

Journey Through Jewish Law, Part 3: Sephardim and Ashkenazim

The Rishonim (~1000-1500 C.E.)

1. Rabbi Moshe Mizrahi, HaKeter Institute, Jerusalem

Of course, every word in the Talmud is necessary, but the lengthy back-and-forth discussions made it difficult and cumbersome for all but the most advanced scholars. To remedy this, the leading Spanish Torah scholar of his time, and maybe of all time, Rabbeinu Yitzchak Alfasi (Rif), wrote a condensed version of the Talmud, leaving out all its discussions and giving the reader the conclusion and final decisions. A student of both Rabeinu Nissim ben Yaakov and Rabeinu Chananel, Rav Alfasi's work became the prime source for halachah. Every halachic work produced since then has been influenced by it, and it is printed together with every edition of the Talmud.

At the same time in France, Rabbeinu Shlomo ben Yitzchak, or as we know him "Rashi," sought to make the Talmud more accessible in a different manner. He composed a running commentary on the entire Talmud, deciphering difficult words and explaining the Talmud's discussions in a brief but comprehensive manner. Almost all of his commentary is extant today, and it has become so basic and popular that there is no longer such a thing as studying Talmud without Rashi's commentary. Even so, with few exceptions, Rashi did not give us his opinions about deciding the halachah where it is disputed or undecided in the Talmud.

In the following century, another Spanish scholar, Rabbeinu Moshe ben Maimon, came up with a revolutionary idea. He saw that the halachot were scattered haphazardly throughout the Talmud, so that if someone wanted to master the halachot of Shabbat he would have to know tractates Bava Kama, Ketubot, Pesachim and others besides the basic tractate of Shabbat. So he began a ten-year project to gather all the halachot found in the Talmud and organized them in a clear fashion. Also, taking into account that the Jews no longer lived in Babylonia, he rewrote all the halachot of the entire Oral Torah, taken from the two Talmuds and the responsa of the Gaonim, in clear, classic Hebrew, a language that he expected Jews in all countries to understand. He named this work Mishneh Torah, which means the "Repetition of the Torah."

2. Rabbi Moshe Mizrahi, HaKeter Institute, Jerusalem

Rambam's French contemporary was a grandson of Rashi, Rabbeinu Yaakov ben Meir, otherwise known as Rabbeinu Tam (the Torah describes our forefather Yaakov as a man who was *tam* – perfect). He developed the system of comparing different passages of the Talmud to one another and resolving all apparent contradictions. His followers continued developing this system, eventually creating a wealth of literature commenting on the entire Talmud, called *Tosafot* – additions. Both Rashi's running commentary and the *Tosafot* eventually became part and parcel of the Talmud, all appearing on the same pages...

Another contemporary of Rambam and Rabbeinu Tam was Rabbeinu Avraham ben David, who lived in the region of Provence in southern France. He was an outspoken opponent of the positions of Rabbeinu Yitzchak Alfasi and Rambam, and he wrote works challenging their halachic viewpoints.

Provence was the home of many prominent *Rishonim*, and most of their works reflect the enormous influence of Rambam. In fact, they referred to the Mishneh Torah as the *Urim Vetumim* (the stone-clad breastplate of the High Priest)...

The Spanish Rishonim eventually combined the schools of Rabbeinu Yitzchak Alfasi and of the Tosafot. This came to a climax with the appearance of Rabbeinu Asher ben Yechiel (Rosh), a German scholar who had been a prime disciple of Rabbeinu Meir of Rothenberg, and who fled to Spain when his mentor was imprisoned and held for ransom. He composed a monumental work on the Talmud, formatted like the Rif but including all the opinions of the Tosafot and of the most prominent Spanish Rishonim. His work appears in our printed Talmud after each tractate.

One of Rabbeinu Asher's sons, Rabbeinu Yaakov (Ba'al HaTurim), found that the Rishonim up to that point had written an entire library of Talmudic works. In many cases there were four, five, even ten or more approaches to clarify passages in the Talmud. It was rare for the average person to have access to all these handwritten works, much less be able to study and understand them and decide which to follow in practice.

3. Rabbi Yaakov ben Asher (1269-1343, Germany/Spain), Preface to Arba'ah Turim

As a result of our endless exile, we have become weakened. Our hearts have become numb, our hands feeble, our eyes dim, our ears deaf and our tongues dumb. Our power of speech has been taken from us, the wellsprings of our wisdom have become plugged up. Our logic has become confused, and disputes have increased. There is no halachah free of multiple opinions... Our Rabbis taught that one should go to the wise man so that he will teach...

Therefore, my thoughts moved me and got me thinking [about what to do]. I took upon myself to examine the holy books and gain an understanding of them. Then I would pick two or three of the main teachings of the authors and clarify them in a manner that would leave no doubt.

