive more than a decade earlier, as a young man who traveled for his studies. He thanks God for leading him to Lublin, to the study room of his rabbi, whom he followed in order to be a student there, and "to harvest in the bundles … and when things were distributed, I collected … and I did not hold myself back from copying some books,

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[1188] Isserles, *ShUT Rema*, §132: ...כאשר כתוב לפניך אשר העתקת משלחן ערוך שלי

[1189] Isserles, *ShUT Rema*, §132: ולֹא ידעתי אם מה׳ היתה זאת או אם תקנתי העניין בשעת ההדפסה

[1190] Rabbi Shmuel of Böhm, *Ḥokhmat Shlomo*, first ed.

אם המעיין מתקשה באיזה עניין בדבר הלכה שלֹא יוכל לירד לעומקו הן מחמת שגיאה או חומר העניין יוכל לשלוח על ידי איש מוקדם או הוא בעצמו כאשר הוא מורגל ותדיר שנוסעים ליריד לובלין, ושמה יוכל לראות בגוף הגמרות של הגאון ז"ל אשר הם ביד בנו האלוף הר"ר יחיאל יצ"ו, או יכתוב לבנו דבר הקשה והוא ישיב לו תשובה...

old and new, … from the books of the great *geonim* … including the great work *Yam shel*

*Shlomo* … and God is my witness … that the copying of the book from the handwriting of

the author himself came to me legitimately."[1191] According to Altshul, Rabbi Luria's

writings on sixteen tractates were available at the time, many of which were eventually

lost.[1192] Rabbi Isserles' writings were similarly accessible to scholars. In the introduction

to his kabalistic work *Aderet Eliyahu*, Rabbi Eliyahu Loenz (1555-1636) presents a brief

overview of his life. In the course of his travels and studies, he came to Cracow, where he

studied with some of the important rabbis, but also consults and copies from manuscripts:

> …there I also found a strength, more precious to me than any fortune, because through an occurrence, I laid my hands on *Darkhei Moshe*, the copying of which was difficult for me, because it was a first draft/edition, as the righteous author passed on and went to the next world … before he could remove from it the mistakes and stumbling blocks, and many things were written between the lines and on the margins (on the pages), and I copied it late at night and I was the first to copy it.[1193]

A rabbi's papers thus were not simply his own reference tool; they were in some

sense public, with the expectation that they would be accessible for consultation even

before publication. Rabbi Katz's declaration from *ShUT she'erit Yosef*'s introduction that

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[1191] Eliezer Altshul, "Epilogue and apology of the copyist and proofreader," in Shlomo Luria, *Yam shel Shlomo, Bava kama* (Prague, 1616): והלכתי אחריו להיות זנב לאריו״ת וללקוט בעמרים לק״ט שכ״חה ופ״אה ושאבתי גם מי״ם בששון ממעי״ני הישועה...ובשעת פזר כנסתי תוש״ייה...לא מנעתי מלהעתיק כמה ספרים ישנים וחדשים...מספרי הגאונים הגדולים...ובכללם גם החיבור הגדול י״ם ש״ל שלמ״ה על מסכת בבא קמא...וסהדי במרומים ועידי בשחק שהעתקת הספר מכתיבת ידו להמחבר עצמו בא לידי בהיתרא...
I thank Professor Reiner for sharing his transcription of the epilogue with me.

[1192] See Elhanan Reiner, "A Biography of an Agent of Culture: Eleazar Altschul of Prague and his Literary Activity," in *Schöpferische Momente des europäischen Judentums in der frühen Neuzeit*, ed. Michael Graetz (Heidelberg: Winter Verlag, 2002), 236-237: "In 1591-1592, Altschul was in Lublin … In 1592, as he tells us, he copied the book *Yam shel Shlomo* on the tractate *Bava kama*, the first volume of a gigantic work that, as Altschul informs us in his introduction, 'comprised sixteen parts.' This is mentioned in Altschul's 'Epilogue and apology of the copyist and proofreader' in Shlomo Luria, *Yam shel Shlomo, Bava kama* (Prague, 1616).

[1193] Eliyahu Loenz, *Aderet Eliyahu*, ed. Shetland (Jerusalem: Sha'arei Ziv, 1998), iv.
עד הביאני אל עיר גדולה של חכמים וסופרים, וידעי התורה ולומדיה היא ק״ק קראקא נודעת בשעריה ושם שאבתי מימי באר התורה...גם שם מצאתי לי און חביב עלי מכל הון, כי ע״י סבה בא לידי דרכי משה, אשר העתקתי עלי היתה קשה, כי היה מהדורא קמא כי הצדיק המחבר, חלף והלך לעולמו ועבר, כי נתבקש בישיבה של מעלה...בטרם הסיר ממנו הטעיות והקמשונים, ודברים רבים כתובים ביני חטי ועל הגליונים והעתקתיו לילה באישון ואני הייתי המעתיק הראשון.

"I only wrote this in order to be in my possession as I grow old…" now seems a cliché that, nevertheless, contains much truth: These writings were his own notes, which he used as a reference tool, and which students and colleagues could consult and copy.[1194] It was part of the scholarly culture, both by virtue of the material situation and the cultural expectations, that the scholar's archive, which often included letters, was public and could be consulted, during the author's lifetime and after his death. This publication practice permitted continuous and repeated referencing, correcting, and consulting, as well as sharing and adaptation in multidirectional and dynamic ways. These archives were flexible and could include very diverse contents in disparate states of completion and organization. There was no need to wait for the finished, printed book to have a scholarly conversation; writings were open and could be emended and adapted by author and reader alike. The existence of these halakhic texts in open-ended archival form thus enabled the consultations, flexibility, and variety that fueled this scholarly culture.

### b. From Reference Tools To Printed Books

These letters, together with the many other writings and notes that constituted the scholar's archive, did eventually make it into print, but in ways that often resembled their archival predecessors rather than as paradigmatic "works of responsa." In the sixteenth century, Hebrew printing in Poland was still in its infancy. The first Hebrew book was printed in 1534; the responsa treated in this chapter date from a few decades later. I thus contend that the remaining archive-like qualities of these early printed collections are related to the transition from an earlier, more dynamic form of publication to the more stable print

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[1194] Siev, "Preface," *ShUT she'erit Yosef*, 33.

publication. This is not merely a question of the practical adaptation to a new technology; it is an issue of cultural adaptation: more specifically, it concerns the scholarly culture regarding texts in this period.

The continuities between early modern scholarly archives and the published work are more obvious once we look at the formation and publication process of some of these works. Ann Blair traces the idiosyncrasies of Jean Bodin's *Theatrum* to the origins of the work as a commonplace book, which was a storehouse for both personal notes and knowledge taken from printed books.[1195] Angelo Poliziano's collected Greek and Latin works were published by Aldus Manutius (1498), together with 251 letters from his correspondence.[1196] Brian Oglivie showed how Bauhin's use of letters to collect information for his personal commonplace book of thousands of plants affected the descriptions in his published *Pinax theatri botanici* (Basel, 1623).[1197] Pierre Bayle assembled the excerpts for what would eventually become the *Dictionnaire* by collecting, copying, and inserting excerpts from his writings, including some letters, which he sometimes simply sent straight to the printer with typographic remarks on the letter itself for inclusion in his work.[1198]

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[1195] Blair, *The Theater of Nature*, 67: "When their personal commonplace books lacked the needed range and quality, authors of all kinds resorted to these printed cribs…. The use of commonplace books, both printed and personal, has thus been clearly identified in the works of minor and major figures, from Shakespeare and Montaigne to Thomas Browne…."

[1196] Shane Butler's comparison of Angelo Poliziano's actual correspondence to his collection of epistles printed by Manutius shows that Poliziano had corrected and edited not only his own letters, but also the letters addressed to him, in preparation for publication. Angelo Poliziano, *Letters*, ed. Shane Butler (Cambridge, MA: Harvard University Press, 2006), 1: 292-293.

[1197] Ogilvie, *The Science of Describing,* 212.

[1198] See Elizabeth Labrousse, *Pierre Bayle*: *Héterodoxie et Rigorisme* (Den Haag: Springer, 1964), 2: 48n97: "…chaque fois que la chose était possible, en effet, Bayle s'épargnait la peine de recopier: l'original de plusieurs lettres qu'il a reçues et citées dans le *Dictionnaire* porte des indications destinées au typographe."

Similar processes affected the nature of rabbinic open scholarly reference archives when they were printed. For example, Rabbi Katz noted his glosses on *Sefer ha-Mordekhai* and *Tur* on the margins of those works and on separate strips of paper, which were stuck between its pages. As Rabbi Asher Siev, who edited a recent version of the responsa, has remarked, this led to unfortunate results once his insights and corrections were removed from their context and printed.[1199] As these scholarly archives included letters, the published letter collections, likewise, included other remainders of these archives, which found their way into print.

### c.      Printing Archives in a Transitioning Culture

In his book on printing in Renaissance Venice, Martin Lowry describes the "violent shock" that printing brought to the world of manuscript scholarship, not only in terms of the new roles of editor and printer but also in terms of the authors themselves, who suddenly were faced with the option of printing their work in their lifetime. The printer Aldus Manutius encountered many difficulties precisely when trying to print works of *living* authors: "Passing a work to the press … scared a number of literary men into delays, perpetual revisions, and evasiveness…."[1200] In the realm of Hebrew printing, Glick's bibliography of responsa similarly mentions the "resistance among respondents to bring their responsa

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[1199] Siev, "Preface," *ShUT she'erit Yosef,* 22-23.

גם ביאורי רבינו על הטור והמרדכי קצרים עד מאד. אמנם שם מובנת תופעה זו...ביחוד במרדכי היו שגיאות רבות בכתבי היד ובמודפס. ...והיה צורך ללבנו ולהסבירו לתלמידים. את זה עשה רבינו בבהירות ובקיצור נמרץ, ואח"כ רשם בשולי הספר את הבאור הנכון לדין המסויים, ולבסוף כשהסכים מתוך הלחץ להוציא לאור את חדושיו אסף גם רשימות אלה וסדרן להדפסה. אבל נראה שהיו לו גם הערות רשומות על פתקאות בודדות שלבסוף נאספו והוכנסו למקומן הראוי שהרי ישנם מקומות באמצע הערותיו לטור ח"מ שבהם מתחיל הקטע בסימון "בח"מ" שלא לצורך.

[1200] Martin Lowry, *The World of Aldus Manutius: Business and Scholarship in Renaissance Venice* (Ithaca, NY: Cornell University Press, 1979), 218-219. Ernst Philip Goldschmidt already remarked on the commercial incentives behind what should be printed first, and pointed out that, after the invention of print, older works were overwhelmingly the ones printed first. See Ernst Philip Goldschmidt, *Medieval texts and Their First Appearance in Print* (London: Oxford University Press, 1943), 13, 23.

to print."[1201] Even in those early days of print, scholars were familiar with printed books – by the sixteenth century, numerous books had, after all, been printed – why these hesitations?

Hebrew print was well underway in the sixteenth century. A survey of the output of printing presses such as Venice or Cremona, and definitely those of Prague, Augsburg, or Cracow until the 1570s, when the responsa of Rabbi Katz and Rabbi Luria appeared, reveals, however, that the presses were publishing very few works by living authors. The works being printed were overwhelmingly canonical books such as the Pentateuch or Talmud and books in popular demand such as the liturgy for holidays (*maḥzor*), the *Hagadah* for Passover, and prayer books. Some individual responsa were printed, but these should be considered ephemera, in a category with almanacs and broadsides intended for immediate, practical, and often temporary consumption.[1202] The overwhelming majority of the authors of other works – in biblical commentary, in halakha in general, and definitely in responsa specifically were deceased.[1203]

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[1201] Glick, *Kuntres*, 1: 91.

[1202] For instance, the *Psakim shel rabanei Italyah* [Halakhic decisions of the rabbis of Italy] (Venice: Bomberg, 1519), regarding a controversy that took place at the time, or the *Psukim* printed by Heliz, discussed in the previous chapter of this dissertation. Practical manuals for slaughter, such as Rabbi Yacov Weil's *Shḥitot u-bdikot* (Prague, ca. 1530) are also in the category of practical manuals.

[1203] The responsa of Rabbi Shlomo ben Adret, and the responsa attributed to RaShY and Naḥmanides, for instance, as well as the works of responsa by 15th-century ashkenazic rabbis discussed in chapter two of this dissertation.

Regarding this situation and its importance for Rabbi Yosef Karo's enterprise, for instance, see Tirẓa Kelman, "Ktuvot be-et barzel u-ve oferet be-dfus: Mahapekhat ha-dfus ve-yeẓirat ha-ḥibur Bet Yosef" [Written in a metal pen and lead in print: The print revolution and the creation of the work Bet Yosef] *Pe'amim* 148 (2016): 20. I am not considering here the category of mystical and philosophical works, nor of grammar, but these, too, were usually by authors who were already deceased or based upon a prior work that dictated its structure.

Models for printing these non-responsa works were often self evident. The boundaries and structure of canonical books were defined by tradition. The form and contents of more ephemeral and practical works were dictated by need and use. There was no predetermined model, however, for printing a collection of responsa. The works of responsa that had been printed all belonged to deceased authors, and their contents, as well as their basically nonexistent structure, were determined by what was available.[1204] It was not clear with regard to living authors and their dynamic, constantly fluctuating, hybrid archives how to go from archive to published printed work.

## 5. CONCEPTIONS OF BOOKS
### a. Printing In One's Lifetime: Challenges

The culture of archival textual organization thus buttressed a mode of publication that was much less clear-cut, rigid, or unidirectional than print. We can better understand the "violent shock" of printing, as Lowry calls it, and also the lack of organization of early modern books of responsa, if we take into consideration that, in the scholarly culture of the sixteenth century, writings were often published before being printed and were more personal, piecemeal and less set in form. No preconceived notions dictated how one should

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[1204] The two main exceptions to this statement are *Trumat ha-deshen* (Venice, 1519) and *ShUT MaharY Kolon* (Venice, 1519). See the second chapter of this dissertation for a discussion of these.

Regarding the main categories of Hebrew books that were printed until 1500, see Israel Mehlman, "Bikurei ha-dfus ha-ivri" [The first fruits of Hebrew printing] *Areshet* 5 (1972): 455. Other than Bibles, Talmuds, prayer books, and ephemera, one can also add some mystical works and philosophical treatises, and some works on grammar. The halakhic texts being printed were mainly codes, some small practical works, and responsa, almost exclusively the works of deceased rabbis.

If we compare ashkenazic halakhic works printed between 1470 and 1599 generally to works of responsa, other halakhic books were printed almost three times more often than works of responsa. See Glick, *Kuntres*, 1:70.

organize and prepare a rabbi's archive for print.[1205] The variety of types of documents, genres, and stylistic and editorial inconsistencies of these early printed collections correspond to a world of archives in which it suddenly became possible to publish one's writings in fundamentally new ways. If publishing by means of manuscript copy and publishing by means of print copy are very far removed at the technological level, they are even more profoundly different when considering the *scholarly culture* in which manuscript copying was embedded and the practices of transmission that it made possible. As a result of this cultural clash, these practices found little to no continuity.

### b. Rabbi Isserles and Rabbi Karo: Print Projects and False Starts

The two sixteenth-century figures who changed the organization of halakha more than any others were Rabbi Yosef Karo, who wrote the *Shulḥan Arukh*, and Rabbi Isserles, whose gloss on this code, named *Mapah*, permitted application of the code for the ashkenazic realm. Both rabbis successfully published printed works of halakha in their lifetime. The latter first published non-halakhic works, a commentary on the Book of Esther,[1206] and a mystical-philosophical work.[1207] His first halakhic work, *Torat ḥatat* (Cracow, 1570), very consciously used the structure of *Sha'arei Dura*, because that work had already appeared

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[1205] From 1470 to 1570, the period preceding the printing of the responsa discussed in this chapter, only three works of responsa had been printed in their authors' lifetime, of which none were in the geographical sphere of Ashkenaz: 1. *ShUT Binyamin Zev* (Venice, 1538): the author lived in Greece; 2. *ShUT MaharY bar Lev* (Salonica, 1557-1598): only partially printed during the lifetime of the author, Rabbi Yosef ben David ibn Lev, who died in 1580; 3. *Divrei rivot* (Salonica, 1562): the author, Rabbi Yizḥak Adrabi, died in 1585. The only ashkenazic figure who printed responsa in his lifetime prior to the 1570s was Rabbi Meir Katzenelbogen of Padua (Venice, 1553), who did so as an appendix to the responsa of his predecessor, Rabbi Yehuda Mintz, who was no longer alive. In the introduction, he apologized profusely for adding his own responsa, and claimed that he did so in order to print a greater volume of material, fearing that his rabbi's responsa were too few and would be lost. For more on this work, see chapter 2 in this dissertation.

[1206] *Meḥir yayin* (Cremona, 1559).

[1207] *Torat ha-olah* (Prague, 1570).

in print at the time, as chapter three mentioned. *Mapah* was preceded by *Darkhei Moshe*. This work, published as a gloss on Rabbi Karo's *Bet Yosef*, served as a basis for *Mapah*, but was printed much later.[1208] Moreover, *Darkhei Moshe* was originally intended as a gloss on *Arba Turim*. Only later did the author alter the work into a gloss on *Bet Yosef*. *Darkhei Moshe* is, thus, a work with two false starts: first, a gloss on *Arba Turim* transformed into a gloss on *Bet Yosef*; second, a gloss on the *Bet Yosef* cast aside in favor of *Mapah*, its shorter, more codified alternate, a gloss on the *Shulḥan Arukh*. These false starts are very telling of the world of halakhic printing in the middle of the sixteenth century, when the first volume of *Bet Yosef* was published in Venice.[1209]

In the introduction to *Darkhei Moshe*, Rabbi Isserles describes himself as a halakhic decision maker whose practice included consulting both rabbinic and textual authorities: "in all my teaching, I made for myself a rabbi … so that I take only one chip from the beam…. And I always held before my eyes the words of the ancient authorities."[1210] The authorities mentioned consist of the basic canon of halakha, which he lists chronologically:[1211]

…the words of the Talmud, the *geonim*, Alfasi, the Tosafists, Maimonides, the *poskim rishonim* [first decision-makers].[1212] And the *Mordekhai*, the *Asheri*, and the *Tur*, these are the *aḥaronim* [last ones] because they penetrated [the halakha] to its very core

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[1208] *Darkhei Moshe Yoreh de'ah* (Sulzbach, 1692), *Darkhei Moshe Oraḥ ḥayim* (Fjorda, 1760). The other two volumes were not printed in full. An abridged version of all four volumes was printed in Berlin, 1702-3. *Shulḥan Arukh* with *Mapah* (partially in Cracow, 1570; then fully in Cracow, 1578).

[1209] *Tur Oraḥ ḥayim* with *Bet Yosef* (Venice, 1550). The other three volumes were printed in 1551, 1553, and 1558.

[1210] See Babylonian Talmud, Tractate *Sanhedrin* 7b and RaShY there. When a case was submitted to R. Huna, he used to summon and gather ten schoolmen, in order, as he put it, that each of them might carry a chip from the beam (translation from Soncino Talmud).

[1211] He described these authorities as those who "came into the innermost sanctum, and they are counted at the head of all the compositors (ibid.וראש כל המחברים המה נמנים , כי הם באו לפני ולפנים."

[1212] *Poskim* are halakhic decision makers; "*rishonim*" literally means "the first," but here it denotes the earlier generation of post-*ge'onic* halakhic decisors of the Middle Ages.

and are considered foremost among all the authors, and also because they are the *poskim* whose decisions have spread throughout the diaspora.[1213]

This *modus operandi* is interrupted when others confronted him with additional material. Rabbi Isserles describes arriving at an impasse, not knowing how to incorporate the sheer amount and scale of this additional material into his halakhic writing:

> …and I had no ruse to rescue myself, when I looked at all their words which were as long as from '*azel*' to '*azel*'[1214] and as the labor is great and the days are few and I, the laborer, am lazy,[1215] and even if I skim them [wear out my eyes?] and look at them [/forget][1216] them quickly 'like from the sea to the frying pan,'[1217] and, behold, their teachings are absent.[1218]

Seeing as these writings were voluminous and "their teachings are absent," meaning, perhaps, that the writings were difficult to summarize and distill, Rabbi Isserles sought a way of assimilating these authorities into his own halakhic enterprise. He began by

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[1213] Moshe Isserles, *Darkhei Moshe*, ed. Rabbi Ḥaim Shlomo Rosenthal (Jerusalem: Makhon Yerushalaim, 1979), 35. ולעולם שויתי נגד עיני דברי הקדמונים, דברי הגמ׳ והגאונים, ורי״ף והתוספות והרמב״ם הפוסקים ראשונים, והמרדכי והאשר״י והטור המה אחרונים, כי המה באו לפני ולפנים ובראש כל המחברים המה נמנים.
First, he begins with the Talmud and the Babylonian authorities from the early medieval period. Then, he proceeds to the central halakhic authorities of the high Middle Ages: Isaac Alfasi, the Tosafists, and Maimonides, who he calls "rishonim," or the first halakhic decisors. Subsequently, Rabbi Isserles adds the "aḥaronim," in other words, the latter authorities, namely Rabbi Mordekhai ben Hillel's compilation, *Sefer ha-Mordekhai*, Rabbi Asher ben Yeḥiel's summary and commentary on the Talmud, and his son Rabbi Yacov's *Arba Turim*, which compiled and summarized the halakha across four distinct fields, incorporating his father's halakhic opinion.
[1214] Babylonian Talmud, tractate *Psaḥim* 62b: "*Mar Zutra* said: between '*Azel*' and '*Azel,*' they were laden with four hundred camel loads of exegetical interpretations!" This refers to the verses in I Chronicles 8: 38-44 that begin with "And *Azel* had six sons..." and end with "...these were the sons of *Azel*." *Mar Zutra* is making the point that many interpretations were given for the verses between these two mentions of '*Azel*.' Rabbi Isserles uses this to refer to the many "loads" of halakhic writings that he was attempting to somehow summarize and fit into his work.
[1215] Mishna, tractate *Avot* 2:15.
[1216] In Aramaic אשכם is "to see them," but in Hebrew, it is close to "to forget them." In this case, the continuation כמימא לטינרא is in Aramaic. This would perhaps mean that the Aramaic "to see" is a better meaning, but, as the context in the Talmud where the expression כמימא לטינרא is used, in fact, deals with memory, perhaps "forget" makes more sense here.
[1217] This expression, "like a fish from the sea to the frying pan," denotes something that happens very quickly. See, for instance, Babylonian Talmud, Tractate *Kidushin* 44a.
[1218] Isserles, *Darkhei Moshe*, ed. Rosenthal, 35. וכי המלאכה מרובה בימים מועטים ואני הפועל  בעיון כל דבריהם שארכו כמאצל לאצל ,ולא היה לי תחבולה להנצל ושמועתן איננה ,ואף אם הטעיף בהם עיני ואשכחם כמימא לטיגנא,עצל

summarizing the writings. In the course of this undertaking, Rabbi Isserles explained, he decided to collect all these synopses on the margins of one work: "…and as I was doing this, my ideas said to me, and the vision of an intelligent thing came before my eyes, to collect all the novel interpretations of the *poskim* together, so that they would be in my hands like one,[1219] and to write them *for my memory* on the margins of one *posek*."[1220] He thus describes collecting summaries to aid his own memory and choosing the *Arba Turim* as the most appropriate work to use for his marginalia, as it had the clearest and most useful organizational scheme:

> …and I saw that none were more fitting than the *Turim*, because their words are organized in a beautiful order, and one can easily find in it what one seeks, any of the explanations, be they old or new, and thereby all the things were preserved and saved in my heart, and immediately I girded my loins, and from my slumber I shook myself, and from the help of He who is enthroned upon praises,[1221] I was aided, that my plans I began and almost concluded.[1222]

While he was preparing these glosses, when he "had almost concluded," Rabbi Isserles heard about Rabbi Karo's *Bet Yosef*, which was similar in enterprise but, unlike his own work, was already finished. He therefore decided to adapt his work and publish it as a gloss on *Bet Yosef*, rather than as an independent gloss on the *Arba Turim*, as he had originally intended. The project motivating Rabbi Karo's work is, indeed, remarkably

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[1219] Ezekiel 37:17: "Join them together into one stick so that they may become one in your hand."

[1220] Isserles, *Darkhei Moshe*, ed. Rosenthal, 35 (emphasis added):

ואגב גררא אמרו לי רעיוני וחזיון דבר חכמה לנגד עיני ללקוא כל חדושי הפוסקים ביחד כדי שיהיו בידי כאחד *ולכותבן לזכרון* בצד איזה פוסק – "*posek*" here denotes a type of work, not the person who makes halakhic decisions, but, rather, a work of halakhic decisions; in this case, he ends up choosing the *Arba Turim*. (Compare to the responsum §25 in Rabbi Isserles' responsa, where he cites the son of Rabbi Shalom Shakhna's [d. 1558], who explained that they begged of his father "to make a *posek*," which he refused. בקשתי עם הרבה לומדים ממנו...שיעשה פוסק

[1221] Psalms 22:4.

[1222] Isserles, *Darkhei Moshe*, ed. Rosenthal, 35. וראיתי שאין טוב מזו אלא ספר הטורים, כי דבריהם בסדר נאה מסודרים ובקל אפשר למצוא בו מבוקשו, אף א מהמבוערים הן זקנים הן נערים וע"י זה היו הדברים בלתי צפונים ושמורים, ומיד את מתני נאזרתי, ומשנת תרדמתי ננערתי, ומעזר יושב תהלו נעזרתי, שמחשבותי התחלתי וכמעט גמרתי...

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similar to that of Rabbi Isserles, as can be seen in the introduction to *Bet Yosef*. Rabbi Karo

introduces his book by explaining that, because of the duration of the diaspora, the halakha

had been transmitted, or "emptied from vessel to vessel,"[1223] so often as to result in a

situation where "the Torah is not only turned into two Torahs, but into a multitude of Torahs

because of the many books in existence that explain its laws and rules."[1224] He mentions

the phenomenon of halakhic compilations and their transmission as one of the sources of

this multiplication and expansiveness of halakhic textual material: "And even though their

intention … was to illuminate our darkness, this good light that we enjoyed from them …

had as its consequence much doubt and confusion, as everyone compiles a book for himself

and repeats that which his predecessor already wrote and compiled, or contradicts that

which his peer wrote."[1225]

Similarly to Rabbi Isserles, he also mentions the vastness of the textual material

and the impossible task of incorporating it all: "And if a man will decide with regard to

every law that he needs to inquire into its roots and origins in the Talmud and the

interpreters and the *poskim*, all of them, this will weigh very heavily on him."[1226] In the

introduction, Rabbi Karo also explained why earlier halakhic compilations were

problematic sources: they were often incomplete, partially incoherent, and badly

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[1223] Karo, *Bet Yosef*, introduction: הורקנו מכלי אל כלי

[1224] Karo, *Bet Yosef*, introduction: כי לא נעשית התורה כב' תורות אלא כתורות אין מספר לסבת רוב הספרים הנמצאים בביאור משפטיה ודיניה.

[1225] I translate חיבר here specifically as compiled, as it is used in addition to כתב or wrote. Ibid, continued (emphasis mine): וגם כי הם ע"ה כוונתם היתה להטיר מחשכנו נמשך לנו מתוך האור הטוב שנהינינו מהם ע"ה ספק ומבוכה רבה, בהיות כל אחד מחבר ספר לעצמו וכופל מה שכבר *כתב וחיבר* מי שקודמו או כותב הדין בהיפך מה שכתבו חבירו

[1226] Ibid, continued: ואם יאמר אדם בכל דין שיצטרך לחקור שרשו ומוצאו בדברי הגמרא והמפרשם והפוסקים כולם יכבד הדבר עליו מאד.

copied.[1227] His description of the canon of authorities also resembles that of Rabbi Isserles, from the list of earlier authorities to the conclusion that the task is impossible: "...and then [he will have to] inquire into the words of Alfasi and the ROSh and the RaN and the Mordekhai, and then Maimonides, and the other *poskim* ... and it is very clear that this is a thing that has no measure."[1228]

"Because of all this," Karo exclaims, "I, the insignificant, Yosef ... came to be zealous for the Lord ... to compile a book that includes all the laws...."[1229] Rabbi Karo, likewise, chooses the structure of the *Arba Turim* as a basis for his work, briefly explaining that the structure of this work serves his purposes better than Maimonides' code does because the latter merely mentions the laws, without presenting their sources, whereas the *Tur* includes sources, thus providing the necessary scaffolding for adding glosses and summaries.[1230] Both figures thus understood, perhaps more clearly than any other rabbis at the time, that the challenge they were facing was one of organization. Both Rabbi Isserles and Rabbi Karo decided that the solution would be a printed codification based on *Arba Turim*.

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[1227] Ibid, continued: ואם יאמר אדם לבחור בספרי הקוצרים כסמ"ק והאגור והכלבו, באמת שזו דרך קצרה וארוכה כי מעולם לא יוכל לדעת שום דין כהלכתו, ובפרט בספר האגור כי בהרבה מקומות מביא לשון הטור כהוייתו ההוא צריך נגר ובר נגר דיפרקוניה והוא ז"ל מעתיק כמן שמצאו. גם במקומות מביא פוסק אחד להתיר בלי שום חולק במקום שכל גדולי ישראל חולקים ואוסרים וגם הפוסק ההוא שמביא אותו הדין להתיר כתב שיש שיש לגמגם בו, והוא ז"ל כתב רק דברי ההיתר ולא זכר דברי הגמגום הנזכר בדברי הפוסק ההוא.

[1228] Ibid, continued: ואח"כ לעיין בדברי הרי"ף והרא"ש והר"ן והמרדכי ואח"כ לעיין בהרמב"ם ושאר פוסקים וגם בדברי תשובות הגדולים הנמצאות אצלו לדעת אם הדין ההוא מוסכם מהכל או אם יש בו מחלוקת וכמה מחלוקות בדבר ובדברי מי ראוי להכריע. וזה דבר מבואר בעצמו שהוא דבר שאין לו קצבה...

[1229] Ibid, continued: על כן אני הדל באלפי' יוסף...קנאתי לה' צבאות ונערתי חצני לסקל המסילה והסכמתי לחבר ספר כולל כל הדינים...

[1230] Ibid, continued: ולכן הסכמתי לסמכו לא' מהפוסקים המפורסמים ועלה בדעתי לסמכו לספר הרמב"ם ז"ל...וחזרתי בי מפני שאינו מביא אלא סברא א' והייתי צריך להאריך ולכתוב סברות שאר הפוסקים וטעמם. ולכן הסכמתי לסמכו לספר ארבעה טורים שחבר הרב רבינו יעקב בן הרא"ש ז"ל כי הוא כולל רוב דעות הפוסקים.

