

*To our dearly beloved children
Efrat, Tamar, Naama, Gilad, Ariel and Hila*

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Acknowledgments

This book examines the teachings of Rabbi Meir Simcha Hakohen of Dvinsk, author of the books *Or Sameah* and *Meshekh Hokhmah*. Despite Rabbi Meir Simcha's true genius and tremendous creativity, which spanned several disciplines, his work has not yet received the attention it deserves. I trust that this book will partially fill this lacuna.

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Introduction

Both the yeshivah and academic worlds classify the work called *Or Sameah* as a critical commentary. Existing in the shadow of Maimonides' *Mishneh Torah*, *Or Sameah* is perceived to be eclectic in its *halakhic* writings, possessing penetrating insights but lacking methodological structure; it is certainly not considered a systematic *halakhic* code. In my earlier book, *The 'Or Sameah'—Halakhah and Jewish Law: R. Meir Simcha Hakohen's Writings on Maimonides' Mishneh Torah* (henceforth: *The 'Or Sameah'—Halakhah and Jewish Law*), I demonstrated that this is not the case. In the following several pages, I will briefly summarize the research goals and findings that formed the basis of that book in order to provide the necessary background to understand the issues addressed in the present book.

Since R. Meir Simcha neither wrote an introduction to his works nor shared his *halakhic* cogitations with his readers, the methodological approach that I used in *The 'Or Sameah'—Halakhah and Jewish Law* was based on a close reading of several hundreds of R. Meir Simcha's "comments" in the *Or Sameah*. I broke them down into their component parts, charted them, and divided them into subcategories reflecting different characteristics of R. Meir Simcha's *halakhic* writings. I processed and summarized this data, which provided—insofar as such a thing is possible—a reliable basis for establishing, defining, and further discussing the different issues addressed in that book.

Since *The 'Or Sameah'—Halakhah and Jewish Law* was the first scholarly monograph devoted to the *Or Sameah*'s composition, it was important to carefully examine R. Meir Simcha's commentary section by section,

analyzing his objectives and exploring the *halakhic* and legal principles that guided him in his work. The book provided new paradigms for understanding R. Meir Simcha's work and demonstrated how the author of *Or Sameah* systematically elaborated upon Maimonides' *halakhic* writings, ultimately venturing beyond the strictures of the *Mishneh Torah*. In the process of showing how the author developed and expanded upon Maimonides' *Mishneh Torah*, the book also revealed how he accepted its authority and gave voice to his own innovations and creativity.

After demonstrating, in my aforementioned book, that R. Meir Simcha had fulfilled his commentarial goals in an earlier work on the Talmud, I attempted to clarify his principal objective in *Or Sameah*. I began by examining how the author of *Or Sameah* functioned as a traditional Maimonidean commentator ("armsbearer"): locating Maimonides' sources, explicating Maimonides' rulings, and answering the criticisms against him. Following this, I explored his practice of using manuscripts to examine variant readings that revealed textual corruption, a practice that was and is far from normative in the contemporary rabbinic world. It is important to note that, even though R. Meir Simcha's work is rife with normative, *halakhic*, judicial language not typically found in commentaries, *Or Sameah* is not an autonomous *halakhic* code, as it employs Maimonides' rulings as more than simply a "jumping off point" for the author's own rulings.

Having examined the particulars involved in expanding Maimonides' *Mishneh Torah*, I found it easier to comprehend and depict R. Meir Simcha's primary objective. While it may be true that R. Meir Simcha himself would neither have explained nor even have conceived of his enterprise in this way, my analysis of the work itself clearly confirms that this is the objective that comes to fruition in R. Meir Simcha's *Or Sameah*. As I. Twersky has noted, no individual, no matter how great his stature, can properly evaluate himself or his work.¹

By examining the *Or Sameah*'s meaning from a legal perspective, I discovered that the author's primary goal was the refinement and continued development of the *Mishneh Torah*, the most comprehensive codification of

¹ I. Twersky, "Maimonides' *Mishneh Torah*'s Goal and Role" (Hebrew), *The Israel Academy of Science and Humanities* 5, no. 1 (5732): 7.

