

Michael Tilly/Burton L. Visotzky (Eds.)

# Judaism II

Literature



**Kohlhammer**

## **Die Religionen der Menschheit**

Begründet von  
Christel Matthias Schröder

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Peter Antes, Manfred Hutter, Jörg Rüpke und Bettina Schmidt

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Burton L. Visotzky/Michael Tilly (Eds.)

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# Medieval Commentary, Responsa, and Codes Literature\*

Jonathan S. Milgram

## 1 Introduction

For Jewish history, the medieval period extended from the middle of the 7<sup>th</sup> century CE, with the Muslim conquest, to the middle of the seventeenth century, with the demise of the Sabbatean messianic movement.<sup>1</sup> The period covered in this chapter, highlighting the primary works of three separate, but interrelated, genres of medieval legal literature—commentary, responsa, and codes—stretches from approximately the middle of the 8<sup>th</sup> century to the late 16<sup>th</sup> century. That is, from the appearance of the first work of rabbinic literature composed after the Babylonian Talmud (hereafter, Talmud), the *She'iltot* attributed to R. Achai of Shabcha (mid-eighth century), to the publication of what became the universal code of Jewish law, R. Joseph Caro's *Shulchan 'Aruch* (1565).

Commentary consisted of running interpretations to rabbinic texts—almost exclusively the Talmud (however, see below regarding Mishnah). Responsa (sing., responsum) were written queries posed to a rabbinic authority and the decisor's ruling for the application of practical law. Codes were legal compendia listing laws in the abstract, derived from discussions (*sugyot*) in the Talmud, local custom, and legal precedent. However, at times, individual works stretch the limits of a specific genre. A line-by-line commentary to a talmudic text may feature an abstract legal conclusion resulting from the talmudic discourse, as typically would a code. In the midst of analyzing a practical query, the author of a responsum may engage in an aside commenting directly on a talmudic text, as would the author of a commentary. Finally, embedded in a code's presentation of laws is the writer's implied interpretation of the talmudic source, bridging code and commentary. Despite the, sometimes unavoidable overlap, the distinctions between genres will prove useful for our presentation. The most detailed descriptions below relate to talmudic commentary for an important reason. Invariably, how a medieval scholar interprets the

\* I thank Yonatan Brafman, Gregg Stern, Burton Visotzky, and Barry Wimpfheimer for reading a draft of this essay, and Neil Danzig for discussing the complex issues involved in writing this chapter. I am especially indebted to Pinchas Roth for his comments and corrections.

1 Haim H. Ben-Sasson, »The Middle Ages,« in idem, ed., *A History of the Jewish People*, Cambridge, 1976, 385.

Talmud affects the content of the other two genres. In responsa, the medieval rabbi adapts talmudic law to lived reality; in codes, the author categorizes talmudic law.

The three genres, produced in lands as far flung as northern France and Egypt over a period spanning almost a millennium, are summarized here. The volume of representative works led this author to make difficult decisions about the inclusion and exclusion of specific compositions. This chapter only provides a glimpse, therefore, of each genre, the related people, periods, and places. Due to limitations of space and in order to link all of the materials under discussion, the decision was made to feature, almost exclusively, the medieval compositions that proved most influential to the author of *Shulchan 'Aruch*, R. Joseph Caro, and his preeminent glossator, R. Moses Isserles, as well as the classic work that received such dedicated treatment by them both, R. Jacob ben Asher's, *Arba'ah Turim*. And, certainly, the decision to highlight the works leading up to *Shulchan 'Aruch* is sound on historical grounds since Caro's achievement set the Jewish legal agenda for the next half-millennium. These include works from geonic Babylonia (6<sup>th</sup>-11<sup>th</sup> centuries CE) and, for the period of the Rishonim (10<sup>th</sup>-14<sup>th</sup> centuries CE), Muslim Spain and North Africa, northern Europe (France and Germany), and Christian Spain. The inevitable outcome was the silencing of voices, such as that of the Karaites who, having rejected classical Jewish law, did not play a role in its developing medieval narrative.<sup>2</sup> Even the literary and legal expression of faithful rabbinic Jews whose works did not fit into the chronicles and chronology of specific legal developments—scholars from Italy, England, Provence, and Byzantium—were excluded. Finally, the significant critics and critiques of Caro's project of codification, both in his time and in the centuries following, could not be addressed.<sup>3</sup>

For the centers mentioned, the primary objective of this essay is the identification of characteristics that distinguish the scholars of one land and period from the scholars of other lands and periods. Issues such as which scholars preferred to write running commentaries, how different sages dealt with the problem of conflicting legal material in the Talmud, and why some codes were authored in Aramaic and handled only practical law, while others were written in Hebrew and addressed all areas of (even inoperable) law, are among our topics. The attempt is made to highlight the relationships of scholars to one another and for the most well-known scholars, limited biographical details accompany the first mention of their names. Many of the scholars are known by Hebrew acronyms. The full name and acronym for each scholar is given at the first occurrence; thereafter, only the acronym is usually used (e.g. Rashi). The abbreviation »R.« preceding a name stands for »Rabbi.« Throughout, bibliographic references to editions of works are provided.

Talmud  
Responsa

Shulchan 'Aruch  
Caro, Joseph  
Moses Isserles (Rama)  
Jacob ben Asher  
Arba'ah Turim

Gaon/Geonim  
Babylonia  
Rishon/Rishonim

Karaism

Commentaries  
Talmud

Shlomo Yitzchaki  
(Rashi)

2 Michael Corinaldi, »Karaite Halakhah,« in *An Introduction to the History and Sources of Jewish Law*, ed. Neil S. Hecht et al., Oxford, 2002, 251–70. See the section on Karaite literature by Marzena Zawadowska in this volume.

3 Edward Fram, »Jewish Law from the Shulhan Arukh to the Enlightenment,« in Hecht, *Introduction*, 360–77.

Sherira Gaon  
Jacob ben Nissim ibn  
Shahin  
Gaon/Geonim  
Abraham ibn Daud  
Sefer Ha-qabbalah

Medieval Jewish lore attempted to produce (at least) two histories of the tradition.<sup>4</sup> The first is the Epistle of R. Sherira Gaon (986/987 CE), a responsum to R. Jacob ben Nissim ibn Shahin of Kairouan's questions on the development of talmudic literature and the order of generations of sages until the Geonim.<sup>5</sup> The second is the Andalusian Abraham Ibn Daud's twelfth century work, *Sefer Ha-qabbalah* (The Book of Tradition), containing the legend of ›The Four Captives.‹ This ›origin myth‹ records the capture of four great early medieval scholars, redeemed by communities which they each later led, and the subsequent succession of the rabbinate in those centers.<sup>6</sup>

Cairo Genizah

The field of medieval Jewish studies was transformed by the discovery of the Cairo Genizah in the late nineteenth century.<sup>7</sup> The repository of the Ben Ezra Synagogue in Fustat, Old Cairo, was filled with hundreds of thousands of leaves of Jewish texts relevant to almost every sub-field of Jewish Studies, from the Bible until the nineteenth century. Certainly, the study of medieval codes, commentary, and responsa is all the richer due to the treasures discovered, as the bulk of the material dates from the tenth to the thirteenth centuries. Mention of the significance of texts found in the Cairo Genizah is made when relevant.

Commentaries  
Responsa

## 2 The Geonim

Gaon/Geonim

The Geonim functioned in Babylonia, roughly corresponding to modern day Iraq, from the middle of the 6<sup>th</sup> century CE until 1038 CE, coinciding with the death of the Gaon Hai ben Sherira. The two main academies (*yeshivot*; sing., *yeshivah*) in Geonic Babylonia, Sura and Pumbeditha, were each led by an academy head, or Gaon (singular for ›Geonim‹). In his Epistle, Rav Sherira Gaon made the case for the talmudic origins of the academies.<sup>8</sup> According to his account, Sura was founded by Rav (d. 246/247) after leaving Palestine for Babylonia in 218/219 CE; Pumbeditha was founded in 258/259 by the students of Rav's colleague, Shmuel (d. 253/254), after the destruction of Nehardea, the location of Shmuel's academy during his lifetime. While the historicity of this claim has been a matter of scholarly debate,

Hai ben Sherira (Hai  
Gaon)  
Yeshivah/Yeshivot  
Sura  
Sherira Gaon  
Pumbeditha  
R. Shmuel  
Nehardea

4 Two are cited below when relevant. A third is *Seder Tannaim ve-Amoraim*, ed. K. Kahan, Frankfurt-am-Main, 1935; and a fourth, Menachem Hameiri's, *Seder Hakkabalah* published as *History of the Oral Law and Early Rabbinic Scholarship by Rabbi Menahem ha-Meiri*, ed. Shlomo Z. Havlin, Jerusalem/Cleveland, 1992 (Hebrew).

5 Benjamin M. Lewin, *The Epistle of Rav Sherira Gaon*, Haifa, 1921 (Hebrew); for English, see *The Iggeres of Rav Sherira Gaon*, ed. Nosson D. Rabinowich, Jerusalem, 1988. On the epistle see Robert Brody, *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture*, New Haven/CT, 1998, 20–25.

6 Gerson Cohen, *The Book of Tradition*, Philadelphia/PA, 1967, 64–90.

7 For an overview, see Robert Brody, ›The Cairo Genizah,‹ in *Hebrew Manuscripts: A Treasured Legacy*, ed. Binyamin Richler, Jerusalem/Cleveland, 1990, 112–33.

8 See Brody, *Geonim*, passim, and the section on geonic literature by Burton L. Visotzky in this volume.

the assertion, in and of itself, is of singular significance: the Geonim saw themselves as a link in a long and unbroken chain of oral tradition stretching back to talmudic times and even beyond, ultimately to the original revelation at Mt. Sinai.

The primary focus in the academies was oral study and transmission of the Talmud. The Gaon served as instructor, administrator of legal affairs for his jurisdiction of Jews, court judge, and author or editor of the works discussed below.

Talmud  
Gaon/Geonim

## 2.1 Commentary of the Geonim

For the most part, early Geonim did not author running commentaries to talmudic texts. The few exceptions are restricted to commentaries embedded in responsa-type works, the Gaon giving a running commentary to a text at the request of the questioner (see below). Further notable exceptions include the Mishnah commentaries attributed to Sa'adia Gaon (d. 942) and a commentary to Mishnah Toharot attributed to Hai and other Geonim. A shift in writing commentaries took place in the later Geonic period, in Pumbeditha, where Sherira and his son Hai wrote commentaries to select tractates of the Talmud: Berakhot, Shabbat, Hagigah and Baba Batra (chapter 1–3).<sup>9</sup> These were written primarily in Hebrew and passages presenting little or no difficulty were not commented on. The style reflects concern for the bottom-line legal outcome of the talmudic discussion, a trademark of the limited Geonic talmudic exegesis extant, and the commentaries known from Muslim Spain (see below).

Gaon/Geonim  
Commentaries  
Responsa  
Mishnah  
Sa'adia Gaon  
Hai ben Sherira (Hai  
Gaon)  
Pumbeditha  
Sherira Gaon

Exegesis

## 2.2 Responsa Literature of the Geonim

The responsa literature (*She'elot uteshuvot*; literally, »questions and answers«) represents the most important historical source for the period. Writing responsa was the primary way that the Geonim kept up ties with, and exerted influence on, the Jewish world.<sup>10</sup> The Muslim conquest (beginning in the seventh century CE) made Babylonia an important center for the Islamic empire—the sovereignty of which stretched from Spain and North Africa in the west and reached almost to India in the east—and brought most of world Jewry under one single political authority and cultural dominion. Trade routes enabled questions to be sent somewhat systematically—even if with great difficulty—from one end of the empire to the other and back. The responsa were mostly authored in a mixture of Hebrew and Aramaic, at times also including Arabic. Questions were often sent in batches, or in a *quntres* (quire), and came from communities outside of Babylonia wanting to (a) clarify a given point in the Talmud text or the relationship between contradictory texts or

Responsa

Gaon/Geonim

<sup>9</sup> Elazar Hurwitz, »Fragments of the Geonic Commentaries on Tractate Shabbat,« New York, 1986 (Hebrew).

<sup>10</sup> Brody, *Geonim*, 185–88.

Minhag	(b) ask questions of practical law and <i>minhag</i> (local tradition). Textual emendations, based on interpretive grounds and textual evidence, were also offered. <sup>11</sup>
Responsa	The survival of so many responsa (between 5,000 and 10,000) <sup>12</sup> —although only a fraction of the original number—verges on the miraculous. In addition to the potential perils of travel, mail in this period was not considered private and intermediaries between one point and another would open the letters and copy from them. Ironically, at times, this activity did its share to preserve responsa, even when letters did not get to their intended destination.
Responsa	Publishers of Geonic responsa depended completely on medieval, mostly European, manuscripts, until the publication of Albert Harkavy's collection of Geonic responsa in 1887. <sup>13</sup> Although unknown to Harkavy, his was the first collection of responsa based on Cairo Genizah fragments. Accordingly, his publications transformed the study of the Geonic period because of the outstanding condition in which the texts he used were preserved. <sup>14</sup>
Cairo Genizah	
Gaon/Geonim Talmud Amoraim	As for interpretive methodology, Geonim did not engage in dialectic between talmudic discussions. The Talmud, the product of multiple generations of amoraim (sages living in Babylonia between the 3 <sup>rd</sup> and 5 <sup>th</sup> centuries CE), contains conflicting discussions on legal topics. Unlike later commentators (see below regarding the Tosafists), Geonim did not, generally or systematically, attempt to harmonize the contradictory material they confronted in the corpus of the Talmud. Rather, what was considered the dominant »course of the talmudic discussion« ( <i>sugya de-shemata</i> ) <sup>15</sup> was used for legal decision making, perhaps due to its more thorough, persuasive or conclusive treatment of a topic. Other, conflicting accounts in the Talmud, were relegated to the status of secondary discussions and, for legal purposes, were ignored or rejected. <sup>16</sup> Important collections of Geonic responsa include: B. M. Lewin's, <i>Otzar Hageonim</i> in thirteen volumes, printed according to the order of talmudic tractates; <sup>17</sup> Sh. Z. Havlin and I. Yudlov's, <i>Toratan shel geonim</i> , in seven volumes; <sup>18</sup> and Robert Brody's, <i>Responsa of Rav Natronai Gaon</i> . <sup>19</sup>
Responsa	

### 2.3 Codes Literature of the Geonim

Talmud She'iltot	Geonic codes were composed in a mixture of Hebrew and Aramaic, often the Aramaic sections summarizing the discussions in the Talmud. The <i>She'iltot</i> (»Queries«)
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11 Uziel Fuchs, *The Geonic Talmud*, Jerusalem, 2017.