Notwithstanding this insight, however, their undertakings did encounter problems. Both hoped to publish their larger scholarly archives but ended up with a shorter, more popular project. They both used their archives to create shorter, more unified, and comprehensive codes. Rabbi Karo created *Shulḥan Arukh*, which was based on his "storehouse," *Bet Yosef*, named after the biblical Yosef's storehouses,[1231] but significantly abridged and codified. Although Rabbi Karo himself considered the latter work less important, he attained wide fame for it. His tombstone called him the creator of the *Shulḥan Arukh*.[1232] Rabbi Isserles, in a responsum, explains *Darkhei Moshe* in similar terms, as a larger book from which he took material for his glosses.[1233] The first work of halakha that Rabbi Isserles printed, *Torat ḥatat*, was likewise created using the material from *Darkhei Moshe* as an archive.[1234] In his introduction to the *Mapah*, he expresses his sincere hope of

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[1231] Genesis 41.

[1232] The current plaque lists *Bet Yosef* as well, but older images show that the text on the tombstone was .ציון הרב רבי יוסף קארו זצל, הבעל שולחן ערוך

See R. J. Zwi Werblowsky, *Joseph Karo: Lawyer and Mystic* (Philadelphia: JPS, 1980), 2n1; 3, plate 1. Werblowsky remarks that the inscription "most probably dates from a later period when the *Sh. A.* was already well established as Karo's main claim to popular fame."

[1233] Isserles, *ShUT Rema*, §35: ...וכן כתבתי בעצמי בחיבורי דרכי משה אשר ממנו סדרתי את השלחן ערוך; Isserles, *ShUT Rema*, §131.

[1234] Although *Torat ḥatat* was printed before *Darkhei Moshe*, Galinsky has shown that Rabbi Isserles wrote the former work based on the latter. This is in line with our understanding that *Darkhei Moshe* was, first, a form of manuscript archive from which Rabbi Isserles extracted material for his writing. Galinsky considers it obvious that Rabbi Isserles used *Darkhei Moshe* to write *Torat ḥatat*. He proves this as follows: in the order of the *Arba Turim* (which is also the structure of *Darkhei Moshe*), the laws of the *heart* appear before those of the *liver*. In the order of the *Sha'arei Dura* (which is also the structure of *Torat ḥatat*), on the other hand, the laws of the *liver* precede those of the *heart*.

In *Torat ḥatat*, Rabbi Isserles mentions a case in which the laws of the heart and liver are identical. He opens this by paraphrasing *Sha'arei Dura*, but rather than paraphrasing in the correct order, mentioning the opinions first about the *liver*, then about the heart, he references the opinions on the *heart* first, and then simply states that these laws are the same for the liver.

Why reference the later section and say that the earlier is identical, rather than referencing the earlier section and stating that the next one is identical? Galinsky explains that this is because he was using his notes on the *Tur* (*Darkhei Moshe*) as a basis, where they were reversed (heart first, then liver), with all the references from the relevant literature. Thus, as he used his *Darkhei Moshe* to create *Torat ḥatat*, he copied it from *Darkhei Moshe* in that collection's order. See, Eliezer Galinsky, "Introduction" to Moshe Isserles, *Torat ḥatat*, ed. Eliezer Galinsky (Jerusalem: Mosad ha-Rav Kook, 2015), 23-24.

publishing *Darkhei Moshe* : "…and I hope to God that also my longer writings will spread in Israel, and there you can find bundles and bundles, piles and piles of proofs and reasoning and my justifications and reasoning for every item as much as I could attain…."[1235] Rabbi Isserles, whose gloss made him the most important ashkenazic authority in the history of early modern halakha, died before realizing his wish to see his longer work *Darkhei Moshe* in print. These attempts and failures, circumnavigations and unexpected turns derive from a situation in which both authors were adapting their archives of summaries, notes, and glosses – originally intended as a method of information management – to a world of textual publication that was coming into its own at that time. Even scholars who were highly sensitive to the emerging changes and eager to adapt could not anticipate precisely the transformations in this world of archives, manuscripts, and compilations.

### c. Books of Responsa in Early Modern Scholarly Culture

Rabbi Isserles thus succeeded in publishing his halakhic writings in the form of glosses structured as part of a larger codification by Rabbi Karo, a sfardic figure with a more universalist approach to halakha. In the ashkenazic realm, Rabbi Isserles was not the only one working on a grandiose, structured oeuvre of halakhic text, with hopes for publication. Rabbi Shlomo Luria had been working on his *magnum opus*, *Yam shel Shlomo*. Rabbi

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[1235] Isserles, *Shulḥan Arukh*, *Mapah,* introduction:  בספרו הגדול בית יוסף, מכל מקום הלכתי בדרכו לכתוב...
הדברים סתמא ...ואם לא ימצאהו בספרו ידקדק בדברי האחרונים אשר נתפשטו במדינות אלו...כי מעט מזער הוספתי מדעתי...ואקוה
להשם יתברך שגם דברי הארוכים יתפשטו בישראל ושם אגודות אגודות חבילות חבילות של ראיות וטעמים ונימוקי וטעמי בכל דבר
לפי השגת ידי..."
"In any case I went in his path [Rabbi Yosef Karo] to write everything plainly, because in general my opinions can also be found in his book … and if it cannot be found in his book, check the words of the later scholars who have spread in our lands … because very little of what I added is from my own opinion"

Isserles' plans regarding his archive had not come to fruition: *Darkhei Moshe* was never printed in full. Rabbi Luria's work was likewise not printed in his lifetime. By the time his *Yam shel Shlomo* was printed, an innumerable amount of his writings, which spanned about sixteen tractates, had been lost. Paradoxically, Rabbi Luria's responsa, which were negligible compared to *Yam shel Shlomo*, were printed close to his lifetime, while his larger project never made it into print in its entirety.[1236]

This paradox reflects the challenges of adapting scholarly archives from a manuscript culture into printed works. The more structured, complete, and comprehensive a work, the more feasible it would seem to publish it in print in theory – although, in practice, it was not always easy to carry out. Responsa, however, had no such blueprint; as independent units that belonged to a rabbi's general archive, there was no overarching structure to these writings, no organizational logic, not even a clear principle for selecting and delineating the contents. The lack of a predetermined blueprint made it easier to publish responsa "as is," without imposing any structure or seeking a unifying concept of the work. This could be done most conveniently once the author died, when the living archive became a "*nachlass*," thus ensuring that the work was complete in the simplest sense of the word, although not in any other sense.

Living scholars thus found it more compelling to conceive of unified and structured codifications rather than a coherent collection of responsa as suitable for the printing press. It is telling that both Rabbi Karo and Rabbi Isserles, who harnessed the power of print so consciously for their codes, did not publish their responsa or even prepare them for eventual

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[1236] See chapter 3 in this dissertation for more on Rabbi Luria's methods and literay projects.

publication. Rabbi Isserles' responsa, as we have seen, were printed after his death, without organization or structure. The very first collection of Rabbi Karo's responsa was similarly printed after the author's death. In his will, he asked, in the words of his son, Rabbi Yehuda "that all his responsa to questions be collected, and all his writings, and that they be arranged to be printed"[1237] – note the conflation of responsa and "all his writings," yet another testament to the place of responsa alongside other notes. The son printed *ShUT avkat rokhel* (The spices of the merchant)[1238] in Salonica in 1597-8, and he decided to organize the responsa according to the four volumes of the *Tur*, which also formed the pillars of his father's famous works. Only one part of the responsa, however, was printed:

> … as they were scattered, one here and one there, so that even one responsum from those that were not organized into a book immediately could not be found in its entirety on one paper, rather, half of it was on one paper and, for the other half, I had to wait until I could find its continuation, and sometimes it was in three or four smaller papers, depending on the dimensions of the issue, and sometimes I would find the middle of the issue without the beginning and the end, and this was the case for the majority of them….[1239]

In other words, unlike Rabbi Karo's supremely organized code, the responsa material was not ordered; even simply assembling the responsa and organizing them into four categories was too difficult.[1240]

The transition from a manuscript scholarly culture to a world of print publication is not merely technological; it concerns modes of organization and a concept of knowledge.

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[1237] See Yosef Karo, introduction to *Avkat rokhel* (Salonica: 1597-8) שיקובצו כל תשובות שאלותיו וכל כתובותיו, ויותן סדר להדפיסם.

[1238] Song of Songs 3:6.

[1239] Karo, introduction to *Avkat rokhel*.

ומה גם בהיותן מפוזרות אחת הנה ואחחת הנה, שאפילו תשובה אחת מאותן שלא היו מסודרות מיד על ספר לא היתה שלמה בנייר א', אלא חצייה בנייר זה וחציה אחר, הייתי צריך להמתין עד שימצא שאריתה, ולפעמים בשלשה או בארבעה ניירים [!] קטנים כפי גודל העניין ההוא, וגם בהמצא אמצעית העניין בלי סוף וראש, וזה היה ברובו כמו כולו."

[1240] Those relating to the volume *Even ha-ezer*, dealing with family law.

As recent scholars have correctly pointed out, manuscript culture and print culture coexisted in the sixteenth century.[1241] This becomes especially clear when scholarly culture and practices are examined: a culture can be using printed books while simultaneously working with texts in ways that defy print technology. The world of halakhic texts in this period provides such an example, and the fate of responsa demonstrates the impact of this change. Ultimately, the paradigm of codification dominated the age of print – but responsa were almost impossible to codify. The printed works of responsa lacked an overall structure or unifying organization, while precisely those figures who printed structured codifications could not find a suitable scheme for their responsa, leaving them in disarray in manuscript.

Taking as our starting point an early modern learned world in which writings of all kinds were assembled as creative reference tools, which were not only used privately by the scholar but also consulted and copied by peers, it becomes easier to understand that the very notion of printing one's work was – although not exactly foreign – somewhat difficult to conceptualize in practice because scholars were immersed in the current scholarly practices that defied the dynamics of print publication. Print technology did not *fill a void*; it *replaced* an earlier world with methods of copying that subsumed specific learned practices and expectations, not all of which were smoothly translatable to print. What did this earlier world look like? As Peter Miller explains, contemplating Peiresc's archive made it possible for him to glimpse a different form of scholarship and study, "one organized around research rather than writing."[1242] This more dynamic world of scholarship helps us

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[1241] See, for instance, Jeffrey Todd Knight, "From *compilatio* to compilation" in Johnston and Van Dussen, *The Manuscript Book*, 81-84.

[1242] Miller, *Peiresc's History of Provence*, 6.

understand responsa's resistance to codification. The notion not of a defined, structured, unified book, but, rather, of a scholarly archive with a "de-structured" approach to order, as Décultot defines the essence of the *adversaria*, represents this ashkenazic culture and its important epistemological significance.[1243]

### d. Responsa in Manuscript, Responsa in Print

As cited earlier, Rabbi Isserles, in his introduction to *Darkhei Moshe*, presents the body of texts on which he based his halakhic decision making. Others, however, disrupted this process by introducing an additional category of halakhic text into this canon:

> And although these are the decisors (*poskim*) that have spread in the entire diaspora, and these are the laws of the *olah*-offering,[1244] which were in my heart at the start, to instruct according to their words to the innumerable nation;[1245] and as I adjudicated from them sometimes clear things, others came with *megilot starim* (hidden scrolls)….[1246]

Although Rabbi Isserles seems to have been willing to decide solely according to the earlier canon, "others" came with "hidden scrolls," and he was forced to abort his project. As the rest of the passage, which lists the new material, makes abundantly clear, these texts contain none other than responsa:

> … others came with *megilot starim* (hidden scrolls) and showed from the responsa of the sages after whom we follow, the generals and the noblemen, such as the responsa of *ROSh* (Rabbi Asher ben Yeḥiel), *RaShBA* (Rabbi Shlomo ben Adret), and *MahaRY Kolon* (Rabbi Yizḥak Kolon), and *RibaSh* (Rabbi Yizḥak bar Sheshet) and *MaharaI* (Rabbi Israel Isserlein), who are the great authorities… [1247]

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[1243] Décultot, "Introduction," 11.

[1244] Leviticus 6:2, also wordplay and a reference to Rabbi Isserles' kabalistic-metaphysical work on the measurements of the Temple, *Torat ha-olah*.

[1245] Numbers 23:10, מי מנה עפר יעקב. The expression עדת מי מנה is known from the *piyut* "Ḥasal sidur Pesaḥ," by R. Yosef Tov-Elem, which is part of the Passover *Hagadah.*

[1246] Isserles, *Darkhei Moshe*, ed. Rosenthal, 35.

וכאשר, להורות אחר דבריהם לעדת מי מנה, על לבי בראשונה, וזאת תורת העולה, ואף כי הם הפוסקים שפשטו בכל הגולה באו אחרים עם מגילות סתרים, פסקתי מהם לפעמים דברים ברורים.

[1247] Isserles, *Darkhei Moshe*, ed. Rosenthal, 35.

In this list, Rabbi Isserles enumerated several famous works of responsa, asserting that he would have been perfectly content making halakhic decisions without taking these "hidden scrolls" – the responsa – into consideration. This seems unfathomable from a contemporary perspective. In a footnote of his bibliography of responsa, Glick mentions this paragraph and exclaims, "And we stand in shock and wonder, could it be that it occurred to Rema, the rabbi of the ashkenazic diaspora, to compose a book of halakhic decisions without taking the responsa into consideration?! At the moment, we have not found someone who can solve this riddle."[1248] Rabbi Isserles called the additional canon that appeared and challenged his earlier form of halakhic decision making "hidden scrolls." The reference to "scrolls," as opposed to books (*sfarim*), writings (*ktavim*), or compositions (*ḥiburim*), to name but a few, points to their physical state: they had been in manuscript. Likewise, the word "hidden "may relate to their status as works that circulated in personal, semi-private circles, as opposed to the more universal canon mentioned earlier.[1249] Perhaps the answer to Glick's riddle lies in the shift from "hidden scrolls" to printed responsa.

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[1248] Glick, *Kuntres*, 1: 9, note 333: ואנו עומדים תוהים ותמהים, הייתכן שעלה על דעת הרמ״א, רבם של בני גולת אשכנז, לחבר ספר פסקים מבלי להתחשב בספרות השו״ת?! לפי שעה לא מצאנו מי שיעמוד על חידה זו.

[1249] See chapter 2.2 for my discussion of the source of the expression in the Talmud, and of a similar use of "hidden scrolls" in the early modern period in the first printed edition of Mordekhai ben Hillel's *Hilkhot shḥita u-bedika* [Laws of slaughter and checking] (Venice, ca. 1550). Yochanan Treves, who edited the first printed *Hilkhot shḥita u-bedika*, describes publication in his time as follows: "everyone who has in his hands *megilot starim* brings them out to the printers and they are a light to all." "*Megilot starim*" literally means "hidden scrolls," but here it is used to denote personal manuscripts. As use of the term "hidden scrolls" implies, the Ashkenazic halakhic texts were not simply in manuscript in the material sense (denoted here by the use of "scrolls" rather than "books"); in addition, these manuscript compilations were personal ("hidden"), and, consequently, not always an obvious candidate for print publication. This status accorded to "hidden scrolls" is not only because they were copied by hand rather than printed, but also because the source of responsa is correspondence – letters –a genre that in its personal correspondence aspect is more closely related to manuscript than other works are (as opposed to, for example, a treatise, which may be reproduced by hand but follows the logic of a printed text – stable, public, etc., rather than that of a personal letter). Many of these earlier works of responsa maintained a certain "manuscript-status" in their logic and authority even

The works of responsa listed by Rabbi Isserles, which are both ashkenazic and sfardic in origin, were all, by the mid-sixteenth century, available in print.[1250] To those works of responsa, Rabbi Isserles adds, "also the words of Our Master Rabbi Yacov Weil, and our Master Rabbi Yacov Moellin, and our Master Rabbi Israel Bruna, those are the masters, with the swords of precautions and customs they are stringent..."[1251] These three authorities are mentioned separately because the former were the more general authorities, whereas the latter three represented a more specific ashkenazic world, with its customs and its added stringencies. Two out of these three works were also printed around that time.[1252]

As a result of this alternative trove of authorities shown to him, Rabbi Isserles explains, he found himself in a problematic situation: "and by means of this, my words on the basis of the earlier authorities were broken, and I was thought amongst my peers as

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after they were printed. The process of bringing ashkenazic halakhic manuscripts to print was, evidently, not just a technical step; it was part of a web of changes that affected the practices of halakhic study in highly significant ways. By being printed, the manuscripts entered a more public realm of readership.

[1250] The responsa of Rabbi Asher ben Yeḥiel (Constantinople, 1517 and Venice, 1552-3); several parts of the responsa of Rashba (Rome, 1470; Constantinople, 1516; Venice, 1519); the responsa of Rabbi Yosef Kolon (Venice, 1519); the responsa of Rabbi Israel Isserlein: *Trumat ha-deshen* (Venice, 1519); the responsa of Ribash (Constantinople, 1546-7 and Riva di Trento, 1549).

About a handful of works of sfardic responsa were published in addition to the ones mentioned here: *ShUT Binyamin Zev* (Venice, 1538), *ShUT Rabbi David ha-Kohen* (Constantinople, 1537-8), *ha-Ran* (the Responsa of Rabbi Nissim Gerondi) (Rome, ca. 1546-7), *Tshuvot ve-igrot ha-Rambam* (Responsa and letters of Maimonides) (Constantinople, 1514).

When it comes to the Ashkenazic works, however, this brief list covers *all* the works of responsa that were published before 1550. As Rabbi Isserles mentioned later in the introduction that, in the process of writing his work, he heard about Rabbi Yosef Karo's parallel work, *Bet Yosef*, the first volume of which was published in Venice in 1550, this introduction was probably written not long after that time.

[1251] Isserles, *Darkhei Moshe*, ed. Rosenthal, 35:

ואף כי הם הפוסקים שפשטו בכל הגולה, וזאת תורת העולה, על לבי בראשונה, להורות אחר דבריהם לעדת מי מנה, וכאשר פסקתי מהם לפעמים דברים ברורים, באו אחרים עם מגילות סתרים, והראו מתוך תשובת החכמים אשר אחריהם אנחנו נגררים, הסגנים והחורים, כתשובת הרא"ש והרשב"א ומהרי"ק וריב"ש ומהרא"י שהמה האורים הגדולים אשר עיני האנשים מאירים, ולבות האנשים מתרדמתן מעירים, ואם המה בני אנשים אנחנו נגדם כחמורים.

גם דברי מהרי"ו ומהרי"ל ומהרי"ב שהמה המורים, בחרבות סייגות ומנהגות מחמירים

[1252] The responsa of Rabbi Weil in Venice, 1549 and those of Rabbi Moellin in Cremona, 1556. Although the collection of Rabbi Bruna's responsa was not printed until much later, many individual responsa of his appeared in printed works such as *Psakim u-ktavim* (Venice, 1519).

someone senseless." [1253] At the earlier point in time upon which Rabbi Isserles is reflecting

in his narrative, when it was "in his heart at the start, to instruct according to their words,"

this may well have been the case. However, as he was writing this introduction to *Darkhei*

*Moshe*, sometime around 1550, these works were already beginning to be available in print,

no longer "hidden scrolls."

In his introduction to *Bet Yosef*, Rabbi Karo terms the responsa that a scholar would

consult the "responsa *that can be found with him*,"[1254] once again indicating that, unlike

the other works he mentions, responsa were circulating in a less complete and universal

manner than other works – everyone possessed different collections of responsa. Another

remark, a few paragraphs later, regarding the works of responsa that he did include is also

quite telling: "...and the responsa of the ROSh and the Rashba and Rabbi Yiẓḥak bar

Sheshet, and Rabbi Shimon bar Ẓemaḥ, and Rabbi Yiẓḥak Kolon and *Trumat ha-deshen* ...

and, see, I have also received some responsa from the RaShbA written with a pen of iron

and lead in print...."[1255] Thus, he is clearly first taking printed responsa into consideration.

All but one[1256] of these works were available in print before 1520. Moreover, he reveals

his sensitivity to print publication regarding responsa elsewhere in the introduction.

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[1253] *Darkhei Moshe*, ed. Rosenthal, 35: וע''י זה דברי על פי הקדמונים היו שבורים, ונחשבתי עם חבירי כבוערים
("as someone senseless," Psalms 94:8: "take notice, you senseless ones among the people" בני בוערים)

[1254] Karo, *Bet Yosef*, introduction: ואח''כ לעיין בדברי...וגם בדברי תשובות הגדולים *הנמצאים אצלו*

[1255] Ibid.: ...ותשובות הרא''ש והרשב''א והר''י בר' ששת והר''ר שמשון בר צמח ומהר''י קולון ותרומת הדשן...והנה בא
לידי קצת תשובות הרשב''א כתובות בע''ט ברזל ועופרת בדפוס וכתוב בתחלתן שהם תשובות הרמב''ן וכשאני כותב מאותן תשובות
אע''פ שאני יודע שה' תשובות הרשב''א אני יכותב 'כתוב בתשובות להרבמ''ן לפי שספרי הדפוס מצויים ביד כל אדם ומי שירצה לעיין
בלשון התשובה עצמה יכול לעמוד עליה.
     See also Tirẓa Kelman's MA thesis, which deals in depth with the sources used by Rabbi Karo in one subsection of the *Shulḥan Arukh* and uses this as a test case to explore the fact that the only two ashkenazic works of responsa mentioned in this introduction were also the only ones available in print before 1520. Between 1520 and 1559, when *Bet Yosef* was printed, a few more works of responsa were printed (the ones mentioned in Rabbi Isserles' introduction), but Rabbi Karo did not seem to be using them.

[1256] The responsa of Rabbi Shimon b. Tzemach Duran (Amsterdam, 1738).

Mentioning that the printed edition of one of the collections of RaShbA's responsa were mistakenly attributed to Naḥmanides, he explains that he will continue to refer to them by their wrong attribution because "the printed books are found with every man," and that is the title under which it was printed, thus permitting readers to know which title to consult.[1257]

The works of responsa that, according to Rabbi Karo and Rabbi Isserles, needed to be included in their codifications were printed. Responsa that did not circulate in print form seem exempt from this expectation. Seventeenth-century scholars would display a similar understanding: Unlike many of his fifteenth-century colleagues, whose works were printed in the following century, the responsa of Rabbi Moshe Mintz (ca. 1415-1480) were not printed until the seventeenth century.[1258] In the introduction to his printed responsa, the consequences of having remained in manuscript for so long become very apparent. Rabbi

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[1257] See my discussion in chapter 2 of Ḥiya Meir ben David, who edited the Venice, 1519 edition of these responsa attributed to Naḥmanides and clearly knew that this was a mistake, as he mentions it on the title page.

[1258] The responsa of Rabbi Moshe Mintz are much longer than those of his masters and colleagues Rabbi Isserlein and Rabbi Weil; attempting to make the reader's life easier, the editor wrote: "...I have raised on the publication signs which will be of great use to those who consult/study this book." It seems that the editor wanted to include the subsections and conclusions [*u-bo yevo'ar* parts] that exist in the table of contents into the body of the text itself. See Moshe Mintz, *ShUT MaharaM Mintz*, ed. Yonathan Shraga Domb (Jerusalem: Makhon Yerushalaim, 1991), 30-31. Barring a few inconsistencies here and there (see the list in the Makhon Yerushalaim edition 2: 645-646), the order of the *simanim* is preserved in the printed version as it was in Rabbi Moshe Mintz's own list of *simanim*. This was most likely based on his own *pinkas*, in which the responsa were entered chronologically, with a few responsa stuck into earlier pages later on, so that the order is largely chronological, with a few responsa added where they fit in terms of theme or addressee, even though they do not fit chronologically. The order was not edited in any significant way, and, in spite of good intentions, the decision to add the small conclusions from the table of contents into the body of the work was not carried through beyond the first three responsa. There was no attempt to remove personal names, greetings, or place names in any consistent manner. The editor did, however, add numbering for every conclusion for the entire book, which may have made it easier to use in terms of referencing specific passages (for instance, when writing a responsum and including *MaharaM Mintz* as a source). This numbering was reproduced in later printed versions.

Meshulam Feibush, the rabbi of Cracow, mentions in his introduction to the printed edition

that "...this aforementioned [collection of] responsa was not to be found, because it was

closed and sealed and hidden...."[1259] The introduction seems eager to impress upon the

reader that Rabbi Mintz is just as great as his peers who were much better known, as their

responsa had already been in print in the sixteenth century:

> The responsa of … Rabbi Moshe Mintz SeGaL, he is our master and rabbi Moshe Mintz, who was the most important rabbi in Mainz in 1468 in the same generation as the great latter *geonim* from whose wellsprings we drink and after whose rules and decisions we, the sons/inhabitants of Ashkenaz, follow, our master and rabbi Isserl', author of *Trumat ha-deshen* of blessed memory and our master and rabbi Weil of blessed memory, and our master and rabbi Israel Bruna of blessed memory, and our master and rabbi Yehuda Mintz of blessed memory, and our master and rabbi Yosef Kolon, and the rest of the world level *geonim* who lived in those days, as the reader in these questions and responsa can see, and that he [Rabbi Moshe Mintz] was as big in his generation as they were...." [1260]

Rabbi Mintz's long absence from the world of printed responsa meant that he was

less known to readers than other rabbis from his period. [1261] Not only less learned readers

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[1259] *ShUT MaharaM Mintz* (Cracow, 1616), Introduction: ולא היה בנמצא תשוב׳ הנ״ל כי היה סתום וחתום וגנוז ביד איזהו יחידי סגול׳ אשר גנזו אותו לעצמן, ואף גם זה, לא היה בידם הספר בשלימותו ובמילואו, רק קרועים ובלואים וחסרים, עד שיזכני הש״י שבא זה הספר לידי...

[1260] Ibid: תשובות מהר״ר משה מינץ סג״ל הוא מהר״ר משה מינץ, אשר הי׳ רב המובהק במענץ רכ״ח לפרט בדורותם של גאוני עולם בתראי אשר מימיהם אנחנו שותים ובתר דיניהם ופסקיהם אנחנו בני אשכנז נגררים, מהר״ר איסרל בעל תרומת הדשן ז״ל ומהרר״ו ז״ל ומהררו״י ברונה ז״ל ומהר״ר יודא מינץ ז״ל ומהרר״י קולון, ושאר גאוני עולם אשר היו בימים ההם, כאשר יראה הרואה מתוך שאלות ותשובות האלו, ושהוא היה גדול בדורו כמוהם

Rabbi Bruna is also mentioned as part of this list even though his responsa had not been published in print at that point, perhaps because Rabbi Bruna appears frequently in the printed responsa of Rabbi Isserlein and Rabbi Weil.

Rabbi Yacov Berlin (1708-1750), the author of *Be'er Yacov* (Fürth, 1767), was shocked that authorities such as Rabbi Isserles and David ha-Levi SeGaL (author of the gloss on the *Shulḥan Arukh* named *Turei zahav*, or *TaZ*) did not mention Rabbi Moshe Mintz, and Rabbi Ḥayim Yosef David ha-Levi Azulay (*ḤYDA*) set Rabbi Berlin straight by mentioning that this omission was simply because *ShUT MaharaM Mintz* had not been printed yet. See "Introduction," in *ShUT MaharaM Mintz*, ed. Yonathan Shraga Domb (Jerusalem: Makhon Yerushalaim, 1991), 24n139.

[1261] The parts from Rabbi Moshe Mintz's writings that were copied most often in manuscript (prior to printing) are the *seder nisu'in* (order/arrangement of marriage) and *seder ktuva* (order/arrangement of marriage contract), as well as the rules of the orphan's *kadish* prayer, and parts of individual responsa relating to the spelling of names for *gitin* (divorce documents). The list of *simanim* that Rabbi Moshe Mintz himself created also seems to have been circulating, and some rabbis refer to the list independently as a source. שיירי) כנה״ג ביו״ד סי׳ שמ״ה הג״ה ט׳ אות ד׳: ״כתוב בתשו׳ מהר״ם מינץ סי׳ ק״ו ע״יש – ודין זה נמצא רק במפתח ולא בתשובה.)
Other than that, his works were not used very much before they were printed.

but also rabbis seemed to have had limited exposure to Rabbi Mintz' work. [1262] In the seventeenth-century work *Naḥalat shiva*, a collection of laws, responsa, and templates for religious documents and contracts attributed to Shmuel ha-Levi, the author explains that in the *Mapah*, Rabbi Isserles never mentions Rabbi Mintz "...because the responsa of our master Rabbi Moshe Mintz were not yet published by means of print, only in the year 1617, and a few years prior … Rabbi Moshe Isserles was already called up to the *yeshiva* of heaven, so that he, Rabbi Moshe Isserles, did not hear the statements of our master Rabbi Moshe Mintz...."[1263]

In the last entry of his *Avodat ha-Gershuni*, a collection of responsa from the seventeenth century, the author, Rabbi Gershon Ashkenazi (1618-1693), even suggests that if the opinions of Rabbi Mintz contradict those of a later authority, such as, in that particular case, Rabbi Yosef Katz, the principle of *hilkheta ke-batrai* (the law is like the later authorities), does not hold. The aforementioned principle is based on the assumption that any later authority knew the opinions of his predecessors and thus knowingly disagreed with them, whereas the earlier authority may have agreed with the later one had he been exposed to their ideas. However, Rabbi Mintz's responsa, Rabbi Ashkenazi claimed, were exempt from this principle:

> If it is the case that there is a disagreement between … Rabbi Moshe Mintz and

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[1262] The later print publication of Rabbi Moshe Mintz's responsa also led to an extended period of confusion and disarray regarding his authorship of responsa. (Many responsa written by Rabbi Moshe Mintz were, in fact, known, but they were attributed to other rabbis with similar initials, such as Rabbi Menaḥem of Metz [the "*Me'il żedek*"], Rabbi Moshe Isserles, or Rabbi Meir Katzenelbogen of Padua.)

[1263] Shmuel ha-Levi, *Naḥalat Shiva* (Amsterdam, 1667), §31: וכן יש להוכיח בודאי שנעלם מרמ"א דברי מהר"ם מינץ, והא ראיה שכל גדולי זמנו ר"ם מינץ הביא רמ"א בהגהות לד' שולחן ערוך והם תרומת הדשן מהרי"ק מהרי"י ברין ר"י מינץ ולהגדול הזה מהר"ם מינץ לא הביא שום פעם, גם כי לא נתפרסם תשובת מהר"ם מינץ על ידי הדפוס רק בשנת שע"ז, וכמה שנים קודם זמן זה נתבקש הרב רמ"א ז"ל בישיבה של מעלה, הרי דלא שמע הרב רמ"א ז"ל דברי מהר"ם מינץ, ואי הוי ידע הוי מודה ליה כדעת מהרי"ק.