Jewish Law that the world had yet seen. Among other things, he adapted the *Mishneh Torah* to changed historical and social circumstances. R. Meir Simcha methodologically and structurally improved the *Mishneh Torah*'s *halakhic* writings, developing them *a priori* and not *post facto* (most significantly) on normative levels, taking them in new directions that Maimonides had not envisioned. Not infrequently, he did this by changing the format of the *Mishneh Torah*. I demonstrated that R. Meir Simcha achieved this goal in several ways: first, by proposing borderline cases that stretched the boundaries of Maimonides' explicit rulings; second, by adding further details to Maimonides' rulings to expand them; third, by exposing Maimonides' underlying rationale in particular rulings thus establishing guidelines that could be applied to new cases; and, fourth, by citing his own responses to past cases.

I identified certain literary styles and terminologies as indicative of each of these four methods. By paying attention to these markers, the reader can more easily find the way through the byways of the *Or Sameah*. I argued that having realized that the author's principal objective is *halakhic* decision-making, it is necessary to reconsider its traditional classification as commentary or *novellae* and reclassify it as a *halakhic* work based upon a law code firmly ensconced in the field of Jewish law. While R. Meir Simcha has traditionally been classified as a member of Maimonides' Praetorian Guard, his innovative, independent approach seems to be so central to his oeuvre that it might be appropriate to reclassify him, removing him from the category of Maimonides' "armsbearers." Indeed, his newly recognized authoritative weight gives added impetus to this proposal. However, it is important to recall that R. Meir Simcha did not see himself as a revolutionary.

After delineating the *Or Sameah*'s basic structure, I examined the sources R. Meir Simcha used. The first source which I dealt with was the *Yerushalmi*. Here, too, I found that the predominant assumptions about Maimonides' use of sources made by traditional Jewish scholars for several hundred years were not those of R. Meir Simcha. First, he cites the *Yerushalmi* as Maimonides' textual source to almost the exact same degree as the *Bavli* (as opposed to other scholars who focused almost exclusively on the *Bavli*), and he cites both the *Yerushalmi* and the *Bavli* more frequently than any other literary source. Second, R. Meir Simcha takes an

unprecedented approach to studying the *Yerushalmi*, emending what he believes to be corrupted texts. Third, R. Meir Simcha does not attempt to reconcile the *Yerushalmi* with the *Bavli*—sometimes he even highlights the differences between them—and he certainly does not deny the *Yerushalmi*'s relevance to *halakhic* praxis. Fourth, R. Meir Simcha actively takes note of, and integrates the opinions of, the *Yerushalmi* into his *halakhic* decision-making process.

In the context of dealing with R. Meir Simcha's sources, I also addressed Maimonides' attitude towards the rabbinic corpus. It became clear that, notwithstanding Maimonides' utilization of these sources, R. Meir Simcha still consulted them directly, neither relying upon the *Mishneh Torah* as a handy summa of the talmudic corpus nor revering it, to use Maimonides' phrase, as *mishneh*, second in importance only to the Written Torah. This notwithstanding, when R. Meir Simcha found Maimonides' rulings and the words of the rabbinic Sages to be in conflict, he strove to reconcile them.

I also dealt with R. Meir Simcha's stance on comparing Maimonides' rulings with those of the other earlier authorities (*rishonim*).² The overall picture is complex; however, it seems that R. Meir Simcha adopted two basic (though, conflicting) approaches. On the one hand, he tended to defend Maimonides' positions and prefer them over those of the other early authorities; usually, R. Meir Simcha decided that *halakhic* praxis should follow Maimonides' ruling not because it is the most authoritative one, but because it is the most logical one. On the other hand, R. Meir Simcha tended to remain neutral when there was a disagreement between Maimonides and other *rishonim*. I have demonstrated that R. Meir Simcha gave each of these approaches equal weight, and in the course of my analysis found it difficult to establish hard-and-fast rules to explain when he chose to use one approach rather than the other.

