

On Halakhah, History, Order, and Meaning

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I. Introduction

It is an honor to have been invited to participate in writing this Festschrift for Professor Suzanne Stone, who, through her graduate workshop, contributed greatly to the study of halakhah in an academic context in the United States today. By introducing modern legal theory to frame halakhah as a field of legal writing to be taken seriously, and by convening many cohorts of interdisciplinary groups of graduate students from across the humanities to discuss these ideas over the years, Suzanne sensitized each of us to the many possibilities of reading and interpreting halakhic texts for their implicit legal theories and for our own respective fields. Beyond the need to convince academics who may not have been familiar with halakhah of its intellectual significance and its potential contribution to a broad range of scholarship, those wishing to study halakhah in the academy faced an additional barrier of suspicion even from scholars who were aware of the importance of halakhic sources.

Some of the most brilliant academic scholars of halakhah conceived of this literature as essentially isolated from all else, developing in its own separate lane, with only rare and insignificant interactions with the outside world. This approach rendered the possibility of interpreting halakhic material by means of methodologies from other fields at best unimportant, and, more often, deeply problematic. This dynamic was especially pronounced when it came to history as an interpretative lens for halakhah. History was seen as reducing the eternal truths of halakhah interpreted throughout the ages, from one generation to the next, to the temporal contingencies of whatever local occurrences may have taken place when a particular interpretation was recorded. The only intrusions of history into halakhah were marked by

“deflections” in halakhic thought, showing up as gross inconsistencies or forced interpretations.¹ Halakhah developing as it should would therefore show no historical marks. Such an approach means that it is impossible to engage in a historical interpretation of halakhah itself, only in an analysis of crises, exceptions, and abnormal behavior of halakhah.² In his towering halakhic and academic brilliance as well as in his fundamental suspicion of history as a method for studying Jewish law, Isadore Twersky is a paradigmatic example of such a scholar.

This article discusses Twersky’s essay on *Shulḥan Arukh* as an instance of scholarship that presents halakhic sources as important and serious material for Jewish intellectual history, but simultaneously highlights the limitations and dangers of historical study for examining halakhah. Subsequently, I will present a historical interpretation of *Shulḥan Arukh*’s creation that builds upon Twersky’s descriptions, yet attempts to contribute meaningfully to our understanding of this episode in halakhic history by employing decidedly historical approaches. I draw upon methods from book history and the history of early modern printing to inquire into the creation of *Shulḥan Arukh* in this particular moment. The following section develops these insights further, this time adding ideas about knowledge organization, legal authority, and early modern codification projects to suggest ways in which *Shulḥan Arukh* can, in turn, contribute to our understanding of legal thinking and early modern history.

When Twersky wrote his essay, the purview of intellectual history had not yet been broadened to incorporate the various contexts of what is now called “the history of knowledge.”³ The notion that social, material, and cultural history are part of shaping not just the form and the contingencies, but the very essence of knowledge, was yet to be explored. Nor was the early modern period accepted, as it is now, as a historical era in its own right, with unique features and characteristics that distinguish it from the Middle Ages

- 1 For the most recent discussion of this concept, see Haym Soloveitchik, “Angle of Deflection,” in Haym Soloveitchik, *Collected Essays, Vol. III* (London: Littman Library of Jewish Civilization, 2020), 407–21.
- 2 Some of Haym Soloveitchik’s own works are examples of histories of halakhah, showing that halakhic texts can, indeed, as he writes, “talk history.” Haym Soloveitchik, “Can Halakhic Texts Talk History?” in Haym Soloveitchik, *Collected Essays, Vol. I* (Liverpool: Littman Library of Jewish Civilization, 2013), 169–223.
- 3 See, for instance, Peter Burke, *A Social History of Knowledge from Gutenberg to Diderot* (Cambridge, UK: Polity Press, 2000).

and the modern period.⁴ The interpretative methods that both these shifts have introduced make possible new kinds of historical study that can shed light on halakhah in meaningful and nonreductive ways, as well as draw from the study of halakhah significant insights for other fields. Through her tireless scholarship and initiatives, Suzanne has, in her inimitable way, shown how this kind of scholarship can be done, and inspired countless others to follow in her footsteps.

Isadore Twersky's essay, "Shulchan Aruch: Enduring Code of Jewish Law," which was published in Judah Goldin's *The Jewish Expression* alongside essays by Louis Ginzberg, Yitshak Baer, Gershom Scholem, and Sh. Y. Agnon, appears at first glance as an elegant but simple historical description of this important halakhic code, enhanced by a soaring spiritual reflection on halakhah and its meaning in the essay's conclusion.⁵ But this essay also contains some major thought-provoking and revolutionary arguments about halakhah, its historical development, and the conflict between law and religious feeling. In this reflection upon Twersky's description of *Shulḥan Arukh*, I shall pause to appreciate some of the directions that he charts in the field of halakhah and history. I will focus particularly on two ideas that surface in the essay: One is an argument against a certain kind of historical approach to halakhah. The other is an argument about religious law and spirituality. To put the two arguments (too) simply: First, Twersky claims that *Shulḥan Arukh* provides evidence against the historian's inclination to ascribe historical interpretations to halakhic developments. Second, Twersky recognizes in *Shulḥan Arukh* a profoundly pragmatic inclination. *Shulḥan Arukh*, perhaps more than any other code of Jewish law, focuses on the practical law. Moreover, the code also orders halakhic knowledge for organizational functionality and ease of access above all else. Twersky sees in *Shulḥan Arukh*'s extreme practical focus a lack of spiritual religious engagement. I will try to challenge these insights in ways that, I believe, can often be found in germinal form within this very essay itself.

4 See, for instance, Euan Cameron, ed., *Early Modern Europe: An Oxford History* (Oxford: Oxford University Press, 2001); in Jewish history, David B. Ruderman, *Early Modern Jewry: A New Cultural History* (Princeton: Princeton University Press, 2010).

5 Isadore Twersky, "The Shulchan 'Aruch': Enduring Code of Jewish Law," in *The Jewish Expression*, ed. Judah Goldin (New Haven: Yale University Press, 1976), 322–43. The essay was first published as an article in *Judaism* 16 (Spring 1967).

First, I propose to read *Shulḥan Arukh* historically, engaging the history of printing and knowledge organization to show how this work is profoundly intertwined with the early modern moment in which it was created. Second, I will examine Twersky's statement that *Shulḥan Arukh's* mode of organizing halakhic knowledge is the most radically functional of all codes, and his claim that this extreme prioritization of functionality diminishes the code's spiritual significance. The practical inclination that Twersky identified in *Shulḥan Arukh's* organizational tendencies is, as I argue, both a key to the uniqueness of this work's historical moment, and an argument for the deep significance inherent in analyzing and structuring halakhah in all its temporal contingency without resorting to meta-halakhic fields of meaning for transcendence.

