

It was this lack of uniformity in the law, caused not only by differences of opinion as to the substance of the law but also by considerations of where halakhic authorities were born and studied, that motivated Maharshal to undertake the composition of a book of *halakhot*, which he called *Yam Shel Shelomo* [The Sea of Solomon], and which in scope and size is one of the largest books of *halakhot* ever written. Maharshal described his methodology as follows:⁶⁰

I decided to follow the course of wisdom and search out the roots of every subject, and, "by the Temple service" [this is a form of oath], I sometimes had to spend an entire week racking my brains until I discovered the root of a matter. Only then did I write it in the book. The following is my method: I include all the opinions—early, intermediate, and recent—codifiers, authors, and customs, law by law, authors of responsa, writers of epistles[?], collections and anthologies—so that no litigant will be able to argue: "Look how this author's laws and rulings have been written on the basis of his own imagination and doubtful proofs. If he had seen the book or the responsum of such-and-such a rabbi, he would never have dared to disagree and would most certainly have changed his mind."

Maharshal was not the first to set forth the various opinions on each legal issue; his independent spirit and originality manifested themselves in the manner in which he decided between the variant opinions. He showed no favor even to the greatest halakhic authorities; he investigated and examined every subject and decided solely according to his own conclusions based upon the Talmudic sources:

I was therefore unyielding and said about them [the authorities he cited]: "They are all superior beings, but they will be examined as men" [cf. Psalms 82:6–7]. Therefore, I did not rely on any single author above his colleagues, even though whoever studies them thoroughly can discern great differences in quality between them; for, in any event, it is the Talmud that is determinative and supplies the proofs to justify an opinion. Occasionally, an author will state the legal rule correctly, but not for the right reasons. . . .

Consequently, I closely examined and investigated, over and over again, every source and legal decision, with great effort and study (and little sleep), often consulting with my colleagues and especially my students. The reader will find in this book the origin of the law with clear proofs and will surely realize and understand that I did not neglect to study any author before I reached my conclusion.⁶¹

60. *Yam Shel Shelomo*, Hullin, First Introduction. The same passage in a somewhat briefer form appears in *Yam Shel Shelomo*, Bava Kamma, Introduction.

61. See also the passage preceding that quoted in the text:

I was not partial to any of them. . . . Since God has favored me and I have everything

which followed a majority of the three great codifiers (Alfasi, Maimonides, and Asheri)—a point that is addressed again below. Maharshah's methodology also differed from that of Rema, his contemporary and fellow countryman. Maharshah did not apply to the post-Talmudic period the rule that "the law is in accordance with the views of the later authorities"; his purpose in citing the opinions of prior authorities was not to rule according to the latest one, as did Rema, but to ensure that no one would be able to claim that he (Maharshah) was unaware of a particular opinion and that if he had known it, he would have followed it.

Using this method, Maharshah composed *Yam Shel Shelomo* on six tractates of the Talmud: *Bava Kamma*, *Bezah*, *Gittin*, *Yevamot*, *Kiddushin*, and *Ketubbot*.⁶³ His organization, unlike that of the *Mishneh Torah* and the *Turim*, was not topical, but followed the sequence of the Talmud. He adduced all the relevant material on each subject and determined the law according to his understanding of the Talmudic discussion. His treatment of each Talmud chapter is divided into sections (*simanim*), each preceded by a brief summary. Although the arrangement of the material according to the Talmudic sequence makes it extremely difficult to find any particular subject in the book,⁶⁴ he chose it to emphasize his reliance on the Talmud.

When Maharshah reached Tractate *Hullin*, he realized that if he continued with his method he would never succeed in completing his work on all the Talmudic tractates, and that no reader could assimilate the huge amount of material the work would contain.⁶⁵ He therefore decided to nar-

63. Only four chapters of *Yam Shel Shelomo* to *Ketubbot* have been printed. See the apology of the printer following these chapters. See also *infra* n. 67.