ויען כי ארכו לנו הימים בנפוצותיו ותשש כוחנו
ושמם לבנו ורפו ידינו וכהו עינינו וכבדו אזנינו ונאלם
לשונינו וניטל מדברינו ונסתמו מעיינות חכמתינו
ונשתבשו הסברות וגדלו המחלוקות ורבו הדעות ולא
נשארה הלכה פסוקה שאין בה דעות שונות ... ואמרו
רבתינו ז"ל ילך אדם אצל חכם וילמדנו....

על כן העירוני רעיוני ומחשבותי ועם לבבי אשיחה
אמרים. אקומה נא ואסובבה ... ואבינה בספרים
ואלקטה ב' ג' גרגירים בראשי האמרים מדברי
המחברים ... ואבררם בענין שלא ישאר בהם ספק.

4. Rabbi Moshe Mizrahi, HaKeter Institute, Jerusalem

Rabbeinu Yaakov first divided all practical halachah into four sections: a) **Orach Chaim** – an individual's obligations to serve God daily, weekly and on special occasions; b) **Yoreh Deah** – kosher food and guidelines of marital relations and mourning; c) **Even haEzer** – marriage and divorce; d) **Choshen Mishpat** – civil and financial law. He condensed all the major halachic opinions, organized them into chapters and offered his final rulings.

This work – Arba'ah Turim, Four Columns – soon became the backbone of all halachic studies.

Even the Rishonim contemporary to Rabbeinu Yaakov referred to it in their works, and certainly those who came afterward. Studying halachah, from then and until today, means to study the Arba'a Turim and determine the opinion of Rabbeinu Yaakov.

There are two major differences between Rambam's work and that of Rabbeinu Yaakov. The Mishneh Torah expresses only Rambam's opinion on all issues, whereas the Arba'ah Turim explains all the major opinions. Also, the Mishneh Torah included all the halachot of all the Torah, including all those mitzvot that apply only when the nation is at home in the Land of Israel and when the *Beit Hamikdash* (The Temple) is standing and functioning. The Arba'ah Turim includes only those halachot that are in practice during the era of our exile.

The Beit Yosef and Shulchan Aruch (16th century)

Rabbi Yosef Karo was born in Spain in 1488 and was exiled along with his family during the Spanish expulsion. The Karo family settled in Turkey, and young R' Yosef wasted no time in mastering the Talmud and its commentaries. He grew up to be a leading rabbi, and headed a group of elite, devout scholars who devoted themselves entirely to the study of halachah and Torah ethics. Rabbi Karo led his followers to the holy city of Safed, where he quickly became recognized as the leading Torah scholar among more than two hundred outstanding scholars.

Aware of the problems inherent in the study of the Arba'ah Turim, Rabbi Yosef Karo set out to remedy the situation by composing a running commentary on that work, titled Beit Yosef. He had three goals in this project: a) to explain each passage of the Arba'ah Turim, presenting its sources and Rabbeinu Yaakov's halachic decisions; b) to collect all other opinions of the Rishonim pertinent to the halachah discussed in each chapter; and c) to issue an authoritative halachic ruling in every case, which may or may not concur with Rabbeinu Yaakov's rulings.

5. Rabbi Yosef Karo's Preface to the Beit Yosef

Many, many years have passed. We have been cast from vessel to vessel; we have been exiled and exposed to terrible calamities one after the other, until (because of our sins) we have reached the point of "The wisdom of its wise men will be lost" (Yeshayahu/Isaiah 29:14). The Torah has not become like two Torahs – it has become like innumerable Torahs because of the proliferation of books that explain its laws and rules.

Therefore I, the least of all Israel's masses, have decided to author a book that will include all the halachot in practice today, explaining their sources in the Talmud and all the opinions of the Poskim, without exception. I decided to base this work on the Arba'ah Turim, since it already lists the opinions of the majority of the Poskim.

ויהי כי ארכו לנו הימים הורקנו מכלי אל כלי ובגולה הלכנו וכמה צרות צרורות תכופות זו לזו באו עלינו עד כי נתקיים בנו בעוונותינו ואבדה חכמת חכמיו וגו'... לא נעשית התורה כב' תורות אלא כתורות אין מספר לסיבת רוב הספרים הנמצאים בביאור משפטיה ודיניה....

על כן אני הדל באלפי ישראל ... הסכמתי לחבר ספר כולל כל הדינים הנוהגים בביאור שרשיהם ומוצאיהם מהגמרא עם כל חילוקי סברות הפוסקים איש לא נעדר....

הסכמתי לסמכו לספר ארבעה טורים ... כי הוא כולל רוב דעות הפוסקים....