Rabbi Yosef Katz, we must hold on to the gist of our master Rabbi Moshe Mintz's statements, who precedes him [Rabbi Katz] in time ... and it is not fitting to say that '*hilkheta ke-batrai*,…' because the responsa of our master Rabbi Moshe Mintz were not *published and printed* in the days of Rabbi Yosef Katz, so we can say that, had Rabbi Katz seen the statements of our master Rabbi Moshe Mintz, he would have given in to him….[1264]

In other words, by the standards of seventeenth-century ashkenazic scholarly culture, a sixteenth-century rabbi was not expected to make halakhic decisions based on every single responsum in circulation. The expectation that a rabbi had seen the responsa of his predecessors could safely be made only regarding the body of printed responsa. Responsa were, of course, circulating among scholars in manuscript prior to their being printed, but not, it appears, to a degree to which a seventeenth-century rabbi could confidently apply *hilkheta ke-batrai*, which is based on the assumption that the later authorities were exposed to earlier opinions.

To return to Glick's shock that Rabbi Isserles would have dared adjudicate without using responsa, I suggest the following: Glick's expectation that every responsum on a matter be consulted before making a legal decision represents a post-print perspective. Rabbi Isserles, of course, considered responsa as a crucial halakhic source. His introduction did not attribute his neglect of these sources to his rejection of their authority; he simply did not have access to all of them. At first, Rabbi Isserles expresses little concern about viewing all the responsa; he had considered it entirely legitimate to make halakhic decisions without doing so. Responsa were not approached dismissively, they were simply approach as part of a manuscript culture of scholarship rather than a print culture, that is to

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[1264] Gershon Ashkenazi, *ShUT Avodat ha-Gershuni* (Frankfurt am Main, 1699), 124: ואם כן הוא שיש מחלוקי׳ בין מהרר״מ ור״י כ״ץ יש לנו לטפוס עיקר דברי מהרר״ממ שהוא קודם לו בזמן ואפשר גם במעלה...ואין שייך לומר שהלכתא כבתראי מן אביי ורבא ואילך, כין שאין תשוב׳ מהרר״ממ היו מפורסמו׳ ונדפסי׳ בימי מהררי״ך איכא למימר, אלו ראה מהרר״יך דברי מהררמ״מ היה מודה לו...

say, they were not approached as systematically. As described in the earlier sections of this chapter, the responsa were collected in miscellaneous personal reference works, consulted in person, and copied in manuscript according to personal networks, opportunity, and a fair amount of chance; expectations of a scholar's exposure to the totality of these writings were similarly flexible.

Glick is applying *hilkheta ke-batrai* to Rabbi Isserles in ways that a seventeenth-century rabbi could have explained to him was anachronistic. As long as responsa were not printed, halakhic scholarship could proceed with a more selective, less comprehensive approach to such sources; it was unavoidable that some responsa were successfully transmitted but others were not. No realistic standard could define a body of responsa that had to be known. Subsequently, print came to define that standard, which, in turn, fueled the desire to standardize responsa by inserting their conclusions into halakhic codes.

A similar development takes place in early modern England. As common law materials were more frequently printed, these printed collections became the reliable material of choice to use for court arguments. Though technically accessible to all, manuscript material was more difficult to obtain and, it could, thus, not be assumed to be known by all lawyers. John Donne preached a sermon in 1628 stating an expression that was, apparently, already known at the time: "*Absurdum est disputare ex manuscriptis*," explaining, "it is an unjust thing…to press arguments out of manuscrips that cannot be seen by every man."[1265] Print affected the assumptions of what was available to lawyers, which

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[1265] *The Sermons of John Donne*, 10 vols., ed. George R Potter and Evelyn M Simpson (Berkeley, University of California Press: 1953-62), VIII:348. Cited in Ian Williams, "'He Credited More the Printed Booke;' Common Lawyers' Receptivity to Print, c. 1550-1640." *Law and History Review* 28(1) (February 2010): 66.

influenced the expectations of what fellow lawyers and judges were expected to know, and, in turn, changed the ideas of acceptable arguments. A similar dynamic was perhaps in play when it came to responsa, which led to Rabbi Isserles' change of heart regarding the need to include all earlier responsa in his deliberations. It was the gradual emergence of responsa in print, rather than their discovery, that made it unacceptable to determine halakha without consulting all of them. The changed circumstances required Rabbi Isserles to plan his work anew, now including the halakhic opinions from printed responsa into his codification.

## 6. CONCLUSION: THE SIGNIFICANCE OF RESPONSA FOR HALAKHIC ORGANIZATION

This chapter has let responsa lead us to the rabbinic archive; by considering the reasons for the variegated and disorganized state of early modern works of responsa, we have revealed a scholarly culture in which not printed books, but manuscript archives continued to determine the organization of knowledge, even in a world where print was gaining dominance. These scholarly collections were highly personal, flexible, and contained halakhic material of all kinds and genres in barely systematic fashion – letters, glosses, notes, and copies from other collections and from printed works. As such, they can be considered the successors of the manuscript *likutim* that determined not only the organization of halakhic material in late medieval Ashkenaz, but also their approach to halakhic knowledge. Works of responsa from the period discussed in this dissertation were often printed in much the same way as *likutim* were structured, including a host of material

whose only resemblance to responsa was their near-unclassifiable nature: lists of *psakim* (rulings), testimonies of customs, *sidrei get* (arrangements of divorces) and *sidrei ḥaliẓa* (arrangement of *ḥaliẓa* ceremonies, to refuse a levirate marriage) compilations of laws, and other uncategorizeable texts. Some of these kinds of writing were subsumed into the printed codes, others continued to be circulated as independent printed units, and others fell into disuse. Responsa and collections of customs (*minhagim*) would eventually develop into independent genres. As a result of the crystallization of a logic of codified law distinct from the logic of custom, discussed in chapter three, these two genres came to signify distinct fields, and custom was no longer located in the field of halakha.

The authors of the *Shulḥan Arukh* and the *Mapah* were perhaps the first who attempted to include the halakhic opinions from all printed responsa in their codes, which required extracting their conclusions from the responsum as a whole. They were not, however, the last. With the dominance of *Shulḥan Arukh* as an organizational paradigm for halakha, scholars would increasingly write their own glosses based on its structure, and any additional material that they considered important was, thus, inserted into its order. In the nineteenth century, Rabbi Avraham Ẓvi Eisenstadt created a finding aid for the *Shulḥan Arukh* called *Pitḥei tshuva* (Openings of responsa). This work inserted the halakhic conclusions of almost two hundred works of responsa into their correct location in the code. With regard to works of responsa created after the *Shulḥan Arukh*, Elon remarks, to his relief, that after the *Shulḥan Arukh* was published, "a substantial change for the better in the organization of compilations of responsa occurred…. From then on, collections of

responsa were usually organized according to the order of these … codes."[1266] This timing

is not a coincidence; although the basic structure of the *Shulḥan Arukh* already existed in

the fourteenth century in the form of the *Arba Turim*, it became the dominant organizational

paradigm only after the appearance of the *Shulḥan Arukh* in the sixteenth. Unlike the earlier

pattern of the publications discussed here, printed collections of responsa would eventually

increasingly follow a unifying principle by, for instance, including only writings from one

author and excluding non-responsa material.

This discussion, about the world replaced by print technology, has hopefully

enhanced the awareness of this earlier world of texts and scholarship, with its own virtues,

such as dynamism, multi-directionality, flexibility, heterogeneity – and, yes – disorder.

Elon is justified in having found some source of relief in the works of responsa from the

seventeenth century.[1267] The organization of works of responsa according to the four main

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[1266] Elon, *Jewish Law*, 3:1522-1523. The original quote mentions the publication of the *Turim* alongside the *Shulḥan Arukh*. He clearly means the *printing* of these works, not their manuscript publication, which, for the *Turim*, written in the 14th century, preceded the early modern practice of organizing responsa by volume that Elon is discussing, and, for the *Shulḥan Arukh*, could only mean print, as it was immediately printed. As Elon is referring to the organizational structure of the two works (the four volumes), which *Shulḥan Arukh* adopted from the *Turim*, this statement is really about the printing of *Shulḥan Arukh*, not the manuscript publication of the *Turim*.

[1267] Rabbi Yoel Sirkis' *ShUT ha-BaḤ* (Frankfurt am Main, 1687) was not organized in this manner, nor was *Avodat ha-Gershuni* (Frankfurt am Main, 1669) – they do contain an index of topics, starting with the laws on Shabbat, holidays, and so on, similar to the responsa of Rabbi Luria (but not identical) and roughly resembling codes such as Maimonides' *Mishne Torah* or the *Tur*, merely because similar topics are grouped near each other. In this sense, they resemble the index of *Trumat ha-deshen*, except that in *Trumat ha-deshen* the entire work is ordered in this fashion, and all the responsa are mentioned in the index. The organization of the topics in *ShUT ha-BaḤ* and *Avodat ha-Gershuni* was intuitive, not consciously mimicking a specific legal codification. None of the names of the four volumes of the *Tur* are provided for reference.

Rabbi Yair Ḥayim Bacharach's *ShUT Ḥavot Yair* (likewise Frankfurt am Main, 1699), is the first such work of responsa in Ashkenaz to include an index using the four orders of the *Tur*. The author introduces this index as follows: זה הים גדול ורחב ידים שם רמז ואין מספר הויות קטנות עם גדולות שם עניות דעתי יהלך ל"ב יתו"ם ודל יקריב מנחתו. אשר עלה במצודתו. לא ידעתי ספורות. ולשארו בלתי הדורות. ומ"מ להקל על מעייניה. אערכה לפניך מעיינינה ומקוריה לפי סדר התשובות ע"פ ד' חלקי הטורים גם סוגיות ושאר דברים תורניים פרטים למען כל צמא למים ימצא מבוקשו מהר בקשתות ברה"טים. ע"י קוצר מזכרת מיין דזכ"רין נקו"בים לפניך ונחרטים.

The first work of responsa organized according to the four volumes of the *Tur* was that of Rabbi Shmuel de Medina (1506-1589), whose responsa were published in separate volumes between 1594 and 1597

categories of halakha, represented by the four pillars of the *Arba Turim* (civil law; ritual law; holidays and liturgy; family law), did lend these works some structure. Responsa, in essence, however, remain resistant to codification. The division into four categories is rudimentary, and even works of responsa based on this code-inspired structure are far from comprehensive or complete. Responsa are formulated as analyses of real cases, requiring the respondent to pull together variegated halakhic source-material that relates to the particular question. Moreover, the primary value of a responsum is in its presentation of a scholar's specific interpretation and point of view. While the components of a responsum and the different halakhic conclusions of the author can, technically, be taken apart and codified, this undoes much of their purpose. Every responsum is structured as a holistic unit, opposed at its core to the abstraction, division, and systematization that takes place when legal material is codified. As such, this genre remains the embodiment of all that is fundamentally individual and disorganized – non-organizable, even – about Jewish law; something that was taken for granted, even embraced, in early modern Ashkenaz, but that would provoke resistance and anxiety in a culture as taken by the notion of order as ours.

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Let us end with a legend. A collection named *Ma'a lot ha-yuḥasin*, written by Rabbi Efraim Margaliot contains many myths and tales about Rabbi Isserles and others. One of these concerns Rabbi Isserles' writings:

　　　I heard from my lord, my father … who heard in his childhood from truthful people how, because of some reason, Rema sat for some time in a village near Cracow, and

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in Salonica, according to the four volumes of the *Tur*. The next one to include an index that used the divisions of the *Tur* was Rabbi Moshe Benbenishti (1608-1677), whose responsa, *Pnei Moshe*, were likewise printed in several volumes, in Constantinople (1669-1971). The responsa of Rabbi Mordekhai ben Yehuda ha-Levi of Egypt, *Darkhei Noam* (Venice, 1697) similarly included an index that used the four volumes of the *Tur*.

because of this reason, many of his writings remained there and were brought to the treasury of that village's official. And ever since Rema sat there, that official rose very much, and he went and rose higher, and he held on to these writings and refused to give them to anyone, and he commanded his heirs to treat them respectfully, and every year they spread them out in the fresh air and the daylight, to prevent them from rotting and deteriorating – I think that this was told from the mouth of a man who was witnessing the event when they were taking them out and spreading them out in the sunlight, and who knows, perhaps they are still in existence there to this very day.[1268]

In this account, Rabbi Isserles' archive is imbued with amulet-like powers; it is not appreciated as an intellectual contribution but as a powerful object unto itself. In this chapter, I have (perhaps not entirely similarly), also suggested treating the rabbi's archive as a material entity onto itself – not with magical powers to protect us from harm, but with the power to evoke forgotten approaches to knowledge that are difficult for us to access.

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[1268] Efraim Zalman Margaliot of Brod, *Ma'alot ha-yuḥasin* (Lemberg, 1900), 23: שמעתי מא״א המאוה״ג ז״ל ששמע בילדותו מפי אנשי אמת איך שמחמת דבר ר״ל או מחמת סיבה אחרת ישב הרמ״א זמן מה בכפר אחד סמוך לקראקא, ומחמת הסיבה הנ״ל נשארו שם הרבה כתבים שלו והובאו לבית גנזיו של השר הנ״ל. ומאז שישב הרמ״א שם נתעלה השר מאוד והיה הלוך וגדול והחזיק בכתביו אלו ולא רצה למסרם לשום אדם, וציוה ליורשיו אחריו לנהוג בהם כבוד, ובכל שנה שוטחים אותם לאויר ורוח היום שלא ירקבו ויתעפשו וכמדומה שאמר לי מפי איש שראה בעת שהוציאום ושטחום לשמש ומי יודע אם לעת כזאת עודם קיימים שמה.

IMAGE 16

Two slightly different variations of the title page of *ShUT MaharShaL* (Lublin, 1574-5).

A detail from the last responsum in the book, with the words "*tam*" (*finis*) and the list of "*simanei dinim*" (signs of laws) that follows.
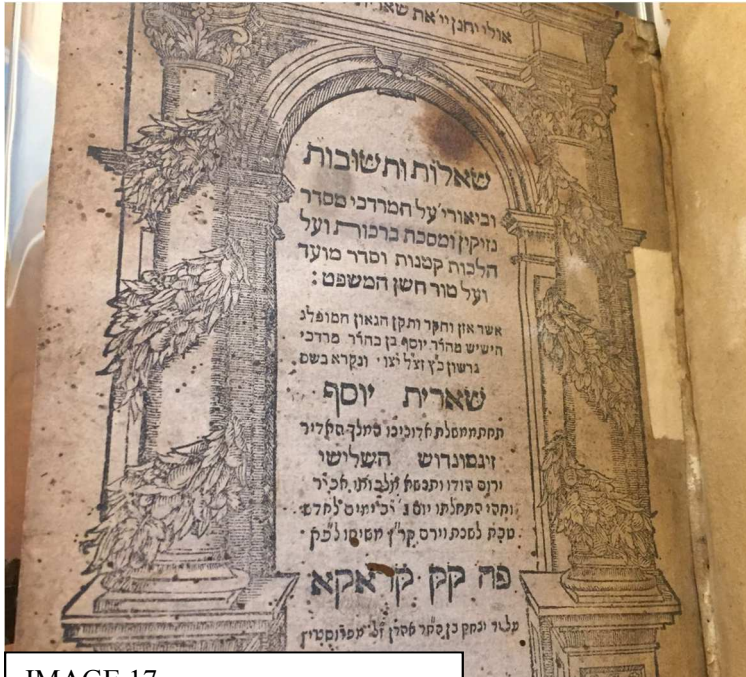
**IMAGE 17**

Title page of *ShUT She'erit Yosef* (Cracow,1590) and detail of one of the resposa added right after the table of contents.
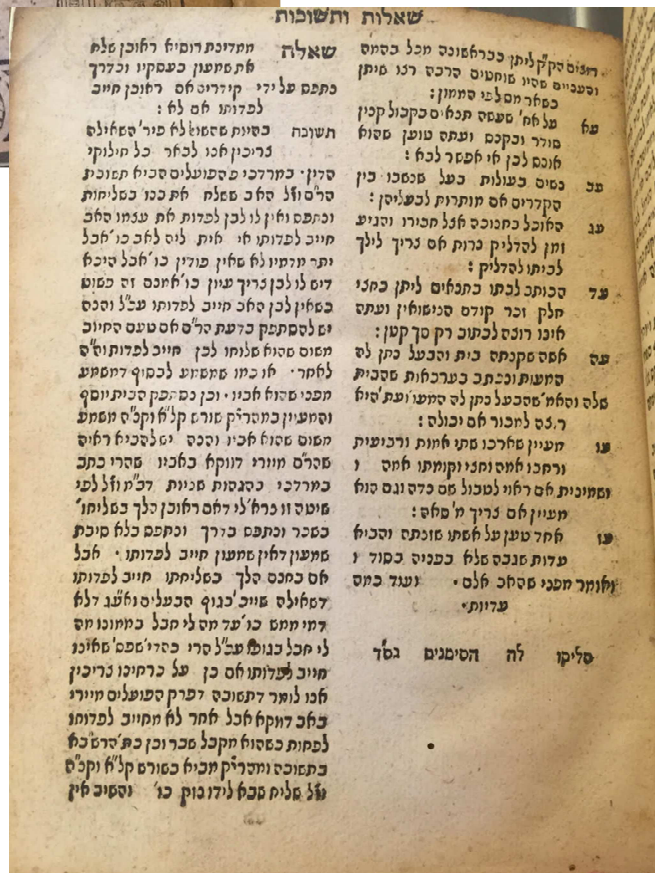
**RESPONSA VERSUS PRINTED CODES**
Codification, Disorder, and Scholarship

## 1. INTRODUCTION

It is impossible to deny that textual material is much more predictably and rationally accessible to the reader in systematically codified works. In sixteenth-century Ashkenaz the paradigm of the *Shulḥan Arukh*, the technology of print, and the communal disruption that would combine to make codifications of halakha dominant, had not fully superseded the existing scholarly culture. Adaptation took some time, prior modes of dealing with knowledge persisted, and early collections of responsa were still quite disorganized as a result. Ultimately, however, the possibility to organize all halakhic material into codifications became more of a reality, and the classic *likutim*, while still canonical in their legal authority, were no longer paradigmatic for the fashioning of halakhic works. Responsa can be incorporated into codifications, but the responsum as a whole cannot be codified in this manner. Although the substantive outcome is in many ways identical, there are essential aspects of reasoning in responsa that get lost in this reorganization.

In order to explore this difference, the current case study will compare responsa to codes. The halakhic conclusions of responsa can be modified to fit into codifications, of course. However, the nature of the individual responsum as a holistic unit – that is, a finished work the value of which derives from the selection and ways in which the particular source material within it are combined, rather than the halakhic knowledge that can be extracted – means that, once abstracted into units that can be integrated within the system of the *Shulḥan Arukh*, responsa lose some of the essence of what defines them. What emerges from this comparison is the insight that responsa present an entirely different

mode of communicating about law. This mode of communication corresponds not with the stable, finished, defined book, but, rather, with the dynamic, open, flexible archive. It represents scholarship as active research rather than finished products.

a. Introduction: Responsa and Codes, Scholarship and Books

The following case study will conclude this final unit of the dissertation, which studied the development of responsa as a genre in early modern Ashkenaz. The past two chapters examined this genre by spanning the life of early modern responsa from their initial form, as letters, to their publication in printed books of responsa. The chapters discussed the scholarly culture in which these responsa were created, in terms of the intellectual community that these epistles brought into being, and as pieces of halakhic writing at the core of scholarly inquiry, during a period of fundamental change for knowledge organization. This case study will analyze the significance of these changes for halakhic knowledge by comparing responsa from Rabbi Karo and Rabbi Isserles concerning a question of inheritance to its equivalent laws as discussed by the same two figures, but in the codes and their glosses.

As will be shown, the legal discussion is entirely different depending on whether it is presented in a responsum or organized in a code. The two aspects of responsa that were discussed in the two previous chapters will each be compared here: responsa as letters versus printed books, and collections of responsa that resemble miscellaneous, personal, and flexible archives versus organized codes. These twin aspects of responsa; its mode of intellectual exchange and its organizational proclivities, will prove to be connected. Moreover, the insights that emerge make it possible to understand the significance of the

reorganization and codification of Jewish law that took place in the sixteenth century, and the crucial role of responsa in this upheaval as archetypal of genres that resists total codification and thus preserve aspects of scholarship at risk of being obscured.

### b. Responsa as Epistles: Orality

The term "letters" in the humanist Republic of Letters referred to philology in particular and learning in general. In the case of the rabbinic community, the term Republic of Letters is particularly appropriate, as "letters," or instances of epistolary correspondence, were so crucial to this network. As the above discussion in chapter five has shown, correspondence was a very distinctive feature of rabbinic communication. Epistles were not only quantitatively but also qualitatively different from other aspects of rabbinic communication, as they constituted the very texture of this community. The only technology of communication that comes close to correspondence in its importance for early modern networks, perhaps even surpassing it, is the printed book.

Books, with their ability to reproduce almost identical texts quickly and cheaply, created an easily shared textual canon. By circulating information and unifying the textual canon, the printed book created a heightened sense of community, contributing to the Rabbinic Republic in innumerable ways. Books and letters are not mutually exclusive in importance; as one study put it, they functioned together within a single information order as complementary media.[1269] Printed works facilitated correspondence about texts, and letters served to compare editions and share glosses, thus eliminating discrepancies. Each

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[1269] Daniel Stolzenberg, "A Spanner and His Works: Books, Letters, and Scholarly Communication Networks in Early Modern Europe," in *For the Sake of Learning: Essays in Honor of Anthony Grafton,* 2 vols., ed. Ann Blair and Anja-Silvia Goeing (Leiden: Brill, 2016), 2: 159.

of these communication technologies, however, played a distinct role, and they each had a

unique function in the formation of the Rabbinic Republic. In this case study, I analyze the

contribution of epistolarity in comparison to books by linking the discursive role of

responsa with Walter Ong's notion of oral logic versus written logic.[1270] Letters make a

unique contribution to the imagined community because of their proximity to oral

discourse, as opposed to books, which lack the oral and discursive elements that the letter

maintains.

The case study considers a responsum written by Rabbi Karo and Rabbi Isserles'

responsum reacting to the former. The case concern a man who, on his deathbed, pledged

part of his inheritance to the poor of the land of Israel. The man died in Ashkenaz, but the

local rabbis deferred to Rabbi Karo in Safed and implemented his decision, another proof

of the importance of responsa for transnational rabbinic cooperation: "Therefore, we have

agreed here and we have forced the [heir] to send one hundred Polish Guldens, which are

equivalent to sixty Venetian Ducats [to the poor], just as the responsum of his honor

adjudicated." [1271] Rabbi Isserles declares his humility before Rabbi Karo, who was his

senior, explaining that he by no means came to overturn the actual decision. Nevertheless,

Rabbi Isserles writes, "the words of this responsum are Torah, and I am obligated to study

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[1270] Walter J. Ong, *Orality and Literacy* (New York: Routledge, 1988).

[1271] Isserles, *ShUT Rema,* §48, ובכן הסכמנו פה והכרחנו האיש לשלוח מאה זהובים פו' שהם נגד ס' דוקט"י וונזיא"ה, – כפי פסק תשובתו דמר. for the sake of reference, for 60 ducats in the mid-16th century, you could rent a house in Venice for a year, see Paul F Grendler, *The Roman Inquisition and the Venetian Press* 1540-1605, Princeton: Princeton University Press, 1977, 20 ("In 1566 Gasparo Bindoni in San Salvatore enjoyed an annual income of 95 ducats from the rental of a house in Venice (60 ducats) and the income of his wife's dowry, which, which consisted of 3 small houses in Venice and 10 fields.") .

it, and I cannot properly comprehend it unless we negotiate about it." [1272] The particular

form of negotiation that takes place is central to what makes responsa unique.

Walter Ong, in his now paradigmatic sociological study *Orality and Literacy: The*

*Technologizing of the Word* draws a general (and, one might add, quite generalized) image

of the evolution of society from an oral to a textual culture.[1273] The shift in technology from

orality to writing had profound social and cultural consequences, and, he claims,

immeasurably influenced the consciousness of these societies. The earlier rhetorical,

dialogical logic, with its linear structure and oral/aural essence gave way to more

formalistic, schematic, and visually arranged thinking.[1274] The distinction was not always

absolute: Ong positions the manuscript somewhere between orality and literacy. Writing,

too, was sometimes used to enhance or support orality, resulting in "written speech," such

as rhetoric, where the written is structured in the form of an oral address, meant to be read

and heard.[1275]  Letters are usually distinguished by their manuscript form and maintain

roots in rhetoric, situating them perfectly in this category of "written speech," preserving

orality in writing.

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[1272] Isserles, *ShUT Rema* 48

אך אמנם דברי התשובה תורה הם וללמוד אני צריך, ולא אוכל לעמוד עליה אם לא בשנשא וניתן על זה.

[1273] Ong, *Orality and Literacy*.

[1274] See Ong *Ramus, Method and the Decay of Dialogue*. (Chicago: University of Chicago Press, 2004. new ed. with foreword by Adrian Johns).

[1275] An additional example of "written speech" is the list, something studied at length by John Goody. Lists are inherently non-oral in the sense that they are all about organizing words and ideas visually in space. On the other hand, a list was meant to be read out loud, and thus can be considered a kind of writing meant to support the oral.

### c. Responsa and Archives: Linear Logic

As chapter six has shown, responsa inhabit the culture of the archive; a dynamic scholarly culture that allowed for expansive research and personal note-taking, permitting continuous consultation, repeated adaptation, structural flexibility, and thematic variety, and multiplicity of contents. It represents a living world of research rather than focusing scholarly culture upon one example of its output, the book. Our conception of the book as a defined, stable, and internally coherent unit is a paradigm strongly related to print. Ong viewed printed books as a development that brought the transition from the linear world of sound to the visual world of space to an entirely new level. Print technology made possible not only new ways of securing words in space but also of fixing their place on the page in a way that was easily reproducible and thus unprecedentedly stable. This technology thus further removed "the orality still residual in writing and early print culture." [1276] This distinction between the discursive orality that is preserved in responsa, originally written in manuscript letters (albeit eventually printed), and the schematic logic of the printed text, represented by halakhic codes, which were created for print in this period, will guide our case study.

The collections of responsa that had been printed by their authors in the sixteenth century were few, and displayed characteristics that were opposed to the paradigm that we have of a printed book; they were not comprehensive, disorganized, incomplete, unstable, and lacking any internal order. This, I argued, was precisely because the type of order required by finished books opposed the very essence of early modern scholarly culture,

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[1276] See Ong *Orality and Literacy*, 117

which was driven by the dynamics of manuscript. As a result, the few books of responsa that were printed by their authors were not fully conceived as books; they were merely printed excerpts from a scholarly archive, and not particularly selective excerpts at that. In this case study, the halakhic discourse of responsa is opposed to the halakhic discourse in the codes, which represent the most structured organizational paradigm that was gradually dominating the world of halakhic texts.

### 2. THE CASE STUDY
### a. The Case in the Responsa

The man who pledged some of his money to charity did so using a "deathbed will,"[1277] an exceptional legal structure applicable only to people on their deathbed, allowing for the allocation of gifts without many formal requirements. In this case, however, the deathbed will was poorly executed because the document included the formulation "like a regular gift," calling the deathbed will into question. Perhaps this was no longer a deathbed will, and, therefore, the standard laws of inheritance with the usual strict formalities ought to be applied? Because these formal requirements were lacking, the entire will, including the pledge to the poor, was now questionable. Rabbi Karo claimed that, regardless of any glitches with the document's formulation, the sum pledged to the poor must be donated, because any vow pledging money to charity – whether in the context of a will or not – applies at the moment it is uttered. The sum thus belonged to the poor when it was promised to them, and it cannot be retracted.

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[1277] The halakhic discussion has been simplified for the sake of this discussion. For a more in-depth study of these laws as they apply in the responsa in question, see the appendix to this chapter.

Rabbi Karo's responsum[1278] describes the case as "simple,"[1279] but Rabbi Isserles, did not share his opinion.[1280] He considered it a case of wills, unrelated to charity. A promise in a will to give money to the poor was, in his opinion, not a vow to charity, but a regular gift. All gifts must be given according to specific formal requirements of transaction, lifted only for deathbed wills. Since this deathbed will was not carried out correctly, Rabbi Isserles argued, it lost its exceptional status; thus, the gift was never legally transacted and the heirs owe nothing to the poor. At most, he recommended that the heirs fulfill any outstanding promises of the deceased, because this is considered a praiseworthy deed. Legally, however, he insisted that the inheritance is entirely theirs and none of it

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[1278] The very first collection of Rabbi Karo's responsa was not printed by the author himself but after his death. The first volume, *Avkat rokhel* (The spices of the merchant), (Salonica, 1597-8), contained only the responsa concerning family law (this corresponds to *Even ha-ezer* [The stone of help]of the *Arba turim* [Four columns]). The other three sections of Jewish law were printed for the first time in Salonika in 1791, including the volume on monetary law, which contains the responsum of this case study. Rabbi Karo's responsum was included in the collection of Rabbi Isserles' responsa more than a century before it was printed in Rabbi Karo's own collection, in Rabbi Isserles' *ShUT Rema* (Cracow, 1640), §47.

The question of classifying this responsum (monetary law, laws of inheritance, laws of charity, or laws of vows) will become very crucial, as discussed in the concluding case study. The one line description of the case in the Salonica, 1791 edition reads: §83 על ענין מי שהקדיש נכסיו לעניי א"י – "on the issue of someone who has consecrated his property to the poor of the Land of Israel." The decision to describe the case as such, emphasizing the pledge to the poor rather than focusing on the heirs, is also highly significant and represents Rabbi Karo's perspective on the case, as opposed to Rabbi Isserles' (whose volume of printed responsa, in contrast, describes the case as regarding an inheritance – closer to the latter's interpretation).

The classification supports Rabbi Karo's perspective as it is printed in his collection of responsa and Rabbi Isserles' approach as it is printed in the latter's collection. As neither were involved in the editing and publication of their volumes, we cannot draw any conclusions about a conscious classification of the question in any particular category in order to strengthen either one's case. Perhaps Rabbi Karo himself wrote the one line description on the responsum, or perhaps his son did, but maybe the editors were simply inclined to describe the responsum using notions of charity because Rabbi Karo's responsum convincingly answered the question in these terms.