In the decades since Twersky's essay, historians have brought new approaches to the study of halakhah in general and of *Shulḥan Arukh* in particular. Scholars have written intellectual biographies of Rabbi Joseph Karo's spiritual world; studied the print and publication history of the code; examined parallels between his halakhic writing and the Ottoman political and legal milieu; and illuminated the role of *Shulḥan Arukh* in codifying Jewish law.⁶ All these studies present examples of how halakhah can be studied in historical yet non-reductive ways. The first part of the current article seeks to contend with Twersky's arguments from the perspective of the historical

6 In chronological order: R. J. Zwi Werblowsky, *Joseph Karo: Lawyer and Mystic* (Philadelphia: JPS, 1980); Elhanan Reiner, "The Ashkenazi Élite at the Beginning of the Modern Era: Manuscript versus Printed Book," *Polin: Studies in Polish Jewry* 10 (1997): 85–98; Joseph Davis, "The Reception of the Shulhan Arukh and the Formation of Ashkenazic Jewish Identity," *AJS Review* 26 (2002): 251–76; Amnon Raz-Krakotzkin, "Adjudication, Messianism and Censorship: The Printing of the *Shulḥan Arukh* as the Beginning of Modernity," in *Tov Elem: Memory, Community, and Gender in the Jewish Communities of the Middle Ages and Early Modern Period: Essays in Honor of Reuven Bonfil*, ed. Elisheva Baumgarten, Roni Weinstein, and Amnon Raz-Krakotzkin (Jerusalem: Mossad Bialik, 2011), 306–35 (Hebrew); Tirza Kelman, "I Shall Create Halakhic Ruling . . . for that is the Objective": *The Dimension of Halakhic Ruling In Joseph Karo's Beit Yosef* (PhD. diss., Ben Gurion University, 2018) (Hebrew); Maoz Kahana, "A Universe Made with Words," *Shenaton ha-Mishpat ha-Ivri* 30 (2019–20): 127–79 (Hebrew); Edward Fram, *Codification on the Cusp of Modernity* (Cambridge: Cambridge University Press, 2022); Roni Weinstein, *Joseph Karo and Shaping of Modern Jewish Law: The Early Modern Ottoman and Global Setting* (London: Anthem Press, 2022); see also the chapters by Yaron Ben-Naeh, Hagai Pely, and Moshe Idel in *Rabbi Joseph Karo: History, Halakha, Kabbalah* (Jerusalem: Zalman Shazar Center, 2021) (Hebrew).

study of halakhah today. The history of early modern knowledge organization serves as an example for ways to examine the halakhic import of *Shulḥan Arukh* and its enterprise historically.

The methodological shifts that have made possible new forms of intellectual history coincided with a move away from the kind of grand narratives and monumental interpretations that Twersky's essay exemplifies, and the bigger questions regarding halakhah, history, and spirituality that he addresses. The second part of this article revisits his statements about codification and the nature of religious law. The more recent focus on the material, social, and cultural history of knowledge recognizes that the concrete aspects of intellectual developments deserve scholarly attention not only for their own sake, but also because they contribute to our understanding of the intellectual enterprises in ways that isolated intellectual analysis cannot provide. It is in this vein that I suggest taking seriously the pragmatic orientation of this "enduring code" not, as Twersky suggested, as a deficiency (at best, a justified vacuum), but rather as a substantive approach to law.

II. Halakhah and History: Overload and Organization

Twersky's essay on *Shulḥan Arukh* presents a beautifully worded description of how Rabbi Joseph Karo created *Beit Yosef*, how Rabbi Moshe Isserles wrote *Darkhei Moshe*, and, finally, the story of *Shulḥan Arukh*, a title that designates, in Twersky's words,

a composite collaborative work, combining the original text of R. Joseph Karo, a Spanish emigré from Toledo (1492) who lived and studied in Turkey and finally settled in Palestine in a period of turbulence and instability and apocalyptic stirrings, with the detailed glosses—both strictures and supplements—of R. Moses Isserles (c. 1525–72), a well-to-do Polish scholar, proud of his Germanic background, who studied in Lublin, and became de facto chief rabbi of Cracow in a period of relative stability and tranquility.⁷

7 Twersky, "Shulchan Aruch," 323. I employ the title "*Shulḥan Arukh*" here as Twersky did, to designate the composite work that includes both R. Karo's and R. Isserles's writings.

This description of the very different circumstances that determined the lives of the two creators will become important to Twersky's cautionary argument against the historical study of halakhah.

In the 1550s, R. Karo published *Beit Yosef*, a gloss and update of R. Jacob ben Asher's fourteenth-century *Arba'ah Turim* (or "*Tur*"), which became the basis for *Shulḥan Arukh*. *Arba'ah Turim* was a four-volume code of Jewish law summarizing the halakhic conclusions of three earlier legal codes for all fields of Jewish law relevant in contemporary times, structured in a complete, systematic, and conveniently navigable work. Twersky characterizes R. Karo's decision to add his sixteenth-century gloss to this fourteenth-century code as stemming from R. Karo's opposition to the dangerously short "oracular" codes and overly lean "sinewy" manuals.⁸ The suspicion of excessive summary was what drove R. Karo to choose as the basis for his gloss the pattern of R. Jacob ben Asher's *Arba'ah Turim*, which was more expansive, rather than Maimonides's *Mishneh Torah*, which was "too concise and monolithic" for R. Karo's taste.⁹ R. Karo worked on *Beit Yosef* for decades as he journeyed in search of a home, finally publishing the gloss after his arrival in Safed. At around the same time in Poland, the young R. Isserles, confronted with the need to determine halakhah as a rabbi and adjudicator, and criticized for not taking into consideration the full accumulation of halakhic sources available, wished to prepare a "digest and anthology" of all available halakhic materials, also structuring it according to *Tur*.¹⁰ As Twersky put it, Isserles was similarly wary of codifications, considering these "Delphic manuals" too terse.¹¹

However, within less than a decade, R. Karo and R. Isserles both gave in to (what Twersky called) the "codificatory syndrome," each using their own methodology to create the abridgments that would form *Shulḥan Arukh*.¹² R. Karo employed his famous "court of three," and R. Isserles consulted the most recent authorities, citing the principle of *hilkheta ke-vatra'e* ("the law follows the later authorities").¹³ The method chosen by R. Isserles, Twersky explains,

8 Twersky, "Shulchan Aruch," 323.

9 Twersky, "Shulchan Aruch," 324.

10 Twersky, "Shulchan Aruch," 325.

11 Twersky, "Shulchan Aruch," 326.

12 Twersky, "Shulchan Aruch," 326.

13 For more on this important principle, see Meir Rafeld, "The Halakha Follows the Later Sages," *Sidra* 8 (1992): 119–40; Israel Ta-Shma, "The Law is Like the Later Authorities: Historical Aspects of a Legal Principle," *Shenaton ha-Mishpat ha-Ivri*

“would preserve established precedent and respect local custom.”¹⁴ Twersky describes the desire of Germanic-Polish Jewry for a code that included more recent Ashkenazic traditions as “reflecting their historical consciousness,” as opposed to R. Karo’s Sephardic audience, which desired a more “classical” code that drew mainly upon the three important medieval codes.¹⁵ Twersky considers the idea driving the Ashkenazic expression of *hilkheta ke-vatra’e*, a tendency to value their specific and recent halakhic development and heritage over more classical sources, to be an expression of “historical consciousness.” When it comes to a broader historical interpretation, however, Twersky considers the case of *Shulḥan Arukh* to present an argument *against* history.