64. In order to locate a particular law in *Yam Shel Shelomo*, one must first know where the law is dealt with in the Talmud. Even then, it is not always initially obvious which Talmudic passage was selected as the locus of discussion of a particular subject. For example, *Yam Shel Shelomo*, *Bava Kamma*, ch. 8, #59, apropos of the discussion in the Talmud as to whether a person may intentionally wound himself, discusses at length the question whether a person may commit suicide rather than submit to forced apostasy. This is really a question of the law of martyrdom, which in the *Turim* is discussed in YD ch. 157 (and is also referred to in *Bedek ha-Bayit*, *ad loc.*). Similarly, *Yam Shel Shelomo*, *Hullin*, ch. 8, #14–42, discusses the laws of ritual washing of hands, which is treated in *Tur* Oḥ chs. 158 *et seq.* In some tractates—*Bezah*, *Yevamot*, and *Hullin*—there is an index of the laws, but nevertheless it is difficult and tedious to locate laws in *Yam Shel Shelomo*.

65. As to this, Maharshah wrote (*Yam Shel Shelomo*, *Hullin*, Second Introduction):

And now I am not ashamed to admit that I had not really understood what that wise man [King Solomon] meant when he said: "To the making of books there is no end" [Ecclesiastes 12:12]. His warning is plain. He was reproofing those authors who want to solve all problems conclusively by means of elaborate proofs designed to make their opinions as impregnable as a wall of iron. It is indeed endless, and exhausting as well! [This is true] especially to a person like myself, who felt constrained to quote all the opinions, so that the commentary I wrote to Tractate *Bava Kamma* alone is as long as a whole book of one of the other authors. Then I started my commentary to Tractate *Yevamot*, and in two years I completed only one-half of the tractate. It took an entire

row its scope by discussing a subject in detail only where there was a particular need, such as when "confusion had developed concerning the matter." However, his methodology for determining the law did not change: he continued to rule on the basis of proofs from the Talmud, except that he was now content with only "a brief [exposition of the] proof."⁶⁶

After Maharshah had decided to narrow the scope of the rest of his work—he had intended to cover all the tractates of the Talmud, even those in the Orders of *Kodashim* and *Tohorot*, although their laws had not been applicable since the time of the Second Temple⁶⁷—a copy of Caro's *Bet Yosef* reached him. Maharshah's opinion of *Bet Yosef* was that in regard to scope, it "left virtually no room for significant improvement,"⁶⁸ but that its contents and methodology were deficient in three respects.

First, Caro "had made compromises in his rulings subjectively and arbitrarily [*mi-sevarat ha-keres*, lit. "by gut reasoning"] mostly in matters of *issur* . . . ; he made a compromise in regard to the three great authorities—Alfasi, Asheri, and Maimonides—by following any two of them when they agreed, and he paid no attention to all the other great authorities, as though he possessed the tradition from the days of the Elders."⁶⁹

Thus, as already mentioned, Maharshah sharply opposed Caro's method of determining the law. Maharshah used the term "compromises" (*pesharot*, thenceforth adopted by many of Caro's opponents), because Caro did not seek out the truth by analytical study, but took the easy and perhaps more efficient way, notwithstanding that the conclusions to which it leads may be erroneous. Such "compromising," in Maharshah's words, was based on "gut reasoning"—an arbitrary numerical formula for determining the law according to any two of his "three pillars of instruction," leaving out of account "all the other great authorities." Maharshah also emphasized that

year's labor to finish the first two chapters of Tractate *Ketubbot* and I worked on [Tractate *Yevamot*,] chapter "Mizvat Halizah" for more than six months. I warned myself, "You will surely wear yourself out" [Exodus 18:18], and the reader as well. How long will you labor and be able to bear this great burden? It is impossible to bear the burden or to consummate the project for either of two reasons: either there will not be enough time to complete the whole work or, because of its length, the readers will become weary, the eyes of the scholars will glaze over it, and its weight will be beyond carrying because of its great length."

66. *Id.*

67. *Id.* In addition to the tractates listed *supra*, *Yam Shel Shelomo*, *Hullin* is also extant, making a total of only seven tractates. According to Maharshah's student, Eleazar Altshul (see the title page of *Yam Shel Shelomo*, Bava Kamma, ed. Prague, 1616), Maharshah completed his commentary on sixteen tractates.