[1279] Isserles, *ShUT Rema*, §47. וכל מי שהנכסים הנזכרים בידו חייב לשלחם לעניי א"י. ועם היות הדברים פשוטים... נדרשתי לאשר שאלוני. נאום הצעיר יוסף קארו.

[1280] Isserles, *ShUT Rema*, §48. "However, now, my opinion is nullified against the opinion of his beautiful highness and Torah honor, and it is on him that one should rely regarding [strict] Torah prohibitions, and all the more so regarding lighter monetary issues."

belongs to the poor. Rabbi Isserles signed off, begging Rabbi Karo "not to cast me behind his back without answering my question."[1281]

Notwithstanding this plea, we have no indication that Rabbi Karo responded, or that the letter even reached him,[1282] and thus no way of ascertaining whether the conversation continued. We do have, however, another kind of text from the same two scholars about the same laws: Rabbi Karo's *Bet Yosef* and Rabbi Isserles' *Darkhei Moshe*, which are their glosses on the fourteenth-century *Arba Turim*; and the *Shulḥan Arukh*, Rabbi Karo's code based on the *Arba Turim*, with Rabbi Isserles' glosses on Rabbi Karo's code named the *Mapah.* Their treatment of wills and charity in those works allows us further to investigate their opinions. More importantly, it provides an opportunity to reflect on the differences between halakhic arguments in responsa and in printed books.

**b. The Case in the Codes**

In the codes, surprisingly, this entire disagreement can barely be detected: Both *Tur* and *Shulḥan Arukh* are divided into four volumes, each dealing with different fields in halakha [see table]. The volume of the *Tur*, *Ḥoshen mishpat* (breastplate of judgment), which deals

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[1281] Isserles, *ShUT Rema*, §48. אך אבקש שלא ישליכני מר אחר גוו לבלתי השיבני על שאלתי כי מונע בר יקבוהו לאום...

[1282] Rabbi Isserles did, however, receive feedback from elsewhere, as he showed his responsum to someone other than the addressee. He sent his response to Rabbi Meir of Padua, who was his relative and the oldest living rabbi in his circles, and it seems that the response was well received by his elder. Beyond halakhic praise, Rabbi Isserles also received some instructions on responsa writing conventions and technique: Someone of Rabbi Karo's intellectual stature, Rabbi Katzenelbogen explained, would not need such lengthy arguments. Moreover, the instinct to preemptively raise all the possible objections together with arguments against these counter-arguments ("in the manner of 'and one should not say'…") was an understandable but faulty strategy, because it provided the other side with more material for their own opinion. He added a concrete example of Rabbi Isserles' tendency to use such preemptive counter-arguments with an explanation of why this was unnecessary: "However, you went into too much length, and in some places wrote unnecessarily in the form of 'and one should not say,' because for a personality like him it is sufficient to write spare words and only hints; on the contrary, these things provide him with material to counter you" (Isserles, *ShUT Rema*, §48). This is a clear example of how epistolary literacy, especially of the kind needed for participation in scholarly conversation, had to be taught.

with monetary law, discusses the formal requirements for legal gifts, acquisitions, and wills. It introduces the institution of the deathbed will as an exception to regular gifts, stating that gifts must satisfy a series of formal requirements *unless* they are deathbed wills. Rabbi Karo agrees with this. Rabbi Isserles, in his gloss, points out the implication of this formulation: a deathbed will that accidentally uses the term "regular gift" will revert to the usual requirements.[1283] This remark by Rabbi Isserles implies that the law supports his view, but it is, at best, an implication.

Rabbi Isserles links this implication to a more explicit case later in the same section, when the *Tur* deals with a series of ambiguous deathbed wills. One of these concerns a person who gives away all of his property (implying that he is on his deathbed) but specifies that he is allocating it "effective immediately" (implying that it is a regular gift).[1284] In that case, the will loses its deathbed status and all the regular formalities are required. Here, Rabbi Isserles links his gloss to the above implication, writing: "...from this we can also learn about the law I discussed at the beginning of this section."[1285] He specifically connects this to the responsum, explaining "…this is simple according to *my* opinion, but I wrote it only because I saw the responsum of the rabbi, the author of *Bet Yosef* who wrote about this, that in such a case, the acquisition *would* work [in favor of the poor] …" [see table]. This would have been the obvious place for Rabbi Karo's opposite opinion to

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[1283] Isserles, *Darkhei Moshe* on *Tur Ḥoshen mishpat*, §250:1.

[1284] In the equivalent discussion in *Shulḥan Arukh*, Rabbi Isserles adds the term "like a regular gift" alongside the term "effective immediately," thus specifically inserting the term that invalidated the deathbed will in our responsum as an example where the term will disallow the deathbed will. This point is central to their disagreement in the responsa, but here it appears as if Rabbi Isserles is merely providing an additional example. See *Shulḥan Arukh, Ḥoshen mishpat*, §250:9 and *Mapah*, there.

[1285] Isserles, *Darkhei Moshe* on *Tur Ḥoshen mishpat*, §250:9.

appear. His gloss on this law, however, merely provides more references in favor of this view and, far from disagreeing, even comments that these laws are obvious.[1286] Rabbi Isserles' comment here also provides a reference to a later section – "and see later, §253 for more on this"[1287] [see table].

This reference leads to a discussion a few sections later in the *Tur*, which describes another ambiguous case: a deathbed situation where the wrong term for "inheritance" is used. Rabbi Karo's gloss, in this instance, states that if it is clearly a deathbed situation, the use of a slightly ambiguous term calling this into question can be disregarded, and the will retains deathbed status.[1288] It is only here that Rabbi Isserles explicitly disagrees: "and his words seem wrong to me … and [Rabbi Karo] wrote in a responsum to uphold a [deathbed] gift using this reasoning, and I contradicted him with clear proofs and Rabbi Meir of Padua agreed with me!"[1289] [see table]. This is the only instance where Rabbi Isserles voices overt disagreement.

Thus, the halakhic disagreement barely finds expression in the legal code.[1290] The only junctures at which any outright dispute can be found are the two places where Rabbi

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[1286] "And these are simple things" (Karo, *Bet Yosef* on *Tur Ḥoshen mishpat*, §250:9 (15)). בפר' ח'. מהל' זכיה ודברים פשוטים הם See table.

[1287] Isserles, *Darkhei Moshe* on *Tur Ḥoshen mishpat*, §250:9 (15). והוא פשוט לדעתי, ולא כתבתי כן רק שראיתי תשובת הרב בעל ב"י שכת' בה שקנה בכה"ג ... ואני השבתי לו בזה ובאו דברי שניה' לפני מור"ם מפדו' ז"ל והסכי' לדברי דלא קנה כמו [שמבואר מהראיות] בתשובה הנכתבי' על זה וע"ל סי' רנ"ג עוד מזה.

[1288] *Bet Yosef* on *Tur Ḥoshen mishpat*, §253: "and even if it is clear to us that she said [the problematic formulation] in the very same words as they wrote it on the document, … it is clear that she is leaving this [as a deathbed will], but she simply did not use the specific correct term." ואפילו אם ברור לנו שאמרה היא באותו לשון ממש שכתוב בצוואה כיון דקיימא לן דאין אדם מוציא דבריו לבטלה סתמא דמילתא שהיא המנחת אלא שלא דקדקה בלשונה.

[1289] Isserles, *Darkhei Moshe* on *Tur Ḥoshen mishpat*, §253: ואין דבריו נראין במה שכתב....וכתב בית יוסף בתשובה לקיים המתנה מטעמים הנ"ל ואני כתבתי עליו וסתרתי דבריו בראיות ברורות והסכים לדברי מהר"ם פאדוואה ז"ל.

[1290] Several other such ambiguous scenarios are mentioned, some of them involving charity. In one case, a dying person pledged all of his possessions to charity, implying that this was a deathbed will that would be voided if he recovered. One opinion claimed that the charity would hold even if he recovered,

Isserles mentions the responsum. Most places where one would expect conflict contain, at most, indirect disagreement and references to other subsections which, eventually, lead to those same two references to the responsum [see table]. These roundabout implications and allusions are the only way in which the legal controversy – so prominent in the responsa – appears in the codes, and then, too, invoking the responsa, rather than as independent halakhic opinions in their own right. Even in those places, Rabbi Karo rarely stated anything to the contrary. In all of the laws of gifts and wills located in this volume of the codes, he simply does not mention the issue that occupied the heart of his argument in the responsum.

The laws of charity and vows are located in volume *Yoreh de'ah* (Teaches knowledge) of the codes, which deals with ritual law or *isur ve-heter* (prohibition and permission). The location of charity in a field that mainly discusses forbidden foods derives from the source of vows in the concept of *hekdesh*, consecration to the Temple. Anything that is vowed to the Temple is considered *hekdesh*, property of the Temple, as soon as the vow is made, and partaking of these consecrated items is *me'ilah*, akin to stealing from God. The term *hekdesh* is often also used for the communal charity fund, which is why vows to charity are discussed alongside vows to give gifts to the Temple. It is in this volume of the codes that Rabbi Karo's strong stance on charity finds expression, and he provides many sources and opinions to support the idea that charity belongs to the poor as soon it is promised to them, and that such a promise cannot be retracted. Rabbi Isserles, once again,

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whereas the other held that the pledge would return to the owner, as he may have intended to give everything away only if he died. Rabbi Karo agrees with the second opinion, which resembles that of his opponent, Rabbi Isserles, in the responsum. He even criticizes the opinion that the promise to charity must be upheld, calling it "perplexing." See Karo, *Bet Yosef* on *Tur Ḥoshen mishpat*, §250.

relates this to the laws of wills without a single argument or discussion. Simply by adding a gloss to Rabbi Karo's discussion: "and see in *Ḥoshen mishpat* §250," he thus directs the conversation back to the volume on monetary law rather than the volume on forbidden consumption[1291] and back to his disagreement with Rabbi Karo in the responsa, where charity and inheritances intersect.[1292]

### c. Responsa versus Codes: Linear versus Schematic Logic

The categorization of a case as inheritance and thus monetary law, on the one hand, or charity and prohibited consumption, on the other, is critical for the current case. This issue emerges in the Babylonian Talmud, tractate *Bava batra* (Final gate), where the different ways of understanding the intentions behind ambiguous gifts are examined. The talmudic discussion concerns a person on his deathbed who declares all his possessions ownerless, consecrates them to the Temple, or dedicates all his possessions to charity. [1293] The

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[1291] This same dynamic is repeated in the *Shulḥan Arukh*, whose structure and division into volumes mirrors that of the *Arba Turim*. Whereas Rabbi Karo's summary reads: "He who has money in his hands and is in doubt if they are for charity, he must give them to charity," Rabbi Isserles adds: "But, he who pledged something in a formulation that leaves doubt and then died, so that one cannot know his intention, the heirs are considered to have the presumption of ownership and the consecration fund [*hekdesh*] is considered those who come to take it from them [and thus have the burden of proof]. See Karo, *Shulḥan Arukh Yoreh de'ah*, §259:5 and Isserles, *Mapah*, there.

[1292] Isserles, *ShUT Rema,* §48. Rabbi Isserles is aware that the issue hinges on this distinction between monetary law and laws of charity. In his responsum, he phrases his reasoning in the following wordsas follows: "Even if he recovers, he cannot retract, because it is a doubt concerning *isura* (prohibitions) and we proceed stringently." Thus, it is the designation of the case as belonging to *isura,* prohibited consumption, which would result in the stringent decision favoring the poor. Similarly, in his gloss on the laws of deathbed wills, Rabbi Isserles explains that, whereas some opinions favor the heirs in ambiguous cases, others oppose this and "adjudicate … that in the case of *hekdesh* … which is *isura*, one goes according to the stringent option," to the advantage of the poor. See *Darkhei Moshe* on *Tur Ḥoshen mishpat*, §250:5.

[1293] Babylonian Talmud, Tractate *Bava batra* 148b

איבעיא להו הקדיש כל נכסיו ועמד מהו מי אמרינן כל לגבי הקדש גמר ומקני או דלמא כל לגבי נפשיה לא גמר ומקני הפקיר כל נכסיו מהו מי אמרינן כיון דאף לעניים כעשירים גמר ומקני או דלמא כל לגבי נפשיה לא גמר ומקני חילק כל נכסיו לעניים מאי מי אמרינן צדקה ודאי מגמר גמר ומקני או דלמא כל לגבי נפשיה לא גמר ומקני תיקו (ל"א הקדיש כל נכסיו מהו הפקיר כל נכסיו מהו חילק כל נכסיו לעניים מהו תיקו)

Translation from Soncino: "The question was raised: [If a dying man] consecrated all his possessions and [subsequently] recovered, what [is the law]? Is it assumed that whenever it is a case of consecrated objects the transfer of possession made is unqualified [meaning that he intended for the gift to

question arises: if the person recovers, will the gift remain or do we say that, since the person gave away everything and did not leave him or herself any source of sustenance, it was clearly only meant in the event of his or her demise, and therefore it can be reneged? The Talmud explains both rationales: On the one hand, one might argue that "charity, he certainly meant to give unqualified," meaning that, since charity is righteous, this person clearly had the full intention to give everything away, even if he left nothing for himself. Therefore, the gift is considered binding and the giver cannot renege. This is countered by the argument that "when it comes to his own well-being, he would not give it away unqualified," a person would not neglect his or her own wellbeing to such an extreme degree, even for charity. Considering the fact that the giver left nothing behind for his or her own use, they could not possibly really have intended to give everything to charity without qualification. Therefore, if the giver does recover, the gift can return to the giver. The Talmud does not decide among these two rationales, rendering this case is *teku*, literally "let it stand," a doubt that cannot be solved. The *Tur* thus summarizes that the law "is not specified."[1294]

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take effect even if he recovers] or, perhaps, when it is a matter of personal interests one does not transfer unqualified possession? [If the answer is in the affirmative, the question arises] what [is the law in the case where] he renounced the ownership of all his property? Is it assumed that since [ownerless property may be seized] by the poor as well as by the rich, he transfers [therefore] unqualified possession or, perhaps, whenever it is a matter of personal interests one does not transfer unqualified possession? [If the answer is in the negative,] what, [it may be asked. is the law where] he distributed all his possessions among the poor? Is it assumed [that in a matter of] charity he has undoubtedly transferred unqualified possession or, perhaps, wherever it is a matter of personal interests one does not transfer unqualified possession? — This is undecided. Some versions do not present these three options (consecration, ownerlessness, charity) as three separate questions but, rather, bundle them all into one. The distinction may have relevance in the case of ownerlessness, but not in our own case, which concerns charity.

[1294] This is called *b'aya de-lo ifhsatei*, see for instance in Babylonian Talmud, Tractate *Brakhot* 51a-b אמר רבי חייא בר אבא אמר רבי יוחנן, ראשונים שאלו: שמאל מהו שתסייע לימין? אמר רב אשי: הואיל וראשונים איבעיא להו ולא איפשט להו, אנן נעבד לחומרא. Thus, there where the Talmud does not make a specific decision between two options, we always go according to the more stringent option, even if it is only a rabbinic prohibition (whereas

The principle of adjudication in such unresolved case is to favor the more stringent adjudication, meaning one in which there is less risk of transgression. [1295] The definition of "less risk of transgression" depends, however, on the category of law. In monetary law, it is considered more cautious to refrain from actively taking money from whoever currently possesses it. Thus, in monetary decisions, uncertainty will always favor the person who currently has the presumption of possessing the money. In the case of prohibitions of consumption, on the other hand, the risk-avoidant decision is to abstain from anything that might be consecrated, for fear of committing the transgression of *me'ilah*. Therefore, classifying the case in the responsum as a question of inheritance favors the heirs, because it places the case in the realm of monetary law. Classifying the case as a question of *isur ve-heter*, on the other hand, will favor the charity fund.

The main crux of the disagreement, so vivid in the responsa, is almost neutralized in the codes. Paradoxically, it is in the *Shulḥan Arukh*, where the two authorities are visually intertwined on the page, that they are actually less engaged in dialogue because of the codificatory nature of the text. The de-structured logic of the responsum renders the actual halakhic dialogue more perceptible. This may not necessarily mean that (cor)respondents are, in fact, engaged in a live argument through these letters – as we have seen, the responsum in question may never have reached Rabbi Karo – but, rather, that

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usually the principle applies that a doubt concerning a biblical prohibition is decided stringently, but a doubt concerning a rabbinic prohibition is decided leniently).

[1295] The principles of how to resolve indeterminacies are based on a number of factors and combinations of factors: is the indeterminacy one of fact, of intention, of legal opinion, of interpretation, etc.? Is the halakhic issue at hand biblical or merely rabbinic? Is there a presumption in place where we can assume that the indeterminacy will resemble the presumption, and what kind of presumption is it (statistical majority, likelihood, quantitative, local, psychological, legal)?

responsa encourage this type of discourse by implying dialogical communication. This points us to the unique role of correspondence: because epistolarity invites the logic of a conversation, it builds the imagined discursive community so necessary for a legitimation of law in ways that codes cannot. Moreover, the linear logic employed in responsa is difficult to express in codifications, the structure of which encourage a more schematic logic.

### 3.	CONCLUSION: ORGANIZATION AND JEWISH LAW

As the case study shows, the disagreement between Rabbi Karo and Rabbi Isserles was practically undetectable in the codes. In the responsa, however, the dispute takes center stage, and it is here that the crucial role of letters and their dialogical nature for halakhic scholarly culture becomes clear. Most questions of halakha, especially those based on real, complex cases, hinge on issues of classification. The crux of these questions is not simply how to apply the law, but, rather, how to analyze, interpret, and categorize the case. For this, it is useful to turn to Ong's description of the transition from oral culture to textual culture, which situates the manuscript in the middle of the spectrum, citing its dynamism, uniqueness, and connection to its creator, to argue for its relative resemblance to speech.[1296] In contrast to the manuscript, print technology places the word squarely in the impersonal and stable and realm of the textual. In this sense, the letter maintains a much stronger connection to oral discourse. Ong distinguishes between the visual order of print and its schematic logic on the one hand and the more oral/aural logic of manuscript and its linear

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[1296] Ong, *Orality and Literacy*, 117-128.

logic. Legal codes are schematic in logic and a perfect fit for print, whereas letters, primarily linked to manuscript, perpetuate oral conversation, especially if we relate the discipline of letter writing to the *ars rhetorica*. As a paradigm for organizing halakhic texts, we can say, following Peter Miller, that archives represent the more discursive aspect of scholarship – the research – as opposed to the printed book, which is a finished product.[1297]

The different forms of presenting and organizing legal texts, represented by printed codes versus manuscript responsa, result in distinct kinds of reasoning. Disagreements concerning categorization are not noticeable in codes because the form of classification appears as a given, and laws are arranged in their respective categories. In reality, of course, organization is neither obvious nor transparent, but those choices are difficult to question from within the schematic order itself. Opinions can diverge in much more explicit ways in texts that are organized in a linear manner, which allow opposing opinions to be presented according to their own logic. Issues of categorization are thus much easier to debate in responsa. This helps explain why the turning points of this case of a deathbed will were hardly visible in the schematic organization of the codes and were hidden in footnotes and references, whereas, in the more direct argumentation and linear logic of responsa, the central disagreement stands out more clearly.

When discussing the *Shulḥan Arukh*, Isadore Twersky described Rabbi Isserles' interventions as "… very radical, but low-keyed and disarmingly calm...," an aspect that Twersky tied to the genre of the code: "It is only the harmonious literary form that avoided

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[1297] Peter N. Miller, *Peiresc's History of Provence: Antiquarianism and the Discovery of a Medieval Mediterranean* (Philadelphia: American Philosophical Society, 2011), 6.

an overt struggle for Halachik hegemony such as occurred in other periods...."[1298] Indeed,

the "harmonious literary form" is one great advantage of the code, permitting the adjacent

placement of different opinions regarding the same topic and, ultimately, the

universalization of halakha into one general system. This fusion was primarily formal, but

form, of course, is no small matter. The possibilities of codes extend beyond the apparent

avoidance of confrontation; opinions placed side by side can be viewed in conjunction;

laws that are classified and placed in their respective locations are easy to find; and the

code's complete and comprehensive structure provides a schematic basis for additional

material.

This more schematic logic, however, requires abstracting cases into concepts and

dividing complex solutions into their modular components. In the process of creating this

more schematic organization, an element of real adjudication is lost. In the dialogical

arguments of the responsa, on the other hand, the logic is not conveyed schematically and

it is impossible to survey visually. Rather, the argument unfolds linearly, like an oral

explanation that has been written down. There is a greater risk of losing the larger scheme

while entering into the responsum's line of reasoning, and it is more difficult to weigh one

argument against the line of reasoning of the other. The sense of having an overview of the

law often seems tenuous. This linear sequential argument, however, is often precisely the

essence of the disagreement. These points come into focus with particular force in the

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[1298] Isadore Twersky, "The Shulchan Arukh: Enduring Code of Jewish Law," in *The Jewish Expression*, ed. Judah Goldin (New Haven: Yale University Press, 1976), 341n29.

dialogical text, and it is this intensity and the head-on nature of articulating an argument as a conversation that brings halakha to life.

The spatial logic crucial for abstract representations of halakha is perfectly suited to the printed code, but responsa, with their often-confusing linear logic, are irreplaceable for the adjudication of empirical cases and for resolving disagreements about categorization. While conceiving of halakha as a neatly codifiable abstract legal system is attractive, this is not how it exists in all its applications and textual sources. Non-codified law is constantly channeled into the schematic system of codes, and vice versa, material from codes are often re-inserted into enter less schematic discussions. Rabbi Karo included much responsa material in *Bet Yosef*, thus introducing cases into the code, for which he had to summarize and edit the responsa. Even while codifying, however, Rabbi Karo also participates in writing responsa, a testament to the complexity and irreducibility of the halakhic conversation.

While printed books may be more effective tools for circulating quantitatively greater information in stable form, its organizational requirements are essentially opposed to the residual orality in the logic of responsa. This dynamism is captured more accurately in correspondence, which maintains the nature of a "conversation between absent friends," in Erasmus' words. A code may be a more accurate, lucid, and surveyable rendering of the law, but the life and action of law as existing in an imagined community is expressed more strongly in the meandering and untidy linear argumentation of dialogic correspondence. The sense of dialogic argumentation necessary to imagine a real discursive forum, a Rabbinic Republic that exists in one's own time and space could not be created without

responsa, and their essence is only preserved so long as their organizational integrity is intact. Thus, the case study shows the unique contribution of responsa for a discursive, argumentative conception of halakha, while printed codes contribute to a more unified, universalized, and stable image of law.

These distinctions have major significance for the foundation of Jewish legal authority. Printed books, while excellent for communicating information and circulating it more broadly and quickly than letters, do not evoke the immediacy and dialogical impression of discourse. The letter's oral discursive quality is crucial, for only with the idea of argumentation can one conceive of a discursive scholarly community, which also lends it a particular type of legal authority. This brings us back to Dworkin's notion of law, discussed in chapter five, which claimed that any conceptualization of law must include a sense of its argumentative, dialogical nature in order to be valid. The argumentative logic is a crucial element of this very definition of law and the discursive forum in which such arguments take place functions as a justification for halakha's authority. Responsa, with their epistolary roots and their dialogical essence are thus crucial to undergird legitimate authority to halakha. Even when these letters are printed in disordered responsa collections, their particular logic is preserved in ways that codification of their contents would obscure.

Of course, other approaches to legal authority exist as well, and Nils Jansen's study of non-legislative codifications (arguably the best non-Jewish parallel for halakhic codifications), such as Gratian's *Decretum* and the German *Bürgerliches Gesetzbuch* presents an interesting case for codification as a source of authority. According to this approach, the elements of codification itself – order, structure, consistency,

comprehensiveness, completeness, and so on – serve as the source of legal authority.[1299]

The question remains which of these types of authority; one based on discourse or one

based on order; best represents the authority of Jewish law. My suggestion would be that

the answer to this question is different for different religious legal cultures and subcultures,

and depends strongly on their most profound understanding of the meaning of law and

religion. For the early modern ashkenazic culture that this dissertation studied, these

conceptions were in the very process of radical change.

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[1299] Nils Jansen, *The Making of Legal Authority: Non-Legislative Codifications in Historical and Comparative Perspective* (Oxford and New York: Oxford University Press, 2010). His use of non-legislative codifications (as opposed to those backed by state power) is intriguing for investigations into the sources of legal authority in halakha, which, likewise, do not stem from a particular model of state power.

**APPENDIX A: TABLE FOR CASE STUDY**

As the table shows, outright disagreement, evident in most of the responsum from Rabbi Isserles to Rabbi Karo about deathbed wills in this chapter, is almost absent from the discussion of deathbed wills in the codes. For the sake of the example, if one were to highlight the responsa in different colors, they would appear almost entirely in red.

In the codes, on the other hand, Rabbis Karo and Isserles seem mostly to agree, and even if Rabbi Isserles implies some disagreement that is relevant to the case of our responsa, it is only implied and not directly opposed to anything Rabbi Karo wrote in the code at that location. The only places in the codes where any outright disagreement between Rabbis Karo and Isserles can be detected are those places where the responsa are mentioned. Any other hints at disagreement are indicated in three ways; either by means of referring from one subsection to another within the same section; or from one section to another within the same volume; or from one section to another in another volume. The first two will ultimately lead back to the mention of the responsa within the volume, thus pointing very indirectly to the disagreement. The only other form of disagreeing is by referring from one volume to another, thus bringing together the two categories – monetary law vs. prohibitions – that drive the interpretation of the legal case in the responsum.

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| responsum is mentioned in codes |
| Volume on monetary law (*Ḥoshen mishpat*) |
| Volume on prohibition and permission (*Yoreh de'ah*) |
| Outright disagreement between Rabbis Isserles and Karo |
| Implied disagreement between Rabbis Isserles and Karo |
| Agreement between Isserles and Karo |
| Reference to other place within volume (*) -> |
| Reference leads here -> (*) |
| Reference to volume on monetary law (*) |
| Reference to volume on prohibition and permission (*) |

| דרכי משה *Darkhei Moshe* | טור *Tur* | בית יוסף *Bet Yosef* | מפה *Mapah* | שולחן ערוך *Shulḥan Arukh* | חושן משפט MONETARY LAW |
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| and the idea that for a poor person it becomes like a vow, this is only specifically when the money was in his possession as he vowed, but if not … | someone who gives a gift to his fellow … can renege so long as it did not reach the receiver, *and if the receiver is poor*, he cannot renege, because promising "on high" (consecrating) is like giving to a regular person… | and on that which he wrote, *and if the receiver is poor*, he cannot renege … the words of our rabbi do not make sense, because "promising it to God is like giving it to a regular person" is only said about *hekdesh* … but a poor person is considered a regular person | <-(6*) for a poor person, see volume *Yoreh de'ah* §259:12 | and if the receiver is poor, he cannot renege | הלכות מתנות gift laws 243 243:2 |
| -> (*1) <- (2*) …and he wrote that there are those who disagree with them, and see there §253 about this law… 604 | …he who gives a gift … and says "after you, so-and-so should inherit" … when the first one dies, the second one acquires it; this is when the first one is not a legal heir, but if he is a legal heir by *Torah*, he cannot lose the inheritance and it goes to his own heirs after him | …and so it says in … that these things only apply to a deathbed will, but not for a healthy individual… | | | 248 |

| | | | | | הלכות מתנות שכיב מרע<br>laws of deathbed wills<br>250:1<br>(7*)<- |
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| (*1)-><br>…wrote: "However, if he wrote on the document 'effective immediately,' it does require a formal *kinyan*, because if he sells it in his life, it does not work orally, only if he did not say 'effective immediately'…<br>and see what I wrote above at the end of §248<br><br>605 | …when does this apply that a gift requires a formal *kinyan*? To a regular gift, but a deathbed gift does not need any formalities, since our rabbis instituted an ordinance that the words of a deathbed individual are as though they were written and handed over *whether he wrote or said, my property is for so-and-so*…even without a formal *kinyan*… | …and that which he wrote, *whether he wrote or said: my property is for so-and-so* … this implies that also in places where it is said orally without writing, it is also considered a deathbed will, and valid… | …and there is no difference whether he commanded to give it right after his death or commanded the heirs… | …a deathbed gift needs no formal *kinyan* in any way, because the words of a dying individual, it is as if they were written and handed over… | |
| <-(3*)<br>…it seems to me that we can learn from this that a dying individual who gave a gift and added that his | …and if he recovers, the gift immediately returns, even if he did perform a *kinyan,* and there is no need to specifically cancel it when he recovers … | … *as soon as he recovers, the gift is immediately canceled even without saying a* | …and even if he made a condition while giving the gift that he cannot cancel it, if he recovers it is | an individual on his deathbed who wrote all his property to others and did not leave anything behind, even if a *kinyan* was performed, if | 250:2 |

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| gifts should be like regular gifts but did not perform a formal *kinyan* on it, the gift is canceled, since he wished to give it as a regular gift, so it requires a formal *kinyan* and since there was no *kinyan* the gift is canceled, and so it also seems from that which I wrote above in this section … for a deathbed gift where they wrote 'effective immediately,' and the scribes must be cautious with such wills, because I've seen many wills | rather *as soon as he recovers, the gift is immediately cancelled even without saying a word…* | *word* … and even if he specifically said that he wants the gift to remain even in the event of his recovery unless he specifically cancels it, this statement is meaningless, since deathbed wills are rabbinically ordinated and deathbed gifts were made valid only so that the dying person should not be upset. Thus, as soon as he recovers, this rabbinic ordinance no longer holds and his gifts are completely canceled, and it is as though he ordered to give these gifts after his death while in good health … which is worthless… | canceled, unless he performed a *kinyan* | he recovers, the gift is automatically canceled | |

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| that scribes have botched by writing 'like a regular gift' in order to make the document better with a will that had no *kinyan* and thus, it seems, they ruined it and weakened the force of the will and one should be cautious | | | | | |
| and…wrote that even if the poor already took possession of it, we remove it from them, and see there, but … decided like *ROSh* that in case of consecration and charity, which is an *isura,* we decide | *and if he consecrated his property* ... or gave it to the poor, it is unknown, is it like a gift that returns when the dying person recovers or no, and it is an *aporia* … and since it is an *aporia*, the gift returns … and my lord, my father the *ROSh* of blessed memory wrote, since it is an *aporia*, we do not cancel the | *…and if he consecrated his property* … or gave it to the poor, it is unknown … an *aporia*, these are the words of Maimonides … a dying individual who consecrated all his property … or distributed it to the poor, if he recovers, it all returns – the reason for this is simple, because, since it is an *aporia*, we | And even if the poor took possession of it, we remove it from them … and not like those who say otherwise. Similarly, the law of *hekdesh* is like that of a gift, that he can take it back like a gift. | and if he consecrated all his property and left nothing … or distributed it to the poor, if he recovers, everything is canceled like a gift. | 250:3 … (5*)<- |

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| stringently…but we do not go according to *ROSh*, but rather according to those who disagree with *ROSh*, …and this also seems to be the opinion of Rabbi Karo.<br><br>809 | consecration … and the distribution to the poor, since we are coming to cancel his actions based on an assumption, and we cannot cancel his actions unless we are sure about the assumption. | take it from him only with very strong proofs…and that which he wrote in the name of *ROSh* that we do not cancel the gift … these are strange things to me … since it is a doubt, we do not take it from him. | | | |
| (3*)<-<br><-(4*)<br>from this we can also learn about that which I wrote above in this section, that if he wrote in a deathbed will that he gives it as a regular gift without performing a formal *kinyan*, the gift is | And similarly, if he wrote about all his property and adds "effective immediately" and transfers it in his lifetime, this is like other regular gifts, if the document is given to the recipient, or if the buyer bought it directly from the giver, everything transfers and he cannot renege. | Maimonides wrote: "… this is for regular deathbed wills, but if he gave some of his property and specifies that it is as a deathbed will which only transfers after death, it does not need a *kinyan* and if he | Similarly, if he wrote that "this document be in any way that is effective," that is like writing that he means to strengthen the deathbed will and it transfers. | 250:17<br>The gift of a dying individual, always if he gives it with a formal *kinyan*, it does not transfer, even if he dies. And even if he wrote it in a document and handed over the document in his lifetime, it does not transfer, because maybe | 250:15<br>…<br>250:17 |

canceled, since Maimonides wrote that if he writes that he is giving it as the gift of a healthy individual, it is treated like a regular gift, and this is simple to me; but I just wrote this because I saw ==in the responsa of the Rabbi Karo== that he wrote that something in this manner does transfer because we attribute it [the wrong formulation] to a scribal error, and I answered him concerning this, and the words of both of us came before Rabbi Meir of

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recovers, it returns, etc. … and similarly, if he wrote about all of his property and specifies that he gives everything, effective immediately etc., everything transfers, and he cannot renege…" and these are simple matters.

he meant to sell it only with a *kinyan*, and there is no *kinyan* after death. But if he specifies that he only means to perform the *kinyan* to strengthen [the deathbed will] …it does transfer.