To explain how both R. Karo and R. Isserles first expanded upon *Arba’ah Turim* in their glosses out of a distaste for overly short codes, only to change their minds and create such codes themselves, Twersky introduces what he calls “a dialectical movement” that often recurs in halakhah:

This dialectical movement . . . characterizes much of the history of post-Talmudic rabbinic literature. Attempts to compress the Halachah by formal codification alternate with counter-attempts to preserve the fullness and richness of both the method and substance of the Halachah. Any student who follows the course of rabbinic literature . . . cannot ignore this see-saw

(1979): 405–23 (Hebrew); Israel I. Yuval, “Rishonim and Aḥaronim, *Antiqui et Moderni*: Periodization and Self-Awareness in Ashkenaz,” *Zion* 57 (1992): 369–94 (Hebrew); Tamara Morsel-Eisenberg, “Anxieties of Transmission: Rabbinic Responsa and Early Modern ‘Print Culture,’” *Journal for the History of Ideas* 82 (2021): 377–404; and many others.

14 Twersky, “Shulchan Aruch,” 327.

15 Twersky, “Shulchan Aruch,” 327. Twersky’s reading is highly sensitive; he does not dismiss formal and linguistic elements as stylistic or external. One of his footnotes (330n29, emphasis mine) relates to the harmonious formal appearance of the genre of codes, which in the unification typical of their genre eschew the confrontation typical of other halakhic genres: “The fact is that R. Moses Isserles’ strictures are very radical, but low-keyed and disarmingly calm . . . most were designed *simply to supersede* R. Joseph Karo’s conclusions. It is only the *harmonious literary form that avoided an overt struggle for Halachic hegemony* such as occurred in other periods . . . there was no dilution of diversity in this case, either, but there was at least a *formal fusion* of Ashkenazi and Sephardi Halachah in one work.” As he points out, this harmonious *form* that incorporates different views also (quietly) does a lot of work.

tendency . . . No sooner is the need for codification met than a wave of non-codificatory work rises.¹⁶

Twersky considers this dialectical tendency from compression to expansion and back to be the driving cause responsible for the dynamism of halakhah's intellectual history, the movement from one iteration of halakhic literature to the next. Not every pendulum, or "see-saw tendency," is dialectical in the Hegelian sense, in that not every such movement is self-propelled, nor does it perform the *Aufhebung* which includes elements of both dialectically opposed sides into a new moment and creates a third element, thus driving historical change. Seeing as halakhic texts that compress do tend to preserve the most recent expansions that they summarized, we could indeed consider this halakhic dynamic as a dialectical move of this kind, a back-and-forth that also generates change and historical development.

This engine of historical change notwithstanding, the phenomenon of *Shulḥan Arukh* features in Twersky's essay as evidence against historical interpretations of halakhah. For one, Twersky's assertion that the move from *Beit Yosef/Darkhei Moshe* to *Shulḥan Arukh* in one decade is an extreme, accelerated example of the dialectic seems in fact to point *away* from its function as a historical mechanism:

What is striking . . . in the case of the *Shulḥan Arukh* is that the dialectical movement plays itself out in the attitudes and achievements of the same person The *Shulḥan Arukh* thus offers an instructive example of the dialectical movement in rabbinic literature as a whole The full dialectic has here played itself out, radical opposition to codes giving way to radical codification, almost with a vengeance . . . for the *Shulḥan Arukh* is the leanest of all codes in Jewish history—from the *Bet Yosef* to the *Shulḥan Arukh*, from the baroque to the bare.¹⁷

This is striking indeed, but—if anything—leads us further from any conviction that such a dialectic can drive consecutive historical stages. Perhaps, instead, these are simply two aspects of halakhah, always simultaneously present. Such an understanding would explain much about the nature of halakhah, but not necessarily provide a historical narrative for the development of rabbinic literature.

16 Twersky, "Shulchan Arukh," 329.

17 Twersky, "Shulchan Arukh," 329.

Twersky explains that the impossibility of fixing halakhah in a stable manner is the reason for this persistent dialectic. In rendering such an explanation, he seems, indeed, to be discussing the essence of halakhah rather than any historical description:

A code could provide guidance and certitude for a while but not finality. *Arvak' arva zarik* (your bondsman requires a bondsman) A code, even in the eyes of its admirers, required vigilant explanation and judicious application. The heartbeat had constantly to be checked It became part of a life organism that was never complete or static.¹⁸

Twersky's poetic language melds a few different ways of approaching the issue, only one of which is arguably historical. The reference to "guidance and certitude, but not finality," implies an epistemological and practical issue when it comes to adjudication. The constant increase of halakhic learning makes it hard to know with any conclusiveness what the law truly should be. The expression "your bondsman requires a bondsman," for its part, points to the limits of legal authority and the lack of finality in deciding and prescribing law. The (f)act of codification in itself does not render anything authoritative for too long. Finally, the language of "pulse and heartbeat" hints at the need to give life to the otherwise dry code, a point that he addresses towards the end.

But Twersky's strongest argument against the history of halakhah stems directly from the historical circumstances of *Shulḥan Arukh's* creation: "This whole story is important," he writes,

because it . . . cautions against excessive preoccupation . . . with contemporary stimuli and contingencies It provides an obvious vertical perspective—i.e. literary categories seen as part of an ongoing Halachic enterprise—to be used alongside an, at best, implicit horizontal perspective—i.e. historical pressures and eschatological hopes—for an explanation of the emergence of *Shulḥan Arukh*.¹⁹

The story of *Shulḥan Arukh* shows that two rabbis from very different sociological contexts, with opposing eschatological perspectives, were both

18 Twersky, "Shulchan Arukh," 329 (transliteration in original).

19 Twersky, "Shulchan Arukh," 329.

engaged in the same project. Thus, Twersky claims, this work must be the result of an internal halakhic development, isolated from the external vagaries of history. It is clear that the historical approach disproven by *Shulchan Arukh*, according to Twersky, is a reductionist model of history (or perhaps a caricature thereof), an approach that reduces spiritual, intellectual, and scholarly achievements to “sociological data,” “contingencies,” and “eschatological pressures.” But, I try to suggest, a different, more nuanced—but undeniably historical—reading, is possible.

Comparing R. Karo to R. Isserles, Twersky exclaims: “their *Sitz im Leben* are so different.”²⁰ In many ways, this is absolutely true. However, there are ways in which their *Sitz im Leben* are quite similar, notably in terms of the history of knowledge. The particular problem both rabbis were considering, the trigger that created their perception of halakhic crisis, and the type of solution they proposed, was characteristic of this very period in the history of knowledge. Ann Blair has shown the links between printing, the early modern sense of information overload, of there being “too much to know,” and the turn to organization—especially to printed works that were organized for maximum ease in searching and consulting—for relief.²¹ Walter Ong has explained how print’s ability to easily reproduce fixed texts and layouts in a stable manner was synergetic with structural approaches to “conquering” fields of knowledge by means of knowledge organization, as in Peter Ramus’s famous diagrams.²² *Shulchan Arukh* can definitely be understood in such terms. *Beit Yosef* was one of the first halakhic works created directly for print (without first circulating in manuscript), Karo was deeply involved in the process of printing the work, and print no doubt played a big role in the work’s immediate popularity and widespread distribution.²³

As I have shown elsewhere, both rabbis emphasized printed works of responsa when discussing why a new codification was needed.²⁴ While

20 Twersky, “Shulchan Arukh,” 330.

21 Ann M. Blair, *Too Much to Know: Managing Scholarly Information before the Modern Age* (New Haven: Yale University Press, 2010).