After analyzing R. Meir Simcha's use of Talmudic sources and the medieval use of them to record accepted law, I demonstrated how he uniquely interpolated the writings of later authorities (*aharonim*) into his

² The earlier authorities, the *rishonim*, flourished between the eleventh and fifteenth centuries after the Geonim and before the later authorities, the *aharonim*.

halakhic deliberations in *Or Sameah*. These writings had an important place in R. Meir Simcha's intellectual world and influenced his methodological approach in several ways: first, the evidentiary one—the later authorities' writings functioned as a witness to the texts of those earlier authorities that R. Meir Simcha had not seen; second, their intellectual influence—the later authorities caused him to reconsider his own perceptions and even caused him to change them, not because of their authority but because of their careful reasoning; and, third, their *halakhic* weight—R. Meir Simcha used the later authorities to ratify his own *halakhic* innovations.

My findings illustrate how, in choosing to emulate the *halakhic* writings of the earlier authorities, R. Meir Simcha was unique in four ways. First, R. Meir Simcha chose to focus on the Talmudic discourse (*sugya*) itself, as opposed to other later authorities who, given the authoritative interpretation of the Talmudic discourse by the earlier authorities, chose to focus on abstract analyses (often straying far from the *sugya's* main topic). Second, R. Meir Simcha made extensive use of non-Babylonian materials, such as the *Yerushalmi* and the *Tosefta*. Third, R. Meir Simcha, in contrast to the other later authorities, who took great pains to exclude any hint of practical *halakha* from the heart of their commentaries, integrated *halakhic* rulings into the very warp and woof of his "interpretive" work. Fourth, R. Meir Simcha, unlike the other later authorities, made extensive use of textual emendation (when he believed that the text was corrupt).

In the first chapter of this book, I examine the normative influence of R. Meir Simcha's biblical commentary, the *Meshekh Hokhmah*. In this biblical commentary, I have discovered three novel approaches whose creativity stems from their incorporation of *halakhic* materials. First, and in contrast to his one-line introduction, R. Meir Simcha does enter the arena of *halakhic* decision in his commentary. Second, even though he is writing a work on the Bible, he engages in *halakhic* discourse to address borderline cases and adds details to Maimonides' rulings when necessary in order to expand their scope. Third, he uses the methodology of biblical interpretation to innovate new laws. In using this tool, R. Meir Simcha took a daring and courageous step away from accepted rabbinic practice stretching back hundreds of years, for the development of law through biblical exegesis had long been shunned as illegitimate by the majority of rabbinic scholars and decisors.

In Chapter 2, I examine the willingness of the *poskim*³ to rely on R. Meir Simcha's innovations in their *responsa*, in their court decisions, and even in the rulings that they gave in appellate courts. I examine how the *poskim* viewed interpretations that broadened or narrowed the scope of Maimonides' rulings. I also examine which hermeneutic approaches the *poskim* accepted and which they rejected; whether there is a link between R. Meir Simcha's adjudicatory style and the way later *poskim* perceived it; whether his writings were used to explain Maimonides in cases in which the Maimonidean rulings were obscure; and whether he achieved the status of an independent decisor, stepping out from under Maimonides' shadow. Furthermore, I consider what led those who relied on R. Meir Simcha to have confidence in his rulings, even when they contradicted those of Maimonides, and what led R. Meir Simcha to be considered (if this was the case), a *bona fide* Maimonidean commentator. Thus, I make two additions to the overall picture. First, I show that the rabbinic decisors sometimes perceived R. Meir Simcha's elaborations and refinements upon Maimonides' *Mishneh Torah* as disagreements. Second, given this state of affairs, it is surprising to note that not only did *poskim* fail to question his authority to disagree with Maimonides, sometimes they even gave his positions preeminence.

In Chapter 3, I investigate whether there are broad-based judicial principles underlying R. Meir Simcha's legal decisions and approach to Jewish law; whether certain *metahalakhic* principles affect R. Meir Simcha's legal creativity; whether there are certain *metahalakhic* principles that guide R. Meir Simcha in addressing changing historical and social realities; and whether the same judicial principles affect the adjudication of laws that, at first glance, seem completely unrelated.