<p>Whoever will have this book will have each passage of the Talmud laid out before him with Rashi's and Tosafot's comments, besides the halachic discussions of Rabbeinu Nissim, Rabbeinu Yitzchak Alfasi, Rabbeinu Asher, the Mordechai, the Rambam, etc. (some sixteen more Poskim are listed) all fully explained.</p>	<p>נמצא שמי שיהיה ספר זה לפניו יהיו סדורים לפניו דברי התלמוד עם פירש"י והתוספות והר"ן ופסקי הרי"ף והרא"ש והמרדכי והרמב"ם והגהותיו וכו' כל דבריהם מבוארים היטב.</p>
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<p>The Household of Yisrael depends upon the halachic rulings of the three pillars of halachic decision – Rabbeinu Yitzchak Alfasi (Rif), Rambam and Rabbeinu Asher (Rosh). I have decided that wherever two of these Poskim agree, we are to rule accordingly except for a number of places where all or at least most of Israel's Torah Sages disagree with that ruling and it has become commonplace to rule otherwise. Wherever one of the three pillars did not reveal his opinion and the other two disagree on the matter, we have the Ramban, Rashba, Ran, Mordechai and Sefer Mitzvot Gedolot to refer to. We will follow the path blazed for us by these giants of spirit. This system is the most logical way to avoid pitfalls and paves the path toward serving the King.</p>	<p>להיות שלש עמודי ההוראה אשר הבית בית ישראל נשען עליהם בהוראותיהם הם הרי"ף והרמב"ם והרא"ש, אמרתי אל לבי שבמקום ששנים מהם מסכימים לדעה אחת נפסוק הלכה כמותם, אם לא במקצת מקומות שכל חכמי ישראל או רובם חולקין על הדעה ההיא ולכן פשט המנהג בהיפך.</p> <p>ומקום שאחד מן הג' העמודים הנזכרים לא גילה דעתו בדין ההוא והשני עמודים הנשארים חולקין בדבר, הנה הרמב"ן והרשב"א והר"ן והמרדכי וסמ"ג לפנינו אל מקום אשר יהיה שמה הרוח רוח אלהין קדישין ללכת נלך כי אל הדעת אשר יטו רובן כן נפסוק הלכה...</p> <p>ודרך זו דרך המלך נכונה וקרובה אל הדעת להרים מכשול.</p>
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After completing the Beit Yosef, Rabbi Karo wrote the Shulchan Aruch, a shorter work containing the conclusions of his halachic decisions. In the introduction to the Shulchan Aruch, Rabbi Karo writes that he hopes that every Jew will be able to study the compendium and become fully knowledgeable of all Jewish law. The Shulchan Aruch became the ultimate code of halachah, the most comprehensive and authoritative collection of halachic rulings ever published.

6. Rabbi Moshe Chagiz (1671-1750, Europe/Israel), responsa Halachot Ketanot (#182)

<p>I have a tradition from my grandfather, Rabbi Moshe Galanti, that throughout the Land of Israel and all the Oriental cities of Babylon, Syria, Turkey and Egypt, the people have accepted, for themselves and for their descendants, the rulings of our master, Rabbeinu Yosef Karo.</p>	<p>קבלתי ממר זקני הראש"ל המג"ן שבכל ארץ ישראל ובכל ערי המזרח בכל סוריה תורכיה ומצרים קיבלו עליהם ועל זרעם הוראות מרן רבינו יוסף קארו זצ"ל.</p>
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I also heard him say that during his lifetime the Torah giants of Safed renewed this commitment to bide by the rulings of our master. Whatever he ruled is the final word.

וגם שמעתי מפי קדשו שבזמנו חזרו גאוני צפת
והידשו תוקף ההסכמה הזאת לקבלת דברי מרן אשר
יאמר כי הוא זה.

In northern Europe, however, the leading rabbis were not that quick to accept Rabbi Karo's Shulchan Aruch. The Jews of Germany and Poland had established their own traditions, often differing from the decisions found in the Beit Yosef. Furthermore, they opposed Rabbi Karo's basic approach of following the rulings of Rif, Rambam, and Rosh. They argued that according to Talmudic principles the halachah should follow the opinions of latter-day Torah scholars, which in this case meant the latter Rishonim. Although all the rabbis recognized Rabbi Karo as an enormous scholar and hailed the Beit Yosef as the greatest halachic work composed in history, they felt that their communities had the right – nay, the obligation – to preserve their traditions and practices. The chief rabbi of Krakow, Rabbi Moshe Isserles, set about to make the Beit Yosef and Shulchan Aruch practical works for Ashkenazic Jews as well.

7. Rabbi Yitzchak Berkowitz, Summary of Klalei Hora'ah, www.jerusalemkollel.com

Interestingly enough, Rav Yosef Karo and Rav Moshe Isserles both worked on their momentous works at the same time, completely unbeknownst to one another. The Beit Yosef and Shulchan Aruch were published first, and Rav Isserles realized that to a large degree his work overlapped that of the Beit Yosef. He therefore chose to turn his work into a commentary of sorts on the Shulchan Aruch to clarify where he differed. The source of their differences is largely based on their different approaches.