22 Walter Ong, *Ramus, Method and the Decay of Dialogue*, new ed. (Chicago: University of Chicago Press, 2004).

23 Tirza Kelman, “In Metal and Lead Letters in Print: The Print Revolution and the Creation of the Work *Bet Yosef*,” *Peamim* 148 (2017): 9–27 (Hebrew). See also Raz-Krakotzkin, “Adjudication, Messianism, and Censorship.”

24 Morsel-Eisenberg, “Anxieties of Transmission.”

some of the proclamations in the authors' introductions are familiar tropes echoing earlier codes, including Maimonides's *Mishneh Torah*—citing the length of exile and its trials, the dispersion of the Jewish people—both R. Karo and R. Isserles, unlike their predecessors, explicitly mentioned information overload.²⁵ Why did R. Karo use his “court of three”? For one, in Twersky's words, it would be presumptuous to scrutinize past giants, and, second, the “process would be too long and arduous.”²⁶ The former reason is a familiar and oft-repeated expression of respect. The latter fear, however, is explicitly an issue of information overload. R. Karo writes that it would take far too long to traverse all the necessary sources, from Talmud to recent adjudicators, “a thing without end.”²⁷ As a young rabbi, R. Isserles had relied just on the Talmud and a few important works, and was soon criticized “for having ignored the rulings of the most recent scholars (e.g., R. Jacob Weil . . .) . . . the progenitors of contemporary Polish Jewry.”²⁸ In Twersky's words: “Impromptu, ad hoc review—and judicious, instantaneous, application—of all this material, this panoply of interpretations and traditions, would be cumbersome, if not impossible.”²⁹ Indeed, R. Isserles writes that consulting all the recently available sources (incidentally, almost all newly printed responsa) is impossible: “Time is short, and the labor is long, and I, the laborer, am lazy.”³⁰ *Shulchan Aruch* was, then, a project of organizing knowledge in the face of overload.

- 25 R. Karo explained that he had to choose one halakhic conclusion from among pre-existent codes because, in Twersky's words, the “process would be too long and arduous” (“Shulchan Aruch,” 325).
- 26 Twersky, “Shulchan Aruch,” 321. The first reason is very different from non-Jewish codifiers, but the second “pragmatic” reason is very similar. Nevertheless, many humanists calling for a new legal code, such as the French jurist François Hotman, did so by emphasizing a sense of historical distance that rendered the past sources irrelevant. This sense of distance is perhaps not so different in principle, though leagues away in sentiment, from the sense of spiritual distance and humility that rendered our halakhists unable to decide between prior authorities.
- 27 R. Joseph Karo, *Beit Yosef*, introduction: רבר שאין לו קצבה [“*davar she-ein lo kitsbah*].” See, for instance, *b.Ketub.* 98b, concerning “an item that does not have a fixed value.”
- 28 Twersky, “Shulchan Aruch,” 325.
- 29 Twersky, “Shulchan Aruch,” 326.
- 30 R. Moshe Isserles, *Darkhei Moshe*, introduction: המלאכה מרובה בימים מועטים ואני הפועל עצל.

That this codification was a project of organizing in the context of print technology—both its challenges and its promises—is clear just by looking at it. Let me list just some of the subtler aspects of information overload and knowledge organization, some of which Twersky mentioned in his essay. Blair categorizes four “s’es” to designate actions that manage information overload: selecting, summarizing, sorting, and storing. *Shulchan Arukh*’s creators employ all four. In Twersky’s words, R. Karo “abridged . . . fastidiously arranged and systematized and clarified.”³¹ As Twersky explains, R. Karo used the pre-existent *Tur* as his basis to “avoid duplication.”³² Beyond simply avoiding repetition, building a new work on a prior code is a form of sorting. Choosing a schematic order ensures that every law has one—and only one—precise and rational location, making the item easy to find, especially when the scheme is already known to scholars from previous works. Avoiding repetition of a topic in several places is especially crucial for legal codes, because duplications can harbor contradictions, rendering the law equivocal. Keeping one topic in one place ensures that the law is summarized in one unambiguous manner. In a sense, the decision to arrive at a clear halakhic conclusion is in itself a form of selecting and summarizing. Twersky characterizes R. Karo’s disregard for “contemporary legislation, innovation, and native usage” a sign of his being “laconic, almost self-effacing.”³³ But the decision to ignore more recent law is also a way of limiting overload.

Aiming at clear halakhic conclusions is likewise a form of organization by selecting and summarizing. Employing metaphors of the legal corpus as a body, Twersky describes that, even as *Beit Yosef* would “flesh out the bare-bones codifications,” of *Arba’ah Turim*, which were too brief for his taste, R. Karo would nevertheless aim to “preserve their . . . sinewiness and pragmatic advantage by unequivocally stating the *pesak*, the binding regulation, in each case.”³⁴ Thus, even as R. Karo expanded the *Arba’ah Turim*, he made sure to preserve the pragmatic advantage of that code’s brevity. When R. Karo subsequently changed his negative attitude about codes to create one himself in the form of *Shulchan Arukh*, he engaged in yet more organizing. R. Karo chose *Arba’ah Turim* as his model for organizational reasons, resembling *Arba’ah Turim* in “its rigid selection of material . . . the circumscribed scope, but not

31 Twersky, “Shulchan Aruch,” 324.

32 Twersky, “Shulchan Aruch,” 323.

33 Twersky, “Shulchan Aruch,” 325.

34 Twersky, “Shulchan Aruch,” 324.

in the method of presentation, which [in *Arba'ah Turim*] is rich, varied, and suggestive . . . while the *Shulchan Arukh* brooks no expansiveness whatsoever.”³⁵ If *Tur* performed the “four s’es”—selecting, sorting, storing, summarizing, to some extent—*Shulchan Arukh* took the fourth, summarizing, to an extreme, resulting in what Twersky calls “the leanest of all codes in Jewish history.”³⁶

This leanest of all codes was the perfect product for print dissemination, its systematic presentation and easy-to-reference structure enhanced by print’s ability to reproduce structure and *mise-en-page* in a fixed manner. The heuristic accessibility was, in turn, more crucial than ever with the constantly expanding audience that printed works could reach: an audience that increasingly came to rely on such finding aids as they procured ready-made and therefore unfamiliar books from authors they had never encountered, rather than assembling glosses themselves from their teachers. In *Beit Yosef*, Twersky mentions, R. Karo had also corrected the text of the *Tur*, which suffered many scribal corruptions.³⁷ Although Twersky does not mention print even once in this essay, such correction, alongside updates and summaries, were typical enhancements introduced in the transition from manuscript to print transmission: addition, summary, and correction. Printers often introduced these changes prominently as enhancements, and the expectations of readers, too, changed to expect standardization and correction.

Information overload is not an objective status of there being quantitatively more knowledge in a certain period. After all, we witness expressions of this sentiment at different points in various periods, each with a radically different absolute quantity of knowledge available. Rather, the sense of information overload results from an existing world of scholarly practices confronted with new methods that are incompatible and clash with the existing practices. The sixteenth century, when printed works changed the horizons of knowledge, was such a moment. It is in this sense that the creation of *Shulchan Arukh* is an argument for halakhah as part of the history of knowledge.