In Chapter 3, I also explore broader judicial concepts. For instance, what seems to be biblical commentary in the *Meshekh Hokhmah* turns out to be similar to passages in *Or Sameah*, thus demonstrating that a fundamental principle underlies both insights. Likewise, I demonstrate that *halakhic* statements in one part of the *Or Sameah* stem from the same underlying

³ A *posek*, or decisor, is an expert on Jewish law, *halakhah*, and one whose authority is widely accepted.

rationale as those elsewhere in the *Or Sameah*, thus revealing the comprehensive and unique *halakhic* approach undergirding the author's rulings. Furthermore, I demonstrate that the aim of creating practical *halakhah* required a flexible, judicial approach, which consolidated several cases under one judicial principle.

R. Meir Simcha's pragmatic approach, suitable for the rabbinic decisor (not the theoretical scholar), rejected laws derived by means of *pilpul* (rabbinic casuistry) or *hilluqei hilluqim* (colloquially, "the infinite splitting of hairs"), for practical *halakhah* requires an essentialist, nonformalistic, and judicial approach. Furthermore, the historical era in which R. Meir Simcha lived and the life he led as a practical rabbinic decisor seem to explain the origin of some of his judicial concepts.

In Chapter 4, I examine various issues pertaining to R. Meir Simcha's understanding of the accepted *halakhic* attitudes toward gentiles. His approach attests to his innovativeness; most important, it attests to his *halakhic* moderation, as he tried to rule as leniently as possible on matters relating to non-Jews. Instead of advocating the complete separation of Jews and gentiles, he encourages increased (and positive) relations between them. In every one of the issues examined, wherein the *halakhah* could be interpreted in a strict manner or in a lenient one, R. Meir Simcha always followed the approach that best facilitated relations between Jews and gentiles. His position is consistent and indicates an underlying judicial-ethical principle that predicates setting the laws governing the relations between Jews and gentiles on an equal footing whenever possible.

The chapter discloses several broad principles pertaining to R. Meir Simcha's attitude toward non-Jews; for example, the category that distinguishes between religious/ritual matters and secular matters. The Jewish laws governing the secular, unlike the religious, apply equally and identically to gentiles as well as to Jews. This chapter also explains R. Meir Simcha's approach to *halakhah* in terms of the historical and sociological circumstances within which he lived. In Eastern Europe, during his period, religious Jews did not feel threatened by secularization and assimilation, as was the case in Western Europe. As a result, they developed an approach that was less inward-looking and isolationist and more open to the surrounding environment. This atmosphere, in particular, allowed

R. Meir Simcha to develop a more moderate and open approach toward gentiles.

The translations of passages from the *Tanakh* cited in this book are based on the *Tanakh: A New Translation of The Holy Scriptures According to the Traditional Hebrew Text* (Philadelphia/Jerusalem: Jewish Publication Society, 1985). The translations of passages from the Babylonian Talmud cited in this book are based on *The Babylonian Talmud* (London: Soncino Press, 1935–1948) with some minor changes. The translations of passages from Maimonides' *Mishneh Torah* cited in this book are based on the Yale edition (New Haven: Yale University Press, 1949–2004) with minor changes.

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1

Midrashic Technique and Legal Creativity in the *Meshekh Hokhmah*

INTRODUCTION

R. Meir Simcha Hakohen (henceforth R. Meir Simcha) was born in 1843 in the village of Butrimonys, in the Vilnius district.¹ Having gained renown as one of his generation's leading scholars, in 1888 he was appointed rabbi of Daugavpils (Dvinsk),² a post he held until his death in 1926.³ R. Meir Simcha's lifetime coincided with the period in which Lithuanian *yeshivot* were dominant in Eastern Europe.⁴ His literary output was quite varied, as his writings fall into several genres. He spent most of his life writing a book on Maimonides' *Mishneh Torah* called *Or Sameah*.⁵ In the introduction to another one of his works, *Meshekh Hokhmah*, which was published about a year after his death in Riga, he characterized his work as "elucidations and

¹ Lithuania.

² Southeast Latvia.

³ Ben Zion Eisenstadt, *Dor Rabbanav Ve'sofrav*, vol. 6 (New York: S. faynberg paaor, 1904), 39.