12 Brody, *Geonim*, 186.

13 Albert E. Harkavy, *Zikhron la-Rishonim: Responsen der Geonim*, vol. 4, Berlin, 1887; New York, 1965.

14 Brody, *Geonim*, 196.

15 Michael Sokoloff, *Dictionary of Jewish Babylonian Aramaic*, Ramat Gan, 2002, 791.

16 Tsvi Groner, *Legal Methodology of Hai Gaon*, Providence/RI, 1985, 62f.

17 Haifa and Jerusalem, 1928–44.

18 Jerusalem, 1992–93.

19 Jerusalem, 1994.



attributed to Ahai of Shabha, the first work produced after the composition of the Talmud is, perhaps, also the earliest code based on the Talmud.<sup>20</sup> Divided into homilies in accordance with the weekly reading of the Torah, the *She'iltot* interweaves into its creative presentations<sup>21</sup> the Talmud's treatment of topics, always with the goal of reaching a legal conclusion. Each homily is divided into four parts: (1) a collection of rulings on a specific topic (e.g., Sabbath or holiday observance, the obligation to give charity, etc.); (2) the raising of a legal question based on the subject chosen; (3) a collection of additional talmudic material related in some general way to the subject; and (4) an answer to the original question, culminating in a legal ruling. The *She'iltot*'s atypical organization and format make it difficult to categorize. Its identification here as a code is the result of the *She'iltot*'s insistence on each unit arriving at a legal ruling. The *She'iltot* benefitted from a critical edition by S.K. Mirsky,<sup>22</sup> the updating of which is a scholarly desideratum, as well as an exhaustive monograph on its manuscript traditions.<sup>23</sup>

Ahai Gaon of Shabha

There is no doubt that *Halakhot Pesuqot* (»Settled Laws«) and *Halakhot Gedolot* (»Great Laws«) are the two most important geonic codes. There is a close affinity between the works, although their relationship remains unclear. For example, there is much material which overlaps verbatim, even if sometimes appearing in different order. Both *Halakhot Pesuqot* and *Halakhot Gedolot* are divided into chapters on specific areas of practical rabbinic law such as the Sabbath, holidays, prayer and family purity. The individual laws are stated simply and succinctly. Usually the bulk of the material for a chapter is drawn from a single talmudic tractate with reference to parallel material. The order of the material in any given chapter is related to the order in the talmudic discussions, even if not totally dependent on it. It seems that the intention of each author was to distill the talmudic discussion by removing the dialectic found in the original Talmud text and simply stating the law that originated in the Talmud. One important difference between the works is that *Halakhot Gedolot* contains large quantities of non-legal materials, not found in *Halakhot Pesuqot*.

Halachot Pesuqot  
Halachot Gedolot

Post-geonic medieval authorities attributed the authorship of *Halakhot Pesuqot* to Rav Yehudai Gaon, a scholar from Pumbeditha who was appointed the head of the Sura academy around the middle of the eighth century.<sup>24</sup> Scholars justifiably question the authenticity of this attribution on the following grounds: the attribution is cited with reservations and it was not common for individual Geonim of this period to single handedly author works other than responsa (only with Sa'adia Gaon, some 175 years later, did this become more common). In addition, *Halakhot Pesuqot* contains references to Rav Yehudai Gaon in the third person as well as rulings that contradict his decisions elsewhere. For centuries the text of *Halakhot*

Talmud

Gaon/Geonim  
Yehudai Gaon  
Pumbeditha  
SuraGaon/Geonim  
Responsa  
Sa'adia Gaon

20 Gideon Libson, »The Age of the Geonim,« in Hecht, *Introduction*, 204.

21 See Jason Rogoff, »Compositional Art of the She'iltot,« PhD diss., JTSA, 2008, 1–15.

22 *She'iltot de-Rav Ahai Gaon*, 5 vols., Jerusalem, 1959–77 (Hebrew).

23 Robert Brody, *Textual History of the Sheiltot*, New York/Jerusalem, 1991 (Hebrew).

24 Brody, *Geonim*, 217–22.

Exod 16:19

Cairo Genizah

Yehudai Gaon

Halachot Pesuqot

Halachot Gedolot

Qayyara, Shimon

*Pesuqot* was only known through citations in later medieval rabbinic works. The first manuscript to be discovered, published by A. Schlosberg in 1886,<sup>25</sup> was entirely in Hebrew (a translation of the original) and is known as *Hilkhot Re'u*, after the beginning of the text, a citation from Exodus 16:29.<sup>26</sup> Only in the twentieth century was a manuscript containing the Hebrew and Aramaic original published by S. Sassoon.<sup>27</sup> Subsequent finds from the Cairo Genizah enabled the publication of N. Danzig's magisterial, *Introduction to Halakhot Pesuqot*.<sup>28</sup>

Although *Halakhot Gedolot* is also attributed to Rav Yehudai Gaon, perhaps due to confusion with *Halakhot Pesuqot*, *Halakhot Gedolot* is attributed to R. Shimon Qayyara as well. This attribution is more reliable. It was already found in Geonic sources and in the writings of Spanish and North African medieval scholars. *Halakhot Gedolot* was first printed in Venice (1548). The second version was printed in the nineteenth century, based on a Vatican manuscript. E. Hildesheimer published a critical edition in three volumes.<sup>29</sup>

### 3 The Rishonim

Rishon/Rishonim

Talmud

Commentaries

Tosafists

Responsa

Rishon/Rishonim

Halakhah

Sepharad/Sephardim

Christianity

Among the major differences between the period of the Geonim and the classical period of the Rishonim (10<sup>th</sup> to 14<sup>th</sup> centuries), in addition to the shift in geographic center from Asia to Europe, was the move from studying the Talmud orally to studying it from written texts. Indeed, several factors—including technological developments—converged to bring about this monumental change.<sup>30</sup> Other major developments during the period of the Rishonim (in all of the different centers of study; see below) included the publication of running commentaries to the Talmud and the expansion of the writing of codes. Furthermore, the development of the dialectical approach by the Tosafists—the goal of which was the harmonization of conflicting conclusions found in the Talmud—unquestionably transformed the study of the Talmud text and the writing of codes and responsa.

During the classical period of the Rishonim, the distinctive characteristics of four separate legal (*halakhic*) cultures obtained (but not all are treated here, see above). They were: (1) Muslim Spain and North Africa (*Sefarad*); beginning in the tenth century and ending in the late twelfth century as a result of the Christian

25 *Halakhot Pesuqot o Hilkhot Re'u*, Versailles, 1886 (Hebrew).

26 Samuel Morell, *Mechkar al sefer hilchot reu*, PhD diss., JTSA, 1966 (Hebrew).

27 Salomon Sassoon, *Sefer Halakhot Pesuqot*, Jerusalem, 1950 (Hebrew); idem and Neil Danzig, *Sefer Halakhot Pesuqot*, Jerusalem, 1998 (Hebrew).

28 New York and Jerusalem, 1999 (Hebrew), esp. 175–80 for below.

29 Ezriel Hildesheimer, *Sefer Halakhot Gedolot*, Jerusalem, 1971–87. On the versions, see Brody, *Geonim*, 223f.; Danzig, *Introduction*, 180–242.

30 Neil Danzig, »From Oral Talmud to Written Talmud,« *Bar Ilan* 30–31 (2006): 49–110 (Hebrew); Talya Fishman, *Becoming the People of the Talmud*, Philadelphia/PA, 2011; Haym Soloveitchik, »The People of the Book—Since When?,« *Jewish Review of Books* (Winter, 2013): 14–18.

*Reconquista* of the Iberian Peninsula and the corresponding violent revolts of the Muslim Almohades;<sup>31</sup> (2) Northern Europe, broadly encompassing Northern France (north of the Loire valley) and Germany, known in the literature as Tzarfat and Ashkenaz, respectively.<sup>32</sup> The activity in Northern Europe dates from the late tenth to the end of the thirteenth century with the deaths of R. Meir ben Baruch of Rothenburg (1293) as a prisoner in the fortress at Ensisheim<sup>33</sup> and R. Mordechai ben Hillel (1298) in the Rintfleisch massacres. (3) Provence (France, south of the Loire valley) from ca. 1100 until the effects of the expulsion of Jews from French territories in 1306;<sup>34</sup> and (4) Christian Spain (also Sefarad); beginning in the early 13<sup>th</sup> century with the writings of R. Meir Halevi Abulafia (Ramah) and concluding with the death of R. Nissim ben Reuven (Ran) in 1376.<sup>35</sup>

Each legal culture is labeled as such for a number of significant reasons including, but not limited to geographic location and [non-Jewish] governing religious and political body in that locality; common academies attended by the community's sages; teacher-student relationships; and legal methodology. Accordingly, those who lived under Islam and whose methodology highlighted the practical legal outcome of textual analysis are treated as a discrete unit. Despite encompassing a large geographic area and not insignificant distinctions in outlook among its French and German constituents, Northern Europe is labeled here as its own legal culture.<sup>36</sup> For example, in Germany (until the early thirteenth century)<sup>37</sup> there was a preference for ruling in accordance with established practices transmitted generationally and a penchant for practical law, while in northern France the outcome of analysis of the Talmud was considered binding and more theoretical study was embraced. Leading German scholars were jurists who sat as members of courts,

Ashkenaz/Ashkenazim

Meir ben Baruch of  
Rothenburg  
Mordechai ben Hillel  
Rintfleisch Massacres

Abulafia, Meir Halevi  
(Ramah)  
Nissim bar Reuven  
(Ran)

Islam

31 Jonathan Ray, *The Sephardic Frontier: The Reconquista and the Jewish Community in Medieval Iberia*, Ithaca/NY, 2006.

32 Also included are Italy (Italia) and England (Anglia), not treated here. Hirsch J. Zimmels, »Scholars and Scholarship in Byzantium and Italy,« in *The Dark Ages*, ed. Cecil Roth, New Brunswick/NJ, 1966, 175–88; Isadore Twersky, »The Contribution of Italian Sages to Rabbinic Literature,« *Italia Judaica* (1983): 383–400; Pinchas Roth and Ethan Zadoff, »The Talmudic Community of Thirteenth-Century England,« in *Christians and Jews in Angevin England*, ed. Sarah Rees Jones et al., Woodbridge, VA, 2013, 184–203.

33 Simcha Emanuel, »Did Rabbi Meir of Rothenburg Refuse to Be Ransomed?«, *JSQ* 24 (2017): 23–38.

34 Shlomo Pick, »*The Jewish Communities of Provence Before the Expulsion in 1306*,« PhD diss., Bar Ilan University, 1996; Isadore Twersky, »Aspects of the Social and Cultural History of Provençal Jewry,« *JWH* 11 (1968): 185–207; Pinchas Roth, »Rabbinic Politics, Royal Conquest, and the Creation of the Halakhic Tradition in Medieval Provence,« in *Regional Identities and the Cultures of Medieval Jews*, ed. Javier Castaño et al., Liverpool, 2018, 173–91.

35 Leon A. Feldman, »R. Nissim ben Reuben Gerondi,« in *Exile and Diaspora*, ed. Aharon Mirsky et al., Jerusalem, 1991, 56–97.

36 Ephraim Kanarfogel, »From Germany to Northern France and Back Again: A Tale of Two Tosafist Centres,« in *Regional Identities and Cultures of Medieval Jews*, ed. Talya Fishman and Ephraim Kanarfogel, Oxford, 2018, 149–71.

37 Avraham (Rami) Reiner, »From Rabbenu Tam to R. Isaac of Vienna« in *The Jews of Europe in the Middle Ages*, ed. Christoph Cluse, Turnhout, 2004, 276 n. 11; and for below, 274f.

whereas the preeminent rabbis in northern France were primarily intellectuals and teachers of Jewish law.<sup>38</sup> The German legal tradition had a deeply ensconced aversion to resettling the land of Israel, as compared with the northern French promotion of mass immigration.<sup>39</sup> Nevertheless, significant points of contact justify grouping Germany and northern France together. Primary for our purposes is the intellectual overlap between students and scholars. For example, the famous French commentator, R. Shlomo Yitzchaki (Solomon ben Isaac; Rashi), studied in the great German academies of Worms and Mainz before returning to his native Troyes to serve as communal leader. Beginning in the third decade of the twelfth century, young German scholars traveled to France to master the new methods of textual analysis spearheaded by Rashi's grandson, the Tosafist R. Jacob ben Meir Tam (universally known as, Rabenu Tam). Upon their return to Germany, these scholars and their students integrated the tosafistic method into their legal works.<sup>40</sup> The Jews of Spain under Christendom—who themselves eventually adopted and expanded the tosafist method while still preserving aspects of their Muslim Spanish predecessors' approach—are also treated here as a separate halakhic culture.<sup>41</sup>

The early 14<sup>th</sup> century witnessed the meeting of east and west with the migration of the great German scholar, R. Asher ben Yehiel, or Rosh (inheritor of R. Meir ben Baruch of Rothenburg's mantle of leadership) with his family to Spain.<sup>42</sup> There Rosh met R. Solomon ben Avraham Aderet (Rashba), the most prominent rabbinic jurist on the Iberian peninsula of his time. Rosh became head of the Ashkenazi community in Toledo. It was in Spain that Rosh's son, R. Jacob, penned *Arba'ah Turim* (»Four Columns«), an influential code of practical law that later served as the framework for R. Joseph Caro's *Shulchan 'Aruch* (»Set Table«).