Twersky is also the scholar who gave us the concept of halakhah as separate from meta-halakhah.³⁸ Twersky’s “horizontal” distinction of halakhah

35 Twersky, “Shulchan Aruch,” 331.

36 Twersky, “Shulchan Aruch,” 329.

37 Twersky, “Shulchan Aruch,” 324.

38 See, for instance, Jay Berkowitz and Ephraim Kanarfogel, “Law and Spirituality in Jewish History: On the Contribution of Isadore (Yitzhak) Twersky,” *Jewish History* 36 (2022): 171–88.

from meta-halakhah seems to stem from a similar tendency as his “vertical” isolation of internal halakhic development through the ages from any other historical context.³⁹ To regard the development of halakhah as anything but a primarily isolated and self-propelled vertical diachronic process would risk reducing halakhah to the kind of historical contingencies that produce the reductionist explanations he cautioned against. But intellectual history, when practiced as part of the history of knowledge (which came into its own as a field more recently) writ large, provides a method to study the historical development of information transmission and organization in a way that reveals the period’s distinctiveness and its effect on halakhic knowledge in non-reductionist ways. Notwithstanding their specific political and personal circumstances, the two rabbis who created *Shulḥan Arukh* were both facing similar developments in the history of knowledge, including technology (print), globalization (migrations), and information overload (a result of combination of print and mobility). The dialectic of expanding/summarizing knowledge will persist as long as humans have limited mental capacity, a need to respond to the multiplicity of their circumstances, and a desire to reason about it using principles. But it is not in itself a *historical* dialectic. What is historical is that this dialectic finds expression differently in different periods, and meaningfully so.

III. Order and Legal Projects

Having suggested this take on the significance of *Shulḥan Arukh*’s organizational approach as a historical chapter in halakhic development, I would like to turn to the second point Twersky makes in his essay, about the code’s apparent lack of religious engagement beyond bare-bones halakhah, its choice of functionality over spirituality, what he calls its “radical codification.”⁴⁰ The two main medieval models for codes available to these early modern halakhic codifiers, Maimonides’s *Mishneh Torah* and R. Jacob ben Asher’s *Arba’ah Turim*, are organizational enterprises par excellence. They both

39 See above, n12 (Twersky, “Shulchan Arukh,” 329, emphasis added): “This whole story is important, because it . . . cautions against excessive preoccupation . . . with contemporary stimuli and contingencies . . . It provides an *obvious vertical perspective*—i.e. literary categories seen as part of an *ongoing Halachic enterprise*—to be used *alongside an, at best, implicit horizontal perspective*—i.e. *historical pressures and eschatological hopes*—for an explanation of the emergence of *Shulḥan Arukh*.”

40 Twersky, “Shulchan Aruch,” 329.

invented new schemes for arranging halakhah that aimed to be complete, unified, systematic, and well-ordered. But there are some essential differences in the type of knowledge management projects that each represents. Both codifiers of *Shulḥan Arukh* chose *Tur* over the alternative of *Mishneh Torah* as their organizational scheme. Twersky explained Karo's original preference for *Tur* as stemming from his initial anti-codificatory tendencies. *Mishneh Torah* was too monolithic to permit the multiplicity R. Karo deemed necessary.⁴¹ But, as we mentioned above, R. Karo continued to employ *Arba'ah Turim's* scheme, even after he changed his mind about codifications and decided to create *Shulḥan Arukh*. The pattern that *Arba'ah Turim* provided had, as Twersky puts it, a "pragmatic advantage" over other codificatory models. As the current section explores, this pragmatic orientation extends beyond issues of organization and reference to define the very nature of the *Shulḥan Arukh's* legal enterprise at its core.

Between *Mishneh Torah* and *Arba'ah Turim*, Twersky identifies the latter's classification as being more practical, which was also the reason R. Karo preferred it: "by . . . adopting the classification of the *Tur*, R. Karo capitulated unconditionally to the practical orientation."⁴² What is this "practical orientation"? One sense of a code being "practical" is the creator's prioritization of use we discussed above, a concern with how the code will be consulted by readers, which is expressed by focusing on organization. Another sense in which some codes can be more "practical" than others is their focus on practiced halakhah, emphasizing the final legal decision (and, in the case of *Shulḥan Arukh*, winnowing away anything else). An additional kind of practicality is choosing to focus on laws that apply in the reader's time and location while omitting irrelevant laws. Examining these different forms of practicality can expose a code's goals and significance.

41 R. Joseph Karo, *Beit Yosef*, OH, introduction: ועלה ברעתי לסמכו לספר הרמב"ם ז"ל להיותו הפוסק היותר מפורסם בעולם. והזויתי בי מפני שאינו מביא אלא סברא אחת והייתי צריך להאריך ולכתוב סברות שאר הפוסקים וטעמם. ולכן הסכמתי לסמכו לספר ארבעה טורים שחבר הרב רבינו יעקב בן הרא"ש ז"ל כי הוא כולל רוב דעות הפוסקים. In this introduction, R. Karo mentions that he changed his mind regarding Maimonides's code, because it does not provide the various opinions and R. Karo would have to reinsert them. (By the time he wrote *Shulḥan Arukh*, R. Karo, too, left out the alternative opinions and explanations, just as Maimonides had, but readers could refer to the equivalent section in *Beit Yosef* should they wish to explore those other opinions and interpretations.)

42 Twersky, "Shulchan Aruch," 330.

Arba'ah Turim focused only on laws that were still in practice in medieval Europe, leaving out laws about the Temple or the Holy Land. Twersky recognized in the scope of *Tur*, in its omission of laws irrelevant in its own day, a more pragmatic attitude than in *Mishneh Torah*:

Mishneh Torah is all inclusive in scope, obliterating all distinctions between practice and theory, and devoting sustained attention to those laws and concepts momentarily devoid of practical value or temporarily in abeyance because of historical and geographical contingencies.⁴³

Mishneh Torah's idea of completeness (its "all-inclusive scope") expresses not only a preference for theory over practical halakhah, it also evinces a prioritization of values beyond practicality for the reader. Twersky explains how this difference in goals for their codes is reflected in the respective authors' distinct organizational decisions, each choosing a very different principle to guide their halakhic order:

For while both . . . were of one mind in . . . seeking an independent classification of Halachah, they differed in their goals: Maimonides sought to create a topical-conceptual arrangement that would provide a new interpretative mold for study and would also be educationally sound, while R. Jacob ben Asher was guided only by functionality and as a result was less rigorous conceptually.⁴⁴

Twersky intuits that these different approaches to codification and its goals are also related to profoundly divergent understandings of history and its relation to halakhah. The sense in which codification following *Arba'ah Turim* is more pragmatic corresponds to the ways in which that brand of codification is historical, in contrast to *Mishneh Torah's* order, which lacks such historicity and is sometimes almost anti-historical in orientation.⁴⁵

43 Twersky, "Shulchan Aruch," 331.

44 Twersky, "Shulchan Aruch," 331.

45 The current article does not discuss Maimonides's historicism when it comes to explaining the source and reason for certain commandments (such as the sacrifices). In those instances, ascribing historical reasons to a religious commandment is, in many cases, Maimonides's way of diminishing that law's eternity and absolute necessity. Thus, although he employs historicism as an explanatory mechanism, the historical dimension is in his system contingent