⁴ Shaul Stampfer, *The Formation of the Lithuanian Yeshiva* (Hebrew), rev. edition (Jerusalem: Zalman Shazar Center, 2005), 12.

⁵ This work is generally classified as a commentary on Maimonides' *Mishneh Torah*; see, for example, M. Elon, *Jewish Law: History, Sources, Principles* (Hebrew), (Jerusalem: Magnes Press, 1992), 930.

interpretations, insights and homilies, comments and *novellae* on the Pentateuch.”⁶ R. Meir Simcha also wrote *novellae* on the Babylonian and Jerusalem Talmuds, and a volume of *responsa*.

Or Sameah, which many regard as an analytical scholarly interpretation, shows many characteristics typical of a practical *halakhic* work. I have shown elsewhere that the primary goal of this composition was to refine the first systematic codification of Jewish law, Maimonides’ *Mishneh Torah*.⁷ The work primarily focuses on legal rulings; even if such rulings have less weight than those rulings of the *responsa* literature,⁸ this work still plays a crucial and central role in the process of *halakhic* adjudication. Therefore, *Or Sameah* may be classified as belonging to the genre of “Jewish law and adjudication,” not that of the “*novellae* and commentaries,”⁹ and not even to that of Maimonides’ commentators (often called his “armsbearers”). Its goals are practical, not merely intellectual or theoretical. R. Meir Simcha refined the *Mishneh Torah* in three main ways: First, he asked questions that probed the borderline cases. In these, he used inductive thinking to expand Maimonides’ legal rulings and determine whether they also applied to cases beyond their explicit, factual parameters. Second, but also inductively, he added elements to the very laws, not to the facts of the cases at hand. Third, he revealed the underlying rationale of the laws and rendered the laws in consonance with its abstract principles by reformulating the casuistic phraseology in a normative form.

⁶ First published in Riga about a year after his death, it has since come out in over sixteen different editions, including those of A. Abraham, S. H. Domb, Z. Metzger, and Y. Cooperman.

⁷ Yitshak Cohen, “The *Or Sameah*’s Objectives and their Halakhic and Jurisprudential Implications” (Hebrew), *Shenaton Hamishpat Haivri* 25 (2008): 97.

⁸ See Berachyahu Lifshitz, “The Legal Status of the Responsa Literature” (Hebrew), *Shenaton Hamishpat Haivri* 9 (1982): 289, which addresses another dimension—that of transcending local considerations—which plays a role in every actual *responsum*.

⁹ This is in contrast to R. Hayyim of Brisk and R. Simeon Shkop, who developed analytical methods that probed the depths of the matter. Their focus remained separate from the practical and mundane. Their writings reflect the spiritual worldview of the *yeshiva* deans, who were less involved in practical adjudication. See Immanuel Etkes, “*Bein lamdanut lerabbanut beyahadut Lit’a shel hame’ah hatesh’a esreh*,” *Tsiyon* 53, no. 4 (1988): 402.

1. R. Meir Simcha and the Use of Midrashic Technique to Develop the Law

As stated, *Or Sameah* is not only a collection of *novellae*, but also a *halakhic* work, containing legal rulings. Should this also prove true of *Meshekh Hokhmah*, R. Meir Simcha's commentary on the Torah, this would be an even more significant discovery, as R. Meir Simcha does not characterize the work as such, and it is extremely unusual for *halakhists* to base accepted rulings on midrashic techniques of exegesis of biblical verses.¹⁰ Thus, the question of whether R. Meir Simcha did so, and whether the decisors accepted these rulings, merits examination. In this chapter, I survey R. Meir Simcha's unique midrashic techniques of exegesis in *Meshekh Hokhmah*, exploring their legal status and the extent of their influence on subsequent decisors. Did these decisors indeed consider *Meshekh Hokhmah* a work that had actual legal import, or did they relegate it to the genres of biblical commentary and *novellae*? Did they accept R. Meir Simcha's midrashic style of exegesis even when the resulting laws did not fit within the accepted boundaries of normative *halakhah*? Did they rely on his novel rulings even with respect to issues that had serious legal consequences, such as prohibited marriages, the release of *agunot*, and so on? This chapter will present some of the creative rulings that R. Meir Simcha reached via his midrashic techniques, and discuss the extent of their impact on subsequent decisors. Building on this analysis, I will examine why R. Meir Simcha's midrashic innovations had such a formidable impact.