### 3.1 Muslim Spain and North Africa

In Qayrawan, northern-central Tunisia of today, and what was to become the Jewish center for the region from the 9<sup>th</sup>–11<sup>th</sup> centuries, the academy (*beit midrash*) was headed by R. Jacob ben Nissim ibn Shahin (who inquired of R. Sherira, see above) and R. Hushiel.<sup>43</sup> The study of Talmud was directed towards legal decision-making. Although scholars based their approaches heavily on those of the Geonim, significant independence in specific rulings is discernable.

Shlomo Yitzchaki  
(Rashi)  
Shlomo Yitzchaki  
(Rashi)  
  
Shlomo Yitzchaki  
(Rashi)  
Jacob ben Meir (Rabbe-  
nu Tam)  
Christianity  
  
Halakhah  
  
Asher ben Yehiel  
(Rosh)  
Meir ben Baruch of  
Rothenburg  
Aderet, Solomon ben  
Avraham (Rashba)  
Ashkenaz/Ashkenazim  
Arba'ah Turim  
Caro, Joseph  
Shulchan 'Aruch

Kairawan  
Beit Midrash  
Jacob ben Nissim ibn  
Shahin  
Talmud

38 Ephraim Kanarfogel, *The Intellectual History and Rabbinic Culture of Medieval Ashkenaz*, Detroit/MI, 2013, 38.

39 Ephraim Kanarfogel, »The Aliyah of »Three Hundred Rabbis« in 1211,« *JQR* 76 (1986): 191–215.

40 Reiner, »Rabenu Tam,« 277–81.

41 Yitzhak Baer, *History of the Jews in Christian Spain*, Philadelphia/PA, 1961.

42 See Abraham H. Freimann, *Harosh: Rabbi Asher ben Yehiel*, Jerusalem, 1986 (Hebrew translation from German).

43 Menahem Ben-Sasson, *The Emergence of the Local Jewish Community in the Muslim World*, Jerusalem, 1996, 213 (Hebrew).

### 3.1.1 Commentary in Muslim Spain and North Africa

Although likely preceded by the commentary of R. Nissim ben Jacob (son of R. Jacob ben Nissim above) to select tractates of the Talmud,<sup>44</sup> the commentary of R. Hananel ben Hushiel (d. 1055/56; son of R. Hushiel mentioned above), universally known as Rabenu Hananel, is the earliest known systematic commentary to most of the Talmud that has survived. Another somewhat contemporary commentary written in Muslim Spain by the luminary R. Shmuel Hanagid,<sup>45</sup> for example, only exists in fragmentary form and seemingly focused on giving localized interpretations to specifically challenging talmudic discussions. And, while Shmuel Hanagid's student, Isaac ibn Giyyat, may have written a comprehensive commentary to most of the Talmud, it is not extant and is only known from citations and lists of books found in the Cairo Genizah. By contrast, R. Hananel's commentary to the talmudic orders of *Mo'ed* (dealing with the Sabbath and holidays), *Nashim* (addressing laws of marriage and divorce), and *Nezikin* (handling torts and damages), and the tractates *Berachot* (blessings) and *Hullin* (on ritual slaughter of animals for consumption) are all in our possession. Like Rashi's commentary (written some 75 years afterwards; see below) R. Hananel's work has been studied since its composition some 1000 years ago. Unlike Rashi's treatise, printed on the page of standard Talmud editions since the 15<sup>th</sup> century, R. Hananel's commentary was known, for centuries, solely through the writings of others and made its way onto the standard printed page of Talmud only in 19<sup>th</sup> century. Thousands of fragments of R. Hananel's commentary were found in the Cairo Genizah, attesting to the commentary's popularity.<sup>46</sup>

According to the legend of ›The Four Captives,‹ R. Hananel's father, R. Hushiel, was one of the four scholars ransomed, having come from the city of Bari (Southern Italy). He was rescued by the community of Qayrawan. He headed the academy there and his son, R. Hananel, was likely born there. It may be that R. Hananel was actually born in Bari, however, and then came to Qayrawan with his father. Eleventh-twelfth century Franco-German scholars refer to R. Hananel as ›ish romi,‹ ›the Roman,‹ even though they were aware of his presence in North Africa. One scholar attributes the epitaph to the popularity of R. Hananel's commentary in early Italian centers of learning.<sup>47</sup> Upon R. Hushiel's death, R. Hananel inherited his father's position. According to the legend's chronology, the events took place between 950–960 CE. Based on other evidence, however, scholars argued that R. Hushiel's arrival in Qayrawan was by free choice and took place ca. 1005.<sup>48</sup>

Nissim ben Jacob

Hananel ben Hushiel

Shmuel Hanagid

Cairo Genizah

Shlomo Yitzchaki  
(Rashi)

Kairawan

44 Shraga Abramson, *Rav Nissim*, Jerusalem, 1965, 93–149 (Hebrew).

45 *Hilchot Hanaggid*, ed. Mordechai Margulies, Jerusalem, 1962 (Hebrew); Israel Ta-Shma, *Talmudic Commentary in Europe and North Africa: Part One: 1000–1200*, Jerusalem, 2000 (Hebrew).

46 Yosaif Dubovick, ›Rabenu Hananel and the Geonim of Babylonia,‹ PhD diss., Bar Ilan, 2015 (Hebrew).

47 Israel Ta-Shma, ›Haperush hameyuchas lerabenu Gershom latalmud,‹ in idem, ed., *Studies in Medieval Rabbinic Literature 1: Ashkenaz*, Jerusalem, 2004, 5 n. 6 (Hebrew).

48 Shraga Abramson, *Perush Rabenu Hananel Latalmud*, Jerusalem, 1994, 68 (Hebrew).

Although R. Hananel's is a running commentary, unlike other authors of his time (such as R. Nissim), who heavily paraphrase the Talmud, R. Hananel only selectively paraphrases.<sup>49</sup> The author walks the reader through the subject matter; he points to textual problems and resolves them; and he fills in blanks in the Talmud text with data and definitions in order to ease the student through the process of studying the terse and ambiguous text. Although in form R. Hananel's approach to the Talmud is a clear departure from the Geonic written record (the latter did not author running Talmud commentaries), there is no doubt the content of his work represents substantive continuity with the interpretations of the Geonim. Often Geonic remarks seem to be the building blocks for R. Hananel's comments. R. Hananel's greatest innovation, then, may be the act of collecting, integrating and reworking many Geonic statements—especially those of Rav Hai Gaon—into a systematic, ordered, clear and flowing commentary.

Another significant feature in his commentary is the use of the (earlier) Palestinian Talmud for clarifying the meaning of the (later) Babylonian Talmud's text. R. Hananel did not rule in accordance with the Palestinian Talmud when it conflicted with the Babylonian Talmud, however.<sup>50</sup> The extensive use of the Palestinian Talmud was also a significant departure from Geonic methodology.

The commentary is composed mostly in Hebrew. Scholars suggest that the emphasis on Hebrew may be due to R. Hananel's (or his family's) Italian origins. An important characteristic of the commentary is that the author collected parallels from tannaitic literature and elsewhere in the Talmud. R. Hananel's insistence on deriving legal conclusions in his commentary and, at times, his mention of the current practice to indicate what should be the appropriate conclusion in the Talmud, blur the lines between commentary and code. He himself acknowledged the tension when apologizing for veering from presenting just commentary.

As described by ibn Daud, the »outstanding« student of R. Isaac Alfasi (Rif; see below), R. Joseph b. Meir Halevi ibn Migash<sup>51</sup> (Ri Migash), authored commentaries to multiple tractates of the Talmud. However, only Baba Batra and Shevu'ot, originally in Hebrew, were published and well known (even shortly after the author's passing).<sup>52</sup> I. Ta-Shma argued for the earlier existence of a commentary to, at least, seven more tractates, probably originally authored in Arabic.<sup>53</sup> Ri Migash's method of interpretation distinguishes itself in that the author engages in a process of asking a question, giving an answer, followed by an objection, then by a proof, and so on, giving his own interpretation and concluding with a ruling in light of the legal directives of others. Ending with a decision is consistent with the general tendency among Geonic and North African commentaries. Ri Migash's work repre-

Hananel ben Hushiel  
Hai ben Sherira (Hai  
Gaon)

al-Fasi, Isaac ben Jacob  
(Rif)  
Joseph ben Meir Halevi  
ibn Migash (Ri Migash)

49 Ta-Shma, *Commentary*, 1:39, 128, 125.

50 Abramson, *Rabenu Hananel*, 68–78.

51 Cohen, *Book of Tradition*, 85.

52 Ta-Shma, *Commentary*, 1:176f.

53 Israel Ta-Shma, »Yetzirato hasifrutit shel rabenu Yosef halevi ibn migash,« in idem (ed.), *Studies in Medieval Rabbinic Literature, 2: Spain*, Jerusalem, 2004, 15–31 (Hebrew).

sents the end of an era of writing commentaries in Muslim Spain of a certain style, dependent as it was on Geonic compositions and methods.<sup>54</sup> Significantly, Ri Migash's contribution had a great influence on Maimonides, whose own teacher (his father) was Ri Migash's student.

Well known for contributions in multiple fields, Moses Maimonides (Rambam; 1138–1204), physician, philosopher and legal scholar, spent most of his career in Egypt. He authored commentaries to three orders of the Talmud; however, the full commentaries are not extant. The only comments known are primarily from the quotations of others and, regarding the authorship of Rosh Hashanah, there is scholarly disagreement.<sup>55</sup> Maimonides' commentary to the Mishnah originally published in Judeo-Arabic<sup>56</sup> (a postclassical Arabic written by Jews in Hebrew characters), however, is available in its entirety; and most of the work is even extant in a manuscript copy in the author's own hand.<sup>57</sup> While as a matter of historical fact Maimonides' work is the second known commentary to the entire Mishnah (the first was authored by R. Nathan Av Hayeshivah, a Palestinian sage of the 11<sup>th</sup> century), Maimonides' commentary remains the oldest extant complete commentary to the Mishnah. Nathan's commentary is not available in its entirety and the sections in our possession were highly altered over time.

Maimonides listed four goals for his Mishnah commentary: (a) to expound each individual mishnah in light of all of the analyses presented in the Babylonian Talmud; (b) to give the legal conclusion for each mishnah interpreted, based on the entire talmudic tradition; (c) to introduce the beginner to the Talmud; (d) to place before the student or scholar all that is necessary for the easy study and repetition of the commentary's contents. Also noteworthy are the author's introductions,<sup>58</sup> presenting not only the history of the oral law but also useful prefaces to some of the orders of the Mishnah.

Gaon/Geonim

Moses ben Maimon  
(Maimonides, Rambam)

Moses ben Maimon  
(Maimonides, Rambam)

Moses ben Maimon  
(Maimonides, Rambam)  
Mishnah

Moses ben Maimon  
(Maimonides, Rambam)  
Mishnah

### 3.1.2 Responsa from Spain and North Africa (Muslim period)

The earliest responsa literature, that of R. Moses b. Ḥanokh and his son R. Ḥanokh, dates from the middle of the tenth century. According to the legend of ›The Four Captives,‹ Moses b. Ḥanokh was redeemed by the inhabitants of Cordova, Spain, where he subsequently became a communal leader.<sup>59</sup> Most of these responsa were

Responsa

54 Israel Ta-Shma, *Talmudic Commentary in Europe and North Africa, Part Two: 1200–1400*, Jerusalem, 2004, 29 (Hebrew).

55 See Ta-Shma, *Commentary*, 1:190f.; Herbert Davidson, *Moses Maimonides: The Man and His Works*, Oxford, 2005, 140–46.

56 The most current edition with translation into Hebrew remains Yosef Kafah, *Mishnah im Perush Harambam*, Jerusalem, 1963 (Hebrew).

57 Salomon D. Sassoon, *Mekhar Makif al ketav yado shel harambam*, Jerusalem, 1990 (Hebrew); Talma Zurawel, »Maimonides' Tradition of Mishnaic Hebrew,« *Edah velashon* XXV (2004): 2f. (Hebrew).