The present time during which part of the law was in abeyance was, in Maimonides' opinion, an historical anomaly, a fleeting moment in the pattern of eternity. The real historical dimensions were those . . . when 'all the ancient laws will be reinstated' . . . The *Turim*, on the other hand, addresses itself only to those laws that are relevant . . .⁴⁶

It would be strange to assert that the author of *Arba'ah Turim*, or following him, the authors of *Shulchan Arukh*, did not believe (as Maimonides did) that these laws, omitted in their codes, were only temporarily suspended. Of course, they, too, subscribed to the conviction that all laws will eventually be reinstated. Their decision not to codify those laws was driven not by any religious belief, but instead by a prioritization of practicality (contemporary applicability and the desire for a concise code) over conceptual completeness. Whereas Maimonides's philosophical priorities (his preference for a "conceptual arrangement" and for a complete, consistent pattern that would provide an "interpretative mold") shaped the contents and structure of his code at the expense of pragmatic considerations, R. Jacob ben Asher prioritized functionality at the expense of such conceptual advantages. These goals relate to the authors' historical approaches. The author who considered functionality more important had less regard for currently irrelevant historical laws, whereas the codifier who preferred conceptual unity sought to transcend the contingencies of historical legal development.

Twersky contrasts two fundamental options for codes: conceptual rigor and eternal truths versus functional advantages and temporal laws. The "functional focus" directs both the orientation toward relevant and practical law (*halakhah le-ma'aseh*) and the preoccupation with the reader's need to find material easily, expressed in more functional (rather than conceptual) organization.

and therefore inferior to a more philosophical or eternal dimension of truth. R. Isserles's inclusion of recent sources is also termed "historical consciousness" in Twersky's essay—this in contradistinction to the more "classical" approach taken by R. Karo. But both approaches denote ways in which this pragmatic type of codification can be historical, as they both embrace the contingent historical development of halakhah over approaches that are more satisfying for their conceptual coherence and theoretical eternity.

46 Twersky, "Shulchan Aruch," 331.

If *Arba'ah Turim* was the more functional of the medieval codes, *Shulḥan Arukh* adopted this priority—then, took it up yet another notch. The one element where *Shulḥan Arukh* resembles *Mishneh Torah* more than *Arba'ah Turim* is its omission of theoretical reasoning, a tendency Twersky describes as follows:

In this respect, the *Shulḥan Arukh* has greater affinities with the *Mishneh Torah*, which also purports to eliminate conflicting interpretations and rambling discussions and to present *ex cathedra* legislative, unilateral views, without sources and without explanations.⁴⁷

In Twersky's words, "*Shulchan Aruch* added a further rigorism to the practicality of the *Turim*" by adopting *Mishneh Torah*'s approach not to engage in lengthy explanations and not to mention alternative options.⁴⁸ *Shulḥan Arukh* thus combined the most pragmatic elements of both earlier models, outdoing *Arba'ah Turim* in its extreme functionality by removing not only irrelevant laws but also any discussions that exceed the practical legal conclusion.

IV. Spirituality and Radical Functionality

Up to this point, Twersky's essay seems to have been merely describing different organizational decisions made by codifiers based on their preferences, in which *Shulḥan Arukh* emerges as most concerned with functionality. But the essay's finale makes clear that there is much more than mere preference at stake in these decisions. In fact, the organizational decisions of the codifiers reveal deep attitudes towards halakhah. Twersky employs his distinction between halakhah and meta-halakhah to identify the meta-halakhic worlds of two codifiers. Maimonides's meta-halakhah was philosophy. As Twersky has shown, Maimonides's philosophical orientation is expressed not only in the *Guide* or in select, programmatic passages of *Mishneh Torah* but also in the work's structure as a whole. The work's organization is itself a philosophical religious statement.⁴⁹ R. Karo's meta-halakhah was kabbalah, part and parcel of his Galilean mystical surroundings.

47 Twersky, "Shulchan Aruch," 332.

48 Twersky, "Shulchan Aruch," 331.

49 Twersky, "Shulchan Aruch," 334. See also Isadore Twersky, *Introduction to the Code of Maimonides* (New Haven: Yale University Press, 1982), 238–323.

But unlike Maimonides, Twersky asserts, R. Karo does not allow any meta-halakhah to infiltrate his code.⁵⁰ R. Karo's concern was, writes Twersky, purely with "what Max Weber called the 'methodology of sanctification' . . . not with charismatic goals or stimuli, the ethical underpinning or the theological vision which suffuse the Halachah with significance."⁵¹ Twersky's insistence on a halakhah/meta-halakhah distinction leads him to see in *Shulḥan Arukh's* radical functionality a lack of meaning, risking that this codification presented itself as "all letter and no spirit."⁵² *Shulḥan Arukh*, Twersky explains, represents *the* fundamental problem and tension of Jewish religious law as a whole, that of "punctilious observance" versus "religious experience and spiritual existence."⁵³ Having recognized *Shulḥan Arukh's* lack of meta-halakhic content, Twersky insists that "Karo, the arch mystic passionately yearning for ever greater spiritual heights, could not have intended to create a new concept of orthopraxis, of punctilious observance of the law divorced, as it were, from all spiritual tension."⁵⁴ Subsequently, Twersky attempts to redeem *Shulḥan Arukh* from its reputation of spiritual dryness.

In Twersky's attempts to rescue *Shulḥan Arukh* from this characterization, salvation comes from outside halakhah (the "meta" realm). He detects spirituality in the paragraphs that uncharacteristically "slipped" into the code, passages like *Shulḥan Arukh's* famous opening paragraph about the sense of mission that a Jew should feel when waking up in the morning. Notwithstanding that passage's important location at the outset of the code, other such examples are few and far between. Apart from these uncharacteristic passages, Twersky concludes, the code unto itself remains devoid of spiritu-

50 He appears in the guise of "a civil lawyer for whom nothing was more pointless, nothing more inept, than a law with a preamble" (332, citing JW Jones, *The Law and Legal Theory of the Greeks*).

51 Twersky, "Shulchan Aruch," 332.

52 Twersky, "Shulchan Aruch," 337. He judges *Shulḥan Arukh* as lacking "what Dilthey called *Erlebnis*, the experiential component" (ibid., 332). It is striking to think that a code concerned with the most practical, with daily life and concrete action, is "lacking *Erlebnis*"—but what Twersky means is that *Shulḥan Arukh* relates to only the practicalities, "the letter," whereas the "*Erlebnis*" he invokes is the spirit, the "invisible meaning" (ibid., 333) of halakhah, unmentioned in *Shulḥan Arukh*.

53 Twersky, "Shulchan Aruch," 337. See also ibid., 334–35: "The 'problem' of the *Shulḥan Arukh* is precisely the 'problem' of Halachah as a whole."