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| Padua, and he agreed with my words that it does not transfer, as it is clearly explained in the proofs of the responsa written on this, and see there in §253 for more on this **610** | | | | | |
| (*2)<-(4*)<- this is attributed to a scribal error…, in Rabbi Karo's words. And his words do not seem right to me … and we can bring proof against this from deathbed wills where a formal *kinyan* is performed, and there we do not say that | and a dying individual who said "I leave this to so-and-so," my master and father wrote in his responsum that this is a formulation for gifts ... and if he says …, this is a formulation for inheritance, and if he says … it is a doubtful formulation that was not decided, therefore the gift does not transfer. | but if she commanded, saying "leave this," … and it could be that all this makes it clear that it is but an error of the scribe of the will, … and even if it is clear to us that she said it exactly as it is written in the will, since we assume that "a person does not cancel his/her own words," we can presume that she meant to leave it but simply was not careful with her words | | | …<br>253 |

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anything he [the dying individual] says is to strengthen the will and that which he writes does not seem correct … and such a case already happened, with a dying individual where the will said that he is giving it as a regular gift and he did not perform a *kinyan* and Rabbi Karo wrote a responsum to uphold the gift for reasons such as these here, and I wrote on it and contradicted him with clear

| proofs and Rabbi Meir of Padua agreed with me. | | | | | |
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| דרכי משה / Darkhei Moshe | טור / Tur | בית יוסף / Bet Yosef | מפה / Mapah | שולחן ערוך / Shulḥan Arukh | יורה דעה / RITUAL LAW |
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| …and so the halakhic decisors of blessed memory have agreed, and not like the *RaShbA* who wrote … that promising orally 'on high' (to God), it is like giving for regular people" applies only to actual *hekdesh* | …promising orally "on high" (to God), it is like giving for regular people, therefore whoever pledges charity cannot renege. | …because it says, "In your mouth, that is charity," he is obligated as soon as he says it orally, and this is to contradict those who say that if he promised something to the poor orally and wishes to renege, he can…. | … | if he said to give his friend a gift and the friend is poor, it is like pledging it to charity and he is not permitted to renege | הלכות צדקה laws of charity 258:12 … |
| … [quotes *RaShbA*]: "and I am unsure about the *hekdesh* itself … and if there is any doubt concerning this, we go to the advantage of the heir, because the money is in the presumptive possession of the owners, who are the | … but for the synagogue, we do accept it even in the first place, *and that is if he says 'I set it aside according to Jewish beliefs'*… | *and that is if he says 'I set it aside…'*…. [quotes *Or zarua*] "I can learn from this that this is the law: doubtful charity is charity, because these are all gifts to the poor … therefore, I the author [of *Or zarua*] say, he who has in | <mark>&lt;-(5*)</mark> But he who consecrated something using a doubtful formulation and dies, and we cannot know his intentions, the heirs are considered to be the presumptive owners and if the *hekdesh* comes to take it from them, the latter must provide proof, and so long as no | Whoever has money in his hands and he is not sure if the money is charity, he must give them to charity. | 259 … 259:4 (*6)&lt;- |

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heirs, and the poor who say that the condition was upheld [and they deserve the money], the burden of proof is on them." And so, too, Rabbi Isserlein adjudicated, that the money is kept in the hands of those with presumptive ownership, and see *Hoshen mishpat* §250.
<-(*7)

his possession money and is not sure if they belong to charity or not, he must give them to charity."

proof is brought, the property is in the presumptive ownership of the heirs…
and see *Hoshen mishpat* §250:3

APPENDIX B: ADDITIONAL SOURCES AND TEXTUAL ANALYSIS FOR CASE STUDY

a. In the Responsa:

The responsa discuss the inheritance of a man who, on his deathbed, pledged part of his inheritance to the poor of the land of Israel. The legal order of the heirs and the amount they inherit is determined by Jewish law.[1300] If someone wishes to bequeath property in any other way, it must be established legally before death by giving it as a gift.[1301] In order to take effect, such a gift must be accompanied by a symbolic action to effect transference of ownership called a *kinyan*.[1302] For deathbed wills, a halakhic category called *ẓava'at shkhiv mara* was established. Based on the understanding that a person close to death may wish to allocate his possessions suddenly, this category is more flexible than regular wills and acquisitions, which have stricter legal standards and formal requirements, such as an official designation of the witnesses and, in the case of bequeathing a gift, the symbolic *kinyan*. Given the risk inherent in the lax legal standards of deathbed wills, such a deathbed will is annulled at any sign of distance between the will and the actual death. If, for example, the person on his deathbed recovers, then becomes sick again, and dies as a result, the earlier deathbed declaration may not be acceptable.

On his deathbed, the deceased in this responsum made his declaration that some of his inheritance should go to charity and proclaimed it to be a *ẓava'at shkhiv mara*, a deathbed will. The written document that was drawn up at the time, however, declared the gift to be a *matanat bari*, a present given by an individual in good health, thus contradicting the gift's status as a deathbed declaration and thrusting the will into a stricter formal category. In this stricter category, a transaction must satisfy additional requirements; for example, a *kinyan* has to accompany the donation. The heirs claimed that the deathbed pledge to charity was contradicted by the use of the term *matanat bari* in the document, thus reverting the will to the regular requirements. As no *kinyan* was performed, the pledge to charity did not fulfill the requirements of a regular gift, and the heirs were the only ones entitled to the inheritance.

Rabbi Yosef Karo disagreed with the claim of the heirs, as the deceased was, in fact, on his deathbed when he pledged the money, meaning that the formal requirements of gifts should not apply. Rabbi Karo does not see a serious problem with the contradiction inherent in considering the gift a deathbed will even though the formulation *matanat bari* appeared in the document. He assumes that this was simply a mistake on the part of the

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[1300] See Maimonides, *Mishne Torah*, *Hilkhot yerusha*, ch 1:1-3, for example.

[1301] For instance, if a man would want his daughter to inherit part of his property, he would have to give it to her as a legal gift before his death, as she is not automatically a legal heir.

[1302] In early modern Ashkenaz, it was common to create a legal document that allowed daughters to inherit. This was called a *shtar ḥaẓi ḥelek zakhar*. It was often given to the daughter as a dowry for her husband. For more on this see Yosef Rivlin, "Shtar ḥaẓi zakhar," (The "half of a male" document) *Diné Israel* 17 (1993-1994): 155-179.

deceased[1303]or the scribe,[1304] who did not realize that using such terminology would raise the bar on the formal requirements.[1305]

Moreover, Rabbi Karo validates the donation independently of the category of deathbed wills: The heirs are wrong, he explains, because this gift is unlike others, which, without a *kinyan*, would be null and void:[1306] "…even without a *kinyan*, this gift would be valid; because it is charity."[1307] Placing the endowment within the context of charity completely changes the requirements for a successful transfer of ownership. Rabbi Karo cites a law that an oral pledge to charity obligates the pledger to fulfill this promise as soon as it leaves his lips.[1308] He supports this by citing the Talmud, "In your mouth – that is charity,"[1309] meaning that charity is binding even by oral declaration alone and cannot be retracted. Rabbi Karo clarifies his approach by quoting the words of Maimonides: "The category of charity falls within the principle of vows; therefore, if a person says 'I obligate myself to give a *sela* to charity,' or 'this *sela* is for charity,' one is immediately obligated to give it to the poor."[1310] Rabbi Karo concludes,[1311] "the poor of the Land of Israel have

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[1303] Karo, *ShUT Avkat Rokhel*, §83 אין בטענת היורשים ממש, שמאחר שהיה ש"מ כשצוה אין ספק שמה שצוה לתת לעניים שבא"י במתנת ש"מ היה, ומ"ש שהוא נותנם במתנת בריא אפשר שהוא טעות נמצא [שו"ת רמ"א: המצווה] שחשב לייפות כחם באומרו שהיא מתנת בריא...

[1304] Karo, *ShUT Avkat Rokhel*, §83 או הסופר טעה וכתב מתנת בריא מדעתו ולפי האמת היא מתנת ש"מ שבאמירה היא נקנית. [מ"ולפי האמת...נקנית" לא נדפס בשו"ת רמ"א]

[1305] Thus, this misplaced formality could easily be explained away. This focus on the dying man's intentions rather than his actions is not without basis. Maimonides in *Mishne Torah, Hilkhot zekhiyah u-matana* ch 8:12 writes that if a man on his deathbed requests a document to be written to bequeath his possessions to someone else but he dies before the document can be written, his request is not fulfilled because the dying man did not perform it as a deathbed will, but, rather, as a regular acquisition with a document, and that document is now incomplete (and one cannot write it in his name after his death).

However, in the next section (8:13), Maimonides writes that if the dying man meant to give a deathbed gift and just added "and write a document" in order to strengthen the rights of the recipient, the document may be written after his death and the possessions given to the recipient. ואם אמר כתבו כדי ליפות כח המקבל כגון שאמר תנו מנה לפלוני ואמר ואף כתבו ותנו לו הרי אלו כותבין וחותמין ונותנין לאחר מיתה.

[1306] Karo, *ShUT Avkat Rokhel*, §83 וכל זה הוא כי יהבו להו ליורשים כל טעותייהו, שסוברים דמתנה זו כשאר מתנות בריא שאם אין בה קנין בטלה היא.

[1307] Karo, *ShUT Avkat Rokhel*, §83 האמת נ"ל אפילו תהיה מתנת בריא ממש אע"ג דלית בה קנין, הרי היא קיימת משום דצדקה היא...

[1308] Some say that it theoretically applies even with an unspoken intention of the heart, although that is unenforceable. See the compilation of Rabbi Mordekhai ben Hillel (German lands, 13th century. *Mordekhai*, Tractate *Bava Batra,* ch 1 [§487]).

[1309] *Babylonian Talmud*, Tractate *ROSh Hashana* 6a.
בפיך זו צדקה, אלמא בדיבורא מחייב

[1310] Maimonides, *Mishne Torah, Hilkhot matanat ani'im* ch 8:1.

[1311] After backing up his conclusions with alternate suggestions; he emphasizes that, even if some of the details and assumptions were weaker, he would still have a strong case. In this manner, he suggests that one could consider any people of standing who are typically present at the deathbed to be representatives of the poor, entitled to collect money for them, and he advances the possibility that a person could even pledge money not currently in his possession to the poor, provided that nobody disputes his claim on the money. See Karo, *ShUT Avkat Rokhel*, §83 For the first claim: ועוד, שהרי כתב ר' ירוחם דאדם חשוב או טובי העיר For the second claim: הוו יד עניים...וכשעושים צואה דרך להמצא שם אנשים חשובים וה"ל יד עניים... ועוד, שאפילו לא היה שם שום גבאי ולא אדם חשוב, ואפילו לא היו הנכסים ברשותו אלא מופקדים ביד אחרים זכו בהם העניים שהרי כתב הרי"ף בפ"ק דמציאה...אינו קדוש, ה"מ דיכול להוציאו בדיינים, אבל היכא דאית ליה פקדון גבי חבריה וכי תבע ליה יהיב ליה ניהליה כמקרקעי ...

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acquired it [the inheritance] and whoever is currently holding said possessions is obligated to send them to the poor of the Land of Israel."[1312]

Rabbi Isserles disagrees with almost every part of this argument,[1313] especially with Rabbi Karo's suggestion that the poor legally acquired the sum as soon as the dying man uttered his decision to donate the money. The source for his counterattack is a medieval responsum[1314] concerning a childless widow who, on her deathbed, commanded the community to take money from her room and give it to the poor after her death,[1315] but later told her brother (the legal heir) to take everything for himself. The conclusion was that the poor did not have the right to her possessions because she changed her mind before death. This should not be considered a vow to charity, he explained, "…because this is not the language of vows, since she said 'give this amount after my death.'"[1316]

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[1312] Karo, *ShUT Avkat Rokhel,* §83 נמצא דבנדון דידן זכו עניי א"י במה שצוה לתת לעניי א"י במתנת בריא, אפילו
אם היו הנכסים בשעת מתנה מופקדים ביד אחרים. ואפילו אם לא היה שם בשעת הצואה לא גבאי ולא שום אחד מחשובי הקהל לא
היה יכול לחזור בו. ואם היה חוזר בו לא היה ממש בחזרתו. כ"ש זה שלא חזר בו שזכו בהם עניי א"י, וכל מי שהנכסים הנזכרים בידו
חייב לשלחם לעניי א"י. [ועם היות הדברים פשוטים נדרשתי לאשר שאלוני.] נאם הצעיר יוסף קארו
The letter, as it is printed in *ShUT Rema*, contains the following ending, where he signs off, writing "and seeing as the matter is simple, I have responded to those who requested it of me. So writes the youth Yosef Karo." In the printed edition of Rabbi Karo's responsa collection, only the name from the signature is included.

[1313] He first critiques Rabbi Karo's explanation that, as the dying man's intention was clearly to create a deathbed will, the problematic formulation in the document can be disregarded, as it was merely added by mistake. Rabbi Isserles brings up various examples where one could have made the same assumption that the document contains mistakes, but, nevertheless, that is not considered sufficient basis to disregard the written document. He analyzes these examples, invokes several laws about who is disadvantaged when a document contains errors, suggests arguments in Rabbi Karo's favor, and then rejects those, too. Rabbi Isserles rejects Rabbi Karo's claim that the principle 'he who holds the document is at a disadvantage' applies only if the document as a whole can be upheld under an interpretation that disadvantages the holder. If however, the interpretation disadvantaging the holder annuls the entire document altogether, Karo claims, we cannot accept such an interpretation. Rabbi Isserles considers this exception to the principle to be very problematic: "If so, no document can ever be declared invalid, if the principle 'he who holds the document is at a disadvantage' is disregarded every time it turns out that it will invalidate the whole document, what is the point of having the principle?!"

[1314] First, Rabbi Isserles claims, as the will included both a pledge to charity and a regular inheritance, and the mistaken formulation invalidated the regular inheritance, it makes no sense to assume that the charity would nonetheless remain valid. This is based on a responsum of RaShbA (Rabbi Shlomo ben Aderet, 13th c. Spain), who ruled that if a person tries to buy or give something based on an *asmakhta* (an unlikely assumption), it will not work for regular transactions but, for pledges to charity, it would work. However, if he is trying to buy or perform a regular transaction together with a pledge for charity, and he bases this on an *asmakhta*, it will not work for the charity either, as they are together in the same transaction. ופסק דהואיל והוי אסמכתא לגבי הדיוט הוי אסמכתא לגבי הקדש ולא קניא, אע"ג דדעת הרשב"א דאסמכתא קניא בהקדש לחוד
כדמשמע באותה תשובה

[1315] From the responsa of Rabbi Meir of Rothenburg (c. 1215 –1293). The responsum, as it is used by Rabbi Isserles here, comes from the *Mordekhai*, a compilation of different medieval ashkenazic sources arranged according to the order of the talmudic tractates and attributed to Rabbi Mordekhai ben Hillel. When one looks at the full responsum in *ShUT Rabbi Meir Rothenburg* (Prague, 1608), §998, the question actually mentions that the heir, in this case, was a poor man himself. מ"מ הכא בדין זה דלא פירשה כלום אלא אמרה 'עשה
המוטב' לא נעשה פירוש לפירושה ויתננו ליורשי' הראוי' ליורשה. ועוד דקרוביה הראויות ליורשה עניים הן ואיכא תרתי עניך
קודמי'...

[1316] Isserles, *ShUT Rema*, §48 ופסק שם מוהר"ם דמכח מתנת שכיב מרע לא קנה ההקדש, דהא חזרה בה קודם מותה
וכו' וכתב שם ואין לומר תתחייב לתת ממונה כך וכך לצדקה מטעם נדר, דאין לשון זה לשון נדר שהרי אמרה כך תתנו לאחר מיתה
ולא נתנה כלום וכו'. Even if she would have used the formula of a vow, Rabbi Isserles adds, she could probably

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He must harmonize his view with a talmudic text in tractate *Bava kama* that contradicts this approach: It tells of a person who pledged money and immediately tried to retract it, only to be told that it can no longer be retracted, because the sage Rabbi Yosef was present when he pledged, and, as a representative of the poor, Rabbi Yosef acquired the money for them.[1317] The statement that the man could no longer retract his pledge was a problem for Rabbi Isserles, who wished to claim that a pledge can still be retracted after uttering it.[1318] He explains that, in the talmudic case, the pledger was present when the vow took effect, which is why he was held to it. In the case of the deathbed pledge, however, such a vow only takes effect after the person is dead, "and thus free of all the

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still retract it, because it is a vow concerning something that takes effect only after death and, unlike wills and inheritances, which the heirs are obligated to fulfill, personal vows need not be enforced after the person who vowed has passed away.

[1317] *Babylonian Talmud*, Tractate *Bava kama* 36b, has a case in which a person learned that he was entitled to a small amount of money as repayment for damages incurred when another man beat him. As this amount seemed negligible, he decided then and there to pledge it to charity. Immediately, he changed his mind. Rabbi Yosef, who was among the rabbis who had ruled that he is owed this reparation money, told the man that he could no longer change his mind, because "The poor have already acquired it, and even though there were no poor people present here, I am the [extension of] the hand of the poor [and I acquired it for them]."

[1318] This case is also problematic for Rabbi Karo's interpretation, because it implies that Rabbi Yosef's presence was needed to acquire the charity for the poor. Thus, as long as nobody took possession of the pledge in the name of the poor, the benefactor would still have been able to change his mind. He resolves this contradiction in several ways. This case, Rabbi Karo concedes, implies that the poor do not acquire ownership of anything pledged to them simply by declaration. Rather, the presence of a representative who could acquire it for them at the moment at which it was pledged is what sealed the deal, allowing no return. Had Rabbi Yosef not been there to claim the money for the poor, it seems that the man would have been able to change his mind. This contradicts the idea that, as soon as charity is pledged, it cannot be reneged.

There are different explanations for this contradiction: The tosafists and Rabbi Asher ben Yeḥiel both explain that, in the case in the Talmud, the money was not yet in the possession of the man himself at the time that he promised it to the poor (it was merely a debt owed to him by the one who beat him). Because the money was not yet in his possession, it was less concrete, which is why it could not pass immediately to the poor people upon his word, leaving him the chance to change his mind had Rabbi Yosef not acquired the right to the money on the spot. Had the actual money been in his possession already, however, it would have passed to the poor instantaneously upon his oral declaration, without the need for anyone to acquire it, and the man could not have taken it back no matter what, even if no one took possession of it yet. It seems that Rabbi Karo uses this interpretation, since he writes regarding our case that "even though the collector was not there, the poor have acquired the right to this money, since that very money was in his possession [at the time of the pledge]."

דכיון שאמר סלע זו לצדקה אע"פ שלא היה שם הגבאי זכו בה העניים, **מאחר שאותה הסלע היתה ברשותו**

Another explanation claimed that the man did not wish completely to retract his promise. Rather than deciding to take back the money entirely, he merely wished to keep it for a while, invest it with profit, and then give the same amount that he originally promised to the poor. He was denied this desire because of Rabbi Yosef, who intervened before he changed his mind and accepted ownership of the money in the name of the poor. Had Rabbi Yosef been absent, the man could have kept the money for longer, but he would not be released from his pledge indefinitely. Thus, one explanation is based on the fact that the ownership of the man was not good enough to give his charity away, whereas the second explanation limits the scope of how far the man can take back his word (he can push it off but he cannot undo the vow as a whole).

This leads him to another argument regarding the exact moment at which the poor can be said to have gained possession of the money.

commandments."[1319] Vows can no longer be enforced once the "vower" is dead, and the heirs have no strict obligation to honor mere vows of the deceased.[1320] Thus, Rabbi Isserles explains, in the case at hand, "… as his only obligation to uphold this [charity] is from the force of a vow, one should not force the heirs to fulfill his vow."[1321] Maimonides in *Mishne Torah*,[1322] writes that any gift given to charity will apply even there where regular gifts would not.[1323] This is a strong source against Rabbi Isserles, who counters it by pointing

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[1319] Isserles, *ShUT Rema*, §48  אבל גבי שכיב מרע בעידנא דהוי לנדריה למיחל ולקיים אותו כבר מת ונעשה חפשי מן המצוות

[1320] For this, Rabbi Isserles cites a Mishna, "He who vows and dies, the heirs are not obligated to pay." Mishna *Erkhin* 5: 1 ...האומר, משקלי עלי Although Rabbi Isserles refers to this chapter in the Mishna in his support, paraphrasing it as הנודר ומת אין היורשין חייבין לשלם it actually does not support his view. Rabbi Akiva Eiger (1837-1761) already pointed out this discrepancy. See Eiger, *ShUT Rabbi Akiva Eiger*, 1ˢᵗ ed., §150  וצל"עג גם מ"ש הרמ"א שהיא משנה שלימה הנודר ומת אין הנודר חייב לשלם, הא אדרבא באותה משנה מבואר בסיפא דמיו של פלוני ומת הנודר חייבים היורשים לשלם, ... אלא דכוונתו הי' למ"ש הרמ"א בשם המרדכי דמקדש לאחר מיתה לא מהני, דאין הקדש לאחר מיתה והארכתי בזה במקום אחר, בעזה"י.
The sentences that follow this citation, which deal with Rabbi Rothenburg's interpretation of this Mishna, calling into question Rabbi Isserles' perspective, as well as his defense of this reading, are printed in parentheses and in a different font in the first printed edition. Possibly, these comments were added by an editor or by Rabbi Isserles himself while glossing his own papers in preparation for potential publication or simply in the process of study.

[1321] Isserles, *ShUT Rema*, § 48  וה"ה בנד"ד מאחר דהוא אינו חייב לקיומיה אלא מכח נדר, אין לכוף ליתומים לקיים נדרו. Rabbi Isserles then strengthens his claim, emphasizing that even the poor themselves cannot acquire an amount promised to them at the moment of the utterance if the time specified by the pledger lies in the future. Moreover, even if someone was present to acquire the rights of the charity in the name of the poor at the moment that the dying person made the declaration, as was the case with the widow who declared this in front of the community members, they could not acquire the money when she uttered the statement, as her statement was not to give the money to charity then and there, but, rather at a later point in time (after her death). Therefore, she had every right to change her mind between the original declaration and her death. If she changed her mind and promised her brother the money as a deathbed will, the only thing that remained from the original vow to charity would, at most, have been a vow, not a deathbed will. She could no longer be held to her vow, however, as she was dead, and the heir, while encouraged to fulfill any wishes that the dead may have expressed, was not entirely obligated to fulfill her vows The principle of: מצוה לקיים דברי המת, "it is a commandment to fulfill the words of the dead" and pay their debts (see Babylonian Talmud, Tractate *Bava batra* 157a), for instance, is merely a positive thing to do, but it is not legally binding like a will, which effectively reassigns ownership based on the wishes of the deceased upon death.
Isserles, *ShUT Rema*, § 48  אף אם היה חל הנדר על אביהם, דלא גרע משאר חוב דמצוה לפרוע כמו שאיתא בכתובות פרק מי שהיה נשוי ופרק מי שמת, אבל מיהא אין כופין על זה.

[1322] Maimonides, *Mishne Torah*, *Hilkhot mekhira*, ch. 22, which concerns the sale of something that is not yet in existence (*davar she-lo ba la-'olam*), such as the future fruit of a tree. Such items cannot be sold before they come into existence, unless specific clauses are added and legal mechanisms are used. Maimonides, however, adds in laws 15-17 in this chapter that for pledges to the Temple and charity, transactions work even for something not yet in existence.

[1323] Maimonides considers cases of acquisition where there is a time lag between the statement and the actual possibility to acquire the object being sold: In general, one cannot sell or give away something that is not in existence at that moment. However, if it is charity, the rules are stricter: "The law of consecrating to the Temple and the law of the poor and the law of vows are not like the law of regular acquisitions, for … even if it does not become consecrated because it is not in existence yet, the person is obligated to fulfill his promise, as it is said 'he must do as everything that comes out of his mouth.' Therefore, if a person commanded on his deathbed and said, 'Everything that this tree yields should be for the poor' … the poor have right to it" (Maimonides, *Mishne Torah*, *Hilkhot Mekhira* ch. 22:15-16).

out that Maimonides is a minority opinion[1324] and can thus be disregarded.[1325] Rabbi Isserles ends this argument with a flourish, referring to Rabbi Karo's famous (and oft-criticized) principles of halakhic adjudication always to follow the majority from among the three main authorities he uses in his code: "It is obvious that one will go according to [the majority] as his honor himself has stated in principle in the beginning of his book...."[1326]

Rabbi Isserles' central critique touches on Rabbi Karo's use of principles from charity to adjudicate a case of inheritance law: "One should be perplexed…how did he

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דין ההקדש ודין העניים ודין הנדרים אינו כדין ההדיוט שאילו אמר אדם כל מה שתלד בהמתי יהיה הקדש לבדק הבית או יהיה אסור עלי או אתננו לצדקה אע"פ שאינו מתקדש לפי שאינו בעולם הרי זה חייב לקיים דברו דכל היוצא מפיו יעשה

והואיל והדבר כן אם צוה אדם כשהוא שכיב מרע ואמר כל מה שיוציא אילן זה לעניים או כל שכר בית זה לעניים זכו בהן העניים.

[1324] Maimonides himself states this quite openly in *Mishne Torah*, *Hilkhot mekhira* 22:17: "and they say that the poor can only acquire that which regular people can and therefore they [the poor] would not acquire something that is not yet existent in the world…." Maimonides, for his part, sticks to his own interpretation and concludes that promises to charity should function like vows and consecrations and not like regular sales: "My opinion does not tend to that, since a person does not command to sell, rather, he commands to fulfill his wishes in charity or in consecrating to the Temple just as he commands to fulfill his vows…." יש גאונים שחולקין על דבר זה ואומרים שאין העניים זוכין אלא בדברים שהדיוט קונה בהן ולפיכך לא יזכו בדבר שלא בא לעולם ואין דעתי נוטה לדברים אלו שאין אדם מצווה להקנות והוא מצווה לקיים דבריו בצדקה או בהקדש כמו שהוא מקיים הנדר כמו שביארנו בערכין.

[1325] Especially since "…the Rabbi Alfasi and the tosafists and Rabbi Asher ben Yeḥiel all wrote that the poor *cannot* acquire it and it is merely a vow, and therefore in the case of a deathbed will, the poor did not acquire it" (Isserles, *ShUT Rema*, § 48).

וכתב שיש גאונים חולקים בזה אך שדעתו אינו מסכמת עמהן ומשמע דזכו בו העניים  ולא מטעם נדר ולכן השיגו שם הראב"ד....מ"מ יש לשאול דאף אם הרמב"ם חולק עליו בזו מאחר דיחיד הוא בדרך זה, והרי"ף והתוספות והאשיר"י כתבו כולן דלא זכו בו עניים אלא מטעם נדר, וא"כ במתנת שכיב מרע לא קנו מאחר דלא חל הנדר עליו לקיים

[1326] Isserles, *ShUT Rema*, § 48.

פשיטא דאזלינן בתרייהו כמו שכלל מר ברריש ספרו בית יוסף, דכל מקום דהרי"ף והרא"ש מסכמים נקטינן כוותיהו. כ"ש כאן דהראב"ד והתוספות מסכימים ג"כ לדעת זו,

Moreover, Rabbi Isserles adds, even Maimonides, in other places in *Mishne Torah* seems to argue to the contrary, that promises to charity cannot be forced after death. This apparent contradiction can be solved by looking more closely at Maimonides' formulation in the laws of sale. He writes that if the dying person promises something that is not yet in existence to the poor, "the person is obligated to fulfill his promise, as it is said 'he must do as everything that comes out of his mouth.' And because this is so, if a person commanded on his deathbed and said … the poor have right to it."

One can explain the formulation "obligated to fulfill his promise" as entirely different from a law that the poor immediately acquire it. Rather, the person cannot take back his promise and is held to it once the tree grows fruit. However, if the person who made the promise is dead, it is merely a requirement for the heirs to fulfill his promises, but the poor do not automatically have legal ownership of the promised amount (*Magid Mishne*, Rabbi Vidal of Tolosa, 14th c takes this approach in his glosses on Maimonides).