58 Ta-Shma, *Commentary*, 1: 185f., 189; Davidson, *Maimonides*, 149f. and 152–57.

59 Cohen, *Book of Tradition*, 63–69.

Isaac ibn Ghiyyat  
Hananel ben Hushiel  
al-Fasi, Isaac ben Jacob  
(Rif)

Joseph ben Meir Halevi  
ibn Migash (Ri Migash)  
Moses ben Maimon  
(Maimonides, Rambam)

Islam

collected by J. Müller in *Teshuvot Geonei Mizrach uMaarav*.<sup>60</sup> The contents of the responsa represent important historical information for the social and economic structure of the early community in Muslim Spain.<sup>61</sup> For other early scholars of the period, such as R. Isaac ibn Giyyat, little responsa literature has survived.<sup>62</sup> About twenty responsa of R. Hananel b. Hushiel are in our possession.<sup>63</sup> Rif authored some 400 responsa, most of which were written in Arabic (and were translated into Hebrew at an early stage) during the final years of his life in Spain.<sup>64</sup> In the responsa, he goes out of his way to contradict the traditions of Spain, causing some controversy between himself and the leaders there.<sup>65</sup> Over two hundred responsa of Ri Migash exist. In one edition, the editor collected all of the previously published responsa from several places in one volume.<sup>66</sup> Maimonides' responsa, many of which were originally authored in Arabic, were collected by J. Blau in a 4 volume set, and are presented with an accompanying parallel column providing Blau's Hebrew translation.<sup>67</sup> These are evidence of the wide range of questions sent to Maimonides; he settled disputes regarding divorce, inheritance, business partnerships, the status of Christians and Muslims in Jewish law, and more. The responsa also attest to Maimonides' stature as a world-renowned legal decisor; questions were sent to him from places as far flung as Baghdad and southern France.<sup>68</sup>

### 3.1.3 Codes Literature from Spain and North Africa (Muslim Period)

Shmuel Hanagid

Isaac ibn Ghiyyat

Hananel ben Hushiel

Shmuel (ibn Naghrela) Hanagid, in addition to being a scholar of Jewish law, was a statesman and military man.<sup>69</sup> He authored, *Sefer Hilkheta Gavrata* (Book of Great Laws), primarily on the laws of daily religious practice.<sup>70</sup> His student, Isaac ibn Giyyat wrote *Halakhot Kelulot* (Complete Laws), presumably including a broad selection of topics; only a limited number of sections survived, including those relating to the Sabbath and holidays. R. Hananel ben Hushiel also wrote collections of rulings, most of which are not extant, and authored *Sefer Hadinin* (Book of Rul-

60 Berlin, 1888; see Avraham Grossman, »Teshuvot Chachmei Sefarad HaRishonim shenish-tamru bikhtav yad Monfefore 98,« in *Studies in the Talmud and Medieval Rabbinic Literature in Honor of Professor Haim Zalman Dimitrovsky*, ed. Daniel Boyarin et al., Jerusalem, 2000, 274–82 (Hebrew); see also Joel Müller, *Teshuvot Chachmei Tzarfat velutir*, Vienna, 1881 (Hebrew).

61 Eliyahu Ashtor, *The Jews of Moslem Spain*, Philadelphia/PA, 1973–84, 237 and 431 n.15.

62 Simcha Assaf, *Teshuvot hageonim*, Jerusalem, 1927, 77–79 (Hebrew).

63 David Rosenthal, *Osef haGenizah hakehirit begeneva*, Jerusalem, 2010, 271–75 (Hebrew).

64 Wolf Leiter, *Responsa of R. Isaac ben Jacob Alfasi*, Pittsburgh/PA, 1954; 2003 (Hebrew).

65 Ta-Shma, *Commentary*, 1:153f.

66 *Responsa of Rabenu Yosef Halevi ibn Migash*, ed. Simcha Chasida, Jerusalem, 1991 (Hebrew).

67 *R. Moses ben Maimon Responsa*, ed. Jehoshua Blau, Jerusalem, 1957–86 (Hebrew).

68 For a useful English summary see Davidson, *Maimonides*, 290–95.

69 Ashtor, *Moslem Spain*, 2:41ff.

70 Ta-Shma, *Commentary*, 1:160–63.



ings»), of which only its colophon from the year 1067 survived in the Genizah.<sup>71</sup> By contrast, the influential code of practical Jewish law by Rif, *Sefer Halakhot Rabbati* (‘Book of Great Laws’; known as *Halakhot*), survived in its entirety and a medieval manuscript of the complete work was published by Shamma Friedman.<sup>72</sup> Rif was from North Africa and lived there most of his life; his last 15 years were spent in Lucena, Spain until his death at age 90. Ibn Daud referred to Rif as »R. Isaac b. R. Jacob b. al-Fasi of Qal’at Hammad,« raising some difficulties as to whether »al-Fasi« was Rif’s family name or whether he was from Fez, Morocco (Qal’at Hammad was in Algeria). The publication of *Halakhot* was a turning point in the presentation of practical law.<sup>73</sup> The code is not only grounded in talmudic law; its order runs parallel to the Talmud and its language is edited in a style closely corresponding to the Talmud’s. Rif’s editorial achievement is so impressive that even to the trained eye, at first glance, it can be challenging to distinguish between the text of Rif’s code and the text of the Talmud. Another editorial accomplishment was Rif’s ability to summarize the key elements of the legal argument. He removed all material extraneous to the immediate legal discussion and provided a summary one-third the size of the Talmud text, always ending with a ruling. Rif’s achievement resulted in his *magnum opus* replacing the study of the Talmud text itself in some quarters.<sup>74</sup>

As a work of practical law, Rif’s code was written only for talmudic tractates with relevance for religious practice in Rif’s time. It deals with the Sabbath and holidays, marriage and divorce, ritual slaughter of animals for consumption, and so on. When necessary, Rif skipped over entire chapters of Talmud in order to deal exclusively with the practical law. At times, he cited from different tractates than the one directly under discussion, in order to include all the talmudic discussions on one topic in the same place. Rif regularly ignored *aggadic* (non-legal, homiletical) material. When Rif cites the Palestinian Talmud’s discussion it seems these quotes were taken directly from comments by R. Hananel,<sup>75</sup> on whose work Rif relied extensively and who, according to ibn Daud, was Rif’s teacher (however, on the lack of historical evidence, see below). Rif seriously engaged and relied on the works of the Geonim. However, when he disagreed with their conclusions, he did not refrain from outright attacking, demonstrating his true independence as a legal decisor. As mentioned, according to ibn Daud, R. Hananel was Rif’s teacher.<sup>76</sup> This contention cannot be maintained on historical grounds. There is no evidence of

Cairo Genizah

al-Fasi, Isaac ben Jacob (Rif)

al-Fasi, Isaac ben Jacob (Rif)

Hananel ben Hushiel

71 Shlomo D. Goitein, »A Colophon to R. Hai Gaon’s Commentary to Hagiga,« *Kiryat Sefer* 31:3 (1956): 368–70 (Hebrew); Nechemia Aloni, »Lekolofon leferush Masechet Chagiga shel Rav Hai Gaon,« *Kiryat Sefer* 32:3 (1957): 375f (Hebrew).

72 *Sefer Halakhot Rabbati*, ed. Shamma Friedman, Jerusalem, 1974 (Hebrew).

73 Leonard Levy, »The Decisive Shift: from Geonim to Rabbi Yitshak Alfasi,« in *Tiferet Leyisrael: Jubilee Volume for Israel Francus*, ed. Joel Roth et al., New York, 2010, 93–130.

74 Israel Ta-Shma, *Rabbi Zerachia Halevi Baal Hamaor uvnei chugo*, Jerusalem, 1992, 150 (Hebrew).

75 Ta-Shma, *Commentary*, 1:149.

76 Cohen, *Book of Tradition*, 84.

Kairawan

Rif having been in Qayrawan, nor of R. Hananel being in Fez. Significantly, Rif often cites R. Hananel anonymously and integrates R. Hananel's comments when arguing with him. Neither activity is representative of the typical treatment of a teacher's work by a student and, in fact, Rif never refers to R. Hananel as his teacher. Ibn Daud's superlatives regarding Rif's status as a rabbinic decisor, in contrast, should be taken as indicative of Rif's historical renown.

al-Fasi, Isaac ben Jacob (Rif)

Scholars assume that there were emendations made by Rif to his *Halakhot* over time.<sup>77</sup> In his responsa, occasionally, he directs his students to make corrections to the *Halakhot*. These changes were not incorporated by all and, significantly, several versions of sections of Rif's *Halakhot* exist because one group of students incorporated certain emendations while another did not.<sup>78</sup> Some emendations were only transmitted orally, as mentioned several times by Nachmanides in his, *Sefer Milchemet Hashem* (see below, »Christian Spain«). Rif's *Halakhot* is included in standard editions of Talmud. Hillel Hyman published a critical edition of *Halakhot* to the first part of tractate Pesachim.<sup>79</sup>

Moses ben Nachman (Nachmanides, Ramban)

Moses ben Maimon (Maimonides, Rambam) Mishneh Torah

Maimonides revolutionized the codification of Jewish law with the publication of his *Mishneh Torah*. Although conceptually organized into sections on specific laws (Laws of the Sabbath, Laws of Inheritance and so on) like the geonic codes discussed earlier, *Mishneh Torah* remains the only code whose scope includes all of biblical and talmudic law. That is, it includes even the legal system's inoperable elements and enactments.<sup>80</sup> Furthermore, as Maimonides writes in his introduction, he intended his all-encompassing presentation of the law to be second only to the Bible itself, hence the name *Mishneh Torah* (»second law« or »repetition of the law«), and to replace the study of the classical works of talmudic law:<sup>81</sup> »A man may first read the Written Law and then read the present work. He will learn from it the entire Oral Law, and he will not need any further work besides the two.«<sup>82</sup> A few decades after Maimonides' death, the work also began to be called, *Hayad hachazakah*, »the mighty hand,«<sup>83</sup> based on the work's division into fourteen books; the numerical value of fourteen in Hebrew characters is made up of the letters yod and dalet, spelling yad, »hand,« in Hebrew.<sup>84</sup>

Moses ben Maimon (Maimonides, Rambam)

Although Maimonides can be placed as an intellectual great-grandson of Rif—Maimonides' teacher, his own father, was a student of Ri Migash who in turn was

77 Israel Francus, »Early Lacunae and Corruptions in the Text of R. Isaac Alfasi's »Sefer Hala-khot«,« *Tarbiz* 47:1/2 (1978), 30–48 (Hebrew); Shalem Yahalom, »Hilufeï mahadurot behilkhot harif«,« *Tarbiz* 77:2 (2008), 239–69 (Hebrew).

78 Ta-Shma, *Commentary*, 1:151f.

79 Alfasi: *Tractate Pesachim*, ed. Hillel Hyman, Jerusalem, 1990 (Hebrew).

80 Twersky, *Code*, 188.

81 Shamma Friedman, »The Rambam and the Talmud,« *Diné Israel* 26–27 (2010): 221–39 (Hebrew).

82 Davidson, *Maimonides*, 197.

83 Boaz Cohen, »The Classification of the Law in Mishneh Torah,« *JQR* 25,4 (Apr. 1935): 529 n. 41.

84 Davidson, *Maimonides*, 214.

a student of Rif—and held Rif's *Halakhot* in the highest esteem,<sup>85</sup> he departed significantly from Rif both in form and content. Not only did Maimonides organize his work conceptually and include all of Jewish law. He also wrote his work in what verges on pristine mishnaic Hebrew—even translating Aramaic legal terms into Hebrew. In a move that was viewed as controversial after *Mishnehh Torah*'s publication, for each case study he recorded only a single and final anonymous formulation of the law; that is, without citing his sources.

Maimonides' writing style is lucid, precise and concise. In each chapter the author strikes a balance between providing judicial generalizations and case law. With seeming pedagogic intention, at the beginning of chapters Maimonides defines concepts and terms, and only then presents cases in which he applies the definitions. The cases are drawn, almost exclusively, from talmudic examples and, although he departs significantly from talmudic presentation, at times there is a correlation between the order and numbering of the chapters in *Mishnehh Torah* and the corresponding chapters in the Mishnah.<sup>86</sup>

The first two of *Mishnehh Torah*'s fourteen books in manuscript form (Ms. Huntington 80) and proofread by Maimonides himself are housed in Oxford's Bodleian Library and were published in an edition with extensive notes by Sh. Z. Havlin.<sup>87</sup> In addition, select pages of *Mishnehh Torah* with marginal corrections, all in Maimonides' own hand, were published by E. Hurvitz.<sup>88</sup> Shamma Friedman uncovered a meaningful correlation between the corrections in the margins of these texts and the opinions of Rashi, although there is no prior evidence suggesting Maimonides knew of Rashi's work.<sup>89</sup> In recent decades three useful editions of *Mishnehh Torah* were published. The first is by Y. Kafah; the text is based on Yemenite manuscripts<sup>90</sup> and includes the editor's extensive commentary and inquiry into the sources used by Maimonides. The next edition, *Rambam Meduyak*, is still in progress.<sup>91</sup> In it, the editor, Y. Sheilat, corrects the standard printed text of *Mishnehh Torah*, with a preference for the Oriental manuscript tradition. Shabtai Frankel sponsored the publication of an edition that includes the classical commentators.<sup>92</sup> Its text is based, primarily, on the printed edition. Frankel includes an index of variant readings and bibliographies for specific rulings. An erudite multi-volume commentary to *Mish-*

Mishneh Torah

Moses ben Maimon  
(Maimonides, Rambam)

Mishneh Torah

Mishneh Torah  
Moses ben Maimon  
(Maimonides, Rambam)

Shlomo Yitzchaki  
(Rashi)  
Shlomo Yitzchaki  
(Rashi)

85 Twersky, *Code*, passim.

86 Shamma Friedman, »The Organizational Pattern of the Mishnehh Torah,« *JLA* 1 (1978): 37–41.

87 *Mishnehh Torah leharambam: Madda veahavah, hasefer hamugah*, Cleveland/OH 1997 (Hebrew).

88 *Mishnehh Torah of Maimonides: Newly discovered handwritten pages of Rabbi Moshe Ben Maimon from the Cairo Genizah*, New York, 1973, 4–44 (Hebrew) and »Additional Newly Discovered Handwritten Pages from Rabbi Moshe ben Maimon,« *Hadarom* 38 (1974): 9, 14–22 (Hebrew).