54 Twersky, "Shulchan Aruch," 336.

ality. As a solution for injecting spirituality into the *Shulḥan Arukh*, Twersky suggested imbuing the code with religious meaning by adding an external ideational framework, which provides purpose to practice (philosophy), or supplementing a rationale or mystique that gives reasons to the individual commandments and their details (mysticism, or other models of *ta'amei ha-mitsvot*).⁵⁵ It remains up to the individual, Twersky exhorts, to enact this “coordination of inner meaning and external observance.”⁵⁶ Thus, anyone fulfilling the law can bring this meaning to their actions: “If all actions of a person are infused with the radical awareness that he is acting in the presence of God then every detail becomes meaningful and relevant.”⁵⁷ However, as Twersky proceeds to admit, these suggestions to graft ideologies onto the code are not executed in the work itself: “*Shulḥan Arukh* . . . attempts neither.”⁵⁸

Twersky finally proposes the intriguing idea that this omission may have been an intentional act by the codifiers as a way to keep the spiritual options open: perhaps *Shulḥan Arukh* “only charts a specific way of life but does not impart a specific version or vision of meta-Halacha . . . because the latter is to be supplied and experienced independently.”⁵⁹ Twersky thus attempts to soften his criticism of *Shulḥan Arukh*, suggesting that the code purposely erased any meta-halakhah so as to better allow each individual to graft their choice from amongst the varied meta-halakhic approaches onto the fixed law. *Shulḥan Arukh*'s authors, Twersky suggests, left the spiritual component open for everyone to supply in their own unique way because they believed that religious meaning was a personal matter (“every person spices his food differently”), or that spirituality “should not be codified or legislated.”⁶⁰

Yet if Twersky's best defense of *Shulḥan Arukh* consists in exhorting the benefits of a code so spiritually dry that it can accept any number of meta-halakhic interpretations, the implication remains that this leanest of all codes, taken by itself, is supremely devoid of religious meaning. Despite Twersky's redeeming suggestion about halakhic life as a whole, provided the

55 Twersky, “Shulchan Aruch,” 333.

56 Twersky, “Shulchan Aruch,” 336.

57 Twersky, “Shulchan Aruch,” 336.

58 Twersky, “Shulchan Aruch,” 333.

59 Twersky, “Shulchan Aruch,” 337.

60 Twersky, “Shulchan Aruch,” 337 (“Because providing these spiritual coordinates required special and separate, if complementary, treatment”).

halakhic realm is supplemented with spiritual meaning, the essay remains, in a sense, an indictment of halakhah at its most strictly practical, which Twersky also identifies as halakhah as its most codified. For where *Mishneh Torah* aims at philosophical truths is precisely where it falls short as a code, as Twersky points out: “The fact is that the *Shulḥan Arukh* is much closer to this codificatory ideal than the *Mishneh Torah*, which, after all, is as much commentary as it is code.”⁶¹

While Twersky’s suggestion that *Shulḥan Arukh*’s authors intended this austerity to improve its compatibility with different meta-halakhic schemes is intriguing, it also stops short of recognizing the no less profound meaning of the very element Twersky identified as the code’s most distinctive characteristic: *Shulḥan Arukh*’s extreme functionality. In focusing only on organization; in its “austere functionality” expressed in its relentless pruning, and “complete elimination of ideology, theology, and teleology”; in abandoning conceptual elegance, spiritual meaning, and ideal notions of law in favor of a pragmatic system, *Shulḥan Arukh* hews closer to the codificatory ideal.⁶² Yet this pragmatic priority is precisely what renders the code lacking in Twersky’s eyes. Twersky’s reduction of this essential aspect of *Shulḥan Arukh* to a mere means of achieving higher ends neglects the chance to contemplate its quintessential value *as a code*.

Perhaps this austere functionality can be read *as* its message, suggesting that halakhah can be all-encompassing and meaningful not by association with meta-halakhah nor by transcending history, but in its very own way. In his book on Maimonides, Moshe Halbertal presents different models of codes, some more radical than others. The less radical models are organizational in nature, rearranging the existent laws, enacting, in Halbertal’s words, “the administrative transfer of a pile of material from one file to another, or a technical arrangement that could have been organized differently.”⁶³ At the other extreme, Halbertal posits the radical codes, which aspire not just to rearrange, but, rather, to *be* the law. If Maimonides’s code had a bold philosophical implication, codes such as *Arba’ah Turim* have the humble managerial task of simply rearranging material for greater convenience. As Halbertal suggests, *Mishneh Torah* is a radical codification, whereas *Shulḥan Arukh*, he

61 Twersky, “Shulchan Aruch,” 332.

62 Twersky, “Shulchan Aruch,” 332.

63 Moshe Halbertal, *Maimonides: Life and Thought* (Princeton: Princeton University Press, 2014), 181–84, 230.

implies, represents the far less radical, because more pragmatically oriented, merely “administrative,” organizational code. Twersky would agree with this assessment. But in his description of *Shulḥan Arukh*, Twersky uses a peculiar choice of words, calling “the functionality of the *Shulḥan Arukh* . . . radical.”⁶⁴ Beyond denoting the code’s extreme pragmatism, perhaps this functionality indeed conceals something radical that deserves to be appreciated, a point where pragmatism turns into something more—perhaps, we might say, into its own approach to Jewish law.

For one, pragmatism can conceal more profound approaches to halakhah as a historical product. As Twersky points out, “the most pungent definition of the Code is a negative one, indicating what the author will omit.”⁶⁵ Considering what they omit, the medieval models that stood before our early modern codifiers each evince a particular historical approach. Maimonides’s approach was anti-historical, including all the laws from the pre-exilic past and refusing to accept the historical contingencies that made those laws irrelevant at the moment. Moreover, Maimonides also excluded the various alternative opinions that existed at every moment of past legal interpretation, remaining only with the conclusion he considered true. In his introduction to *Mishneh Torah*, Twersky explains Maimonides’s removal of the various opinions and debates as an attempt to “restore the original state of the Oral Law,” thus countering the historical development that resulted in the copious and incoherent material that necessitated codification.⁶⁶ This form of summarizing, too, then, is driven by an anti-historical tendency. R. Jacob ben Asher, conversely, accepted history. He left out the categories of law that the vagaries of history had rendered irrelevant, choosing to write a code for his current exilic moment. Additionally, *Arba’ah Turim* maintained the differences in opinion from his predecessors as live options that had to be considered and contended with.

In following *Arba’ah Turim*’s pattern, R. Karo and R. Isserles continued that code’s acceptance of historical development in excising laws that were not currently relevant. When creating *Shulḥan Arukh*, its authors still followed that pattern charted by *Arba’ah Turim*, but imitated Maimonides’s code in its erasure of alternative opinions and interpretations. *Mishneh Torah* omitted the disagreements and contradictions that are the product

64 Twersky, “Shulchan Aruch,” 331.

65 Twersky, *Introduction to the Code*, 99.

66 Twersky, *Introduction to the Code*, 99.

of halakhic development in history; *Arba'ah Turim* omitted the laws that exile made irrelevant; *Shulḥan Arukh* omitted both, accepting the historical contingencies that rendered entire categories of law irrelevant, but also rejecting the variety of options that produced copious halakhic discussion. If *Shulḥan Arukh's* creators imitated this attempt to restore the law to its original state, were they, then, adopting Maimonides's effort to counteract history, yet nevertheless omitting pre- (and post-) exilic law? This seems to engage two contradictory approaches to halakhah's history. Did *Shulḥan Arukh's* authors accept the state of halakhah in their day, when so many of the laws were in abeyance, or did they attempt to restore the law to an ideal state, removing the confusion and disagreement that came in its wake? At one level, this contradiction can be resolved by referring to the pragmatic orientation of the code. Even if the underlying approach to history involved contradictions, the authors of *Shulḥan Arukh* simply prioritized the most functional (and thus the briefest) way of writing.