a. *Traditional Reluctance to Use Midrashic Technique to Develop the Law*

Gilat asserts that in the post-Talmudic period, there is almost no evidence of law being pronounced through midrashic exegesis. The same assertion

¹⁰ *Responsa Maharik*, root 139, p. 156; R. Elijah Mizrahi, in his commentary on the Torah, beginning of *Parashat* [Torah portion] 'Matot' s.v. *vayedaber*, notes that the authority to do so was only granted to the Sages of the Mishnah; *Sdei Hemed*, *Klalei Haposkim* 16:50; *Responsa Beit Avraham* states that this approach is not adopted by any rabbinical decisor, neither early nor late. For an academic perspective, see Z. Frankel, *Darkhei Hamishnah* (Berlin: n.p., 1923), 18.

holds true for the period of the *rishonim*, and the period of the *aharonim*.¹¹ Thus, in the main, legal creativity arising from scriptural verses atrophied.¹² The scriptural source was used only to provide allusions for laws that had already been laid down in the Talmud. For a decisor to skip over the Talmudic, Geonic, and rishonic writings, and go directly to the scriptural sources themselves for the purpose of creating new legal precedents, required tremendous judicial boldness and courage. Over time, as the scriptural source grew increasingly remote, a decreasing number of authorities were willing to bypass the received views and render new rulings via exegesis of that distant scriptural source.

E. E. Urbach wrote a lengthy discussion of the problems of accepting midrashic techniques and forms of exegesis as the basis for *halakhic* rulings.¹³ He quotes the opinion of R. Y. I. Halevy, who contends that the sole source of law is the received legal tradition, and the Rabbis never really relied on midrashic exegesis to derive legal innovation.¹⁴ J. N. Epstein also held this view.¹⁵ On the other hand, H. Albeck argued that, when a case on a point of law regarding which there was no extant tradition reached the High Court (*beit din hagadol*) in ancient times, the judges engaged in midrashic exegesis of the scriptural text, deriving their rulings from it alone.¹⁶ Epstein

¹¹ Y. D. Gilat, *Studies in the Development of the Halakhah* (Hebrew), (Ramat-Gan: Bar-Ilan University Press, 1992), 389.

¹² See B. Lifshitz, "Aggada and its role in the unwritten law" (Hebrew), *Shenaton Hamishpat Haivri* 22 (2004): 233, 295, on the Written Law's role as a canonical work that does not itself create new law, but serves as the source of the authority to do so.

¹³ E. E. Urbach, *The World of the Sages—Collected Studies* (Hebrew), (Jerusalem: Magnes Press, 2002), 50; and E. E. Urbach, "The *derasha* as a basis of the *halakha* and the problem of the *Soferim*" (Hebrew), *Tarbiz* 27 (1958): 166.

¹⁴ Y. I. Halevy (Rabinowitz), *Dorot Rishonim* (Berlin: Yehuda Leyv Galde, 1923), part 1, 3:292; 5:467.

¹⁵ J. N. Epstein, *Prolegomena ad Litteras Tannaiticas* (Hebrew), (Jerusalem: Magnes Press, 1957), 511; also, see M. Halbertal, *Interpretative Revolutions in the Making* (Hebrew), (Jerusalem: Magnes Press, 1997), 14.

¹⁶ H. Albeck, "The laws and the exegeses" (Hebrew), *Alexander Marx Jubilee Volume* (New York: *Beit Hamidrash Lerabanim Beamerica*, 1950), Hebrew section, 1–8. Shamma Friedman appears to adopt a similar approach in *Tosefta Atiqta: Synoptic Parallels of Mishna and Tosefta Analyzed with Methodological Introduction* (Pesah Rishon) (Hebrew), (Ramat-Gan: Bar Ilan University Press, 2002), 77.

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