Abstract

Poland-Lithuania of the 16th and 17th centuries was a world exceedingly rich in Torah scholarship, in terms of both content and the extent of activity. Alongside the giants of heuristics and Talmudic hermeneutics like R. Shlomo Luria (Maharshal), R. Shmuel Edels (Maharsha), and R. Meir (Maharam) of Lublin arose new generations of halakhic decisors whose work revolved around two central halakhic codes – the *Shulhan Arukh* and, to a lesser extent, the *Tur*; they became known as the *nosei kelim* or “attendants” at the “set table” of the *Shulhan Arukh* and the *Tur*. Authors of rabbinic responsa were also operating in parallel, though they were of lesser renown.

This flourishing of halakhic literature was driven in large part by the close connection with the Judaism of the Near East, first and foremost the writings of R. Yosef Karo, whose monumental works the *Beit Yosef* (a commentary on the *Tur*) and the *Shulhan Arukh* were published in the mid-16th century and were immediately received by European Jewry. Karo even corresponded with R. Moshe Isserles (the Rema) of Cracow, considered until today to be the most important Ashkenazi halakhist of the last several centuries. The Ashkenazi response to these books was varied; some Polish scholars opposed these books on the grounds that they did not take the Ashkenazi tradition more fully into account. As he wrote in his introduction, Karo made his halakhic decisions according to the majority rule of two out of three halakhic giants: R. Yitzhak Alfasi (the Rif), R. Moshe Maimonides (the Rambam), and R. Asher (the Rosh). Since two of them were Sephardic, many decisions were based on the Sephardic majority they created. Isserles tried at first to compose his own code, but gave up that endeavor when the *Beit Yosef* and *Shulhan Arukh* were published, choosing instead to write the *Mapah* (the “tablecloth”), a collection of glosses and notes on the *Shulhan Arukh*, as well as a revised version of *Darkei Moshe*, his commentary on the *Tur*.

Others, however, were more fundamentally opposed to the work of Karo and Isserles. Among the strongest charges against them was the critique that the *Shulhan Arukh* did not include sources for Karo’s decisions. These staunch opponents included R. Shlomo Luria, R. Yehiel Ashkenazi, R. Haim for Friedburg, R. Meir of Lublin, and R. Shmuel Edels, all of them halakhists from the second half of the 16th century (though some lived into the 17th century). Other halakhists attempted to form a synthesis; for example, R. Mordechai Jaffe, author of the *Levushim*, made Karo’s and Isserles’ work the basis of his own, but added to it and supplemented the rulings with earlier sources. The series of commentaries on the Talmud had a similar aim; Luria’s *Yam shel Shlomo*, for example, was an attempt at a codification of the halakhah, though organized by Talmudic tractate, not topically, as was the *Shulhan Arukh*. Even in Ashkenaz and Prague, the *Shulhan Arukh* was frequently met with a certain reticence, expressed in part by R. Haim of Friedburg, mentioned above, as well as R. Yehuda Loeb of Prague (the Maharal) and R. Shlomo Efraim of Luntschitz.

Against this background rose new generations of scholars, the students of Luria and Isserles, born in the second half of the 16th century, and their own students, born at the end of that century or early in the next. These scholars greatly expanded the literature of famous commentaries on the *Shulhan Arukh* and the *Tur*. R. Yehoshua HaKohen Falk and R. Yoel Sirkes became the leading commentators on the *Tur*, with their commentaries *Drishah uPrishah* and *Bait Hadash*, respectively, while commentaries on the *Shulhan Arukh* included Falk’s *Sefer Meirat Einayim* on *Hoshen Mishpat*, as well as the landmark work of Shabbatai Kohen, the subject of this study: *Siftei Kohen* on *Yoreh Deah* and *Hoshen Mishpat*, known by its acronym as “the Shakh,” a term also used to refer to Kohen himself. Kohen’s commentary on *Yoreh Deah* was published by the author in Cracow in 1646-47; in the same year, R. David Segal published his parallel commentary, *Turei Zahav*. (We will not address the commentators on the other sections of the *Shulhan Arukh*, *Even haEzer* and *Orah Haim*, since these lie outside the bounds of our discussion.)