89 Shamma Friedman, »Klum lo nitznatz perush Rashi be-veit midrasho shel ha-Rambam?,« in *Rashi: demuto vi-yetzirato*, ed. Avraham Grossman and Sara Japhet, Jerusalem, 2009, 403–64 (Hebrew).

90 *Mishnehh Torah*, Kiryat Ono, 1983–95 (Hebrew).

91 Yitshak Sheilat, *Rambam meduyak*, Maale Adumim, 2004 (Hebrew).

92 *Sefer Mishnehh Torah*, Jerusalem/Bnei Brak, 1975–2001 (Hebrew).

*nehh Torah*, the text of which is based on manuscripts, was published by Nachum Rabinovich.<sup>93</sup> Yale University Press published, thus far, thirteen of the fourteen books in English translation.<sup>94</sup>

### 3.2 Northern Europe

Gershom ben Judah  
(Rabenu Gershom,  
Ma'or Hagolah)

Shlomo Yitzchaki  
(Rashi)

Tosafists

Rabbinic activities in Northern Europe began in the early 11<sup>th</sup> century with the founding of the academy at Mainz by R. Gershom ben Judah (d. 1028), known as Rabenu Gershom Ma'or Hagolah (Illuminator of the Diaspora). Unlike commentary in Muslim Spain, which focused on the interpretation of Talmud for the purpose of fleshing out practical law, the northern European interpretative project included commenting on those parts of Talmud that were not of any practical import, including tractates from the orders of *Kodashim* and *Toharot* (dealing with matters of the Temple's sacrifices and ritual impurity, respectively).

It has long been known that Rashi, employing the term *hachi garsinan* (»thus we should read [the text]«), emended texts of the Talmud based on logical and interpretive criteria, even when he had no textual tradition to support the emendation.<sup>95</sup> Recently, Vered Noam suggested that some of Rashi's emendations are paralleled in Oriental Talmud texts to which Rashi may have had access.<sup>96</sup> In the next generation, scholars known as the Tosafists, among them Rashi's grandsons, engaged in a veritable revolution in the interpretation of the Talmud. The entire talmudic corpus was treated as if produced with a fundamental unity of legal conceptions. The outcome was an agenda of harmonizing the conflicting and contradictory talmudic discussions that occur throughout the talmudic corpus (which, historically, were the outcome of the Talmud having been produced by multiple generations of Sages over the course of several centuries and in more than one center). The project of the Tosafists, to be sure, affected the way Jewish legal analysis would be conducted for the next millennium. The implications of this methodology for practical law were evidenced both in the codes and the responsa authored by the second generation of Tosafists (see below).

#### 3.2.1 Commentary in Northern Europe

R. Gershom was the principal halakhic authority of his time in the region.<sup>97</sup> An outstanding interpreter of talmudic texts and legal scholar, he is best known for a number of edicts and a commentary to the Talmud that appears in the standard Vilna printing to some ten tractates, both attributed to him (however, see below). The commentary is the earliest known and available running commentary to the Talmud from northern

93 *Mishnehh Torah larambam: Yad Peshutah*, Maaleh Adumim, 1987 (Hebrew).

94 New Haven/CT, 1949.

95 Robert Brody, »Rashi as Textual Critic: A Clarification,« *JSIJ* 16 (2019): 1–10.

96 »Early Version Traditions in Rashi's Emendations to the Talmud,« *Sidra* 17 (2001–2): 109–50 (Hebrew).

97 See Avraham Grossman, *Early Sages of Ashkenaz*, Jerusalem, 1988, 106–31, 132–49 (Hebrew).

Europe, although the extent to which authorship, in the strict sense of the word, can be attributed to R. Gershom, himself, is questionable.<sup>98</sup> The commentary's purpose is to achieve a clearer understanding of the Talmud's text by paraphrasing parts of it and filling in gaps in the argumentation. Scholars suggest that the commentary is really an edited collection of »the commentaries of Mainz,« (*perushe magenza*), as many of the parallels to these comments are called in other medieval works. The terminology and style of the work, as they stand in the most authentic textual witnesses, reflect an educational context of group study with citations in the name of »the teacher« as opposed to »the students,« and the like. According to I. Ta-Shma, these commentaries were likely composed and edited in the academies of Mainz from around the middle of the 11<sup>th</sup> century to the beginning of the 12<sup>th</sup> and were based on authentic comments or even an original, now lost, full-blown commentary by R. Gershom. The recovery of the original layer of the commentary is not possible, although, at times, it may be discernible on terminological grounds and is expressed by the term, »*inyan acher*,« or »another matter.« Significantly, there is no great concern in the commentary with the emendation of texts (as is evidenced in the later commentary of Rashi); nor is there any attempt at comparison with parallel talmudic material (the hallmark of the even later tosafist interpretive method).

Mainz

R. Gershom

Shlomo Yitzchaki  
(Rashi)

Tosafists

Shlomo Yitzchaki  
(Rashi)

According to tradition, Rashi, whose Talmud commentary came to supersede all known commentaries that preceded it,<sup>99</sup> was born in Troyes in 1040 and died there in 1105. Indeed, Rashi's commentary benefited from early popularity and unprecedented dissemination: within a century of his death, his commentary had spread from the communities of France and Germany to Spain and Africa to Asia and Babylonia. Rashi studied in the academies of Mainz and Worms with three great scholars of his day, R. Jacob bar Yakar (his primary teacher), R. Isaac bar R. Judah, and R. Isaac Segal Leviyah. Around 1075 he returned to Troyes and opened his own academy. According to tradition he earned his living from winemaking, although this cannot be verified.

Worms

Shlomo Yitzchaki  
(Rashi)

Rashi's commentary covered most, and perhaps even the entire, Talmud. However, it has not survived in its entirety. Most of Baba Batra is not extant; for tractates Nedarim, Nazir and Taanit,<sup>100</sup> the commentary is inaccurately attributed to Rashi; regarding Moed Qatan there is uncertainty; and for Hullin there are several versions.<sup>101</sup> Since the advent of the Babylonian Talmud's printing in 1484, every edition of Talmud has been printed with Rashi's commentary in the margin. Finally, there is a long standing scholarly debate revolving around the question of how many editions of his commentary Rashi wrote.<sup>102</sup>

<sup>98</sup> Ta-Shma, *Commentary*, 1:36–40.

<sup>99</sup> See the extensive study, Jonah Fraenkel, *Rashi's Methodology in his Exegesis of the Babylonian Talmud*, Jerusalem, 1975 (Hebrew).

<sup>100</sup> David Halivni (Weiss), *Fragments of a Commentary on the Treatise Taanit*, Jerusalem, 1959 (Hebrew).

<sup>101</sup> Ta-Shma, *Commentary*, 1:40f.

<sup>102</sup> For a summary see Grossman, *The Early Sages of France*, Jerusalem, 1996, 223–31 (Hebrew); Shamma Friedman, »*Perushei Rashi latalmud—hagahot umahadurot*,« in *Rashi Iyunim biyetzi-rato*, ed. Zvi Steinfeld, Ramat Gan, 1993, 147–76 (Hebrew).

Shlomo Yitzchaki  
(Rashi)

Rashi does not paraphrase the Talmud. He engages in his own unprecedented strategy. He cites words or phrases directly from the talmudic discussion (a lemma, in Hebrew: *dibbur hamatchil*) to direct the reader to the stage in the talmudic discourse on which he is commenting. Then, through the citations and his comments on them (at times the citations themselves serving as part of the comment), Rashi provides an organic commentary that flows in sync with the discourse and difficulties in the Talmud text itself. His commentary does not just smooth out difficulties and inconsistencies. Inevitably, at every stage, and always implicitly, Rashi draws his reader deeper into the Talmud text by reflecting the discussion's literary and logical ebbs and flows in his comments. He invites the reader to participate actively in the complex playing out of the talmudic discussion's argumentation.<sup>103</sup> This means that Rashi does not qualitatively ease the student's study of the text unless the student realizes the initial difficulties in the Talmud text itself (and this realization, at times, occurs only after reading Rashi's comment).<sup>104</sup>

Talmud

Shlomo Yitzchaki  
(Rashi)  
Tosafists

Rashi does not engage in comparative work. Unlike the Tosafists (see below), he only interprets the material at hand,<sup>105</sup> determines one reading of the talmudic discussion, and develops his overall reading in that direction. Additional features in Rashi's commentary include clarifying the meaning of difficult words in the text and indicating their old French equivalents; pointing to later places in the talmudic chapter or tractate that may be relevant to the current discussion; and an avoidance for issuing rulings in the commentary. Aaron Ahrend published a critical edition of Rashi's commentary to Megillah and Rosh Hashanah.<sup>106</sup>

Tosafists  
Shlomo Yitzchaki  
(Rashi)

The intellectual activity of the next generation of north European scholars, the Tosafist school (*Baalei Hatosafot*, »authors of the additions«), should be labeled as nothing short of an interpretive revolution. Unlike Rashi, who developed a singular approach when commenting on each individual talmudic discussion, the Tosafists chose to view the same talmudic discussion from different interpretive angles and entertain multiple logical possibilities for the developing argumentation. A major feature of the method, and likely its most distinguishing characteristic, is the dialectical approach employed for the resolution of contradictions within the talmudic corpus. Although reminiscent of the talmudic analysis of the Mishnah, scholars consider the degree to which the approach may find its analog in the *glossae* affixed to collections of Roman and Canon law in the middle ages.<sup>107</sup>

Mishnah

Tosafists

The Tosafists' approach to dealing with contradictory conclusions in the talmudic corpus stood in stark contrast to the earlier methods. Before the tosafistic inter-

103 Ta-Shma, *Commentary*, 1:40–56.

104 For a concrete example see Barry Wimpfheimer, *The Talmud: A Biography*, Princeton/NJ, 2018, 118–25.

105 However, on other talmudic discussions informing his localized comments, see Jonathan S. Milgram, »The Talmudic Hermeneutics of Medieval Halakhic Decision-Making,« *JJS* 65:1 (Spring, 2014): 88–112.

106 Jerusalem, 1998 and, 2004, respectively.

107 Kanarfogel, *Intellectual History*, 84–110.

pretive movement, internal contradictions in the Talmud were certainly known and, at times, resolutions were offered. As noted earlier, for the Geonim for example, contradictory conclusions in the Talmud were able to coexist because longstanding traditions deemed some talmudic discussions dominant and authoritative while other—even if parallel—material was relegated secondary status. For the Tosafists, on the other hand, contradictions in the text of the Talmud could not coexist. Accordingly, the Tosafists distinguished themselves by concentrating their method on addressing talmudic contradictions and resolving them. Seemingly, they held steadfast to the presumption that law cannot admit contradiction. So, they engaged in a process of collection, comparison, and highlighting contradictions that placed parallel (or at least relevant) sources in conversation with one another. Through elaborate argumentation, the Tosafists offered a thesis, its antithesis and, finally, synthesis. They made conceptual distinctions between the contradictory material in one talmudic text and its counterpart in another in order to resolve the issues they raised. The Tosafists engaged in this intellectual endeavor not only to come to the most compelling understanding of the material but also—and perhaps primarily—to express the plurality of understandings available to the reader. By the year 1200, it would seem, the entire Talmud had been reinterpreted through the method described.

At times, the interpretations suggested are presented as challenges to the comments offered by Rashi. As a result of the Tosafists' reactions to Rashi, scholars debate whether the Tosafist movement was spawned by the writing of Rashi's commentary. Furthermore, scholars disagree whether the origins of the Tosafist movement can be traced to France, beginning with the students of Rashi, or to Germany.<sup>108</sup>

Some ninety-five percent of the interpretive material in the works of the Tosafists is the product of Rashi's grandson, R. Jacob ben Meir of Ramerupt, known as Rabenu Tam (1100–1171), and his nephew Rabbi Isaac of Dampierre, known as Ri Ha-Zaken (d. 1189).<sup>109</sup> R. Tam developed the method and Rabbi Isaac applied it to the entire Talmud.<sup>110</sup> In the texts of *Tosafot*, however, it is virtually impossible to separate the voices of the two. R. Isaac worked via *reportatio* (the official written report of a teacher's instruction) through four main students: R. Baruch ben Isaac, R. Shimshon of Sens, R. Yehudah mi-Paris, and R. Elchanan (his son). Later, derivative versions of these *Tosafot* became the basis for most of the *Tosafot* which have appeared in printed Talmud editions since the advent of Jewish printing.<sup>111</sup>

Shlomo Yitzchaki  
(Rashi)  
Tosafists

Shlomo Yitzchaki  
(Rashi)  
Jacob ben Meir (Rabbe-  
nu Tam)  
Isaac of Dampierre (Ri  
Ha-Zaken)  
Talmud  
Tosefta

108 Ephraim E. Urbach, *Baalei Hatosafot*, Jerusalem, 1955, 21f. (Hebrew); Ta-Shma, *Commentary*, 1:65; Haym Soloveitchik, *Collected Essays II*, Liverpool, 2014, 23–28.

109 Oral communication by Haym Soloveitchik, October 9, 1996; from his class, *Introduction to the Literature of the Rishonim* (Bernard Revel Graduate School, Yeshiva University).

110 Haym Soloveitchik, »The Printed Page of the Talmud,« in *Printing the Talmud*, ed. Sharon Lieberman Mintz and Gabriel M. Goldstein, New York, 2006, 40–42.