68. *Yam Shel Shelomo*, *Hullin*, Second Introduction (near the end). This was the same reaction to *Bet Yosef* expressed by Rema in connection with his *Darkhei Moshe*. See *supra* p. 1351.

69. *Yam Shel Shelomo*, *Hullin*, Second Introduction (near the end).

not [be so presumptuous as to] stand in the place of great men."⁹⁴ Since Jaffe's teachers had anticipated him in all that he had proposed to do in the field of *Halakhah*, he turned to writing books of Bible commentary, philosophy, *Kabbalah*, and astronomy.⁹⁵

With the growing popularity of the *Shulhan Arukh* as well as Rema's glosses, Jaffe turned to the *Levushim* once again. He concluded that "the time has come for me to return to my original project, because my teachers have yet left me room to make a significant contribution of my own."⁹⁶ He felt that the two aspects of the *Shulhan Arukh* that he had originally planned to correct still required correction despite Rema's glosses. First, Jaffe believed that Caro and Rema "had merely written chapter headings and cryptic rulings without any rationale, as though [all those laws] had been given to Moses at Sinai without any explanation. This [type of exposition] is adequate only for themselves and others of their [intellectual] stature."⁹⁷ In Jaffe's opinion, this extreme brevity raised three concerns:

They [Caro and Rema] have set their table with all kinds of delicacies, but the dishes are tasteless without salt. When the wise eat them, each dish will have the taste that is familiar to them; but how will tasteless food without salt taste to us, the poor [i.e., the unlearned]? Laws can no more be set forth without reasoning than food can be [served] without salt. Furthermore, when a law is accompanied by its rationale, it will be remembered more correctly . . . and we will also be able to analogize to it all similar future cases.⁹⁸

Jaffe's first concern on account of the brevity of the *Shulhan Arukh* was that, because a code is meant to be studied, it is extremely important that the rationale of each law be stated, so that the *Halakhah* will be more interesting and absorbing. Second, Jaffe believed, studying the underlying reasons as well as the laws themselves is essential to ensure that the laws will be fully understood. Third, Jaffe felt that it was necessary to provide the rationale of the laws in order to enable them to be used by way of analogy to solve new problems.⁹⁹

94. *Id.*

95. *Id.*, p. 3, cols. 3–4.

96. *Id.*, p. 3, col. 4.

97. *Id.*

98. *Id.*

99. See also *id.*, p. 4, col. 1:

When I saw that the above-mentioned authorities, of blessed memory, put only the delicacies on their table but held back the salt (which must be sprinkled on each sacrificial offering, and which heats up the food and warms the man), and have concealed it under their tongues [see Job 20:12] so that it is still hidden within them and others of their talents, I decided that the wool of my lamb will warm me and others like me from the outside.

The second aspect of the *Shulhan Arukh* with Rema's glosses that Jaffe felt still required correction was:

They have left out of their *Shulhan Arukh* many laws contained in Rabbenu Jacob's *Turim* and in Caro's longer work, *Bet Yosef*. Perhaps this was because they considered them elementary, but I do not think that that is sufficient reason for omitting them. Certainly, if one reads their books [the *Shulhan Arukh* and Rema's glosses] without reading the *Turim* or *Bet Yosef*, those [omitted] laws will in the course of time seem strange to him—he will be unfamiliar with them and will know nothing about them.¹⁰⁰

Mordecai Jaffe therefore returned to his original plan of writing a book in accordance with the following guidelines:

To write every law comprehensively and not to leave out anything that they [Caro and Rema] left out, and to complete [the laws], with the help of God, in all their details and with their reasons, as I had begun to do.¹⁰¹

Jaffe's examination of Caro's codificatory work also led him to the conclusion that dividing the code into two separate books—one lengthy and exceedingly detailed (*Bet Yosef*), and the other overly terse and cryptic (the *Shulhan Arukh*)—prevents the code from achieving its purpose. It is burdensome to use the detailed book and not helpful to use the shorter volume. The correct approach to codification was the middle way:

My book will be like the mean between two extremes. One extreme is the great work of . . . [Caro], of blessed memory, which he wrote on the *Turim*, and which is extremely lengthy. The other extreme is the *Shulhan Arukh* of the two aforementioned masters, of blessed memory [Caro and Rema], which is very brief. My book will take the middle way between them: it will explain at length where there is a need for explanation; and it will be brief when brevity is appropriate, in order to make available to every reader a concise statement of all the reasons for the laws.¹⁰²

Jaffe stressed that his work, which was intended to facilitate the study and knowledge of the *Halakhah*, would be useful to two types of readers. For those proficient in the *Halakhah* and familiar with its sources, the book would lighten "the burden of examining [the sources] continuously,"¹⁰³ and for beginners the book would be of exceedingly great value:

100. *Sefer Levush Malkhut bi-Khelalo*, Introduction, p. 3, col. 4.

101. *Id.*

102. *Id.*

103. *Id.*, p. 4, col. 1:

And you, my learned colleague, who can study the sources, do not complain against me, saying, "How have you benefited me?" I have greatly benefited you too . . . for I

errors in determining the law, thereby facilitating the analogical use of existing law to solve new problems; and (2) to offer a convenient and correct method for the study of the *Halakhah*. In his Introduction, Jaffe described himself as "a tailor" who had undertaken the task of "sewing";¹¹³ and, indeed, he succeeded in sewing a splendid royal robe for the halakhic system. For each law, his work presents very briefly and succinctly the reason, the Biblical source, and several apposite Talmudic *dicta*; and it also cites and explains opposing views.

Jaffe's work was widely distributed, even during his lifetime. As Jaffe himself wrote:

I received a letter that the scholars of Jerusalem (may it be speedily rebuilt and re-established) join eagerly in regular study of my book, the *Levushim*, each day after the morning service when they leave the synagogue, so that they will be readily conversant with God's Torah.¹¹⁴

113. See *id.* (the beginning of the Introduction, "The tailor says . . ."); see also *Sefer Levush Malkhut bi-Khelalo*, after the Introduction, for Jaffe's remarks concerning the glosses to *Levush ha-Tekhelet* and *Levush ha-Hur* (which originated in a treatise by Joseph ha-Lavan who inquired of Jaffe regarding it, see *id.*), which also begin with the formula "The tailor says. . . ." Jaffe goes on to refer to "the reason why I sewed these ten royal robes."

114. This statement appears at the end of *Levush ha-Tekhelet* and *Levush ha-Hur* after the list of thirty-six customs. In a subsequent passage, Jaffe requested the various communities to set up a daily class to study the *Levushim* after the morning prayers; and he concluded: "These are the words of the one who beseeches, firm in his love of those who study God's Torah and are God-fearing. . . . This day, Friday, the 33rd day of the Omer [5]369 A.M." (= 1609 C.E.; the date is given in the form of the numerical value of the Hebrew letters of the name Mordecai Jaffe). The statement appears in *Levush Malkhut*, ed. Prague, 1609, which was published in the author's lifetime (as is indicated by the title page), but the statement was apparently omitted in all subsequent editions of the *Levushim*. The statement also appears in the Introduction to *Hagurat Shemu'el*, a commentary on the *Levushim* by Samuel b. Azriel of Lenzberg, in the following form:

When the *Levushim* was printed, the scholars of Jerusalem made of it, within the lifetime of the author, belts for their garments with which they strongly girded themselves, joining together for regular study of his book the *Levushim* each day before they leave the synagogue, as the distinguished author himself wrote at the end of *Levush ha-Tekhelet ve-ha-Hur*.

David b. Judah, in the Introduction to his book *Migdal David*, commented (ed. Prague, 1616, p. 2a/b):

Many of those who study the *Levushim* determine the law in accordance with the conclusions of its eminent author because he states the rationale [for those conclusions]. I have also frequently heard many attribute this practice [of following the *Levushim*] to the fact that the author of the *Levushim* lived after our master, Rabbi Joseph Caro, and Rabbi Moses Isserles [Rema], and since he is the later authority, his rulings supersede theirs.