The generally accepted form of study in the yeshivas and study halls of Poland-Lithuania at the time was that of *pilpul* or heuristics, but halakhic decisors employed a more practical method. The Shakh, for example, would bring several Talmudic sources to bear on a given discussion but read them for their practical ramifications when deciding the halakhah. He sought to rule in every matter according to the majority of decisors, at the same time striving to illustrate how those decisors ruled in accordance with the earlier sources. When a conflict arose, he did not hesitate to contradict his predecessors, including even such famous scholars as Maimonides and the very authors of the *Shulhan Arukh* and the *Mapah*, Karo and Isserles, since truth was the ultimate value guiding his decisions. He was also proficient in logical reasoning, often arriving at his own independent conclusions, which at times even contradicted his predecessors’.

The **primary goal** of this study is to reveal the methodological foundations of the Shakh’s rulings in cases of doubt (*sefeikot*), especially in the area of monetary claims. Though the Shakh would become recognized as a major halakhist, in his commentary on *Yoreh Deah* he turns out to be quite conservative; in his commentary on *Hoshen Mishpat*, on the other hand, he strikes out on an independent and innovative hermeneutic path. There he focuses more on procedure and the laws of testimony, but also probes deeply into matters of content, as can be seen, for example, in his lengthy commentary on *dinei degarmei*, cases of indirect damage (*Hoshen Mishpat* 386). He takes special interest in the principle of *natal harayah* (“the burden of proof is on the one who seeks compensation”) and the principle of *kim li* (“I am certain”) in cases of judicial error, including the concept of *sugya d’alma* (roughly, “case law”), and in doubtful cases of property ownership. These topics are dealt with at length by the Shakh in his commentary on *Hoshen Mishpat* 25; some are also addressed in his halakhic monograph *Takfu Kohen*.

In this context I also aim to reveal and describe the methods and hermeneutical tools employed by the Shakh in arriving at his halakhic rulings. Here we encounter unprecedented innovation and a uniquely wide array of such tools in comparison to other halakhists.

The second goal of the study is to confirm if, and to what extent, the Shakh can be seen as a forerunner of the conceptual method in approaching halakhic concepts in general, and of the Lithuanian *shitat hahavanah* in particular. This study shows that the Shakh dealt quite a bit in the conceptualization of ideas from Jewish Talmudic and halakhic scholarship. The path between these two points (the Shakh on one side and the Lithuanian scholars on the other) leads through the books *Kitzvot haHoshen* and *Netivot haMishpat*.

My **methodology** begins with phenomenology but, after revealing the Shakh’s scholarly-halakhic method in deriving halakhah, turns to a comparative analysis of the methods of other halakhists, as we will see in the following sections.

The study opens with **the current abstract and a foreword** that delineates the goals of the study, its history, and its methodology. **The body of the study is divided into a number of sections**:

**The first section** provides the historical background preceding the Shakh as well as his biography. This section includes three chapters.

**Chapter** **1** discusses the historical situation of the Jews in 16th-17th century Poland-Lithuania, until the Chmielnicki massacres of 1648-49, from the social, economic, and legal perspectives, followed by a discussion of the world of Torah learning.

**Chapter** **2** includes the biography of “the Shakh,” Shabbatai Kohen, including information about his family, his teachers, and his writings, as well as his central place among the halakhists of his generation and in contemporary folklore. Within this framework, I critique several common assumptions regarding the history of Kohen and his family.

**Chapter** **3** gives the broader European background to the Jewish Torah world in Poland-Lithuania during the period under discussion. Topics addressed include the influence of the invention of the printing press on Jewish religious literature, that of the general European trend toward codification in the 16th century on Jewish law, and that of economic ties between Jews and non-Jews in Poland-Lithuania on halakhic positions, among others.

**The second section** of the study, the first of two central sections, addresses the Shakh’s unique scholarly-halakhic method. It includes six chapters.