However, if we interrogate more deeply the historical approach of *Mishneh Torah* versus *Shulḥan Arukh* where halakhic disagreement and development is concerned, it becomes clear that although both codes employed a similar technique, they did so for fundamentally different reasons. *Mishneh Torah*, in including all of Jewish law, refused to distinguish between eternal theory and current practice, dismissing the "historical and geographical contingencies" that rendered some laws irrelevant.⁶⁷ Likewise, Maimonides saw halakhic disagreement as a contingency. Halakhic disagreement was, to Maimonides, an accident of history, a gradual deterioration which the unification of the law in the form of his code could heal.⁶⁸ R. Karo likewise pointed to exile as an unwanted source of the proliferation of opposing halakhic opinions, and hoped that his code would serve to mitigate the problem. However, the solution offered by *Shulḥan Arukh* does not present itself as a way to undo the damage, it merely proposed a pragmatic way of dealing with it. This

67 Twersky, "Shulchan Aruch," 331.

68 Maimonides, *Mishneh Torah*, introduction:

ובזמן הזה תכפו צרות יתרות, ודחקה שעה את הכול, ואבדה חכמת חכמינו, ובינת נבוינו נסתתרה... ומפני זה נערתי חוצני, אני משה בירכי מיימון הספרדי, ונשענתי על הצור ברוך הוא, ובינותי בכל אלו הספרים; וראיתי לחבר דברים המתבררים מכל אלו החיבורין, בעניין האסור והמותר... עד שתהא תורה שבעל פה כולה סדורה בפי הכול--בלא קושיה ולא פירוק, ולא זה אומר בכה וזה אומר בכה, אלא דברים ברורים קרובים נכונים, על פי המשפט אשר יתבאר מכל אלו החיבורין והפירושוין הנמצאים מימות רבנו הקדוש ועד עכשיו.

See also Halbertal, *Maimonides*, 96–103.

can be understood not only by considering each code's selection of material (excluding the pre-exilic laws or not), but also by examining their respective methods for excluding alternative opinions. Whereas Maimonides chose which legal opinion to keep based on his halakhic analysis, R. Karo employed a method that was unprecedented in halakhic codification in following the majority from among the three most prominent medieval codes. This system implies a certain level of accepting historical contingency—one might even say, arbitrariness.⁶⁹

Rather than attempting to retrieve some fundamental, primordial legal truth, R. Karo simply rounded up a selection of historical conclusions and selected one among them by counting which option was supported by the larger number of authorities.⁷⁰ R. Isserles mostly accepts this system, adding an Ashkenazic layer that is, if anything, even more comfortable with halakhah's historicity in its addition of locally specific and very recent opinions. If Maimonides sought to escape history by codifying, the authors of *Shulḥan Arukh* offered a practical tool to live through it. *Mishneh Torah's* exclusion of alternative opinions stems from the author's belief that determining the correct law leads it back to its original state. *Shulḥan Arukh*, by contrast, excluded alternative opinions by accepting, participating in, and even intensifying the historically contingent process by which certain laws gained precedence over others, citing only the conclusions of this process. It builds a systematic and unified whole out of a historically curtailed selection of contingent parts. *Shulḥan Arukh* is thus, in its constant prioritization of the pragmatic role of codes, also the code most accepting of halakhah's historical existence.

There is something even more deeply meaningful in this radically pragmatic orientation, a meaning that is revealed in *Shulḥan Arukh's* organizational priorities and offers a response to the question of history. The scheme of *Arba'ah Turim*, which *Shulḥan Arukh* adopts, is more "practically oriented" than theoretically complete, omitting currently irrelevant laws and choosing the contingencies of history and exile over transcendence and completeness. Moreover, the practical orientation in *Shulḥan Arukh's* focus lies not in commentary or philosophy but in *organization* in its most pragmatic

69 See Fram, *Codification*, 53–63. Note, especially, Fram's point about how this method of codification leads to inconsistencies and was philosophically questionable (55).

70 On whether R. Karo actually carries out this method, see Kelman, *I Shall Create Halakhic Ruling*; Fram, *Codification*, 63–70.

sense, in “rearranging”—sorting, summarizing, and so on. But this is no small matter: *Shulḥan Arukh* chooses to embrace the historical contingency of halakhic development, and it chooses pragmatic organization as its priority. The attempt—which proved quite successful—to arrange these laws schematically, to remove repetition and contradiction, to systematize, was also made with practical goals in mind. But creating such a scheme is to express faith in law’s unity, systematicity and completeness, albeit not in Maimonides’s philosophical and conceptual sense. To create such a scheme is to accept that the state of halakhah that its codifiers faced was a corpus formed by a process of exile and historical contingency, rife with loss of entire legal categories and confusing attempts at interpretation. Nevertheless, to codify as *Shulḥan Arukh* does is to assert that, not through supreme intellectual restoration but through pragmatic human organization of the most functional kind, these laws can nevertheless be unified and rationally explored.

Presenting the historically contingent collection of legal results rather than anything more ideal but, nevertheless, doing so as a complete scheme of law in its own right, in a comprehensive, systematic, organized, manner, is to combine the arbitrariness of law’s historical development and human contingencies, its lack of absolute totality, with the fullness and implied significance of a code’s structure and systematicity.⁷¹ For arranging historically contingent knowledge in a complete, ordered scheme is to elevate the historical incidents of legal development as meaningful. As such, to create a pragmatic code is to imbue meaning in the most functional of approaches. This idea can be no less significant than any “meta-halakhic” philosophy, perhaps even more so. Twersky himself hints at this, when he discusses the fullness of halakhah: “Halachah, like nature, abhors a vacuum Consequently, every action—even tying one’s shoes—can be and is invested with symbolic meaning”⁷² Halbertal, in a different article, has shown that the tendency towards ever-increasing fullness is characteristic of talmudic law.⁷³ This sense of fullness need not express any essential, primeval necessity or absolute completeness; it can also be generated by the human activity of legal

71 Or “classical,” a term Twersky uses at one point to characterize the difference between R. Karo’s choice of classical medieval halakhic sources versus R. Isserles’s more recent (fifteenth-century), local, Ashkenazic medley.

72 Twersky, “Shulchan Aruch,” 336.

73 Moshe Halbertal, “The History of Halakhah and the Emergence of Halakhah,” *Diné Israel* 29 (2013): 1–23 (Hebrew).

interpretation and transmission, occurring within historical time. Halakhah can attain such fullness even without a meta-halakhic supplement, for it can be expressed in the completeness of schematic organization. It is a completeness that legal scholars can choose to create, even while abandoning ideals of absolute, eternal law. The aspiration inherent in systematic arrangement, when applied to a collection of laws as undeniably contingent and historically caused as the ones in *Shulḥan Arukh*, proclaims an idea of halakhic fulness, and thereby also of a belief in the halakhic project's profound self-sufficient meaning, perhaps with even more conviction than any meta-halakhic theory ever could.

In its pursuit of functionality, this radically practical code accepts the historical contingency that affects halakhah in all its senses—both the historical reality of exile and the historical development of halakhic interpretation. It is perhaps this code's readiness to work with the imperfect, contingent products of history that also invites the historian to approach these materials in a way that is historical without being reductive, that recognizes in the historical process something essential to the purpose of the code.