[1326]While vows to charity take effect as soon as they are uttered, promises made as part of an inheritance take effect only when the person dies. The idea that charity passes into the possession of the poor at the moment of utterance is irrelevant for this case, Rabbi Isserles claims, because "all that is because of its being a vow, and that is not relevant at all to issues of deathbed wills … nobody disagrees concerning this, that one is not obligated to fulfill the deathbed will as a vow, rather, … because 'it is a commandment to fulfill the words of the dead'" (Isserles, *ShUT Rema*, § 48).

ועכ"פ יש לתמוה אדברי מר, איך הביא ראיה לנד"ד ממה דצדקה נקנית באמירה בבריא, דכל זה הוא מטעם נדר ולא שייך כלל לדברי שכיב מרע לקיים צואתו לאחר מותו. דהרי ליכא חולק על זה דבשכ"מ לא צריך לקיים מטעם נדר, אלא...מטעם דמצוה לקיים דברי המת. וא"כ היה למר לכתוב מטעם זה שאין לחלק בין צדקה לשאר דברים ולא משום צדקה נקנית באמירה.

bring proof to the current case from the fact that charity is acquired by an utterance…?!"[1327]
To Rabbi Isserles, a deathbed pledge to charity is not owned by the poor at the moment of
the pledge. After the pledger's death, the vow should be kept to respect the wishes of the
deceased, which is desirable, but it is not a legal requirement. Rabbi Isserles' responsum
concludes: "From all the above it seems that one should proclaim the heirs to be in the
right, and that is the best possible thing that one can do with the possessions … 'the best
thing' is to give it to the heirs and not to the *hekdesh* (consecrated fund)."[1328] He did not
consider the case at hand to involve any vows at all. It was simply a case of a mismanaged
inheritance. Rabbi Karo, on the other hand, interpreted it as a case of charity, in which
pledges are considered vows. This disparity about the categorization of the case is the crux
of the disagreement.[1329]

### b. in the Codes:

Given their fundamental disagreement, it is surprising that Rabbi Karo's and Rabbi
Isserles' opinions as they appear in the codes do not seem all that different from each other.
In the *Shulḥan Arukh*, Rabbi Karo specifically writes: "If he consecrated all of his gifts and
left nothing behind … or gave it to the poor, if he recovers from his illness, it is
canceled."[1330] The *Arba Turim* (or *Tur*)[1331] introduces the sections on laws of deathbed
wills after a more general discussion of the laws of gifts and acquisitions. Most deathbed
gifts are automatically canceled when a person recovers, but some – including charity – are
uncertain,[1332] as the code states: "And if he consecrated his property … or gave it to the
poor, it is a question whether the law should be like someone who gave and it returns if he
recovers, or not, and it is not specified…."[1333] This law is based on a discussion in the
Talmud that examines ambiguous gifts. If a person on his deathbed consecrates all his

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[1327] Isserles, *ShUT Rema*, § 48

[1328] Isserles, *ShUT Rema*, § 48 אך אבקש שלא ישליכני מר אחר גוו לבלתי השיבני על שאלתי כי מונע בר יקבוהו
לאום...מכל הנ"ל היה נראה לזכות היורשים והוא הטוב שאשפר לעשות בנכסים כמו שכתב מוהר"ם והיא בתשובה במרדכי פרק מי
שמת על אשה שצותה לעשות הטוב בנכסיה ופסק דהטוב הוא לתת ליורשים ולא להקדש.

 The woman in question is actually the same widow from this responsum (*ShUT MaharaM
Rothenburg*, §998). She had left a separate sum in another person's hands and told him to do "whatever is
best" with the money. Rabbi Rothenburg concluded that "whatever is best" was to give the money to the
heirs, not charity – but one of his arguments for this is that the heirs were also poor. מ"מ הכא בדין זה דלא פירשה
כלום אלא אמרה 'עשה המוטב' לא נעשה פירוש לפירושה ויתננו ליורשי' הראוי' ליורשה. ועוד דקרוביה הראויות ליורשה עניים הן
ואיכא תרתי ענייך קודמי'...

 [1329] Having removed the case from the realm of vows and charity, Rabbi Isserles continues to
dismantle some of the secondary points, such as Rabbi Karo's claim that any community representative can
be considered a representative of the poor; the assumption that such community leaders are typically present
at a deathbed; and Rabbi Karo's final point, that a person can successfully consecrate even money not
currently in his or her possession, so long as it is easily recoverable.

[1330] *Shulḥan Arukh, Ḥoshen mishpat* §250 הקדיש כל נכסיו ולא שייר כלום או הפקירם או חלקם לעניים אם עמד
נתבטל הכל כדין נותן מתנה

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[1331] Rabbi Yacov ben Asher's code on which *Bet Yosef* and *Darkhei Moshe* are both based.

[1332] For instance, if the person confesses on his deathbed that some of his property, in fact, belongs
to someone else, it does not revert to the dying individual in the wake of recovery. Instead, it goes to the
rightful owners.

[1333] Yacov ben Asher, *Tur Ḥoshen mishpat* §250:3 ואם הקדיש נכסיו או הפקירן או נתן לעניים מיבעיא אי
הוי דינו כמו נותן וחוזר בו אם יעמוד או לא ולא איפשיטא

possessions to the Temple, or dedicates them to charity,[1334] and then recovers, will the gift remain or do we say that, as the person gave away everything without providing a source of sustenance for himself, it was clearly only meant in the event of his demise, and therefore the gift can be reneged? The Talmud does not decide, rendering this case as *teku*, ("let it stand"), a doubt that cannot be solved.[1335]

The *Tur* summarizes that the law "is not specified."[1336] In principle, if earlier authorities considered something an *aporia* and did not specify how to adjudicate, one should rule according to the strictest interpretation. Having determined that an ambiguous gift to charity is such a case, the *Tur* goes on to summarize the medieval opinions on this issue: "[Maimonides] and the *RaMaH* [Rabbi Meir Halevi Abulafia, 13th c Spain] wrote that, as it is not specified, he can renege … but my master and father the *ROSh* [Rabbi Asher] wrote that as it is not specified, we do not undo the *hekdesh* [consecration fund] … and the handout that he gave to the poor...."[1337] One opinion is that, as the issue is in doubt, we should allow the gift to return to the owner, while the other opinion states that, as the issue is in doubt, we should not undo the gift. The same reasoning leads them to opposite conclusions!

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[1334] Babylonian Talmud, Tractate *Bava batra* 148b.

איבעיא להו הקדיש כל נכסיו ועמד מהו מי אמרינן כל לגבי הקדש גמר ומקני או דלמא כל לגבי נפשיה לא גמר ומקני הפקיר כל נכסיו מהו מי אמרינן כיון דאף לעניים כעשירים גמר ומקני או דלמא כל לגבי נפשיה לא גמר ומקני חילק כל נכסיו לעניים מאי מי אמרינן צדקה ודאי מגמר גמר ומקני או דלמא כל לגבי נפשיה לא גמר ומקני תיקו (ל"א הקדיש כל נכסיו הפקיר כל נכסיו מהו חילק כל נכסיו לעניים מהו תיקו)

Translation from Soncino: "The question was raised:[If a dying man] consecrated all his possessions and [subsequently] recovered, what [is the law]? Is it assumed that whenever it is a case of consecrated objects the transfer of possession made is unqualified [meaning that he intended for the gift to take effect even if he recovers –T.M-E.] or, perhaps, when it is a matter of personal interests one does not transfer unqualified possession? [If the answer is in the affirmative, the question arises] what [is the law in the case where] he renounced the ownership of all his property? Is it assumed that since [ownerless property may be seized] by the poor as well as by the rich, he transfers [therefore] unqualified possession or, perhaps, whenever it is a matter of personal interests one does not transfer unqualified possession? [If the answer is in the negative,] what, [it may be asked. is the law where] he distributed all his possessions among the poor? Is it assumed [that in a matter of] charity he has undoubtedly transferred unqualified possession or, perhaps, wherever it is a matter of personal interests one does not transfer unqualified possession? — This is undecided. Some versions do not present these three options (consecration, ownerlessness, charity) as three separate questions but, rather, bundle them all into one. The distinction may have relevance in the case of ownerlessness, but not in our own case, which concerns charity."

[1335] The Talmud explains both rationales: On the one hand, one might argue that, as charity is righteous, this person clearly had the full intention to give everything away, even if he left nothing for himself. Therefore, the gift is considered binding and the donor cannot renege. This is countered by the argument that a person would not neglect his or her own wellbeing to such an extreme degree, even for charity. Considering the fact that the giver left nothing behind for his or her own use, they could not possibly really have intended to give everything to charity without qualification. Therefore, if the giver does recover, the gift can return to the giver.

[1336] This is called *b'aya de-lo ifhsatei*; see, for instance, in Babylonian Talmud, Tractate *Brakhot* 51a-b אמר רבי חייא בר אבא אמר רבי יוחנן, ראשונים שאלו: שמאל מהו שתסייע לימין? אמר רב אשי: הואיל וראשונים איבעיא להו ולא איפשט להו, אנן נעבד לחומרא. Thus, there where the Talmud does not make a specific decision between two options, we always go according to the more stringent option, even if it is only a rabbinic prohibition (whereas usually the principle applies that a doubt concerning a biblical prohibition is decided stringently, but a doubt concerning a rabbinic prohibition is decided leniently).

[1337] Yacov ben Asher, *Tur Ḥoshen mishpat* §250:3 ואם הקדיש נכסיו או הפקירן או נתן לעניים מיבעיא אי הוי דינו כמו נותן וחוזר בו אם יעמוד או לא ולא איפשיטא

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Rabbi Karo analyzes both opinions: On the one hand, the conclusion of Maimonides that, as the case is uncertain, the gift *should* return, and the opposing idea of Rabbi Asher ben Yeḥiel, on the other, that, because the case is uncertain, we should *not* undo the gift to charity. Based on our familiarity with his responsum on the inheritance, we would expect Rabbi Karo to side with Rabbi Asher and determine that a gift to charity, once promised, cannot be reneged. However, Rabbi Karo criticizes Rabbi Asher's opinion, considering it "perplexing" that the charity would not return to the owner.[1338] Rabbi Isserles, in his gloss, hastens to point out that Rabbi Karo's remark here counters the notion that promises regarding charity are immediately and irrevocably binding. According to the codes and their glosses, then, Rabbi Karo and Rabbi Isserles *agree* on this principle.

The codes show us other points of agreement that the responsa would not. An important prooftext that Rabbi Isserles used against Rabbi Karo was known to Rabbi Karo, and he even considered it relevant to deathbed will cases. Although he does not mention it anywhere in the responsum, Rabbi Karo does cite this text in his glosses on the law of deathbed wills.[1339] Additionally, in the responsum, Rabbi Isserles rejected the claim that the problematic formulation in the document was a scribal error. However, in the codes, he glosses as follows: "… I have seen many wills that the scribes have botched and wrote 'as the gift of a healthy person' …."[1340] In the responsa, it would weaken Rabbi Isserles' argument to mention that such mistakes happen, but, in reality, he agreed with Rabbi Karo that scribes often made precisely this mistake. The codes thus show us that the two authorities can agree about the sources, about the principles, even about facts on the ground. Where is the disagreement?

c. Responsa, Codes, Organization, and Adjudication

The disagreement between Rabbi Isserles and Rabbi Karo, so explicit in the responsa, is much harder to detect in the codes. The laws of deathbed wills in the *Arba Turim* opens with a formulation implying that deathbed wills are an exception to regular gifts and acquisitions: "Concerning the statement that gifts require a *kinyan* … this is regarding gifts given by a healthy individual, but gifts given in a deathbed will do not require any of this…."[1341] This description of deathbed wills as a less stringent manifestation of regular gifts provides Rabbi Isserles the opportunity to support his own view that calling the charity pledge a "gift given by a healthy individual" in the will turned the deathbed will into a regular gift and thus raised the bar on the legal requirements for it to be valid. Rabbi Isserles explains that Rabbi Karo's code implies "that a person on his

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[1338] Rabbi Karo writes: "And that which is written in the name of the ROSh [Rabbi Asher] … these are perplexing things to me, as here we clearly have basis to assume [that the donor did not mean it] as a person would not give away all his possession and be required to beg at the doors…" (Karo, *Bet Yosef* on *Tur Ḥoshen mishpat* §250). On the words ומ"ש בשם הרא"ש אין מבטלין

ודברים תמוהים הם בעיני דהכא ודאי איכא אומדנא ברורה דלא עביד איניש דיהיב כל נכסיו לאחריני והוא יחזר על הפתחים אלא דמשום דלדבר מצוה נינה מספקא לן דילמא גמר ומקני הילכך מספיקא אין מוציאין מידו וכדברי הרמב"ם והרמ"ה ז"ל וכן דעת הריב"ש בסימן ק"ס

[1339] The prooftext in question is the responsum of Rabbi Rothenburg. It is cited in Karo, *Bet Yosef on Tur Ḥoshen mishpat* 250:3 … אלמנה שהיתה חולה...עיין במרדכי

[1340] Isserles, *Darkhei Moshe* on *Tur Ḥoshen mishpat* §250:2 (א*).

[1341] Karo, *Tur Ḥoshen mishpat* §250:1 במה דברים אמורים שמתנה צריכה קנין או אחד מדרכי ההקנאות במתנת בריא אבל בנתנת שכיב מרע אינה צריכה כלום….

deathbed who gave a gift and added … that the gift should be considered 'like the gift of a healthy individual' but neglected to make a *kinyan*, his gift is null and void…."[1342] Here, he is merely pointing out an implication, but no outright conflict can be detected.

In *Darkhei Moshe,* Rabbi Isserles' gloss on *Bet Yosef,*[1343] he revisits this point several paragraphs later,[1344] when the discussion turns to ambiguous deathbed gifts. [1345] Maimonides is cited for a list of ambiguous scenarios, including one regarding a person who gives away all his property on his deathbed, but does so in a manner resembling a regular gift. Rabbi Karo's conclusion is that "this is like any other gift given by a healthy individual,"[1346] meaning that the usual formal requirements of gifts and acquisitions, such as a contract and a *kinyan*, are required. In this subcase, among a long list of ambiguous cases of gifts, Rabbi Isserles openly expressed his disagreement with Rabbi Karo. Even so, it does not take place in any obvious way. Rather than disagreeing with the opinion that a deathbed pledge can be reneged, in his gloss, Rabbi Karo merely provides the reference for Maimonides' opinions[1347] and even adds that these laws are obvious.[1348]

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[1342] This quote can be found in the glosses of *Darkhei Moshe* in the standard printed *Tur Ḥoshen mishpat* §250.Where possible, I have quoted from the so-called "long" *Darkhei Moshe* (the longer version of Rabbi Isserles' gloss, which was not printed with *Bet Yosef*). See Isserles, *Darkhei Moshe ha-arokh,* vol. 2, ed. Shlomo Rosenthal (Jerusalem: *Makhon Yerushalaim*, 1978). ונראה לי ללמוד מזה דשכיב מרע שנתן מתנה והתנה שיהיו מתנותיו כמתנת בריא ולא קבל קנין עליה דמתנתו בטילה דמאחר שחפץ ליתן במתנת בריא צריך קנין ומאחר דלא קנה המתנה בטילה

[1343] The longer version of *Darkhei Moshe* was not printed until much later for some volumes: *Yoreh de'ah* (Sulzbach, 1692), *Oraḥ ḥayim* (Fjorda, 1760), and the other two volumes had to wait until the 20th century to be printed in full.

[1344] The first comment is in *Darkhei Moshe*, §250:1-2; the second comment is in §250:9.

[1345] In the Talmudic discussion in *Bava Batra*, one of the important factors to determine this distinction was whether the person instructed to give away all of his possessions or if he made sure to leave some property for himself. If a person left something for himself, it cannot be considered a deathbed will, as he clear expected to continue living. Such a gift would thus have to fulfill all the formal requirements of regular gift giving. If the person was on his deathbed and gave only part of his property away, the situation is unclear. As he made sure to retain some of his property, can it still be considered a deathbed will, or is it a regular acquisition, meaning that all the formal legal requirements of acquisitions apply? The situation becomes even more complicated when the laws of deathbed wills and regular acquisitions are combined: Consider the case of a person who gives away some of his property on his deathbed, but makes sure to do so according to all the formal legal requirements of an acquisition. If he recovers, can we assume that the formal sale can be disregarded, as he probably fulfilled the formal requirements only in order to strengthen the deathbed will? If this is the correct interpretation, then it is still a deathbed will that we are dealing with, and, as he recovered, the entire acquisition returns, as deathbed wills do. On, the other hand, we might assume that the acquisition was made independently of the person's deathbed status and therefore it should stand, given that it conforms to all the necessary legal requirements for a normal acquisition. How should one treat the instructions of people when it is not definite whether they are on their deathbed or not? For instance, someone who is not on his deathbed due to illness, but nevertheless close to death in other ways, such as a person about to be judged by a ruler and executed.

[1346] Yacov ben Asher, *Tur Ḥoshen mishpat* §250:9, וכן אם כתב כל נכסיו ומפרש שנותן הכל מעכשיו ומקנה לו מחיים הוא כשאר מתנת בריא שאם הגיע השטר ליד מקבל או שקנה מיד הנותן קנה הכל ואין יכול לחזור בו עד כאן:

[1347] Maimonides, *Hilkhot zekhiya u-matana* Ch 8:18 אל תטעה בשכיב מרע שכתב כל נכסיו ופירש שנתן הכל מעכשיו והקנה מחיים שאין זה מתנת שכיב מרע אלא כשאר כל מתנות הבריאים שאם הגיע השטר ליד המקבל או שקנו מיד הנותן קנה הכל ואין יכול לחזור בו.

[1348] "And these are simple things." Karo, *Bet Yosef* on Tur *Ḥoshen mishpat* §250:9 (15) בפר' ח' מהל' זכיה ודברים פשוטים הם – the reason why the disagreement is not expressed is because the quote from

Rabbi Isserles pounces on this opportunity: On Rabbi Karo's statement that "these are simple things," Rabbi Isserles writes: "And from this, one can also learn concerning the law that I mention at the beginning of the section, that if someone writes in a deathbed will that he gives it 'like the gift of a healthy individual' but neglects to perform a *kinyan*, his gift is invalid."[1349] He finally brings the responsum into the conversation: "…and this is simple according to my opinion, but I only wrote it because I saw the responsum of the rabbi, the author of *Bet Yosef*, who wrote about this that in such a case the acquisition *would* work … and I responded to him…." He then inserts one more point in his favor: "and the words of both came before our master Rabbi Meir of Padua of blessed memory, and he agreed to my words, that such a will does not acquire [for the poor] as is clear from the proofs of the responsa written on this…."[1350,1351] The dispute from the responsa is thus located at this almost unnoticeable juncture.[1352] The disagreement is hidden in Rabbi

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Maimonides is not about charity per se, simply about a person who is on his deathbed but giving away his property in the manner of a regular gift.

[1349] Isserles, *Darkhei Moshe ha-kazar* on *Tur Ḥoshen mishpat* §250:9 (15) or, *Darkhei Moshe ha-arokh*, ed. Rosenthal, 121on the words: [ריש סימן] כ"כ לדין שכתבתי ר"ס..."ומזה יש ללמוד ג"הרי הוא כשאר מתנות בריא..." זה, דאם כת' בצוואת ש"מ שמתנ' במתנת בריא ואין בו קנין דמתנת' בטילה דהרי כת' הרמב"ם דאם כתב דנותן לו במתנות בריא יש לו דין מתנות בריא

[1350] At the end of this reference to the responsa controversy, Rabbi Isserles refers the reader to §253, for "more on this." In that section, the long version of the gloss *Darkhei Moshe ha-arokh* (not printed in the standard version of *Bet Yosef*), refers us to §252, where *Bet Yosef* discusses a responsum of the RYTbA (Rabbi Yom-Tov ben Ashvili, 13th-14th c, Spain) regarding ambiguous formulations before death. There, a man commands that something should be "given" to his daughters. The daughters would receive the money but, according to some opinions, not by virtue of its being a gift.

Rabbi Isserles paraphrases this in his gloss, writing "and *Bet Yosef* in §252 wrote in the name of RYTbA … that these formulations 'do not contain a formulation of gifts' and this requires closer inquiry, if he said 'give,' how is that not a formulation of gifts?!" Isserles, *Darkhei Moshe ha-arokh* on *Tur Ḥoshen mishpat* §250:3, 129 – this remark does not appear in the standard printed gloss (punctuation added).

וכב"י ס"ס רנ"ב בשם הריטב"א האומר לאפטרופס שמינה שיתן לבנות או בנו או שיחזיקו בעדן כל הנשאר בנכסי' הנ"ל אין בלשונות אלו ל' מתנה עכ"ל, וצ"ע אם אמר ליתן אמאי אין ל' מתנה?! It is not entirely clear why Rabbi Isserles thinks that this relates to the responsa controversy. Following this web of references, it does, however, point to what seems to be a basic underlying disagreement between him and Rabbi Karo: Whereas Rabbi Karo considered the larger context of the case of the deathbed will to trump any specific formulations in the document, dismissing the words "as the gift of a healthy individual" as a negligible mistake, Rabbi Isserles could not get past these words in the document, no matter how much contextual evidence pointed to the fact that the dying man had in mind to bequeath his money as a deathbed will. Here, too, we see that Rabbi Isserles thought it unfathomable that someone using the words "give" could be considered to do anything other than giving a gift. Thus, once again, Rabbi Karo is open to considering the nonverbal context of the situation as a whole, whereas Rabbi Isserles considers specific formulations to determine the nature of the transaction in incontrovertible ways.

[1351] Isserles, *Darkhei Moshe ha-kazar* on *Tur Ḥoshen mishpat* §250:9 (15) or *Darkhei Moshe ha-arokh*, 121.

והוא פשוט לדעתי, ולא כתבתי כן רק שראיתי תשובת הרב בעל ב"י שכת' בה שקנה בכה"ג משום דתלינן בט"ס [טעות סופר] ואני השבתי לו בזה ובאו דברי שניה' לפני מור"ם מפדו' ז"ל והסכי' לדברי דלא קנה כמו [שמבואר מהראיות] בתשובה הנכתבי' על זה וע"ל סי' רנ"ג עוד מזה.

[1352] By inserting a reference from this particular ambiguous subcase into the introduction of the section, Rabbi Isserles can cleverly make his point because he has linked ambiguous cases that are ultimately considered regular acquisitions to Maimonides' statement concerning a document that includes the words "like the gift of a healthy individual." Once this connection is made, Rabbi Isserles can go on to state, "this

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Isserles' reference to another section in his gloss, where Rabbi Karo's own gloss does not say anything to the contrary. This roundabout act of internal reference, from a gloss that was ultimately not even printed to a gloss earlier in the code, is the only way for Rabbi Isserles to insert a reference to their responsa controversy into the codes.[1353] Rabbi Karo simply does not mention it anywhere among these laws.

Where, then, can we find Rabbi Karo's opposing view, benefiting the poor – the one that is so strongly stated in his responsum? Although Rabbi Karo's tone is subdued in the laws of deathbed wills, he takes a much stronger position in favor of the poor in the laws of charity. The *Arba Turim* clearly states "charity is like a vow … therefore if a person says 'I obligate myself to give this sum to charity or 'this sum is for charity,' he must give it to the poor immediately."[1354] Rabbi Karo's gloss clarifies, as his responsum did, that this flows from the concept "in your mouth, that is charity," meaning that one is obligated as soon as the charity is pledged orally.[1355] These sections of the laws of charity contain long glosses by Rabbi Karo with many sources relating to the immutability of promises to charity.[1356] Why did Rabbi Karo's stance, which was not so pronounced in the laws of acquisition, become so strong in the laws of charity?

is simple according to my opinion, but I only wrote it because I saw the responsum of the rabbi, the author ~~of *Bet Yosef*," after which Rabbi Isserles also added that Rabbi Meir agreed with him.~~

[1353] In fact, Maimonides does not even specify such a case exactly, but Rabbi Isserles inserts his case against Rabbi Karo here as it is the most appropriate place that he can find. He lists one case where everything is given away, thus resembling a deathbed situation, but a regular contract of acquisition is written. On the other hand, he lists a case where some property is spared, but the person specifies that this is a deathbed will. However, there is no mention of a case where everything is given away, the document is a will (not a contract of acquisition), but it contains the words "like the gift of a healthy individual." On the contrary, the formulation used by Maimonides actually seems to raise a point in Rabbi Karo's favor: Maimonides accepts the option that sometimes elements from a regular acquisition were added to a deathbed will not to change the status of the deathbed will to that of a regular acquisition, but simply "to strengthen the deathbed will" (Tur *Ḥoshen mishpat* §250:9 [14]). ואף אם יש בה קנין אינו קונה אלא כמיפה את כחו In such a case, Maimonides thinks that the elements of acquisition can be disregarded. In the responsa, Rabbi Karo uses this idea that problematic words in the will were added merely "to strengthen the deathbed will" in support of the poor.

[1354] Yacov ben Asher, *Tur Yoreh de'ah* §258:2, or: "a person's oral declaration that something is pledged 'on high,' it is as though he gave it to another person. Therefore, he who pledges charity cannot retract it" (Yacov ben Asher, *Tur Yoreh de'ah* §258:6).
אמירת אדם לגבוה כמסירתו להדיוט. לפיכך מי שנודר צדקה אי אפשר לו לחזור בו.

[1355] Karo, *Bet Yosef* on *Tur Yoreh de'ah* §258:6 (he points out that Rabbi Alfasi thinks so, and most others agree, although some disagree).
כן העלה הרי"ף בר"פ שור שנגח ד' וה' (ב"ק יח:) דהא אמרינן (ר"ה ו.) בפיך זו צדקה אלמא בדיבור מחוייב הוא...
A possible exception is made for something that is pledged to the poor but is not in the pledger's possession at the time when he makes the promise (Yacov ben Asher, *Tur Yoreh de'ah* §258:8). Rabbi Karo mentions that this does not include cases where the money can easily be recovered legally. He uses this argument in the responsum. He adds that, even if the pledge is made regarding an abstract sum, such as if someone pledges to donate a debt owed to him which he had not yet recovered, "if he says so in front of the charity collector and the debtor, the charity collector acquired it, and it is charity and one cannot retract it, and it is prohibited to change it, just as though the charity collector already owns it" (Yacov ben Asher, *Tur Yoreh de'ah* §258:8).
ואפילו האומר חוב יש לי ביד פלוני יהיה יהיה לצדקה, אם אומר כן בפני הגבאי ובפני בעל חוב זכה בו הגבאי.
והרי הוא צדקה ואי אפשר לחזור בו ואסור לשנותו כאילו כבר בא ליד גבאי.

[1356] He mentions, for instance, an opinion that if a person promises his friend a gift, he can usually retract the promise, "but to a poor person it is a vow, meaning that it is as through he pledged it to charity and cannot retract" (Karo, *Bet Yosef* on *Tur Yoreh de'ah* §258:12). כתב המרדכי...אמר ליתן לחבירו מתנה מרובה.
מותר לחזור בו הדא דתימא לעשיר אבל לעני נדר – פירוש הוי כנודר לצדקה ואסור לחזור בו

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The advantage of the poor is based on comparing them to a *hekdesh*, [1357] and this comparison is the key to understanding Rabbi Karo's stance. The term *hekdesh* [literally "consecrated"] signifies the fund for collecting, safeguarding, and distributing any consecrated money, sacrifices, and objects that have been promised to the Temple and also functions as a designation for the legal status of such consecrated objects; a sheep, for instance can be "*hekdesh*." The improper use of something that was consecrated, for instance, the act of slaughtering a consecrated sheep for personal consumption is called *me'ilah*, a form of stealing from God.[1358] Like so much of the language and concepts of sanctity relating to the Temple, the notion of *hekdesh*, too, was used more broadly in the post-Temple context. *Hekdesh* could connote any sacred funds, such as a community's fund for charity or other religious uses. The idea that the charity fund is like the Temple

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In cases where someone pledges to donate a debt owed to him that he has not yet recovered, he similarly rules in favor of the poor. *Mordekhai* limits this somewhat, as he is of the opinion that if the promise was made about something not in the person's possession, he can retract even if the recipient is poor, but Rabbi Karo counters this option, stating: "that … if a person promises that a specific object is pledged, if this object is chattel and he does not have it at the moment ... it is as though he said nothing.... But if he vowed to give such-and-such a sum to charity, even if at the moment of the vow, he has nothing in his possession, he is obligated to give it, and as I have written in the name of the halakhic authorities of blessed memory" (Karo, *Bet Yosef Tur Yoreh de'ah* §258:12).

Rabbi Karo's stance gains even more force in questions of doubtful charity, such as when it is unclear whether a sum was set apart for charity or not. He cites from the laws of charity in the compilation *Or zarua* (Rabbi Yiẓḥak ben Moshe of Vienna, d. ca. 1250): "He who has money in his possession and is not certain whether they are for charity or not, he must give them to charity" (Karo, *Bet Yosef Tur Yoreh de'ah* §259:4:5) – in this compilation, the laws of charity occupy their own section at the very beginning of the work.

כתב עוד...הכי נמי איכא למימר הצדיקהו בצדקה, דצדקה היינו מתנה הילכך אומר אני המחבר מי שיש בידו מעות ומסתפקא ליה אם הם של צדקה או לאו חייב ליתן אותם לצדקה עכ"ל אז"ק (הל' צדקה סי יח)

[1357] RaShY's explanation provides a clue: In this medieval commentary on the Talmud, the above-mentioned dilemma concerning someone who promised every last possession to the poor is explained in a strange and somewhat asymmetrical manner. As we have seen, the Talmud weighs the giver's intentions: Can we say that, as it is for charity, he fully meant to give it away, even though he now has nothing left for himself; or can we assume that nobody would neglect his own well-being to such a degree, and he obviously meant to qualify the donation to exclude a case in which he survives and is in need of sustenance? RaShY's commentary on the opinion that considers the pledge not binding accords with the Talmud's argument interpreting the pledger's intentions; RaShY's commentary on the opinion that considers the pledge binding, however, diverges: he does not present an argument about the pledger's intentions, but, rather, he argues that "the 'hand' [the power of acquisition] of the poor is like the 'hand' [the power of acquisition] of the *hekdesh*."