**Chapter 4** provides an overview of this method within the context of commentators on the *Shulhan Arukh* and includes an explanation of my description of the Shakh’s method as “scholarly-halakhic.”

**Chapter 5** presents the halakhic method – to be distinguished from the scholarly one – which can also be referred to as “the Shakh’s pecuniary theory of ruling in cases of doubtful property.” It deals primarily with the Shakh’s commentary on halakhic principles in property cases involving doubt, such as the principles of *natal harayah* (burden of proof), *kim li* (certainty), and *halakhah kebatrai* (preference for later rulings), as well as the case of a judge who erred. I found new principles of halakhic decision-making that scholars, both rabbinic and academic, did not fully explore, such as the extent of authority of *sugya d’alma* and the meaning of the concept of *shikul da’at*.

Another topic addressed in this chapter – which is built on the foundation of the preceding chapters and which joins them into a single unit – is the position of the Shakh regarding the autonomy granted a rabbinic judge at the time of his ruling. It should be stressed that the current discussion is not primarily dedicated to judicial decision-making based on the details of a particular monetary dispute nor to the principles of such decisions such as *rov*, *hazakah*, or *migo*; rather, it deals primarily with the meta-principles that come into play only after it has become clear that a decision cannot be reached based on the evidence or standard halakhic process.

Nowhere does the Shakh present a summary of his judicial theory, and so we must cull the relevant statements scattered throughout his work, the bulk of which are found in his commentary on *Hoshen Mishpat* and the remainder in the monograph *Takfu Kohen*.

**Chapter Six** describes the fundamental characteristics of the scholarly method, to be distinguished from the halakhic one. In this description, the Shakh is revealed to be a uniquely independent halakhist, one unafraid of coming out against his predecessors, at times battling not only Karo and Isserles but also the Rif, the Rambam, and the Rosh, the greatest of the Rishonim. Logical arguments are his primary weapons in this battle, and he wields them well.

**Chapter Seven** discusses the remaining characteristics of the Shakh’s method.

**Chapter Eight** discusses the heuristic approach known as *pilpul* and the Shakh’s limited use of it in making halakhic decisions. I show that the Shakh apparently learned from his master, R. Yehoshua Harif, not to bring such heuristics into the process when attempting to reach a practical halakhic decision. I likewise reveal the Shakh’s abilities in making heuristic distinctions based on factors of ontology and taxonomy.

**Chapter Nine** addresses the Shakh’s methods in his commentary on Yoreh Deah, based on his multiple writings on that section of the Shulhan Arukh: *Siftei Kohen* and *Sefer haArukh miShakh*, as well as *Kuntres haAharon* and *Nekudot haKesef* (both written as part of his scholarly dispute with the *Turei Zahav*). These works were all written relatively early in the Shakh’s career, before his great breakthrough in depth, breadth, and conceptualization that we witness in his commentary on *Hoshen Mishpat* and *Takfu Kohen* on cases of doubt in monetary claims.

**The third section** deals with the influence of earlier halakhists on the Shakh, beginning with the Geonim and concluding with his elder contemporaries. This section includes two chapters.

**Chapter Ten**, a lengthy chapter outlining the Shakh’s affinities with his predecessors, is at the center of this section. Among the Rishonim I found four major influences. This chapter also discusses some early Aharonim, with an emphasis on R. Shlomo Luria and R. Yehoshua Falk (both mentioned above), who had the greatest influence on the Shakh among the Aharonim. (Luria’s scholarly method was a palpable influence, as were his halakhic decisions, which are frequently adopted by the Shakh; Falk’s influence, on the other hand, was more structural, in that he commented on every entry in *Hoshen Mishpat*, providing the Shakh with a basis for discussion on multiple occasions even if he ultimately rejected Falk’s arguments.) Shakh’s own teachers, including his father, R. Meir Ashkenazi-Katz, were also influential, but their influence is revealed in particular instances and is not noticeable on a global scale across the Shakh’s work. The influence of *pilpul* is discussed in Chapter Eight.