David b. Judah went on to criticize the *Levushim* and asserted that the law should not follow Jaffe's rulings but those of Rema (see *infra* n. 161 for the full quotation). However, his comments provide additional important evidence of the great influence of the *Levushim* in his time (David b. Judah was an older contemporary of Isaiah Horowitz) and of the fact that

כי הוא גמר את חבורו זה בהיותו בן כ"ד שנים, וכבר קודם החבור הזה הכין לו את החומר בספרו „הארוך“. אך ההוגה בספרו והשוחה בים בקיאותו הנפלאה יכול להאמין לו מה שהוא אומר בהקדמתו: „כי מי שלא היה אתי במחיצתי לא יאומן כי יסופר לו מגודל התלאה, שהיתה עלי בחפוש בים התלמוד והפוסקים עד כי העמדתי הכל על בוריו וחזרתי על צדדים וצדי צדדים לא פעם אחת ושתיים אלא מאה פעמים ואחד וכמה יגיעות יגעתי לא עסקתי בשום עסק אחר לא נתתי שינה לעיני ולעפעפי תנומה שנים רבות עד אשר הוצאתי מכח אל הפועל את מחשבתי ובררתי ושקלתי הכל בכף מאזנים“ עכ"ל.

ד.

הש"ך יצא לאור בה בשנה שיצא לאור ספר הט"ז. כשבא הט"ז ליד הש"ך ראה בו בעל דבבא גדול כי בדברים רבים הקדימו ובדברים רבים הוא מתנגד לדעתו, והרגיש, כי בודאי צריך הוא להיות נדחה מפני הט"ז, כי הט"ז היה זקן ויושב בישיבה ומפורסם לבעל הוראה גדול ותלמידיו הרבים יפיצו את ספרו בעולם, והוא צעיר לימים, אשר טרם יצא לו שם על פני חוצות, וחשש שמא יאבד ספרו מתוך הקהל, כאשר קרה לספרים אחרים ממין זה (כן קרה לספר נחלת צבי על או"ח שנתחבר בשעה זו, שיצאו עליו עוררין מיד דלאו בר סמכא הוא וגם אמרו כי רוב דבריו הם גנובים מחדושי אביו, וכן אירע אח"כ גם לס' עולת תמיד על שו"ע או"ח שנדחה מפני השגות בעל מגן אברהם שנדפס עמו בפרק אחד כפי שנדבר עליו להלן). כשראה הש"ך זאת, מיד עמד וחיבר עליו ספר השגות בשם „נקודות הכסף“. בספרו זה הוא מבקר אחרי הט"ז כמעט בכל הלכה ובפרט במקום שהוא מחולק

מכונה דינים מחודשים אשר לא שזפתם עין מעולם, וברוב חריפתו ובקיאותו בים התלמוד והפוסקים צלל במים אדירים והעלה בידו מרגניתא דלית ביה טימי, השגות נכבדות וחמודות, אגודות אגודות ודינים וכללים מכללים שונים יקרים מפנינים ואדרכמונים, לא הניח מלפלפל ומלדקדק בכל החורים וסדקים, חכו ממתקים דברים עתיקים שבעתים מזוקקים. ובכן אמרתי בלי ספק החבור הנ"ל ימצא חן בעיני אלקים ואדם, ובשגם כי ראה ראיתי ופה אל פה עמו דברתי כאשר היה פה אתי במחיצתי ובקנקנו תהיתי וקנקן חדש מלא ישן מצאתי ומפני ישן חדש הוציא חדושים הכבושים תחת לשונו, תורת אמת בפיהו, סמוכים לעד עשויים באמת וביושר במתון ומסיק, ועל כן הסכמתי עמו להדפיסו לזכות את הרבים ולרוחת צמאונם בחבורו זה אשר געשה בלי ספק לשם שמים ולא לשום כוונה אחרת חס ושלום, ועשות ספרים כמותו ירבו בישראל עד כי יבא לציון גואל. כ"ד המדבר באמת וצדק לכבוד התורה נאום הטרוד יושיע העשיל בלא"א הגאון מו"ה יעקב וצללה"ה.