Both Rav Karo and Rav Isserles agreed in principle that it was necessary to codify Jewish law so that it could be accessible to the masses. The multitude of opinions in the Rishonim made arriving at Halachah too difficult for the average Jew. Some decision in each matter needed to be made so that the people had a viable way to properly observe Jewish law. However, how exactly to arrive at the Halachic decisions for the masses was a point of difference between the two. Rav Yosef Karo felt that the use of majority was most appropriate, and thus felt he should choose the opinion of the majority of the most authoritative Poskim among the Rishonim. He defined those Rishonim to be the Rif, Rambam, and Rosh. (In the event that one was silent and the others argued, then he would fall back on other Rishonim like the Rashba, Ramban, etc.)

Rav Moshe Isserles, however, felt that the Gemara tells us the principle that Halachah follows the *Basroi* (בתראי) – the Later Authorities. That is, the later authorities have the advantage that they have seen all the earlier arguments, they have seen all the various recordings of the *Mesorah* (the Tradition) and can choose which they felt was the most authentic. Therefore, the Halachah should follow the later Rishonim who were the most authoritative Poskim of their time. With the end of the Rishonim, the *Mesorah* was considerably weakened, thus the latest Rishonim is the last possible application of the rule of *Basroi*. Rav Isserles selected the Trumas Hadeshen (otherwise known as the MaHarai) and the Maharil as *Basroi*.

It seems that Rav Karo understood that the principle of *Basrai* ended with the period of the Gemara. It is in fact a novel idea to apply the concept to the period of the Rishonim, whose Mesorah was considerably weaker than that of the Amoraim and even that of the Gaonim and Rabbeinu Savorai. Nevertheless, Rav Isserles does apply the concept in that the Rishonim still had some semblance of an intact Mesorah.

8. Rabbi Moshe Isserles (1530-1572, Poland), gloss to Choshen Mishpat 25:2

Whenever the words of the Rishonim have been recorded in writing and are well known, yet the later authorities dissent from them, as we find the opinions sometimes dissenting even from the Gaonim – we follow the more recent authorities seeing as (we have a rule that) since the time of Abaye and Rava (in the Talmud), the halachah follows the later authority.

כל מקום שדברי הראשונים כתובים על ספר והם מפורסמים, והפוסקים האחרונים חולקים עליהם, כמו שלפעמים הפוסקים חולקים על הגאונים, הולכים אחר האחרונים, דהלכה כבתראי מאביי ורבא ואילך.

9. Rabbi Eliyahu Ben Chaim, responsa (#160)

HaRav Yosef Karo has been accepted as the halachic authority for us and for our descendants. We must follow his rulings, even when a hundred other rabbis disagree with him. We follow his rulings whether they are lenient or stringent, even regarding something forbidden by the Torah. The greatest of the generations have agreed on this throughout time. Rabbeinu Moshe Isserles wrote a letter to our master, the Beit Yosef, stating: "I myself study your teachings. Heaven forbid that I would challenge your Torah authority. Anyone who opposes you is tantamount to an opponent of God. Your rulings can be relied upon even regarding a Torah prohibition and certainly in minor monetary matters."

כבר נתקבל הרב בית יוסף לרב עלינו ועל זרענו אחרינו ללכת אחר הוראותיו גם במקום שמאה אחרונים חולקים עליו, בין להקל בין להחמיר ואפילו באיסור תורה. והסכימו על זה דור אחר דור גדולי הדורות. ורבינו הרמ"א בתשובה למרן הבית יוסף כותב אליו: והנני אומר מתניתא דמר קא מתניתא, והלילה להמרות דברי מעלת כבוד תורתו, שכל החולק עליו כחולק על השכינה, ועליו יש לסמוך אפילו באיסורא דאורייתא וכל שכן בענין ממון הקל.

10. Rabbi Akiva Eiger (1761-1837, Europe), Igrot Sofrim (#47)

The Torah nation (the Jews) who reside in Germany and the neighboring countries have accepted upon themselves and their descendants the Torah of Moshe – Rabbi Moshe Isserles – wherever he disagreed with the rulings of the Beit Yosef. The Torah of Moshe is our tradition and we must not veer from it, whether to be more lenient or more stringent.

תופשי התורה בארץ אשכנז ובארצות שסביבותיה קיימו עליהם ועל זרעם תורת משה הרמ"א נ"ע בכל השגותיו על הוראות הבית יוסף.

ותורת משה מורשה לנו מבלי לנטות ממנה להקל או להחמיר.

*Adapted from nleresources.com/wp-content/uploads/2012/07/Jewish-Law-VIII.pdf