**Chapter Eleven** is sui generis in that there I propose a theory on the Shakh’s true goal in writing the halakhic monograph *Takfu Kohen*. I argue that the book served as a defense of the Shakh’s system justifying ex post facto property acquisition in various cases involving halakhic doubt: a disagreement among halakhic decisors and Talmudic quandaries that are either left unresolved or conclude with the word *teiku* (“let it stand”). The Shakh’s apologetic was directed against the method of R. Moshe Lima, who wrote a short work on the laws of acquisition in cases of doubt, in which he disallows all forms of acquisition except *tefisah bereshut*, which, according to his position, has multiple meanings. The Shakh was a rabbinic judge in the court for which Lima served as lead judge (*av beit din*), and the question of acquisition arose in the court’s proceedings. The Shakh writes that this question provided the motivation for his book, but I propose that the Shakh wanted to publicize his opinion and its halakhic basis in order to win the support of the Vilna rabbinic community, where a debate on the same topic occurred.

**The fourth section** addresses the influence of the Shakh on later generations. It includes two chapters.

**Chapter Twelve** defines modern the modern scholarly method of study known as *lamdanut* or *lomdus*. I show that the Shakh had a tremendous influence on those who followed him, and that he also dealt with the conceptual dimensions of halakhic concepts, following the treatments of the Ashkenazi authors of the Tosafot and the Sephardi Rishonim, as well as the responsa of certain Sephardi scholars from the 16th century. I argue that this trend greatly influenced the later commentaries the *Tumim*, *Ketzot haHoshen*, and *Netivot haMishpat*, and, via the latter two, reached the leading scholars of Lithuania at the end of the 19th century and the start of the 20th. My final conclusion in this chapter is that we should see the Shakh as an important forerunner, perhaps even the first, of the Lithuanian *shitat hahavanah*, mediated through *Ketzot haHoshen* and *Netivot haMishpat.*

**Chapter Thirteen** addresses the related question of the extent to which the Shakh’s rulings were accepted as halakhah. I conclude that in *Yoreh Deah* the rulings of the Shakh and those of the *Turei Zahav* hold relatively equal weight, with only a slight preference for the Shakh. In *Hoshen Mishpat*, on the other hand, the Shakh is clearly favored, despite the fact that the author of *Sefer Meirat Einayim* is considered a major halakhist.

**The fifth section** is comprised of a single chapter.

**Chapter Fourteen** discusses literary and bibliographic aspects of the Shakh’s works. The literary aspects are not limited to the bodies of the texts themselves but also apply to Metadata found at the beginning and end of every composition, whether in the form of an introduction, poem, or colophon. The bibliographic aspects include the considerations of the printers and their notes, historical details of the printers and their presses, and other features of the books.

The work concludes with a **conclusion** and a bibliographic appendix.

**To conclude**, the current study is intended first and foremost to reveal and describe the scholarly-halakhic method of the Shakh, which has yet to be researched by scholars. The major sources are Shabbatai Kohen’s commentary *Siftei Kohen* on *Shulhan Arukh: Hoshen Mishpat* and *Takfu Kohen*, though I also dedicate a chapter to *Siftei Kohen* on *Yoreh Deah*, as well as his approach to *pilpul*. In this context I also show the development of the Shakh’s scholarly method from a “traditional” commentary on *Yoreh Deah* to a combative and innovative one on *Hoshen Mishpat*.

I also research and categorize the influences of the Shakh’s predecessors on his work, influences that contributed to the creativity of his method.

The aim of this study is to show that the Shakh should be recognized as an important forerunner of the Lithuanian *shitat hahavanah*, and to this end I researched the extent of the Shakh’s influence on the halakhists who followed him and the forms that influence took.

Finally, I address several related topics, such as the Torah world of Poland-Lithuania in the 16th and 17th centuries and the influences of the broader European culture on this world. The Shakh’s biography and bibliographical and literary aspects of his work are all addressed within the context of a critique of several widespread misconceptions. A special chapter, Chapter Eleven, is dedicated to describing my discovery of the true motivations behind the Shakh’s composition of the book *Takfu Kohen*.

My honored readers will hopefully find that these goals have been achieved by this study.