111 Marvin Heller, »Earliest Printings of the Talmud,« *ibid.*, 62.

### 3.2.2 Responsa in Northern Europe

R. Gershom

Approximately one hundred responsa of R. Gershom are in our possession. Shlomo Eidelberg published 77 of them in one volume<sup>112</sup> and other responsa were published previously by J. Müller.<sup>113</sup> It is assumed that many anonymous responsa of the period were also authored by R. Gershom. Although R. Gershom dealt with all areas of Jewish law in his responsa, the majority were regarding monetary matters, pointing to the heightened economic activity of the Jews in the period in question. In his responsa, he refers to his teacher, R. Yehudah bar R. Meir ha-Cohen, better known as Leon or Lontin.<sup>114</sup>

Yehudah bar Meir ha-Cohen

Shlomo Yitzchaki (Rashi)

The largest collection of Rashi's responsa was edited by I. Elfenbein,<sup>115</sup> although it is assumed that many of Rashi's responsa were lost. In stark contrast to the responsa of R. Gershom, Rashi's responsa deal, primarily, with matters of ritual law. While scholars debated the historical reasons for this difference, A. Grossman's suggestion that this is due to the manner in which Rashi's responsa were preserved and collected (appended to works dealing with ritual law by Rashi's students and others) is most compelling.<sup>116</sup>

Tosafists

Jacob ben Meir (Rabbe-nu Tam)

Shlomo Yitzchaki (Rashi)

A collection of responsa of the Tosafists was published by I. Agus.<sup>117</sup> Rabenu Tam's *Sefer HaYashar* is made up of two parts, Novellae and Responsa. Each was edited and published separately.<sup>118</sup> Although this work was not popular, R. Tam, himself, was quite well-known. For example, ibn Daud, the author of *Sefer Ha-Qabbalah*, seems never to have heard of Rashi, but knew of Rabenu Tam.<sup>119</sup> The responsa in the volume are generally clear. The novellae, however, are difficult to understand and, in many places, only once one is already aware of R. Tam's opinion elsewhere are the novellae comprehensible. This is due to the fact the novellae represent R. Tam's notebook and were mangled by his students.<sup>120</sup>

Eliezer bar Nathan of Mainz (Raavan)  
Tosafists

Some contemporaries of R. Tam's in Germany opposed the use of his dialectical approach for legal decision-making.<sup>121</sup> Such is evidenced in the responsa (and novellae) of R. Eliezer bar Nathan of Mainz (Raavan), in his treatise, *Even Haezer* (arranged according to talmudic tractate).<sup>122</sup> Within a short time, however, the French tosafistic meth-

112 *The Responsa of Rabbeinu Gershom Maor Hagolah*, ed. Shlomo Eidelberg, New York, 1955 (Hebrew).

113 See Joel Müller, *Teshuvot Chachmei Tzarfat velutir*, Vienna, 1881 (Hebrew); *Teshuvot Geonei Mizrach uMaarav*, Berlin, 1888 (Hebrew).

114 Grossman, *Ashkenaz*, 80.

115 Israel Elfenbein, *Responsa Rashi, with notes by Louis Ginzberg*, New York, 1943 (Hebrew).

116 Grossman, *France*, 239–46.

117 *Responsa of the Tosaphists*, ed. Irving Agus, New York, 1954 (Hebrew).

118 *Sefer ha-Yashar: Hiddushim*, ed. Simon S. Schlesinger, Jerusalem, 1955 (Hebrew); *Sefer ha-Yashar: Teshuvot*, ed. Ferdinand Rosenthal, Berlin, 1898 (Hebrew).

119 Cohen, *Book of Tradition*, 89.

120 Haym Soloveitchik, *Collected Essays I*, Liverpool, 2013, 14.

121 Reiner, »Rabenu Tam,« 278.

122 *Sefer Raavan*, ed. Shalom Albeck, Warsaw, 1904 (Hebrew).



od's imprint was even felt in the responsa and novellae of German scholars. A case in point is Raavan's grandson, R. Eliezer ben Joel (Raviah) of Bonn, author of *Sefer Avi haezri* and *Avi Asaf* (the latter having mostly disappeared). This work is organized according to the order of talmudic tractates, includes both novellae and responsa, and benefitted from an outstanding (but incomplete) edition prepared by V. Aptowitzer,<sup>123</sup> later supplemented by Shear Yashuv Cohen, and even later completed by D. Deblitski. The author cites heavily from the responsa written by R. Tam. The imprint of the French tosafistic approach reached its peak in Germany<sup>124</sup> in *Sefer Or Zarua*,<sup>125</sup> a work arranged by topics in the order of their appearance in the Talmud, authored by Raviah's student R. Isaac ben Moses of Vienna. The author even travelled to study in the French academy of R. Judah Sir Leon (disciple of R. Isaac of Dampierre).

The outstanding student of R. Isaac of Vienna was R. Meir of Rothenburg,<sup>126</sup> likely the greatest talmudic authority in Germany of his generation. R. Meir was famously held captive at the castle in Ensisheim and died there. R. Meir wrote extensive responsa in many areas of Jewish law. The most recent edition, edited by S. Emanuel, brings to light 501 new responsa by R. Meir and his colleagues.<sup>127</sup>

One prominent student of R. Meir was R. Mordechai ben Hillel, who penned *Sefer hamordechai* (The book of Mordechai). In it the author follows the sequence of Rif's *Halakhot*. More compendium than commentary, R. Mordechai's goal was to write a supplement to Rif's work that included the opinions of scholars of the northern European school. He also quotes extensively from the works of scholars from different centers of learning.<sup>128</sup> Individual critical editions to two tractates were published, Gittin by M. Rabinowitz<sup>129</sup> and Kiddushin by J. Roth.<sup>130</sup> An edition with reference to manuscript variants and notes to one dozen tractates was also published.<sup>131</sup>

Eliezer ben Joel of  
Bonn (Raviah)

Talmud

Jacob ben Meir (Rabbe-  
nu Tam)

Isaac of Dampierre (Ri  
Ha-Zaken)

Meir ben Baruch of  
Rothenburg

Mordechai ben Hillel  
al-Fasi, Isaac ben Jacob  
(Rif)

### 3.2.3 Codes Literature in Northern Europe

Although the edicts attributed to R. Gershom, known as his *takkanot*, were not handed down historically in the form of a code, no discussion of legal thinking in the region would be complete without their mention.<sup>132</sup> Among the edicts, the most famous in-

R. Gershom

123 Victor Aptowitzer, *Mavo lesefer Ravyah*, Jerusalem, 1938 (Hebrew); S.Y. Cohen, *Sefer Ravyah*, Jerusalem, 1964 (Hebrew); David Deblitski, *Sefer Ravyah*, Bnei Brak, 1975–2000, 2005 (Hebrew).

124 Reiner, »Rabenu Tam,« 279.

125 See *The Complete Or Zarua*, ed. Avraham Marinberg and Shalom Klain, Jerusalem, 2001 (Hebrew).

126 Irving A. Agus, *Rabbi Meir of Rothenburg*, Philadelphia/PA, 1947.

127 *Responsa of Rabbi Meir of Rothenburg and his Colleagues*, ed. Simcha Emanuel, Jerusalem, 2012 (Hebrew).

128 See Menachem Elon, *Jewish Law: History, Sources and Principles*, vol. 3, Philadelphia/PA, 1994, 1249f.

129 *Sefer Hamordechai lemaschet gittin*, Jerusalem, 1990 (Hebrew).

130 *Sefer Hamordechai lemaschet kiddushin*, Jerusalem, 1990 (Hebrew).

131 *Sefer Hamordechai hashalem*, ed. Avraham Halpren and Hayyim HaCohen Schwartz, Jerusalem, 1982–2013 (Hebrew).

132 For a thorough discussion of the issues see Grossman, *Ashkenaz*, 132–34.

clude the prohibitions against marrying more than one wife; divorcing a woman without her consent; and reading someone else's mail.<sup>133</sup> The statutes are listed in several works which have often been copied one from the other and the number of edicts (between 10 and 16) varies among the works. The evidence for the ordinances is from sources later than R. Gershom and not from works attributed to his students. Accordingly, the historical attribution to R. Gershom cannot be maintained.

Isaac of Dampierre (Ri Ha-Zaken)

Moses of Coucy

Moses ben Maimon  
(Maimonides, Rambam)  
Tosefta

Among the famed students of R. Isaac of Dampierre who moved to the Land of Israel,<sup>134</sup> was R. Baruch ben Isaac,<sup>135</sup> author of *Sefer Ha-Terumah* (»The Book of the Offering«). In this work of practical law, the student took the master's method of dialectic and theoretical conclusions and came to practical decisions for a broad audience.<sup>136</sup> He arranged his work topically, such as on the dietary and Sabbath laws. R. Moses of Coucy organized his code, *Sefer Mitzvot Gadol*<sup>137</sup> (»Large Book of the Commandments«; acronym, *Smag*) according to Maimonides' enumeration of the biblical commandments (*Sefer Hamitzvot*; »The Book of the Commandments«). For each commandment he produced a discussion based on the *Tosafot* of his teacher, R. Judah of Paris. In disputes between Maimonides and the Tosafists—whether about legal conclusions or the enumeration of the commandments—R. Moses of Coucy generally sided with the Tosafists.<sup>138</sup> The technicalities inherent to the massive work made it only accessible to scholars.<sup>139</sup> An abridged version, *Sefer Mitzvot Katan* (»Small Book of the Commandments«), was compiled by R. Isaac of Corbeil and became highly influential.

Meir ben Baruch of  
Rothenburg  
Mordechai ben Hillel  
Rintfleisch Massacres  
Asher ben Yehiel  
(Rosh)

With the death of R. Meir at Ensisheim and that of his student R. Mordechai ben Hillel in the Rintfleisch massacres of 1298, Jewish legal creativity in the region came to an end. In the aftermath of R. Meir's demise, the man who was to become his most famous student, R. Asher ben Yehiel, moved to Spain with his family. That move began a new chapter in the history of Jewish legal thinking and production.

### 3.3 Christian Spain

The beginnings of a discernible approach in Christian Spain are found in the works R. Meir Halevi Abulafia (Ramah; 1175–1244). Ramah was a transitional figure in multiple fields, between the methods and concerns of the scholars in Muslim Spain and the ap-

133 Avraham Grossman, »The Historical Background to the Ordinances on Family Affairs Attributed to Rabbeinu Gershom,« in *Jewish History: Essays in Honour of Chimen Abramsky*, ed. Ada Rapaport-Albert et al., London, 1988, 3–23.

134 See Kanarfogel, »Aliyah,« 191–215.

135 Simcha Emanuel, »Ish al mekomo mevoar shemo,« *Tarbiz* 69 (2000) (Hebrew): 423–40; *Sefer ha-terumah*, Warsaw, 1897 (Hebrew).

136 Yoel Friedemann, *Sefer Haterumah of R. Baruch ben Isaac: Aims, Structure and Version*, PhD diss., Hebrew University, 2013 (Hebrew).

137 *Sefer Mitzvot Gadol*, ed. Elyakim Schlesinger, Jerusalem, 1995–99; Jeffrey Woolf, »Maimonides Revised: The Case of *Sefer Misvot Gadol*,« *HTR* 90:2 (1997): 175–203.

138 Elon, *Jewish Law*, 3:1262.

139 Soloveitchik, »Printed Page,« 41.

proaches developed in Christian Spain.<sup>140</sup> The field of talmudic analysis was no exception. Ramah's Talmud commentary, for example, presents itself in the classic style of Talmud commentaries by scholars of Muslim Spain: its goal is to reach a conclusion for practical law. At the same time, Ramah, who was based in Toledo (the capital of Castile), was the first sage in Christian Spain to make any use of the analyses of the Tosafists.<sup>141</sup> The full integration of the Tosafist approach reached its peak, at least in Catalonia (northeast of Toledo), only later, with the Talmud commentaries of the famed poet, kabbalist and physician, Moses ben Nachman (Nachmanides), known as Ramban (d. 1275). In his rulings, however, he remained faithful to his Spanish legal heritage.<sup>142</sup> Both he and his contemporary R. Jonah Gerondi, founded talmudic academies in the region during the first half of the thirteenth century: Ramban in his native Gerona, and R. Jonah in Barcelona. The methods of the French Tosafists were familiar to both. Ramban trained under Provençal scholars who had studied in Northern France; R. Jonah studied in Northern France.<sup>143</sup>

Certainly, the greatest student of Nachmanides and R. Jonah was Rashba (see below), who sat at the helm of Spanish Jewry after the death of Nachmanides for half a century. Rashba's younger Ashkenazi contemporary, R. Asher ben Yehiel (Rosh), made an everlasting mark on Jewish legal developments in Spain. After the imprisonment and death of his teacher, R. Meir of Rothenburg, Rosh and his family escaped Ashkenaz and moved west, settling in Toledo. The intellectual environment in Castile was different, not only from that of Rosh's native Ashkenaz, but even from the centers of Talmud study in Catalonia. In Castile, serious study of the Talmud with glosses of the Tosafists was not common. Jewish law was all but decided according to Maimonides' *Mishneh Torah* and the earlier *Halakhot* of Rif. Furthermore, the few students of Talmud who did, in fact, study the glosses of the Tosafists seriously, did so with inferior versions of the works. Upon his arrival in Castile, therefore, Rosh faced the challenge of refocusing the regnant legal methodology to Talmud and Tosafot and bringing more reliable versions of the Tosafists' analyses to the attention of the community of learners. To be sure, Rosh's activities and literary oeuvre had a permanent effect on the state of Jewish legal affairs. His son, R. Jacob ben Asher, later authored the work *Arba'ah Turim*, which was heavily based on his father's legal output. This work, in turn, served as the skeleton for R. Joseph Caro's universally accepted code of Jewish law, *Shulchan 'Aruch*.