Babylonian Talmud, Tractate *Bava batra* 148b, see RaShY's commentary on חילק נכסיו לעניים מהו מי לימא יד עניים כיד הקדש ואם עמד אינו חוזר או לא, תיקו

The basic interpretation of the plain meaning of the Talmud צדקה מיגמר ומקני, "it is charity, therefore he intends fully to sell it" is closer to trying to determine the giver's intention. RaShY's take on the Talmud's statement that צדקה מיגמר ומקני does not deal with intention but with the validity of the rights of acquisition in various kinds of acquisition. He suggests that charity has a strong power to acquire funds, even funds that were pledged lacking the perfect form of the intention to give. This interpretation of the meaning of צדקה מיגמר ומקני takes us deeper into legal principles of acquisition and further away from psychological questions of intention, as the plain meaning of the Talmud suggests.

[1358] The word signifies simultaneously stealing, trespass, and unfaithfulness (it is also used about an unfaithful woman). See Leviticus 5:15-17 and Numbers 5:12-31 and Joshua 5:1. In modern Hebrew, it means embezzling.

*hekdesh,* i.e., that promises to charity could be considered to "become *hekdesh*" and leave the owner's possession as soon as he uttered his intentions, forms the basis for this view.

The concept of *hekdesh* also explains why the intense dispute between Rabbi Karo and Rabbi Isserles in the responsa can hardly be detected in the codes. The organizational model of the *Arba Turim*, the code of halakha that was used as the basis of most other halakhic writings, is divided into four distinct volumes that relate to separate categories of Jewish law.[1359] The main points of disagreement between Rabbi Karo and Rabbi Isserles in the case of deathbed promises to charity are spread across two separate volumes in the legal codes: The issue of deathbed gifts is part of the laws of acquisition and thus belongs to the volume *Ḥoshen mishpat*, which deals with monetary law. The laws of promises to charity, on the other hand, are in the volume *Yoreh de'ah*, which deals not with monetary laws but with the field of "*isur ve-heter*" or permissions and prohibitions, which overwhelmingly deal with prohibited foods, but also include laws of oaths and pledges. The strange placement of laws of pledges to charity in a volume on prohibited consumption can be understood more readily when considering the original concept of *hekdesh*, where the consecration of something (often animals or foods for sacrifices) renders it prohibited for consumption because it "belongs to God." Similarly, the charity fund is off limits for any other consumption as soon as one designates something as belonging to this fund. Thus, wills and vows, the two most important categories for the case disputed in the responsa, are located in separate volumes.

The categorization of a case as monetary law, on the one hand, or prohibited consumption, on the other, is critical for the current case. As we have mentioned, the question of funds consecrated to charity on one's deathbed is declared a *teku*, an unresolved case, and the principle of adjudication in such undetermined cases[1360] is to favor a more stringent adjudication, meaning one in which there is less risk of transgression. However, the definition of "less risk of transgression" depends on the category of law. In monetary law, it is considered more cautious to refrain from actively taking money from whoever currently possesses it. Thus, in monetary decisions, uncertainty will always favor the person who currently has the presumption of possessing the money, placing the higher burden of proof on the person who comes to claim it from the one currently in its possession. Because the rabbis consider the more stringent stance to be risk avoidance, not actively removing money from someone who is holding on to it is the correct approach. In the case of prohibitions of consumption, on the other hand, the risk-avoidant, more stringent decision is to abstain from anything that might be consecrated, for fear of committing the transgression of *me'ilah*. Therefore, classifying the case in the responsum as a question of inheritance favors the heirs, as it places the case in the realm of monetary law. Classifying the case as a question of *isur ve-heter*, on the other hand, will favor the charity fund. Because these categories are not adjacent or even in the same volume of the codes, cases of conflict between the two kinds of law have no clear location.

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[1359] Ritual law, family law, monetary law, and *isur ve-heter*.

[1360] These principles of calculating indeterminacies are based on a number of factors and combinations of factors; is the indeterminacy one of fact, of intention, of legal opinion, of interpretation etc., is the halakhic issue at hand biblical or merely rabbinic, is there a presumption in place where we can assume that the indeterminacy will resemble the presumption, and what kind of presumption is it (statistical majority, likelihood, quantitative, local, psychological, legal).

In the codes, Rabbi Isserles' divergent opinion can be detected only between the lines, or rather, between the glosses: When Rabbi Karo's glosses cite the laws of charity: "He who has money in his possession and is not certain if they are for charity or not, he must give them to charity,"[1361] Rabbi Karo was dealing only with the issue at hand in that volume of the code, namely charity. [1362] Rabbi Isserles, in his glosses on Rabbi Karo's code, directs this issue back from charity to the inheritance cases in the volume on monetary laws. He does so without a single argument or discussion, but simply by adding a footnote to Rabbi Karo's discussion: "and see in *Ḥoshen mishpat* §250," thus pointing the conversation back to the laws of gifts and acquisition in the volume on monetary law, rather than the volume on forbidden consumption.[1363] This roundabout gloss leads the reader back into the domain of his direct disagreement with Rabbi Karo in the responsa, where charity and inheritances intersect.[1364]

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[1361] Karo, *Bet Yosef Tur* on *Yoreh de'ah* §259:4:5 – in this compilation the laws of charity occupy their own section at the very beginning of the work כתב עוד...הכי נמי איכא למימר הצדיקהו בצדקה, דצדקה היינו מתנה הילכך אומר אני המחבר מי שיש בידו מעות ומספקא ליה אם הם של צדקה או לאו חייב ליתן אותם לצדקה עכ"ל אז"ק (הל' צדקה סי יח)

[1362] Rabbi Isserles intervenes by quoting a responsum in which a case of charity versus inheritance concludes as follows: "and if there is a doubt in the case, we go leniently in favor of the heir, because the money is in the presumptive possession of the owners, which is the heir, thus, the burden of proof is on the poor..." (the responsum is from RashbA [Rabbi Shlomo ben Aderet 1235-1310], as quoted in Isserles, *Darkhei Moshe* on *Tur Yoreh de'ah* §259:4:5).

ואם יש ספק בדבר הולכין בו להקל אצל היורש לפי שהממון בחזקת בעליו שהוא היורש ממילא והעניים שאמרו נתקיים התנאי עליהם להביא ראיה עכ"ל...

[1363] This same dynamic is repeated in the *Shulḥan Arukh*, seeing as its structure and division into volumes mirrors that of the *Arba Turim*. Whereas Rabbi Karo's summary reads: "He who has money in his hands and is in doubt if they are for charity, he must give them to charity." Rabbi Isserles adds: "But, he who pledged something in a formulation that leaves doubt and then died, so that one cannot know his intention, the heirs are considered to have the presumption of ownership and the consecration fund [*hekdesh*] is considered those who come to take it from them [and thus have the burden of proof]" (Karo, *Shulḥan Arukh Yoreh de'ah* §259:5).

מי שיש בידו מעות והוא מסופק אם הם של צדקה חייב ליתן אותם לצדקה.
הגה: אבל מי שהקדיש דבר בלשון שמסתופקים בו ומת שאין לידע כוונתו נקראו היורשים מוחזקים וההקדש שבא להוציא מהם עליו הראיה וכן זמן שאינו מביא ראיה הנכסים בחזקת היורשים (רשב"א...) ועיין בחושן משפט סי' ר"ן סעי' ג

[1364] Rabbi Isserles is aware of the fact that the issue hinges on this distinction between monetary law and laws of charity. In his responsum, he weighs the opinion of Rabbi Asher, who stated that if someone pledged all his belongings to charity and subsequently recovered, the pledge cannot be retracted. Rabbi Isserles phrases this reasoning as follows: "Even if he recovers, he cannot retract, because it is a doubt concerning *isura* (prohibitions), and we proceed stringently."

Isserles, *ShUT Rema*, §48.

... דאין לזוז מדבריהם להוציא ממון מן היורשים מוחזקים אף נגד עניים, כמו שפסק הרמב"ם פ"ט מהל' זכייה לעניין מתנת שכ"מ להקדש אם עמד חוזר, וכן פסק הטור ח"מ סי' ר"ן בשם הרמ"ה. ואע"ג דהרא"ש והמרדכי פרק מי שמת פסקו דאם עמד אינו חוזר,**הואיל וספיקא דאיסורא הוא ואזלינן לחומרא**, מ"מ לעניין זה נקטינן כדברי הרמב"ם והרמ"ה כמו שפסקו בתראי ר"י בר ששת סי' ק"ס בתשובותיו ושארי הגאון מהר"ם פדוא"ה בתשובותיו סימן נ' וכן נראה דעתו דמר בסֿפרו. [בית יוסף ח"מ סי ר"ן "ודברים תמוהים הם בעיני דהכא ודאי איכא אומדנא ברורה דלא עביד איניש דיהיב כל נכסי' לאחריני והוא יחזר על הפתחים אלא משום דלדבר מצוה נינהו מספקא לן דילמא גמר ומקני הילכך מספיקא אין מוציאין מידו ] וכן פסק הרשב"א בתשובותיו סי' תפ"ט ומהרא"י בפסקיו סימן ע"ג דיורשים נקראים מוחזקים נגד הקדש. ואיך נוציא ממון בנד"ד דאפילו ספקא לא הוי אלא יחיד נגד רבים ובתראי?!

Thus, it is the designation of the case as belonging to *isura*, prohibited consumption, which would result in the stringent decision favoring the poor.

Similarly, in his gloss in the laws of deathbed wills, Rabbi Isserles explains that, while some opinions favor the heirs in ambiguous cases, others oppose this and "adjudicate  that in the case of *hekdesh* … which is *isura*, one goes according to the stringent option" to the advantage of the poor (Isserles, *Darkhei Moshe* on *Tur Ḥoshen mishpat* §250:5).

וכתב ריב"ש עוד שם דאפילו תפסו העניין מוציאין מידם ועיי"ש. אבל במרדכי...פסק כדברי הרא"ש דבהקדש והפקר לעניין דהוה איסורא אזלינן לחומרא

Rabbi Karo also shows that he understands this to be the main issue – do we treat this as a case of monetary law or prohibitions (or, is a pledge to charity in one's inheritance like a *hekdesh* or not), as do many glossators .He himself disagrees with the latter perspective, and he is quick to present all the authorities in favor of the heirs, concluding that the opinions in favor of the heirs are both greater in number and more recent, placing his opinion at an advantage, but he nonetheless lays out his opponents' structure very clearly: The designation of charity as *hekdesh*, and placing that in the category of *isura*, that is, belonging to the realm of *isur-ve-heter*, provides support to the view that the stringent approach favors the poor over the heirs.

This concept, of *hilkheta ke-batra'i,* or, "the law follows the later authorities," has been discussed at length: see Meir Rafeld, "The Halakha follows the Later Sages," *Sidra: A Journal for the Study of Rabbinic Literature*. (1992) 119-140; Israel Ta-Shma. "Hilkheta ke-batra'I (The Law is like the later authorities): Historical Aspects of a Legal Rule," *Shnaton ha-mishpat ha-ivri* (1979): 405-423; Israel I. Yuval, "Rishonim and Aharonim, Antiqui et Moderni: Periodization and Self-Awareness in Ashkenaz," *Zion* 57, no.4 (1992): 369-394, and many others.

**GLEANINGS: AN EPILOGUE**
Three Early Modern Rabbis and Printers on Halakhic Organization.

**1.**

This study has examined the first stages in the transformation of halakhic culture in Ashkenaz from a world of fluid textual and oral transmission and loose compilations to the more systematic universe of printed codifications. The meaning of Ashkenaz is, in many ways, constantly in flux, and this dissertation deals with some of these fluctuations of the cultural, scholarly and religious significance of Ashkenaz. In the most general terms, Ashkenaz can be defined, geographically, as the communities with roots in the German lands, linguistically, as the Yiddish-speaking sphere or, halakhically, as the early modern communities following Rabbi Moshe Isserles' glosses of the *Shulḥan Arukh*.[1365] This last definition is a product of the sixteenth century and lies at the center of the early modern transformation of Ashkenaz. I have described the combination of factors that revolutionized the organization of halakhic texts in Ashkenaz: a new technology of dissemination, the rise of competing organizational paradigms, and the disruption of scholarly culture due to communal migration and subsequent breakdown of the legal tradition. This reorganization, in turn, favored certain types of halakhic reasoning while precluding others – traditional forms of working with halakha that were more in line with older ashkenazic models of transmission. I related this older, personalized form of organization to the rabbinic archive, with its flexible, unsystematic mode of assembling

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[1365] Ashkenaz is, of course, no monolith. See, for instance, chapter 3 in this dissertation for distinctions within Ashkenaz depending on the trajectory of particular communities, chapter 4 for chronological differences in ashkenazic their modes of transmission and attitudes to their past.

material, in general, and with responsa and their dynamic and un-categorizable nature, in particular. Unsystematic modes of knowledge organization, I suggested, have their own virtues when it comes to halakhic scholarship, not least the potential to represent a more dialogic and multifarious idea of religious law.

This epilogue portrays three ashkenazic figures who were involved in printing and organizing their own halakhic writings – one in the sixteenth century, Rabbi Yeḥiel Mekhel Morapchik, one in the seventeenth, Rabbi Yair Ḥayim Bacharach, and one in the eighteenth, Rabbi Yacov Emden. The experience of the first, who lived and worked in sixteenth-century Lublin and Cracow, testifies to the essential clash between print technology and ashkenazic transmission. Ashkenazic halakhic culture was never truly oral, as text was always a central aspect, but the *likut*, or manuscript compilation, with its unsystematic structure and fluid transmission, perfectly embodied this culture's relationship to text. Although such compilations could, technically, be printed, the stabilization that print technology invited was inherently alien to this world. The second figure, a rabbi in seventeenth-century Worms who printed his responsa at the end of his life, represents the type of scholar who collects all his texts in a personal archive similar to those we posited as the organizational origins of sixteenth-century printed responsa. His archival practices, as well as his efforts to publish parts of this collection, illustrate, simultaneously, the establishment of the paradigms that the sixteenth century inaugurates and the persistence of some of its challenges. The final example, from the eighteenth century, depicts an effort by an ashkenazic rabbi in Altona to make a case for the impossibility of organizing halakha in any perfect way. His attack on Maimonides' *Mishne*

*Torah*, the most successful attempt at a perfect halakhic code, reveals a theological worldview that considers disorder an essential aspect of divine law.

**2.**

As the first chapter of the dissertation pointed out, the Hebrew word for compilations, *likutim*, is derived from the verb *le-laket*, to harvest or glean, collecting bundles and stalks from the field. Rabbis often allude to this original meaning when describing their works. Rabbi Yosef Karo collected all the halakhic material in his storehouse *Bet Yosef*, just as his biblical namesake did with the harvest in Egypt during the years of bounty. Rabbi Karo, however, did not merely store this harvest. He processed his harvest, preparing food and arranging the resulting dishes on the *Shulḥan Arukh*, the set, or ordered, table. In another example, Rabbi Isserles, in the colophon of the first edition of *Mapah* (tablecloth, Cracow, 1570), his glosses to *Oraḥ ḥayim* (Way of life), the first volume of this prepared table, proclaimed his gratitude to God who "brought me here, to finish gleaning (*li-lkot*) from the volume *Oraḥ ḥayim,* compiling the gleanings, forgotten bundles, and neglected corners, which the great sage and *gaon* our master and teacher Rabbi Yosef Karo left behind…."[1366] The expression "collecting the gleanings, forgotten bundles, and neglected corners" (*mi-likutei leket shikhḥa u-pe'ah*) refers to the leftovers of the crops that, according to halakha, may be collected freely by the poor.[1367]

Rabbi Isserles cites a *mishna* that harvesting is permitted to all when the weakest of the poor have come and gone. He explains that gleaning in such a situation is considered

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[1366] Moshe Isserles, *Mapah* on *Shulḥan Arukh* (Cracow: Prostiz, 1570), colophon:
אמר משה איסרליש מקראקא ברוך ה' אלקי ישראל אשר הביאני עד הלום ללקוט ולגמור ספר אורח חיים מלקוטי לקט
שכחה ופיאה אשר הניח החכם הכולל הגאון מהרר יוסף קארו ש"ן.
[1367] Leviticus 19: 9-10; Deuteronomy 24: 19-22.

"*likutei betar likutei*," gleaning-post-gleaning, and thus allowed. Having secured his permission to glean the laws and insights his predecessor omitted, Rabbi Isserles invites others, in turn, to "harvest and search after me" for the stalks that he himself had overlooked.[1368] Although he uses the vocabulary of the *likut*, Rabbi Isserles is bringing his harvest to the *Shulḥan Arukh*, incorporating his glosses into its structure. The haphazardly harvested bundles are thus brought to Rabbi Karo's table, incorporated into his meal, added to his processed dishes and served at his ordered table. The result was no longer a *likut*.

Another figure who was printing books in Cracow at the same time, however, similarly used the vocabulary of harvest – but in order to print a real *likut*. This was Rabbi Yeḥiel Morapchik, a relatively minor rabbinical figure who had published two books, *Minḥa ḥadasha* (New offering, Cracow, 1576), and a work called *Seder Brakhot* (Order of blessings, Cracow, 1582). Both works were compilations aimed at a popular audience: the former was a collection of interpretations on *Pirkei avot*, the ethics of the fathers, assembling selections of different commentaries to this mishnaic tractate, but also including seemingly unrelated texts, such as discussions of current polemics about rabbinic authority and halakhic innovation, in which Morapchik took a decidedly conservative position.[1369] The latter was a halakhic compilation of laws, customs, behaviors, and general tidbits of knowledge related to blessings upon consuming food and other occasions.

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[1368] This attitude aligns with general early modern approaches to authorship, originality, and compilation. Isserles, *Mapah*, colophon:

ואמרו ריש פרק ח דפיאה מאימתי כל אדם מותרי' בלקט משילכו הנמושות והם לקוטי בתר ליקוטי ומעתה גם כן הרשות נתונה לכל אדם ללקוט ולחפש אחרי...

Mishna, Tractate *Pe'ah* 1: 8.

[1369] For more on this polemic, see Moishe-Duvid Chechik, *Shalosh maḥlokot* (Three disputes), forthcoming, as well as Chechik's M.A. thesis on Rabbi Yosef Katz and the traditionalist ashkenazic attitude in the 16th century (likewise forthcoming). I thank Moishe-Duvid for sharing his ideas and drafts with me.

In the introduction to both works, Morapchik compares their organization to another, yet unpublished work, which was, likewise, a compilation. The name of that work was *Leket shikhḥa u-pe'ah* (Gleanings, bundles, and corners). In the introduction to *Seder brakhot*, he mentions this larger compilation of halakha: "…and I came … to make a *likut* after the *likut*, as I arranged the formulation of the blessings in the book *Leket shikhḥa u-pe'ah…*"[1370] His introduction to the compilation of commentaries on the *Ethics of our fathers,* likewise, explains that the work is compiled from many sources, "…and like the appearance of this work, I have written a book *Leket shikheḥa u-pe'ah* as a keepsake for me and my house, in an easy language…."[1371] The book is mentioned in several places throughout Morapchik's published works. A section on avoiding superfluous blessings mentions that, "in the lowly[1372] book, called the book *Shikheḥa u-pe'ah leket*, I wrote about this at length."[1373] *Seder brakhot*'s introduction concludes as follows: "Therefore, assemble and listen, sons of Avraham, Yiẓḥak and Yacov…. I set a table before you, and on it are many blessings…." Notwithstanding his invocation of a set table, this book does not resemble the *Shulḥan Arukh*. It is organized as a compilation, combining laws and customs, raising a mixture of topics and genres that is surprisingly varied for a work that presents itself as being limited to the laws of blessings, ranging from the correct order of reciting

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[1370] Yeḥiel Morapchik, *Seder Brakhot* (Jerusalem: *Zikhron Aharon*, 2013), 12:
ובאתי הערה מועטת לקוטי בתר לקוטי כאשר סדרתי נוסח הברכות בספר לקט שכחה ופאה...

[1371] Yeḥiel Morapchik, *Pirkei Avot: Minḥa ḥadasha* (Cracow, 1576), introduction:
וזאת תורת המנחה ויקח כל אחד מן הבא בידו...ומעין זה המראה ספר לקט שכחה ופיאה כתבתי למשמרת לי ולביתי בלישנא
קלילא קצרה וארוכה וישמע חכם ויוסיף לקח תכלית זה כדי לעשות רצונו ברוך הוא.

[1372] He uses lowly = *shefel*, a wordplay on the acronym of the book's title, albeit arranged in a different order: *Sh.p/f.l.*

[1373] Morapchik, *Seder Brakhot*, 12:ובספר שפ"ל הנקרא ספר דכחה פיאה לקט הארכתי ביותר וכאן יש מקום לקצר
Similar mention on p. 14, blessings when entering and exiting a town (where he changes the order again to *L./Sh./P),* and on p. 16, blessings regarding ritual fringes.

blessings on different foods through the intentions one should have during sexual intercourse, to the importance of Torah study.

In addition to presenting it as a compilation or *likut*, Morapchik also introduces the work as a personal transmission of law, tied to his family, "a keepsake for me and my house," stemming from local ashkenazic origins. Using almost the same formulation as he did in *Minḥa ḥadasha*, he explains in *Seder brakhot* that the work was compiled for his personal consultation and intended for personal transmission within his family: "…and I wrote this as a keepsake for me and my house after me, to keep God's ways day in day out…"[1374] He also mentions the personal transmission at the basis of this work in another place: "I wrote at greater length in my book *Leket shikhḥa u-pe'ah* about a multitude of issues as I received them from the house of my ancestors, the citizens of Regensburg."[1375] This truly ashkenazic compilation, conveying the personal laws and traditions of a local ashkenazic clan, collected by a conservative figure who understood the largely personal nature of transmitting rabbinic authority and halakhic tradition, was supposed to be printed under the title *Leket shikhḥa u-pe'ah*. Literally, these are *"collected gleanings, forgotten bundles, and corners of the field,"* but it can also imply "compilation of the forgotten and neglected," which fits the fate of the traditional forms of transmission that this work represented. Ultimately, it was never printed.

**3.**

By the end of the sixteenth century, the first generation of rabbis who wrote and published

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[1374] Morapchik, *Seder Brakhot*, introduction:

וכתבתי זאת למשמרת לי ולביתי אחרי לשמור דרך ה' דבר יום ביומו.

[1375] Morapchik, *Seder Brakhot*, 28 (distancing oneself from impurity and menstruating women):

הארכתי ביותר בספר לקט שכחה פאה בהרבה עניינים כמו שקבלתי מבית אבותי תושבי רעגנשפורג.

halakhic writings during this time of change were no longer alive. In Salonica, the first few

works of responsa ordered according to the basic division of the volumes of the *Shulḥan*

*Arukh* had been printed.[1376] In Ashkenaz, it would take until the end of the seventeenth

century before such a work was published. Rabbi Yair Ḥayim Bacharach's collection of

responsa, *Ḥavot Yair* (Villages of Yair) was the first work of responsa completed and

brought to print by its own author in Ashkenaz. Alluding in the third unit of this dissertation

to the somewhat peculiar makeup of sixteenth-century collections of responsa, I noted that,

similarly to their humanist counterparts, rabbis kept their responsa in personal archives of

notes. In the case of Rabbi Bacharach, there is an actual remnant of such an archive,

including the finding aid created for navigating its contents.

The author of *Ḥavot Yair* maintained an extensive archive of notes; glosses;

thoughts; halakhic interpretations; sermons; copies of manuscript material; copies of his

ancestors' writings; ideas; calculations; experiences; poems; letters; responsa; and other

matters, "all these," as the historian David Kaufmann described, "in an absolutely

unsystematic succession, just as they presented themselves to him and were safely secured

by his ever active pen."[1377] Rabbi Bacharach himself explains that the reader should not be

surprised "that I wrote these things in a jumble without order whatsoever,"[1378] noting that

these writings were a result of his studies, correspondence, teaching, and general musings

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[1376] The responsa of Rabbi Shmuel di Medina, in Salonica between 1594-1597, and the first volume of Rabbi Yosef Karo's responsa, published by his son, which included only responsa corresponding to the first volume of the *Shulḥan Arukh*, with plans to print three other volumes for the remaining sections.

[1377] David Kaufmann, "Jair Chayim Bacharach (Concluded)" *JQR* 3, no.3 (1891): 485-536. This citation, p. 505.

[1378] David Kaufmann, *R Jair Chayim Bacharach und seine Ahnen* (Trier: Sigmund Mayer, 1894), 121.

גם אל יפלא בעיני המעיין שכתבתי הדברים בערבוביא בלי סדר כלל

and insights as they arose. For instance, he clarifies, sometimes inspiration would strike at night or on the road. At other times, he thought of additional explanations related to issues that he had already discussed but was unable to find the earlier discussion (or sometimes, he found the discussion but discovered that there was no more room on that page), which led to some repetitions. Moreover, he taught several classes a day on various topics. Rather than listing every topic in full, the writings contain partial discussions of every topic every day, depending on what he taught. At times, he would fall ill and the class would continue its studies without him, resulting in gaps in Rabbi Bacharach's notes on the topic being taught; once he rejoined them, the notes would resume at the place where the group had arrived.[1379] This personal reference work counted about seven volumes of his own notes but dozens more volumes in which his own writings were mixed with manuscripts, copies, and archives that he collected or inherited from his ancestors.

Rabbi Bacharach created a finding aid for this archive, itself a large volume titled *Yair netiv* (Illuminator of the path),[1380] which gave a short description of every entry per volume, in its order of appearance, together with a short classification of genre ("Talmud," "ethics," "Bible," "general inquiry," and so forth) and a page number.[1381] He had planned to print two books; one was a gloss on the first volume of the *Shulḥan Arukh*, which, he claims, had been ready for print twenty years earlier. His plans were delayed and finally

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[1379] Kaufmann, *R Jair Chayim Bacharach und seine Ahnen*, 121-124.

[1380] A short introduction to this finding aid (whose very existence shows that this was, like the scholarly archives of chapter six in this book, both a private reference work and a corpus that would be consulted by other scholars) relates the title of the index to a concordance by the same name. It was thus, clearly, conceived as a finding aid by its author. This introduction was published as an appendix in Kaufmann, *R Jair Chayim Bacharach und seine Ahnen*, 123-124.

[1381] This volume is now at the National Library of Israel in Jerusalem, NLI Ms. Heb. 5220=38.

thwarted, when he discovered that two Polish rabbis, Rabbi David Ha-Levi (1586-1667) and Rabbi Avraham Gombiner (1633-1683), had both published glosses with many similarities to his own, thus prompting Rabbi Bacharach to revise his notes yet again. The other book, *Mar kashisha* (Old man) was to be a type of dictionary of talmudic terms for which he already had prepared an introduction. He continued to emend and enhance his notes for both books throughout his life, and the right time to print them never presented itself. The challenge of publishing a large, comprehensive, coherent and complete work in one's lifetime was still very real. Rabbi Bacharach was doomed to wander and be displaced often, due to wars and other calamities. He grew old, his eyesight deteriorated, and he still had not printed any of these works.

Echoing the fate of the two works of responsa discussed in chapter six, the only work that Rabbi Bacharach ultimately succeeded in bringing to print was a selection of his responsa. *Ḥavot Yair* was printed in Frankfurt am Main, 1699. *Yair nativ,* the table of contents to his manuscript archive, shows that Rabbi Bacharach selected responsa from his archive and had them copied and prepared for print. The table of contents in *Yair nativ* includes the word "printed" after entries that had been published in the book, together with the section-number in the printed work where this entry could be found. *Yair nativ* even makes note of the amanuenses in publishing the responsa, writing that those entries in the table of contents marked "*b.d.g*.," which stands for *be-dapim gdolim* (in large pages) were copied by a Rabbi Hirsch Frankel onto quarto pages, the entries marked with three perpendicular lines in the table of contents were copied by a Rabbi Elisha, while four dots

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indicate that a Rabbi Hirsch copied that entry.[1382] Although the plan, at first, was to include

635 responsa, corresponding to the numerical value of the book's title, this did not come

to fruition, and only about 240 responsa were printed. In the introduction, he manages to

make something of this numerical value as well. The plan was to print an additional volume

(indeed, the title page of the first edition reads "volume one"), but the second volume was

never printed. Thus, although in 1699 a clear notion of the paradigm of responsa books

already existed, implementing it was harder than expected.

Moreover, the index for this collection of responsa indicates that new

organizational paradigms had already taken hold. The manuscript table of contents in Rabbi

Bacharach's archive noted not only the existence and location of a particular entry in the

work of responsa but it also pointed to the volume and section of *Shulḥan Arukh* to which

the responsum relates. This information could then be used in *Ḥavot Yair*, for the first index

of an ashkenazic responsa collection according to the four volumes of the codifications.

Clearly, Rabbi Bacharach and those helping him prepare the responsa for print were

already thinking in terms of a printed collection of responsa and dividing it according to

sections of the *Shulḥan Arukh*. In the printed book, this index is preceded by a short

introduction:

This is the great and wide sea in which are innumerable hints and existences, small
and large; there my humble opinion travels, my abandoned poor heart will sacrifice the
offerings that it has caught in its net. So much is unknown to me. And they remained
unordered. In any case, to ease the load for those looking through it, I will arrange before
you its wellsprings and sources by the order of the responsa according to the four sections
of the *Turim*, also the *sugyot* and other such Torah-related things and interpretations, so
that all who are thirsty may find what they seek quickly, in the watering troughs and the

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[1382] Kaufmann, "Jair Chayim Bacharach (Concluded)," 528.

gullies,[1383] by the quick suggestion of the indicative waters, hollowed out[1384] and etched before you.[1385]

This introduction is followed by a ten-page, almost exhaustive index according to the *Shulḥan Arukh*. As promised, there is indeed an index according to "the *sugyot,*" the talmudic discussions. This second list, by contrast, is barely one page long, containing less than thirty references in contrast to the hundreds of the previous list. More instructive yet, for our purposes, is the title of this second index: "*sugyot* and questions in the Talmud and tosafists and *poskim* that do not have a legal consequence."[1386] All the halakhic matters, all the material that is legal, was indexed according to the codifications; the only responsa that remained unclassified were those without legal application. The world of halakha was now clearly defined: Jewish law consisted of whatever could be ordered by the *Shulḥan Arukh*. Only non-legal material remained to be indexed by means of the Talmud's structure.

**4.**

As many of the case studies in this dissertation have shown, organization has a profound effect on law. We do not have an explicit formulation of the implications of ashkenazic disorder for its approach to religious law. A parenthetical remark from a rabbi printer in the eighteenth century, however, provides us with some thoughts on this matter. Rabbi Yacov Ẓvi Emden (1698-1776), also known by his acronym Yaveẓ, was a rabbi who wrote

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[1383] Genesis 30: 38.