Tosefta

Moses ben Nachman  
(Nachmanides,  
Ramban)  
Gerondi, JonahAderet, Solomon ben  
Avraham (Rashba)Asher ben Yehiel  
(Rosh)Meir ben Baruch of  
Rothenburg  
Ashkenaz/AshkenazimMishneh Torah  
al-Fasi, Isaac ben Jacob  
(Rif)Jacob ben Asher  
Arba'ah TurimCaro, Joseph  
Shulchan 'Aruch

### 3.3.1 Commentary in Christian Spain

The earliest commentary on the Talmud known from Christian Spain was authored by Ramah. We have no information about the identity of his teachers<sup>144</sup> and very little

Commentaries  
Talmud  
Abulafia, Meir Halevi  
(Ramah)

140 Bernard Septimus, *Hispano-Jewish Culture in Transition*, Cambridge/MA, 1982.

141 Ta-Shma, *Commentary*, 2:15.

142 Ephraim Kanarfogel, »On the Assessment of R. Moses ben Nachman and his Literary Oeuvre,« *Jewish Book Annual* 51 (1993–94): 158–72.

143 Shalem Yahalom, *Between Gerona and Narbonne*, Jerusalem, 2012 (Hebrew).

144 Ta-Shma, *Commentary* 1:14, n. 8 and 2:13–16.

Talmud Yerushalmi

Tosafists

Moses ben Nachman  
(Nachmanides,  
Ramban)  
al-Fasi, Isaac ben Jacob  
(Rif)

information about his students. As stated, his Talmud commentary, in style and content, captures the transition from the classical commentary forms of Muslim Spain to the new modes of Christian Spanish commentary which evidenced northern European influence. The commentary was originally called *Pratei Peratim* (Details) and has been called »*Yad Ramah*« (the High Hand, or Hand of Ramah) since the 18<sup>th</sup> century. Baba Batra and Sanhedrin are available; the commentaries to other tractates, however, have been lost. The work is written in talmudic Aramaic and the author generally dialogues with himself. Ramah shows great independence in issuing rulings. In addition, Ramah makes regular use of the Palestinian Talmud and corrects the text of the Talmud in accordance with variants in works he had before him.

As mentioned, the full integration of the approach of the French Tosafists reached its peak with the Talmud commentaries of Ramban. Ramban's contribution to Talmud commentary came in several forms. As I. Ta-Shma notes, Ramban's work defending Rif's positions in his *Halakhot* should be seen as commentary to the Talmud, due to the overarching concern with the precise interpretation of Talmud texts. Unlike Ta-Shma, however, I include Ramban's supplements to *Halakhot Rabboti*—for areas of law not covered by Rif—below in the section on Codes. Ramban's most famous defense of Rif is *Sefer Milchemet Hashem* (»The Battle of God,« known as *Sefer Hamilchamot*, »The Book of Battles«). There, Ramban unsparingly defends Rif's rulings against the severe critique of R. Zerachya Halevi (Provence, d. 1186), in his work, *Sefer Hamaor* (The Book of Enlightenment). Both *Sefer Hamilchamot* and *Sefer Hamaor* are printed together with Rif's *Halakhot* in standard Talmud editions.

Moses ben Nachman  
(Nachmanides,  
Ramban)

Ramban's novellae to the Talmud<sup>145</sup> are the first in a genre of commentaries to the Talmud continued by his students and their students. The work, as noted, is heavily influenced by the Tosafist methodology, but it is not a line-by-line commentary to the Talmud text.<sup>146</sup> The author assumes a basic understanding of the Talmud text and focuses on highlighting new interpretations of aspects of the text in light of the comments of earlier authorities. Ramban also clarifies the fundamentals and concepts presumed by the text. And, while the great influence of the Tosafist approach is evident throughout the work, it is more in the style of questioning and related textual concerns than in adopting the conclusions offered by the Tosafists. Ramban often suggests alternate solutions to those proposed by the Tosafists.

Aderet, Solomon ben  
Avraham (Rashba)

Ramban's greatest student, and in his own day the most outstanding jurist in Christian Spain, was Shlomo ben Avraham ibn Aderet (Rashba). He authored novellae to many of the tractates of the Talmud, although not all of them are extant.<sup>147</sup> His writing is in line with the general approach of his teacher. In Rashba's work the reader will often find a retelling, elaboration, and explanation of Ramban's understanding of the talmudic material in a more lucid explanatory style than that of Ramban himself.<sup>148</sup> In addition, Rashba will choose one course among the several

145 *Chidushei Haramban*, ed. M. Herschler, Jerusalem, 1995 (Hebrew).

146 Ta-Shma, *Commentary*, 2:35–39.

147 *Sefer Chidushei Harashba Hashalem*, ed. A. Weingarten, Jerusalem, 1989 (Hebrew).

148 Ta-Shma, *Commentary*, 2:58–60.

proposed by the Tosafists and Ramban, and read the entire talmudic discussion on a given topic in light of the chosen approach. The commentary is written in a fluid and expanded style, (especially when compared to Ramban's commentary). Critical editions with notes for tractates Megillah and Rosh Hashanah were published by H.Z. Dimitrovsky.<sup>149</sup>

R. Yom Tov ben Abraham Asevilli (i.e. from Seville), or Ritva, was among the stellar students of both Rashba and Rashba's adversary, R. Aaron Halevi (Ra'ah).<sup>150</sup> He authored novellae to most of the Talmud.<sup>151</sup> Ritva's own approach is heavily influenced by the method of Ramban. He cites the opinions of Ramban's students—who were Ritva's teachers—and adds his own interpretations, at times agreeing and others, disagreeing.<sup>152</sup> He also engages the works of the Geonim, Rashi, R. Hananel, Rif, Rambam, and the Tosafists, paraphrasing the interpretations of his predecessors in his own words. At times, the effect is the clarification of an earlier opinion or approach. Ritva provides more of a running commentary than did his predecessors in Christian Spain, highlighting details of the talmudic discussion's progression. Like Rashba, Ritva primarily engages the Tosafot texts that were used by Ramban. Accordingly, although the intellectual activities of Ritva and Rosh overlapped for some two decades, Ritva did not interest himself in the body of Tosafist writings edited by Rosh.

Rosh's prominent work of talmudic interpretation, *Tosafot Harosh*, currently available in fifteen volumes,<sup>153</sup> was used in the Ashkenazi enclave in Toledo led by Rosh and his family, but was not disseminated to other centers.<sup>154</sup> Rosh's *Tosafot* were based on the earlier *Tosafot* of R. Isaac of Dampierre's students (such as R. Shimshon of Sens) with some emendations, and are presented in a clearer style than the *Tosafot* in other collections. I. Ta-Shma argued that Rosh's view of *Tosafot* was starkly different from the view of Ramban and his students. Rosh saw the Tosafist's literary contribution as a closed canon for study. Ramban, however, viewed the intellectual output of the Tosafists as an adaptable collection and springboard for further development.

Considered the last scholar writing in the tradition of Ramban and his students, R. Nissim bar Reuven (Ran) wrote novellae to the Talmud on some ten tractates.<sup>155</sup> Some novellae to the Talmud attributed to him, however, are really the works of others.<sup>156</sup> Originally from Gerona and later settling in Barcelona, Ran also wrote a commentary to Rif's *Halakhot* on fifteen tractates.<sup>157</sup>

## Tosafists

Asevilli, Yom Tov ben Abraham (Ritva)  
Aderet, Solomon ben Avraham (Rashba)  
Moses ben Nachman (Nachmanides, Ramban)  
Shlomo Yitzchaki (Rashi)  
Hananel ben Hushiel  
al-Fasi, Isaac ben Jacob (Rif)

Asher ben Yehiel (Rosh)

Asher ben Yehiel (Rosh)  
Ashkenaz/Ashkenazim

Isaac of Dampierre (Ri Ha-Zaken)  
Shimshon of Sens

## Canon

Moses ben Nachman (Nachmanides, Ramban)  
Nissim bar Reuven (Ran)  
al-Fasi, Isaac ben Jacob (Rif)

149 Chidushei R. Shlomo ben Aderet al masechet Megillah, New York, 1956 (Hebrew); Chidushei R. Shlomo ben Aderet al masechet Rosh Hashanah, New York, 1961 (Hebrew).

150 See Ta-Shma, *Commentary*, 2:66–69.

151 Chidushei haritva, Jerusalem, 1974 (Hebrew).

152 Ta-Shma, *Commentary*, 2:71–74.

153 *Tosafot harosh al hashas*, Jerusalem, 2018 (Hebrew).

154 Ta-Shma, *Commentary*, 2:81.

155 Chidushei haran, Jerusalem, 1990 (Hebrew).

156 Ta-Shma, *Commentary*, 2:87.

157 Mark Washofsky, »The »Commentary« of R. Nissim b. Reuven Gerondi to the »Halakhot of Alfasi,« HUCA 60 (1990): 191–258.

### 3.3.2 Responsa of Christian Spain

Abulafia, Meir Halevi  
(Ramah)  
Moses ben Nachman  
(Nachmanides,  
Ramban)

A collection of Ramah's responsa, *Or Tzadikim* (Light of the Righteous), was published in 1798–1799 in Salonica. Some responsa of Ramban were compiled by his younger colleague and student, R. Shmuel Hasardi, in his work *Sefer Haterumot* (The Book of Offerings).<sup>158</sup> They all deal with matters of civil law.<sup>159</sup> In spite of his strong inclination for the Tosafist method of Talmud study, Ramban remained faithful to the Spanish legal tradition in his legal decision making. Only some one hundred responsa survived even though it is highly likely many more were written. In modern times all the responsa available were published by Charles Chavel.<sup>160</sup>

Aderet, Solomon ben  
Avraham (Rashba)

Rashba authored over three thousand responsa, making him among the most prolific and influential Jewish legal decisors of all time.<sup>161</sup> Many of the responsa were written to answer questions sent to Rashba by former students. I. Ta-Shma noted that in the responsa the reader can discern the personal tone of the academy head walking the student through the sources towards a legal conclusion. H.Z. Dimitrovsky prepared a critical edition of all of Rashba's responsa based on all of the manuscripts available. However, only two volumes of this work (with notes and commentary) appeared before the editor's death.<sup>162</sup> Another edition, including all known responsa, was also published.<sup>163</sup> Ritva's responsa, collected and published by Y. Kappah,<sup>164</sup> exhibit a strong dependence on the methods of Ramban.<sup>165</sup>

Asevilli, Yom Tov ben  
Abraham (Ritva)  
Moses ben Nachman  
(Nachmanides,  
Ramban)  
Asher ben Yehiel  
(Rosh)  
Ashkenaz/Ashkenazim

Approximately one thousand responsa of Rosh survived, attesting to his singular authority as representative of the Ashkenazi tradition in his generation. These were collected by I. Yudlov<sup>166</sup> and S. Toledano.<sup>167</sup> Despite the comforts afforded to Rosh in Spain after taking refuge there (see above), he at times critiques the religious practices of his new homeland, preferring to uphold the traditions of his native land.<sup>168</sup> Less than one hundred responsa of Ran are extant.<sup>169</sup> It is highly likely that many more responsa existed at one time.

Nissim bar Reuven  
(Ran)

158 *Sefer Haterumot*, ed. Aryeh Goldschmidt, Jerusalem, 1987 (Hebrew).

159 Ta-Shma, *Commentary*, 2:35.

160 *Teshuvot Rabenu Moshe ben Nachman*, Jerusalem, 1975 (Hebrew).

161 Ta-Shma, *Commentary*, 2:56f.

162 *Responsa of Rashba*, Jerusalem, 1990–2015 (Hebrew).

163 *Sheelot uTeshuvot haRaShBa*, ed. A. Zeleznik, Jerusalem, 1997 (Hebrew).

164 *Rabenu Yom Tov ben Avraham Alashvili: Sheelot uTeshuvot*, Jerusalem, 1958 (Hebrew).

165 Ta-Shma, *Commentary*, 2:73.

166 *Sheelot uTeshuvot leRabenu Asher ben Yehiel*, Jerusalem, 1993 (Hebrew).

167 »Kamah Teshuvot chadashot shel haRosh,« *Kovets al yad* 12 (1994): 161–69 (Hebrew).

168 Ta-Shma, *Commentary*, 2:84f.

169 Leon A. Feldman, *Sheelot uteshuvot haRaN*, Jerusalem, 1984 (Hebrew).

### 3.3.3 Codes Literature of Christian Spain

Ramban made a significant contribution to codes literature.<sup>170</sup> These included two supplements to Rif's *Halakhot* for areas of law not covered by Rif, printed in standard editions of the Talmud: *Hilchot Nedarim* (›Laws of Vows‹) and *Hilchot Bechorot vechallah* (›Laws of Firstlings and Dough Offerings‹). Their composition is close in style to that of Rif himself. Ramban's monograph, *Torat Ha'adam* (›The Law of Humans‹), discusses end of life issues and cites talmudic discussions and their interpretation from the Geonim through to Ramban's own time. Finally, Ramban's short book, *Hilkhot Niddah*, on the laws of family purity, is a focused study in which the laws are stated absolutely (save for some occurrences of dissenting opinion) and without attribution.<sup>171</sup>

Rashba's primary work of codification, *Torat habayit* (›The Law of the House‹),<sup>172</sup> deals with religious law pertaining to food (ritual slaughter, forbidden mixtures, etc.). The work has two parts. In *Torat habayit haaroch* (the long *Torat habayit*), Rashba examines the talmudic and post-talmudic sources in detail. In *Torat habayit hakatzar* (the short *Torat habayit*) he presents rulings without attribution. Scholars could consult the longer work and laypeople the shorter. The main critic of Rashba's work was R. Aaron Halevi (Ra'ah), also a student of Ramban.<sup>173</sup> He critiqued Rashba's *Torat habayit*, entitled *Bedek habayit* (›Repair of the House‹). In turn, Rashba anonymously published *Mishmeret habayit* (›Defense of the House‹), responding to R. Aaron's extensive criticism.<sup>174</sup> Ritva authored, among other minor codificatory works, *Hilkhot Berachot* (›The Laws of Blessings‹).<sup>175</sup>

Rosh's *Piskei Harosh* (›Rulings of Rosh‹) is a companion to Rif's *Halakhot* that has been included in printed editions of the Talmud since the advent of Jewish printing. Each of the work's units is long and is composed in a mixture of Hebrew and Aramaic. The original sources with attribution are cited and explained.<sup>176</sup> The goal of the work is to present the relevant talmudic literature along with the opinions of the Tosafists in light of Rif's conclusions, enabling a complete consultation of the sources from the Mishnah until the time of Rosh. Rosh wished to refocus the study of Jewish law as originating from the talmudic texts themselves, something which had been neglected by scholars in Toledo.<sup>177</sup> Furthermore, Rosh seems to organize his work in this way, in part, to realize the approach of his teacher R. Meir of Rothenburg, who held that the law is according to Maimonides and Rif

Moses ben Nachman  
(Nachmanides,  
Ramban)  
al-Fasi, Isaac ben Jacob  
(Rif)  
Talmud

Gaon/Geonim

Aderet, Solomon ben  
Avraham (Rashba)

Asevilli, Yom Tov ben  
Abraham (Ritva)

Asher ben Yehiel  
(Rosh)  
al-Fasi, Isaac ben Jacob  
(Rif)

Meir ben Baruch of  
Rothenburg  
Moses ben Maimon  
(Maimonides, Rambam)

170 See Elon, *Jewish Law*, 3:1242f.

171 Charles Chavel, *Kitvei Rabenu Moshe ben Nachman*, Jerusalem, 1963 (Hebrew).

172 See Elon, *Jewish Law*, 3:1273–75.

173 See Ta-Shma, *Commentary*, 2:67.

174 See Elon, *Jewish Law*, 3:1276f.

175 *Kitvei Haritva*, ed. M. Yosef Blau, New York, 1956 (Hebrew).

176 Elon, *Jewish Law*, 3:1252.

177 Judah Galinsky, »Ashkenazim in Sefarad: Rosh and Tur on the Codification of Jewish Law,« *JLA* XVI (2006): 9.

Tosafists

unless it is disputed by the Tosafists.<sup>178</sup> The work functions as a code: in addition to Rosh collecting material, he issues rulings.

Jacob ben Asher  
Asher ben Yehiel  
(Rosh)

R. Jacob ben Asher composed, *Kitzur Piskei Harosh* (an abbreviation of the rulings of Rosh), a table of contents to and summary of his father's *Piskei Harosh*. R. Jacob numbered the sections of his father's work and, in a corresponding number, provided the reader with the bottom line of his father's discussion.<sup>179</sup> Presumably, the writing of *Kitzur Piskei Harosh* facilitated the study and accessibility of Rosh's complex legal essays.<sup>180</sup> Significantly, the writing of *Kitzur Piskei Harosh* may have been in preparation for authoring R. Jacob's *magnum opus*, the highly influential code of practical law, *Arba'ah Turim*.<sup>181</sup> It's four sections are: a) *Orach Chayim* (the path of life), which deals with daily worship, the Sabbath and holidays; b) *Yoreh De'ah* (it will teach knowledge), that handles dietary laws and ritual slaughter, among other things; c) *'Even Ha'ezer* (the stone of the helper), that address the laws of marriage and divorce; and d) *Choshen Mishpat* (the breastplate of law) which treats the laws of finances and damages. It is styled in part along the lines of the Spanish tradition, with Maimonides' *Mishneh Torah* at its center and, in part, along Ashkenazi lines with a collection of multiple opinions at the reader's disposal.<sup>182</sup> Organized by subject, the work was written in Hebrew and the author provides attributions for medieval sources.

Arba'ah Turim

Moses ben Maimon  
(Maimonides, Rambam)

This method of presentation enabled both the novice to search through the compendium with relative ease and the qualified judge to evaluate cases based on the precedents given. The citation of talmudic sources is far less frequent. J. Galinsky suggests that by paralleling some aspects of Maimonides' *Mishneh Torah*, Spanish scholars might more readily be willing to have *Arba'ah Turim* replace *Mishneh Torah* for decision-making. R. Jacob presents a clear preference for the legal decisions of his father, Rosh, often concluding a section with his father's opinion. It may be that R. Jacob reorganized much of his father's *oeuvre* in order to make it more accessible. *Arba'ah Turim* certainly proved to be a monumental contribution to the codification of Jewish law and later served as the basis for R. Joseph Caro's *Shulchan 'Aruch* (see below).

Moses ben Maimon  
(Maimonides, Rambam)  
*Arba'ah Turim*

Asher ben Yehiel  
(Rosh)

Caro, Joseph  
*Shulchan 'Aruch*

## 4 The Fifteenth to the Sixteenth Century: R. Joseph Caro and R. Moses Isserles

By the beginning of the fourteenth century, the Jewish community of northern Europe was decimated. Its greatest leaders had been either massacred or exiled. By

178 Ta-Shma, *Commentary*, 2:83.

179 Jacob Spiegel, *Amudim betoldot hasefer haivri*, Ramat Gan, 2005, 543f. (Hebrew).

180 Galinsky, »Ashkenazim in Sefarad,« 12 n. 19.

181 Israel Ta-Shma, »Rabenu Asher uvno R. Yaakov baal Haturim,« in idem, *Studies in Medieval Rabbinic Literature* 2, 176 (Hebrew).

182 Galinsky, »Ashkenazim in Sefarad,« 18–21.



the middle of the fourteenth century, the region was further affected by the death of so many due to the Black Plague. The year 1391–1392 witnessed violence through mass riots and forced conversions in the Spanish kingdoms of Castile and Aragon and in the principality of Catalonia.<sup>183</sup> A century later, in 1492, the Jews were expelled from Spain and dispersed all over the world. One refugee, R. Joseph Caro, left Spain as a little boy and after residing in several countries over a long period of time, relocated to the land of Israel where he eventually was a member of the rabbinic court of Safed. Caro authored *Beit Yosef* (‘the House of Joseph’) and *Shulchan ‘Aruch* (‘The Set Table’). In the former, the author provided the community of scholars with a source book; in the latter, he brought to the community of laypeople a concise handbook.

*Beit Yosef* serves as a supplement to *Arba’ah Turim*.<sup>184</sup> In his engaging style, Caro presents the talmudic origins of the laws discussed in *Arba’ah Turim* (generally neglected by R. Jacob ben Asher); he explains the reasoning behind the multiple opinions cited. Caro clarifies the objections R. Jacob had regarding specific legal positions; adds more sources to those cited; and, finally, Caro gives his legal conclusion. Caro chose not to draw conclusions based on his own evaluation of the reasoning of earlier sages. Instead, he would look at the decisions of Rif, Rambam, and Rosh and determine the law based on majority rule. When one of these authorities did not give an express opinion, Caro turned to his second-tier of authorities—including Ramban, Rashba, Ran, Mordechai, and Semag—and decide in accordance with the majority. Finally, Caro acknowledged that communities should continue their own strict practices according to the historical understanding of the law in their communities, even if he promoted a more lenient view.<sup>185</sup> *Beit Yosef* is printed in standard editions of *Arba’ah Turim*. In addition, Caro authored *Kesef Mishneh*, a running commentary to Maimonides’ *Mishneh Torah*.<sup>186</sup>

After completing *Beit Yosef*, Caro authored, *Shulchan ‘Aruch* (‘The Set Table’), a work succinctly providing Caro’s conclusions based on his analyses in *Beit Yosef*. Its structure was based on *Arba’ah Turim*. Accordingly, its four parts match the four sections of *Arba’ah Turim* (see above). The four parts are further divided into sections (*simanim*), which are then subdivided into paragraphs (*se’ifim*). Intended as a legal primer for young students, the book is divided into thirty sections in total since, originally, it was designed to be read in its entirety on a monthly basis. At times, statements of law are extremely concise, even when the earlier codes being cited provided some explanation. Imitating Maimonides’ approach, attributions and names of sources are omitted. Unlike Maimonides, Caro provides more than one opinion in his digest stating, »*yesh omrim*,« »there are those who say.« Unlike Mai-

Caro, Joseph

Shulchan ‘Aruch

Arba’ah Turim

Jacob ben Asher

al-Fasi, Isaac ben Jacob (Rif)

Moses ben Maimon (Maimonides, Rambam)  
Asher ben Yehiel (Rosh)

Moses ben Nachman (Nachmanides, Ramban)

Aderet, Solomon ben Avraham (Rashba)  
Nissim bar Reuven (Ran)Mishneh Torah  
Caro, Joseph  
Shulchan ‘Aruch

183 Benjamin Gampel, *Anti-Jewish Riots in the Crown of Aragon and the Royal Response 1391–1392*, Cambridge, 2016.

184 See Israel Ta-Shma, »Rabbi Joseph Caro and His *Beit Yosef*,« in *Moreshet Sepharad*, ed. Haim Beinart, Jerusalem, 1992, 2:192–206.

185 Elon, *Jewish Law*, 3:1312–40.

186 Moshe Assis, »*Mashehu al Kesef Mishneh*,« *Asufot* 3 (1989): 275–322 (Hebrew).

monides, who presents everything in one uniform style, Caro often maintains the original formulation of the work from which he is borrowing. Accordingly, the reader will find Hebrew, Aramaic, or a mixture of both in the statements of law in *Shulchan 'Aruch*. The work was first published in 1565 in Venice and immediately gained great popularity, but not preeminent authority. In addition, the work had its significant detractors. In the centuries following, as legal scholars chose to author their monographs in reaction to Caro's work, *Shulchan 'Aruch* became more and more influential, eventually becoming the universally accepted code of Jewish law.<sup>187</sup> Some of Caro's responsa were published in *Sefer Avkat Rochel* (Leipzig, 1859).

Moses Isserles (Rama)  
Arba'ah Turim

At the same time that R. Joseph Caro was compiling *Beit Yosef*, a younger contemporary in Poland, R. Moses Isserles (Rema) was writing a similar type of work on the *Arba'ah Turim*; he called it *Darkhei Moshe* (»The Ways of Moses«).<sup>188</sup> However, once Caro's work reached Poland, Isserles realized the greatness and superiority of Caro's opus and decidedly changed the format and purpose of his work. Instead of a full-blown supplement to *Arba'ah Turim*, Isserles decided to abbreviate his work. In it he would highlight aspects of what was missing from *Beit Yosef*: the opinions of more recent codifiers and commentators (Caro only cited classical works), specifically highlighting the areas in which the law had developed in a different direction within the Ashkenazi cultural milieu. Furthermore, Isserles' method of decision making did not follow Caro's adaptation of majority rule. Rather, Isserles applied a principle employed by Ashkenazi authorities, *hilkhetā kevatrai*, »the law is in accord with the later authority.«<sup>189</sup> *Darkhei Moshe* is printed in standard editions of *Arba'ah Turim*.<sup>190</sup> Responsa of Rema were published by A. Siev.<sup>191</sup>

Moses Isserles (Rama)  
Shulchan 'Aruch

R. Moses Isserles also authored glosses to Caro's *Shulchan 'Aruch*. The work is called *Mappah*, or tablecloth, intended to be spread over Caro's *Shulchan 'Aruch*. Like Caro, who extracted from his longer work, *Beit Yosef*, Isserles drew from *Darkhei Moshe* and appended his succinctly formulated conclusions to the rulings in *Shulchan 'Aruch*. His supplements to *Shulchan 'Aruch*, like his addenda to *Beit Yosef*, present the opinions of northern European scholars and the longstanding traditions of the Ashkenazi community.

Shulchan 'Aruch

Unforeseen by the authors or their contemporaries, over time the *Shulchan 'Aruch* with its accompanying Ashkenazi glosses became the universally accepted code of Jewish religious practice. In a style that Isadore Twersky has labeled »austere functionality,«<sup>192</sup> the *Shulchan 'Aruch* provides its audience just with the fixed

187 Isadore Twersky, »The Shulhan 'Aruk: Enduring Code of Jewish Law,« *Judaism* 16 (1967): 141–58; Joseph Davis, »The Reception of »Shulhan Arukh« and the Formation of Ashkenazic Jewish Identity,« *AJS Review* 26:2 (2002): 251–76; R.J. Zwi Werblowsky, *Joseph Karo: Lawyer and Mystic*, London, 1962.

188 Asher Siev, *The Rama*, Jerusalem, 1957 (Hebrew).

189 Twersky, »Shulhan 'Aruk,« 146–48; Israel Ta-Shma, »The Law is in Accord with the Later Authority,« in idem, ed., *Creativity and Tradition*, Cambridge, 2006, 142–65.

190 For further details see Elon, *Jewish Law*, 3:1356–61.

191 *Responsa of Rama*, Jerusalem, 1970 (Hebrew).

192 Twersky, »Shulhan 'Aruk,« 153.

and final laws, removed as the work is from even hints at theology or the inclusion of extra-legal material. Despite Caro's strong mystical leanings, *Shulchan 'Aruch* is categorically different—and more legalistic—than even *Mishneh Torah* or *Arba'ah Turim*, Caro's own most admired forerunners. In the end, functionality prevailed, and the course of history proved the *Shulchan 'Aruch* to be a lasting code of Jewish law.

Caro, Joseph

### For Further Reading

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