[1384] This is a reference to the "male waters," or מים דוכרין, a mystical concept from *Sefer yeẓirah* and its "female" counterpart, the מים נוקבים.

[1385] Yair Ḥayim Bacharach, *Ḥavot Yair* (Frankfurt am Main: Johannes Wüst, 1699), 250a:
זה הים הגדול ורחב ידים שם רמז שם ואין מספר הויות קטנות עם גדולות שם עניות דעתי יהלך ל"ב יתו"ם ודל יקריב מנחתו. אשר עלה במצודתו. לא ידעתי ספורות. ונשארו בלתי סדורות. ומ"מ להקל על מעייניה. אערכה לפניך מעייניה ומקוריה לפי סדר התשובות ע"פ ד' חלקי הטורים גם סוגיות ושאר דברים תורניים פרשים למען כל צמא למים ימצא מבוקשו מהר בשקתות ברה"טים. ע"י קוצר מזכרת מיין דוכרין נקובים לפניך ונחרטים.

[1386] Bacharach, *Ḥavot Yair*, 255a:סוגיות וקושיות בש"ס ותו' ופוסקים דלית בהו נ"מ לדינא

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extensively on halakha, Bible, kabbalah, and other issues. He is best known for his responsa, *Sheilat Yavez*, and for his ideological battles against those he suspected of heterodoxy. In Yavez's eighteenth-century Ashkenaz, the *Shulḥan Arukh* had long been accepted as the central organizational structure for halakhic writing, and Yavez, too, wrote glosses on its four volumes. Print had become the undisputed technology for publishing and circulating halakhic works, and Yavez himself, in fact, established a printing press in his home in Altona to publish his own writings. One such printed work was *Igeret bikoret* (letter of criticism).

*Igeret bikoret*, is, in fact, a responsum (or rather, four responsa, including three of his own), which Yavez himself printed twice, once in 1736 and then again in 1765, concerning a halakhic medical case of a married man whose testicle was removed. The final responsum contains a striking digression that touches upon halakhic organization. At a particular point in the responsum, Yavez notes that one of the halakhic arguments of his opponents neglects a source from the Jerusalem Talmud, the earlier counterpart of the Babylonian Talmud stemming from the Holy Land. Such an omission is legitimate as long as the more authoritative Babylonian Talmud, which he calls "our Talmud," does not explicitly endorse that very point.[1387] He explains that although the main textual basis for halakha is the Babylonian Talmud, the Jerusalem Talmud and many other less authoritative

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[1387] Perhaps somewhat counterintuitively, Yavez explains that it is definitely acceptable to disregard a statement from the Jerusalem Talmud when the Babylonian Talmud explicitly *opposes* it; however, he advises much more caution when approaching a law from the Jerusalem Talmud that the Babylonian Talmud does not mention at all. Yavez makes sure to emphasize that the attention for the Jerusalem source is not because the lack of mention in the Babylonian Talmud implies that those sages were uninformed about the Jerusalem source. Such a claim would be problematic for the authority of the Babylonian Talmud as a whole, and Rabbi Emden specifically precludes this possibility, explaining that the sages of the Babylonian Talmud knew all the contents of its counterpart but did not select to keep everything in their own Talmud.

halakhic sources should be included within a halakhic decision wherever possible because these, too, contain divine truths. He elaborates a complex hierarchy of halakhic decision making. At the basic level is the definitive authoritative corpus, which may under no circumstances be ignored or contradicted (the Babylonian Talmud). In addition, there exists a multitude of texts that are not as authoritative but nonetheless important.[1388] The remaining texts are described as gleanings of the harvest left behind by the sages of the Talmud: "Ravina and Rav Ashi, who are considered the final word … have passed over all the *mishnaic* sources and … have left behind these gleanings (*leket*), and left them in the corner (*pe'ah*). Even so, some halakhic decisors have still chosen to collect them in like grain on the threshing floor,[1389] and made from it fruit of the grain."[1390] It is legitimate to disregard these additional sources when making a halakhic decision, but such neglect involves the loss of a deeper truth that could have been expressed had the source been taken into consideration. This added level of truth is related to the esoteric level of

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[1388] Not only the Jerusalem Talmud deserves special consideration; Yaveẓ additionally includes the *tosefta*, sources from the *mishnaic* period that were not selected to become part of the talmudic canon and proclaims that "all the holy books need each other." Later, he even adds the apocrypha *sfarim hiẓonim* (lit.: external books, some of which the Talmud prohibits reading) to this list. He emphasizes that there is nothing wrong with including other unexpected sources in one's halakhic decision if those sources contain truth. He mentions that countless important halakhic decisors have done so. Emden explains that if someone looks to the external books in order to quench his thirst and understand an issue in cases where the Talmud could not satisfy him, "do not jeer at the thief. Because he is stealing to fill his soul, as he is hungry not for bread, but rather, to hear the words of God." The words of God can, apparently, be found in forbidden books as well.

Emden, *Igeret bikoret*, 16a:

גם הלום ראינו וגדולה מזו מצאנו למחברים מאוחרים שאפילו מתוך ספרים חיצונים נעזרים ומקבצים סיוע מן הבא בידיהם מלא חפנים עמל. במקום שלא השיגה ידם מלא כף נחת רוח בצפה"ת דבש התלמוד להרוות צמאונם. וכן בדין שכך אמרו חכמים הוי למד מכל אדם...ולכן התירו ג"כ רז"ל להשתמש אפילו מספרי החיצונים החמורים שהפליגו העונש בקריאתם.

[1389] Micah 4: 12 – "But they know not the thoughts of the Lord, neither understand they his counsel: for he shall gather them as the sheaves of grain into the granary." Note the relevance of the beginning of this verse to Yaveẓ's thrust in this passage.

[1390] Yacov Emden, *Igeret bikoret* (Altona, 1736), 16a: וכ"ש אחר שגם רבינא ור"א סוף הוראה. שעברו על כל הברייתות וניפום וניפום בכברת שכלם. עזבו אותו הלקט והניחוהו לפאה. אעפ"כ קבצוהו פוסקי הלכות כאמי"ר גרנה ועשו ממנו פרי תבואה. וצ"ל כדרך שאמרנו בענין חידושי הירושלמי הנשמטים מבטן תלמודנו.

interpretation.[1391]

Yaveẓ's preferred method, which does not establish a clear hierarchy of what must be taken into consideration and what safely can be ignored, creates a very confusing textual canon. Rather than attempting to organize these texts or apologizing for the lack of structure, Yaveẓ declares that Torah study is *supposed* to be structured precisely that way: "For the paths of Torah are meandering ones, its trails twist and can be known only after hard searching and toil...."[1392] The circuitous and indeterminate path, is, in his opinion, superior, for reasons that relate to the secret truth of halakha. Yaveẓ's two-tiered structure views halakha, at one level, as a practical system of legal adjudication, but at a deeper level, as an expression of divine truth. Humans cannot grasp this truth in its entirety, but it can be found – scattered and hidden – in Jewish texts and sometimes even in other bodies of knowledge inasmuch as they contain ancient Jewish truths. The aim of determining halakha is, in his eyes, not merely the presentation of an acceptable legal solution, but the incorporation of a larger truth, the precise meaning of which the scholar cannot fully comprehend, because this truth is beyond the human plane.

Because it is divine, this larger truth can be transmitted only in mysterious and circuitous ways. Yaveẓ views favorably the impenetrable configuration of these convoluted texts, regarding it as a direct consequence of the complex and ineffable truths

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[1391] Emden, *Igeret bikoret*, 16a:

כי בדברים הסתומים. אין להשליך את הירו׳ אדרבה, הרבה טרחו המחברים ראשי המדברים בכל מקום בעלי התו׳ והפוסקים בכלל. לבררו ולסלתו וללקוט מתוכו שושנים ששונים בני א״י ואינם שנויים בתלמודינו. או לא דיבר בו במספיק. והירו׳ לפעמים הרחיב לנו הביאור וגולה דין פרטים סתומים וחילוקים נעלמים. אשר לא נודעו עקבות משפטיהם בים התלמוד שלנו. (כידוע לרוב מתוך ספרי הפסק למאן דעייל ונפק) וכן נוהגים הפוסקים למלאות חסרונם ולהביא די סיפוקה מן התוספתא.

[1392] Emden, *Igeret bikoret*, 16a:

מטולטלים שביליה של תורה. נעו מעגלותיה לא תדע כי אם אחר הטורח וחפוש. ולא תמצא אלא אם יגעת בעיון דק ופשפוש.

נעו מעגלותיה (her ways are movable, that thou canst not know them) is taken from Proverbs 5: 5, where it refers to the evil "strange woman."

beneath their surface. He interprets the history of the organization of halakhic texts in

accord with this idea:

> …there never has been made a general collection nor has there been a compilation structured from the halakhic foundations to their secondary consequences, and the results that emerge from the details that branch out of it are not organized in a logical progression. As it is said specifically, "*there is no order to the mishna*" because of a mysterious reason and a hidden secret in the connections between the issues and their relation to one another, in their inner meanings and secrets, beyond their revealed aspects.[1393]

The choice of the word for "structured," *medoragim*, comes from the word "steps"

or *madregot*, which calls to mind Rabbi Ḥaim ben Beẓalel's accusation, cited in chapter

three, that the codifiers seek to make halakha into "*madregot*,"[1394] many little steps, which

permitted the halakhic calculus exemplified by Rabbi Isserles.[1395] Yaveẓ's discussion

articulates why such restructuring is so threatening to the idea of religious law. He

introduces the principle that "*there is no order to the Mishna*"[1396] as an essential

characteristic of halakha, directly related to its divine nature, and he considers the failure

to create a completely and comprehensively ordered code as proof of the halakha's divine

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[1393] Emden, *Igeret bikoret*, 16a:

ולא נעשה בהם קובץ כולל ולא חיבור מודרג מהנחת יסודות ראשונות ותולדות שניות ותוצאות חלקי הפרטים המסתעפים לא באו מסודרים בקדימה ואיחור. כמ"ש ביחוד אין סדר למשנה לטעם נעלם וסוד נכמס בקשר העניינים והתלותם זה בזה בתוכיותם ומצפוניהם מלבד נגליהם

[1394] Ḥayim ben Beẓalel of Friedberg, *Vikuaḥ mayim ḥayim* (Dispute of the living waters) (Amsterdam, 1712), introduction. §12..ויש מורים זחוחי דעת שרוצים לעשות מדרגות מדרגות בדיני איסור והיתר

[1395] Emden, *Igeret bikoret*, 16a:

Yaveẓ uses a similar adjective derived from *madrega* a few lines down, when he explains that God's wisdom does not keep "the legal division and gradation – *hadraga*" החכמה הא-להית שלא תגדר בשמירת החלוקה המשפטית והדרגה...

[1396] This maxim appears in the Babylonian Talmud (for instance, in tractates *Bava kama* 102a and *Avoda zara* 7a). At the basic level, it expresses the fact that the order in which different *mishnaic* opinions concerning the same issue are quoted is irrelevant. In those cases, it is usually employed to contest a rival talmudic interpretation that is based on the specific order of a succession of *mishnaic* statements. Emden is using this passage in an unexpected manner and employs it to mean that there is no comprehensive, logical order in the way in which the oral law is studied.

source. The apparent lack of order in halakhic texts reflects its divine essence, and, therefore, any attempt to change this order and suggest a better one is, in a sense, a loss of the divine organizational scheme.

Codes such as *Shulḥan Arukh*, while providing an ordered way of collecting halakhic texts, do not pose the greatest threat to Yaveẓ's worldview. As the discussion in chapter one of this dissertation pointed out, *Shulḥan Arukh* is complete and comprehensive, and its imposition of an overall structure requires uniformity of all the sources; however, the code lists the legal conclusions along with references to the sources of the law, thus enabling the scholar to return to the original locations of the halakha in its prior order. As Elhanan Reiner has pointed out, this attribute eventually neutralized the definitive character of the *Shulḥan Arukh*, as it invited new layers of glosses that questioned the legal conclusions by revisiting the sources.[1397] The *Shulḥan Arukh* thus left open the option that it was not the last word on Jewish law, thereby softening its monopoly.

The *Shulḥan Arukh*, likewise, does not pose the greatest threat in its theological implications, as its overall organizational scheme does not suggest an alternative system. The logic driving the succession of laws and topics in the *Shulḥan Arukh* is largely associative and intuitive, but it does not, as a scheme, imply a theological statement about Jewish law. At most, it is a practical configuration of halakha; at worst, for Yaveẓ, it is a shallow and limited work, whose results are similar to interpretations of the law based solely on the required authoritative sources, without including the fuller, richer array of

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[1397] Elhanan Reiner, "The Ashkenazi élite at the beginning of the modern era: Manuscript versus printed text," *Polin* 10 (1997), 97-98.

halakhic texts. In the words of Yaveẓ, the *Shulḥan Arukh* is not a serious threat because it does not list the laws "from the halakhic foundations to their secondary consequences" but simply provides conclusions that are "not organized in a logical progression." The structure is merely functional, reflecting a practical view of halakha as a legal system, and it is clear that the work could have been structured differently.[1398]

Yaveẓ posits a world in which the disorder of halakhic texts does not reflect a lack of intellectual or scholarly resources or an insufficiently methodological approach but, rather, provides the very proof of its divine essence. Having dismissed the *Shulḥan Arukh* to some extent, he has one remaining problem: Maimonides' *Mishne Torah*, the medieval work of Jewish law, which my introductory chapter placed at the very furthest codification-end of the compilation-codification spectrum. *Mishne Torah* does precisely what Yaveẓ describes as impossible and undesirable; it organizes laws at the talmudic textual level of the sources in a manner that is geared towards the final halakhic decision while leaving out any source references. Maimonides thus made it difficult to retrace his steps and critique his conclusion and enabled him to present the organization as self-evident.[1399] Most disturbingly, Maimonides' organization departs radically from the heterogeneous, associative, flexible order of the Talmud: he thus presents an alternative philosophy of

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[1398] Menachem Elon characterizes *Arba Turim* as the "middle way" between the extremely codificatory *Mishne Torah*, on the one hand, and the expansive and inconclusive Talmud, on the other. See Menachem Elon, *Jewish Law: History, Sources, Principles*, trans. Bernard Auerbach and Melvin J. Sykes (Philadelphia: JPS, 1994), 3:1286.

[1399] This critique was aimed at Maimonides' work from its inception. See, for instance, Moshe Halbertal, "Sefer ha-miẓvot la-Rambam: ha-arkhitektura shel ha-halakha ve-ha teoria ha-parshanit shela" (Maimonides' Book of Commandments: The architecture of the halakhah and its theory of interpretation) *Tarbiẓ* 59: 3-4 (1990): 457-480.

halakha, beginning with "the foundation of all foundations and the pillar of all wisdom,"[1400]

the recognition of a monotheistic God, and progressing from there to a system of laws

according to which the code is arranged. As such, *Mishne Torah* is the ideal code. Yaveẓ's

attack on this code, hidden in the parentheses of a responsum (regarding, of all things, a

man missing one testicle) reveals the source of his resistance and a formulation of the value

of disorder in halakha.[1401]

Yaveẓ relates to Maimonides' *Mishne Torah* in an aside that he places in

parentheses. The length of this remark – the passage is almost an entire column long – as

well as its intensity – it includes a section of short and rhetorically very strong rhymed

sentences – however, belies the impression that this is a mere aside. In this remark, Yaveẓ

grudgingly admits that Maimonides has indeed "been wise"[1402] and has somehow

succeeded in composing an organized codification; he uses the ambivalent *"hitḥakhem"*

which is more akin to "outsmarting." Yaveẓ qualifies this even further, bestowing the

halfhearted benediction "may he, too, be blessed" on Maimonides, the words used by Isaac

to add a blessing for Esau after already having given away the genuine birthright to

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[1400] These are the first words of the first law in Maimonides, *Mishne Torah*, *Sefer ha-mada* (Book of knowledge/science): *Hilkhot yesodei ha-Torah* (Laws of the foundations of Torah), §1.

[1401] On Yaveẓ problematic stance towards Maimonides as a rationalist philosopher, including the attempt to claim that Maimonides was not the author of the philosophical work *Guide for the Perplexed* and the historical context of the *Guide*'s surge in popularity in the 18th century, such as the printing of a new edition in 1742 for the first time in almost two centuries, see Jacob J Schacter, *Rabbi Jacob Emden: Life and Major Works* (Ph.D. diss., Harvard University, 1988), 545-570.

On the scientific and medical context of *Igeret bikoret*, see Maoz Kahana, "Ha-mahapekha ha-mada'it ve-kidud mekorot ha-yeda: Refua, halakha, ve-alkhimia, Hamburg-Altona, 1736" (The scientific revolution and the codification of sources of knowledge: Medicine, halakha and alchemy, Hamburg-Altona, 1736) *Tarbiẓ* 22, no. 1 (2014): 165-212.

[1402] Emden, *Igeret bikoret*, 16a:

ואע״פ שהתחכם הרמב״ם ז״ל ...לא שהלכה כן אלא הוראת שעה הצריכה לכך... גם ברוך יהיה לזכר עולם יהיה...ואחריו
לא קם כמוהו לעשות כמעשהו כי נורא הוא ומי יכילנו.

Jacob.[1403] He explains that *Mishne Torah* was written as a *hora'at sha'a*, a temporary

breach of the law that is permitted in a state of emergency.[1404] The success of Maimonides'

project, Yaveẓ explains, is nothing short of a miracle: "it is great and terrible, who can

abide it,"[1405] and nobody after Maimonides, he promises, would ever be capable of

producing anything similar.[1406]

Having explained the truly exceptional and irreproducible nature of Maimonides'

codification, Yaveẓ notes that even this near perfect code had its defects: Maimonides'

structure does not cover every halakhic item perfectly. Yaveẓ points to the *Magid Mishne*

(Rabbi Vidal de Toulouse, ca. 1350), a commentator of *Mishne Torah*, who, in his

introduction to one of Maimonides' chapters, commented on some of the potential pitfalls

of Maimonides' choice of organization. In the beginning of the *Magid Mishne*'s gloss of

Maimonides' laws of the Sabbath, he writes that Maimonides:

> …in his eagerness to preserve the order had to change in some places a few laws
> so that they could be introduced into different issues according to the straight order in
> which his writings were divided and arranged ... and I already saw some who were
> proficient in his books and did not sense this … meaning, that the inquirer would look at a
> law in one place, finding it discussed in an incomplete manner, without its complementary
> parts and was confused by this….[1407]

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[1403] Genesis 27:33. ‏גם ברוך יהיה לזכר עולם יהיה...‏

[1404] Emden, *Igeret bikoret*, 16a:

‏לא שהלכה כן אלא הוראת שעה הצריכה לכך...‏

The permission for such breaches for the sake of protecting the Torah is interpreted from the verse in Psalms 119: 126, ‏עת לעשות לה' הפרו תורתיך‏ - (It is a time to act for the Lord, Your Torah has been destroyed), which is reformulated to mean "It is a time to act for the Lord *by* breaching your Torah," thus permitting problematic breaches in times of emergency, in order to protect religion. Not coincidentally, one of the classic examples of such a permissible temporary breach is also related to textual transmission. It is deployed in the Babylonian Talmud, Tractate *Tmurah* 14b, and it relates to the decision to put the oral Torah down in writing because it was at risk of being forgotten.

[1405] Emden, *Igeret bikoret*, 16a:‏כי נורא הוא ומי יכילנו‏ – alludes to Joel 2: 11, about the day of Judgment: "The day of the Lord is great and terrible; who can endure it." ‏כי גדול יום ה' ונורא מי יכילנו‏

[1406] Emden, *Igeret bikoret*, 16a: ‏ואחריו לא קם כמוהו לעשות כמעשהו...‏

[1407] Vidal de Toulouse, *Magid Mishne* on *Mishne Torah*, ed. Shabtai Frankel (Jerusalem: Keter press, 1975), 2: 3.

Yaveẓ emphasizes *Magid Mishne*'s allusion to the frustration expressed by prominent scholars when they failed to find a certain law in what seemed like its appropriate place, cases where "it was sometimes difficult for some scholars to find their way in his marvelously ordered book."[1408] Yaveẓ regards these blunders and omissions as signs. Apparently, he considers that the unfolding of halakhic textual organization in history and the contingencies of its transmission communicate something essential about Jewish law. He describes these failures as a type of triumph: "It seems that the divine wisdom cunningly brought this about, that she was not to be fenced in, in keeping with the legal division and the gradation, like the works of the other – human – wisdoms, which progress from principle to offshoot, from cause to effect…."[1409]

This rational system, Yaveẓ maintains, is in essence, mismatched with the halakhic sources, which express divine knowledge. His structure holds together two different levels of knowledge – one that contains the rational truth and another, deeper one that contains

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His example is RaShbA (Rabbi Shlomo ben Adret), who criticizes Maimonides for mentioning only the case in which sailing on Shabbat is permitted, without specifying when it is prohibited. The *Magid Mishne* explains that this is untrue, Maimonides did mention the prohibition, but he did so in a separate location in order to keep the organizational scheme intact. This separation led to confusion for RaShbA, and, *Magid Mishne* adds, "there are many more such similar cases."

מהפלגת רבינו בשמירת הסדר היה לשנות בקצת מקומות קצת דיניו להיות לכל אחד מהן מבוא בעניינים חלוקים כפי החלוקה הישרה שנחלקו מאמריו ונסדרו,...וכבר ראיתי למי שהיה בקי בספריו שלא הרגיש בנמשך אחרי זה, רצוני לומר שבהיות לדין אחד מבוא בשני עניינים יבאר רבנו חלק אחד במקומו הראוי לו והחלק השני במקומו האחר, ויעיין המעיין בדין ההוא וימצאהו במקום אחד מבלתי שלמות חלקיו ויתמה על זה.

וכבר נמשך זה אצל הרב הגדול ר' שלמה בן אדרת ז"ל שכתב בספר עבודת הקודש בדין הפלגה בספינה דבר ז"ל: 'ראיתיו כמבריח איסורו שכך כתב בפכ"ד (הל' ו') 'מפליגין לים הגדול לדבר מצוה...' כתב היתר דבר מצוה ולא כתב איסור שלא במקום מצוה והניחו במשמע במכלל היתר במקום מצוה אסור שלא במקום מצוה' עכ"ל. ורבינו כתב דין זה על השלמות, פ"ל (הל' י"ג). וכיוצא בו יש הרבה.

[1408] Emden, *Igeret bikoret*, 16a:
ואעפ"כ הוקשה לכמה גדולים למצוא הדרך בספרו הנפלא בסידורו כמו שהעיד המ"מ בפתיחת הל' שבת כי עמוק עמוק מי ימצאנו.

[1409] Ibid.:
כמדומה שהערימה בזה החכמה הא-להית שלא תגדר בשמירת החלוקה המשפטית והדרגה כחיבור שאר החכמות האנושיות ההולכות מן הקודם אל המאוחר מהסיבה אל המסובב.

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the divine truth. The rational truth is accessible and human – it "lacks any inner meaning different from the exterior one"[1410]; it is homogenous and transparent. Rational knowledge, being fundamentally human, is permeable to the human intellect, which allows it to be organized in a rational manner, "from principle to offshoot, from cause to effect." According to Yaveẓ, Maimonides' organization of halakhic knowledge uprooted these sources from their original order, in which dual levels of meaning could be maintained simultaneously, and it repositioned them according to its shallow exoteric aspects alone.

Divine knowledge, however, can never fully be penetrated. Unlike divine truth, Yaveẓ explains, rational truth "is made of one piece. It does not speak one thing from its mouth while meaning another in its heart."[1411] This expression, which refers to insincerity and  usually has a negative connotation, is mobilized here to praise the multiplicity of meanings that can be contained in divine texts. This divine knowledge, which he alludes to in the feminine, is equivocal and deceptive: "She" may seem quite clear and comprehensive on the surface, but she purposefully veils herself. Beneath the covering, countless levels of secrets lie hidden. The divine truth is, by its very essence, impossible to comprehend in rational terms. As Yaveẓ explains, she hides herself behind a mysterious logic in order to reveal herself only to the chosen ones: "…because her face is covered, and she is concealed from her head to her feet. Her hems are not revealed to those unworthy of her. It is hidden for the righteous…"[1412]

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[1410] Ibid.:

בהיותם משוללים מכוונה אחרת פנימים בלתי הנגלית, היא כסותם לבדה העצמית. כי מעשה ידי אדם הם...

[1411] Emden, *Igeret bikoret*, 16a:

כי מעשה ידי אדם הם. כחומר מקשה הם ולא ידברו אחת בפה ואחת בלב חמדה גנוזה. משא דבר ה׳ הוא אשר חזה.

[1412] Ibid:

Maimonides came close to subverting this inner anti-logic by organizing the Torah's laws in a manner that, against all odds, managed to emerge as surprisingly complete and comprehensive. Yaveẓ sees this organizational enterprise as defeating the essence of the Torah. Although he praises Maimonides for taking this necessary task upon himself because of an urgent situation and succeeding, he regards *Mishne Torah* as a deeply problematic project. These parenthetical remarks continue, seguing seamlessly from his critique of Maimonides to a more general discussion of natural versus divine knowledge. Although human knowledge has a purpose when it comes to the study of natural phenomena, those who study nature merely scratch the surface of the appearances of empirical evidence.

> ... she [reason, embodied by the treacherous woman] has overstepped the bounds. Seething, she will step venomously and walk. An overly big step with a haughty air, she goes naked and barefoot, floating above the waters of inquiry, touching the accidental but not the essence and core of the thing. Therefore, the inquirer will eat the bread of his intellect with the sweat of his brow. Because he will not fulfill his needs. And if he speaks of secret and hidden issues all day, do not pay any attention to his words.[1413]

What started out as subtle criticism of Maimonides' choice of a logical order for *Mishne Torah* led Yaveẓ into a direct attack on rational thought as a sufficient tool for comprehending the world. He who relies on his own reason to process the gleanings of knowledge is doomed to "eat the bread of his intellect with the sweat of his brow," just like man, who was expelled from paradise, where the tree of divine knowledge grew, into a mundane existence. Beyond attacking those who have excessive confidence in the human

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כי כסתה פניה והסתירה מראשה עד רגליה לא נגלו שוליה. לבלתי ראוים אליה. יצפון לישרים תושיע לרוב הודיע למבקשיה ככסף וכמטמונים. להנחיל אוהביו יש ואוצרותיהם ימלא עשרות מונים. לא עשה כן לכל גוי...

[1413] Ibid.: ויחף ערום הלוך (?יהירה) יתיר' ברוח גסה פסיעה ותפסיעה. ארש תצעד בזעם גבולה עברה מדי תפשני אז מרחף על פני מי החקירה נוגע במקרים ואינו נוגע בעצם הדבר ומהותו. על כן יאכל החוקר לחם תבונתו בזעם אפו. שלא מילא קוצר כפו. ואם כל היום דבר כמו"ס וסו"ד ירבה. אל תשמע ואל תאבה.

intellect, his strongest criticism is reserved for those who maintain that halakha – divine knowledge itself – can be entirely penetrated by means of rational inquiry.

Yaveẓ applies the same manner of thinking about the world and its phenomena to halakhic texts: The lack of apparent structure in the order of halakhic texts is, in fact, essential to its esoteric layers stemming from its divine nature, which, by virtue of its essence, cannot be structured fully by human logic. For this reason, halakhic texts must be studied in their own (irrational) order. Reordering these sources places one at risk of losing the truth contained within. Consequently, Maimonides' project, which comes close to proving that halakha can be codified successfully, was so threatening to him. Divine wisdom, however, managed, cunningly, to resist codification. The Torah, Yaveẓ maintains, defies any rational systematization, preserving its secrets for those who truly love her. He emphasizes this using the phrase "The secret of God [belongs/goes] to those who fear Him."[1414] This verse from Psalms appears in a famous midrash which is about halakha, transmission, and concealment versus – what else? – textuality:

> Rabbi Judah ben Pazi said... "Write for you these things,"[1415] this is the Written Torah, "For according to (lit. "on the *mouth*") of these things,"[1416] this is the translation that was given orally. [...] Rabbi Judah bar Shalom said: Moses asked that the Mishna, too, should be in writing, and God foresaw that, in the future, the gentiles will translate the Bible and read it in Greek and they will say "we are [them of] Israel," so God said to him "I will write him [only] the majority of my Torah and if so, they will be seen as strangers."[1417] And to this extent, why? Because the *Mishna* is the mystery of God, and God only transmits his mysteries to the righteous men, as it says "The secret of God to those who fear Him"[1418]

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[1414] Psalms 25:14, סוד ה׳ ליריאו

[1415] Exodus 34: 27.

[1416] Exodus 34: 27.

[1417] Hosea 8: 12.

[1418] *Midrash tanḥuma*, Vayera §5:

א"ר יהודה בן פזי... שנאמר כתב לך את הדברים האלה הרי התורה שנתנה בכתב כי ע"פ הדברים האלה הרי תרגום שנתן על פה... א"ר יהודה בר שלום בקש משה שתהא המשנה אף היא בכתב, וצפה הקב"ה שאומות עתידין לתרגם את התורה ולהיות

In this sense, Yaveẓ can be considered to represent the remnants of an older, ashkenazic, approach to Jewish law, an approach that maintained that "all the holy books need one another" and that viewed codification as inherently opposed to the very divine aspects of halakha: "For the paths of Torah are meandering ones," and these meanderings, these traces of disorder, outwitting even the treatment of the best of codifiers, was the proof of its transcendent origins.

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קוראין אותה יונית והן אומרין אנו הן של ישראל, א"ל הקב"ה למשה אכתב לו רובי תורתי וא"כ כמו זר נחשבו וכ"כ למה מפני
שהמשנה היא מסטורין של הקב"ה ואין הקב"ה מוסר מסטורין שלו אלא לצדיקים שנאמר סוד ה׳ ליראיו

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### NOTES ON TRANSLITERATION AND TRANSLATION

Generally, transliteration follows the *Academia le-Lashon* with some adaptations to *Common Israeli Hebrew* for the sake of simplicity and clarity. The letters צ, ח, כ are replaced by ẓ, ḥ, and kh respectively. Double consonants are not transliterated, nor is the *shva na*. An apostrophe is used to separate vowels when necessary, and before an ע if needed. When quoting sources that use transliteration themselves, the words are quoted as transliterated in the sources being cited in the quote. Hebrew words that have an accepted common spelling, such as words that correspond to European place-names, for instance Bacharach, or Mintz, Hillel, Sabbath, kabbalah, remain as they are commonly spelled. When providing bibliographic information, the names of Israeli scholars are spelled in English as they themselves transliterate it, when available. All translations are mine unless noted otherwise.

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